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This public document is published in accordance with R.S. 49:954.1. The publication date for this issue of the Louisiana Register is February 20, 2023. The Office of the State Register is the official state entity for all certified copies of the Louisiana Register and the content contained herein.

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Executive Orders

EXECUTIVE ORDER JBE 23-4

Carry-Forward Bond Allocation 2022

WHEREAS, pursuant to the Tax Reform Act of 1986 and Act 51 of the 1986 Regular Session of the Louisiana Legislature (hereafter “Act”), Executive Order Number JBE 2016-35 was issued to establish

(1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year 2016 and subsequent calendar years;

(2) the procedure for obtaining an allocation of bonds under the ceiling; and

(3) a system of central record keeping for such allocations;

WHEREAS, Section 4(H) of Executive Order Number JBE 2016-35 provides that if the ceiling for a calendar year exceeds the aggregate amount of bonds subject to the private activity bond volume limit issued during the year by all issuers, by executive order, the Governor may allocate the excess amount to issuers or an issuer for use as a carry-forward for one or more carry-forward projects permitted under the Act;

WHEREAS, the sum of five hundred eight million six hundred forty-five thousand one hundred and seventy dollar (\$508,645,170) represents the amount of the ceiling determined by the staff of the Louisiana State Bond Commission (“SBC”) for private activity bond volume limits for the year 2022 (“2022 Ceiling”);

WHEREAS, the sum of three hundred sixty-two million six hundred twenty thousand six hundred and eighteen dollars (\$362,620,618) of the 2022 Ceiling was not allocated during the 2022 calendar year; and

WHEREAS, the SBC has determined that three hundred sixty-two million six hundred twenty thousand six hundred and eighteen dollars (\$362,620,618) of the 2022 Ceiling is eligible for carry-forward, and the Governor desires to allocate this amount as carry-forward for projects which are permitted and eligible under the Act.

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

SECTION 1: Pursuant to and in accordance with the provisions of Section 146(f) of the Internal Revenue Code of 1986, as amended, and in accordance with the request for carry-forward filed by the designated issuer, the excess private activity bond volume limit under the 2022 Ceiling is hereby allocated to the following issuer(s), for the following carry-forward project(s), and in the following amount(s):

Issuer	Carry-Forward Project	Carry-Forward Amount
Louisiana Housing Corporation	Multifamily Housing	\$112,620,618
Louisiana Housing Corporation	Single-family Housing	\$50,000,000
Louisiana Public Facilities Authority	Origin US Megasite I, LLC	\$175,000,000
Caddo-Bossier Parishes Port Commission	BIA Energy Project, Series 2022 (Qualified Carbon Dioxide Capture Facilities)	\$25,000,000

SECTION 2: All references in this Order to the singular shall include the plural, and all plural references shall include the singular.

SECTION 3: 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 17th day of January, 2023.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
R. Kyle Ardoin
Secretary of State
2302#085

Emergency Rules

DECLARATION OF EMERGENCY

Office of the Governor Boxing and Wrestling Commission

Boxing and Wrestling Standards
(LAC 46:XI.101 and 901-917)

The Boxing and Wrestling Commission does hereby exercise the emergency provisions of the Administrative Procedure Act R.S. 49:962 and R.S. 4:64 in order to define and promulgate a new chapter on a classic ring sport to the state of Louisiana, London Ring Fighting. 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.

This Emergency Rule is effective as of February 20, 2023 and will remain in effect for a period of 180 days unless renewed by the commission or until adoption of the final rules, whichever occurs first.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

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Chapter 1. General Rules

§101. Definitions

London Ring Fighting—is 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), LR 49:

Chapter 9. London Ring Fighting (LRF)

§901. Application of General Rules; Professional Boxing Rules and Mixed Technique Event Rules

A. All general rules, excepting §127, Charity Events, shall apply to all LRF events.

B. Except as set forth below, LRF events shall be conducted using the professional boxing rules §305 through §330, excepting rules §307, §309, §318, §320 and §322 which are replaced below and except where the intention would be to modify rules which are specific to LRF events.

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:

1. atomweight—105 lbs to 115 lbs;
2. strawweight—115 lbs to 125 lbs;
3. flyweight—125 lbs to 135 lbs;
4. bantamweight—135 lbs to 145 lbs;
5. featherweight—145 lbs to 155 lbs;
6. lightweight—155 lbs to 165 lbs;
7. welterweight—165 lbs to 175 lbs;
8. middleweight—175 lbs to 185 lbs;
9. It heavyweight—185 lbs to 200 lbs;
10. cruiserweight—200 lbs to 225 lbs;
11. heavyweight—225 lbs to 265 lbs;
12. super heavyweight—265 lbs and above.

B. After the weigh-in of an unarmed combatant competing in LRF events:

1. weight loss in excess of 2 pounds is not permitted for an unarmed combatant who weighed in at 145 pounds or less;
2. weight loss in excess of 3 pounds is not permitted for an unarmed combatant who weighed in at over 145 pounds;
3. the weight loss described in Paragraph 2 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 Professional Boxing Rule §321, Fouls, Deductions, of Points Because of a Foul and Accidental Fouling. Section 321.A of this Part shall be modified 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 kneeing 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 1 inch from the fighter's knuckles. The wrap must include the wrist and may travel up to 3 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 1 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, LR 49:

§911. London Rules Fighting Ring

A. All LRF events shall be subject to the Professional Boxing rule §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 3 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 2 physicians who are licensed in the state of Louisiana. Both physicians must be in attendance at ringside at all times during the fight. A fight/round shall not begin unless the referee insures that both ringside physicians are present at ringside; and

B. 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 Professional Boxing rule §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:

A. L. "Buddy" Emбанato, Jr.
Chairman

2203#021

DECLARATION OF EMERGENCY

Department of Health Board of Medical Examiners

Bridge Year Graduate Physicians
(LAC 46:XLV.303 and 398)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:962, and pursuant to the authority set forth in R.S. 37:1270, R.S. 37:1275, and R.S. 1310.12, the Board of Medical Examiners adopted the following amendments and additions to the Medical Practice Act to implement the Bridge Year Graduate Physicians Program enacted by Act 757 of the 2022 Regular legislative session. The Bridge Year Graduate Physicians Program provides a pathway for medical school graduates who do not obtain a placement in a residency program to continue their training and education preparatory to reapplying for a residency program for the following year. Additionally, by utilizing these physicians in medically underserved areas, the program will benefit not only the participants themselves but the state as a whole. This Rule shall have the force and effect of law as of February 2023 and will remain in effect 180 days, unless renewed by the board, or until permanent rules are promulgated in accordance with law.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLV. Medical Professions

Subpart 2. Licensure and Certification

Chapter 3. Physicians

§303. Definitions

A. ...

* * *

Bridge Year Graduate Physician—a person possessing a doctor of medicine (allopathic/M.D.), doctor of osteopathy or doctor of osteopathic medicine degree (osteopathic/D.O.) or an equivalent degree duly awarded by a medical or osteopathic educational institution approved by the board pursuant to §§333 to 341 of this Chapter who meets the requirements and qualifications provided in §§311 et seq., and who holds a certificate to practice under the direct supervision of a board-certified physician as provided in these rules.

* * *

Training Physician—a board-certified physician who meets and maintains the requirements to serve as a preceptor for physicians practicing under a bridge year graduate physician certificate.

* * *

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1271 and 37:1274.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:908 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 16:513 (June 1990), LR 27:835 (June 2001), LR 31:1582 (July 2005), LR 38:3173 (December 2012), LR 49:

Subchapter H. Restricted Licensure, Permits

§398 Bridge Year Graduate Physician Program

A. A graduate of an accredited school of medicine or osteopathy who applied to, but was not accepted into, an accredited medical residency training program for the first year following medical school graduation, may apply for a bridge year graduate physician certificate.

1. A physician practicing under a bridge year graduate physician certificate shall practice in training for one post-graduate year under the direct supervision of a board-certified physician who has completed training required by the board to be a training physician and who maintains such training at intervals required by the board.

a. The training physician shall be board-certified in either internal medicine or family medicine and shall have a minimum of 10 years' experience.

b. The training physician must not have been subject to any adverse action by a licensing board, subject to review and exceptions at the discretion of the board.

2. The training physician shall practice in the same facility and shall formally review and co-sign the work of the bridge year graduate physician.

a. For the first 90 days, the training physician shall conduct a review of 10 percent of the bridge year graduate physician's charts.

b. Thereafter, the training physician may review on a quarterly basis the level of chart review required for the bridge year graduate physician and may reduce the percentage of charts reviewed if appropriate. At least 25 percent of charts must be reviewed during the pendency of the supervision. The training physician shall notify the board when the level of chart review is reduced.

3. The training physician shall determine the scope of the practice of the bridge year graduate physician under his/her supervision and shall keep records of same.

4. A physician practicing under a bridge year graduate physician certificate shall have prescriptive authority in accordance with state and federal law and board rules, as authorized and supervised by the training physician.

5. The training physician shall issue a report at the end of the bridge year indicating the scope and breadth of the practice of the participating bridge year graduate physician and the instruction and training given to the bridge year graduate physician. The training physician's report shall contain a statement as to whether or not the bridge year graduate physician would be recommended for a residency position upon reapplication.

6. A bridge year graduate physician certificate shall be valid for one year and may be renewed for no more than two additional one-year periods upon application to, and discretion of, the board.

7. All records and documents of the training of the bridge year graduate physician shall be sent to the board at the end of the training in electronic form.

B. A bridge year graduate physician shall complete continuing medical education while participating in the bridge year graduate physician program consisting of at least two hours per week of training provided by participating medical schools via video conference and 50 hours of AMA-approved CME.

C. The board shall select the participants for the bridge year graduate physician program and has the sole authority to accept or reject any applicant. If the number of applicants exceeds the available number of training physicians or training locations, preference may be given to applicants desiring to practice in underserved areas, in primary care or internal medicine, to Louisiana residents, or to graduates of Louisiana medical schools.

D. The board may suspend, terminate, or revoke a bridge year graduate physician certificate prior to the expiration of one year for any reason provided by law or board rule for the termination of licenses, permits, registrations, or certificates issued by the board.

E. A bridge year graduate physician certificate shall not confer any future right to full, unrestricted licensure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1275, and R.S. 1310.12.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 49:

Lester Wayne Johnson, M.D.
President

2302#046

DECLARATION OF EMERGENCY

Department of Health Bureau of Health Services Financing and Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
Children's Choice Waiver
Direct Service Worker Wages and Bonus Payments
(LAC 50:XXI.12101)

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend LAC 50:XXI.12101 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 comes first.

The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) approved the use of bonus payments for agencies providing

Children's Choice Waiver Services to home and community-based services (HCBS) waiver participants under section 9817 of the American Rescue Plan Act of 2021 (ARPA). The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities promulgated an Emergency Rule which amended the provisions governing reimbursement in the Children's Choice Waiver in order to establish workforce bonus payments for direct service workers and support coordination providers along with audit procedures and sanctions (*Louisiana Register*, Volume 48, Number 8). Upon further discussion with various stakeholders, the department determined that additional revisions were needed to the provisions governing the ARPA workforce bonus payments and subsequently promulgated an Emergency Rule that amended the provisions of the July 31, 2022 Emergency Rule (*Louisiana Register*, Volume 49, Number 1). The department has now determined that it is necessary to amend the December 20, 2022 Emergency Rule governing reimbursement in the Children's Choice Waiver in order to amend the provisions governing direct service worker wages.

This action is being taken to promote the health and welfare of Medicaid beneficiaries by ensuring continued provider participation in the Medicaid Program.

Effective January 23, 2023, the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend the provisions of the December 20, 2022 Emergency Rule governing reimbursement in the Children's Choice Waiver in order to amend the provisions governing direct service worker wages.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE Part XXI. Home and Community-Based Services Waivers

Subpart 9. Children's Choice Waiver

Chapter 121. Reimbursement Methodology §12101. Unit of Reimbursement

A. ...

1. Establishment of Support Coordination Workforce Bonus Payments

a. Support coordination providers who provided services from April 1, 2021 to October 31, 2022 shall receive bonus payments of \$300 per month for each support coordination worker that worked with participants for those months.

b. The support coordination worker who provided services to participants from April 1, 2021 to October 31, 2022 must receive at least \$250 of this \$300 bonus payment paid to the provider. This bonus payment is effective for all affected support coordination workers of any working status, whether full-time or part-time.

c. – d. Repealed

2. Audit Procedures for Support Coordination Workforce Bonus Payments

a. The bonus payments reimbursed to support coordination providers shall be subject to audit by LDH.

b. Support coordination providers shall provide to LDH or its representative all requested documentation to verify that they are in compliance with the support coordination bonus payments.

c. This documentation may include, but is not limited to, payroll records, wage and salary sheets, check stubs, etc.

d. Support coordination providers shall produce the requested documentation upon request and within the time frame provided by LDH.

e. Noncompliance or failure to demonstrate that the bonus payments were paid directly to support coordination workers may result in the following:

- i. sanctions; or
- ii. disenrollment from the Medicaid Program.

3. Sanctions for Support Coordination Workforce Bonus Payments

a. The support coordination provider will be subject to sanctions or penalties for failure to comply with this Rule or with requests issued by LDH pursuant to this Rule. The severity of such action will depend upon the following factors:

- i. failure to pay support coordination workers the \$250 monthly bonus payments;
- ii. the number of employees identified as having been paid less than the \$250 monthly workforce bonus payments;
- iii. the persistent failure to pay the \$250 monthly bonus payments; or
- iv. failure to provide LDH with any requested documentation or information related to or for the purpose of verifying compliance with this Rule.

B. - B.3. ...

4. Direct Service Worker Wages and Workforce Bonus Payments

a. Establishment of Direct Service Worker Wage Floor for Medicaid Home and Community-Based Services for Intellectual and Developmental Disabilities

i. Effective October 1, 2021, providers of Medicaid home and community-based waiver services operated through the Office for Citizens with Developmental Disabilities employing direct service workers will receive the equivalent of a \$2.50 per hour rate increase.

ii. Effective October 1, 2021, this increase or its equivalent will be applied to all service units provided by direct service workers with an effective date of service for the identified home and community-based waiver services provided beginning October 1, 2021.

iii. LDH established a mandatory hourly wage enhancement for all DSW's employed in I-DD HCBS Services. The wage enhancement shall be a direct wage increase of 70 percent of the \$2.50 rate increase, equal to \$1.75 per hour.

iv. All providers of services affected by this rate increase shall be subject to a direct service worker wage floor of \$9 per hour. This wage floor is effective for all affected direct service workers of any work status, whether full-time or part-time.

v. The wage being received by DSW's who were working for an agency prior to October 1, 2021 and are still employed by the agency shall amount to a total of \$1.75 more per hour than they were receiving prior to October 1, 2021. In cases where this is applicable, the rate increase is not retroactive to October 1, 2021. If the current wage paid to DSWs who were working for an agency prior to October 1, 2021 and are still employed by that agency totals at least

\$1.75 more per hour than the wage paid to the DSWs prior to October 1, 2021, no change to the DSW's wage is necessary to comply with the mandatory hourly wage enhancement.

vi. The Department of Health reserves the right to adjust the direct service worker wage floor as needed through appropriate rulemaking promulgation consistent with the Louisiana Administrative Procedure Act.

b. Establishment of Direct Service Worker Workforce Bonus Payments.

i. Providers providing services from April 1, 2021 to October 31, 2022 shall receive bonus payments of \$300 per month for each direct service worker that worked with participants for that month.

ii. The direct service worker providing services from April 1, 2021 to October 31, 2022 that worked with participants must receive at least \$250 of this \$300 bonus payment paid to providers. This bonus payment is effective for all affected direct service workers of any working status, whether full-time or part-time.

iii. Bonus payments will end October 31, 2022.

iv. LDH reserves the right to adjust the amount of the bonus payments paid to the direct service worker as needed through appropriate rulemaking promulgation consistent with the Administrative Procedure Act.

v. - v.(b). Repealed.

c. Audit Procedures for Direct Service Worker Wage Floor and Workforce Bonus Payments

i. The wage enhancement and bonus payments reimbursed to providers shall be subject to audit by LDH.

(a) - (d). Repealed.

ii. Providers shall provide to the LDH or its representative all requested documentation to verify that they are in compliance with the direct service wage floor and bonus payments.

iii. This documentation may include, but is not limited to, payroll records, wage and salary sheets, check stubs, etc.

iv. Providers shall produce the requested documentation upon request and within the time frame provided by the LDH.

v. Non-compliance or failure to demonstrate that the wage enhancement and/or bonus payments were paid directly to the direct service workers may result in the following:

- (a). sanctions; or
- (b). disenrollment from the Medicaid Program.

d. Sanctions for Direct Service Worker Wage Floor and Workforce Bonus Payments

i. The provider will be subject to sanctions or penalties for failure to comply with this Rule or with requests issued by LDH pursuant to this Rule. The severity of such action will depend upon the following factors:

(a). failure to pay I/DD HCBS direct service workers the floor minimum of \$9 per hour and/or the \$250 monthly bonus payments;

(b). the number of employees identified as having been paid less than the floor minimum of \$9 per hour and/or the \$250 monthly bonus;

(c). the persistent failure to pay the floor minimum go \$9 per hour and/or the \$250 monthly bonus payments; or

(d). failure to provide LDH with any requested documentation or information related to or for the purpose of verifying compliance with this Rule.

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 28:1987 (September 2002), LR 33:1872 (September 2007), amended by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 34:250 (February 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:324 (February 2010), LR 36:2280 (October 2010), LR 37:2157 (July 2011), LR 39:2504 (September 2013), LR 40:68 (January 2014), LR 41:128 (January 2015), LR 42:896 (June 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:40 (January 2022), LR 48:1544 (June 2022), 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.

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

Dr. Courtney N. Phillips
Secretary

2302#009

DECLARATION OF EMERGENCY

Department of Health Bureau of Health Services Financing and Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
Children's Choice Waiver
Direct Service Worker Wages and Bonus Payments
(LAC 50:XXI.12101)

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities hereby rescind the January 23, 2023 Emergency Rule which amended LAC 50:XXI.12101 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. The Emergency Rule amended the provisions of the December 20, 2022 Emergency Rule governing reimbursement in the Children's Choice Waiver in order to amend the provisions governing direct service worker wages.

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.

The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS)

approved the use of bonus payments for agencies providing Children's Choice Waiver services to home and community-based services (HCBS) waiver participants under section 9817 of the American Rescue Plan Act of 2021 (ARPA). The Department of Health, Bureau Health Services Financing and the Office for Citizens with Developmental Disabilities promulgated an Emergency Rule which amended the provisions governing reimbursement in the Children's Choice Waiver in order to establish workforce bonus payments for direct service workers and support coordination providers along with audit procedures and sanctions (*Louisiana Register*, Volume 48, Number 8). Upon further discussion with various stakeholders, the department determined that additional revisions were needed to the provisions governing the ARPA workforce bonus payments and subsequently promulgated an Emergency Rule that amended the provisions of the July 31, 2022 Emergency Rule (*Louisiana Register*, Volume 49, Number 1). The department determined that further revisions were needed to the provisions governing direct service worker wages and promulgated an Emergency Rule that amended the provisions of the December 20, 2022 Emergency Rule (*Louisiana Register*, Volume 49, Number 2).

The department has now determined that it is necessary to rescind the January 23, 2023 Emergency Rule governing direct service worker wages in the Children's Choice Waiver. This action is being taken to promote the health and welfare of Medicaid beneficiaries by ensuring continued provider participation in the Medicaid Program.

Effective February 10, 2023, the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities rescind the January 23, 2023 Emergency Rule which amended the provisions of the December 20, 2022 Emergency Rule governing reimbursement in the Children's Choice Waiver in order to amend the provisions governing direct service worker wages.

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

Dr. Courtney N. Phillips
Secretary

2302#081

DECLARATION OF EMERGENCY

Department of Health Bureau of Health Services Financing and Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
New Opportunities Waiver
Direct Service Worker Wages and Bonus Payments
(LAC 50:XXI.14301)

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend LAC 50:XXI.14301 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.

The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) approved the use of bonus payments for agencies providing New Opportunities Waiver (NOW) services to home and community-based services (HCBS) waiver participants under section 9817 of the American Rescue Plan Act of 2021 (ARPA). The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities promulgated an Emergency Rule which amended the provisions governing reimbursement in the NOW in order to establish workforce bonus payments for direct service workers along with audit procedures and sanctions (*Louisiana Register*, Volume 48, Number 8). Upon further discussion with various stakeholders, the department determined that additional revisions were needed to the provisions governing the ARPA workforce bonus payments and subsequently promulgated an Emergency Rule that amended the provisions of the July 31, 2022 Emergency Rule (*Louisiana Register*, Volume 49, Number 1). The department has now determined that it is necessary to amend the December 20, 2022 Emergency Rule governing reimbursement in the NOW in order to amend the provisions governing direct service worker wages.

This action is being taken to promote the health and welfare of Medicaid beneficiaries by ensuring continued provider participation in the Medicaid Program.

Effective January 23, 2023, the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend the provisions of the December 20, 2022 Emergency Rule governing reimbursement in the NOW in order to amend the provisions governing direct service worker wages.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community-Based Services

Waivers

Subpart 11. New Opportunities Waiver

Chapter 143. Reimbursement

§14301. Unit of Reimbursement

A. - E. ...

F. Direct Service Worker Wages and Bonus Payments

1. Establishment of Direct Service Worker Wage Floor for Medicaid Home and Community-Based Services for Intellectual and Developmental Disabilities

a. Effective October 1, 2021, providers of Medicaid home and community-based waiver services operated through the Office for Citizens with Developmental Disabilities employing direct service workers will receive the equivalent of a \$2.50 per hour rate increase.

b. Effective October 1, 2021, this increase or its equivalent will be applied to all service units provided by direct service workers with an effective date of service for

the identified home and community based waiver services provided beginning October 1, 2021.

c. LDH established a mandatory hourly wage enhancement for all DSW's employed in I-DD HCBS Services. The wage enhancement shall be a direct wage increase of 70 percent of the \$2.50 rate increase, equal to \$1.75 per hour.

d. All providers of services affected by this rate increase shall be subject to a direct service worker wage floor of \$9 per hour. This wage floor is effective for all affected direct service workers of any work status, whether full-time, or part-time.

e. The wage being received by DSW's who were working for an agency prior to October 1, 2021 and are still employed by the agency shall amount to a total of \$1.75 more per hour than they were receiving prior to October 1, 2021. In cases where this is applicable, the rate increase is not retroactive to October 1, 2021. If the current wage paid to DSWs who were working for an agency prior to October 1, 2021 and are still employed by that agency totals at least \$1.75 more per hour than the wage paid to the DSWs prior to October 1, 2021, no change to the DSW's wage is necessary to comply with the mandatory hourly wage enhancement.

f. The Department of Health reserves the right to adjust the direct service worker wage floor as needed through appropriate rulemaking promulgation consistent with the Louisiana Administrative Procedure Act.

2. Establishment of Direct Service Worker Workforce Bonus Payments

a. Providers who provided services from April 1, 2021 to October 31, 2022 shall receive bonus payments of \$300 per month for each direct service worker that worked with participants for those months.

b. The direct service worker who provided services to participants from April 1, 2021 to October 31, 2022 must receive at least \$250 of this \$300 bonus payment paid to the provider. This bonus payment is effective for all affected direct service workers of any working status, whether full-time or part-time.

c. Bonus payments will end October 31, 2022.

d. LDH reserves the right to adjust the amount of the bonus payments paid to the direct service worker as needed through appropriate rulemaking promulgation consistent with the Administrative Procedure Act.

e. - e.ii. Repealed.

3. Audit Procedures for Direct Service Worker Wage Floor and Workforce Bonus Payments

a. The wage enhancement and bonus payments reimbursed to providers shall be subject to audit by LDH.

i. - iv. Repealed.

b. Providers shall provide to the LDH or its representative all requested documentation to verify that they are in compliance with the direct service worker wage floor and bonus payments.

c. This documentation may include, but is not limited to, payroll records, wage and salary sheets, check stubs, etc.

d. Providers shall produce the requested documentation upon request and within the timeframe provided by LDH.

e. Non-compliance or failure to demonstrate that the wage enhancement and/or bonus payments were paid directly to direct service workers may result in:

- i. sanctions; or
- ii. disenrollment from the Medicaid Program.

4. Sanctions for Direct Service Worker Wage Floor and Workforce Bonus Payments

a. The provider will be subject to sanctions or penalties for failure to comply with this Rule or with requests issued by LDH pursuant to this Rule. The severity of such action will depend upon the following factors:

- i. failure to pay I/DD HCBS direct service workers the floor minimum of \$9 per hour and/or the \$250 monthly bonus payments;
- ii. the number of employees identified as having been paid less than the floor minimum of \$9 per hour and/or the \$250 monthly bonus payments;
- iii. the persistent failure to pay the floor minimum of \$9 per hour and/or the \$250 monthly bonus payments; or
- iv. failure to provide LDH with any requested documentation or information related to or for the purpose of verifying compliance with this Rule.

G. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1209 (June 2004), amended by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 34:252 (February 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 35:1851 (September 2009), LR 36:1247 (June 2010), LR 37:2158 (July 2011), LR 39:1049 (April 2013), LR 40:80 (January 2014), LR 42:898 (June 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 44:58 (January 2018), LR 45:44 (January 2019), LR 46:1682 (December 2020), LR 48:41 (January 2022), LR 48:1558 (June 2022), 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.

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

Dr. Courtney N. Phillips
Secretary

2302#010

DECLARATION OF EMERGENCY

Department of Health Bureau of Health Services Financing and Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
New Opportunities Waiver
Direct Service Worker Wages and Bonus Payments
(LAC 50:XXI.14301)

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities hereby rescind the January 23, 2023 Emergency Rule which amended LAC 50:XXI.14301 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. The Emergency Rule amended the provisions of the December 20, 2022 Emergency Rule governing reimbursement in the New Opportunities Waiver in order to amend the provisions governing direct service worker wages.

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.

The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) approved the use of bonus payments for agencies providing New Opportunities Waiver services to home and community-based services (HCBS) waiver participants under section 9817 of the American Rescue Plan Act of 2021 (ARPA). The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities promulgated an Emergency Rule which amended the provisions governing reimbursement in the New Opportunities Waiver in order to establish workforce bonus payments for direct service workers along with audit procedures and sanctions (*Louisiana Register*, Volume 48, Number 8). Upon further discussion with various stakeholders, the department determined that additional revisions were needed to the provisions governing the ARPA workforce bonus payments and subsequently promulgated an Emergency Rule that amended the provisions of the July 31, 2022 Emergency Rule (*Louisiana Register*, Volume 49, Number 1). The department determined that further revisions were needed to the provisions governing direct service worker wages and promulgated an Emergency Rule that amended the provisions of the December 20, 2022 Emergency Rule (*Louisiana Register*, Volume 49, Number 2).

The department has now determined that it is necessary to rescind the January 23, 2023 Emergency Rule governing direct service worker wages in the New Opportunities Waiver. This action is being taken to promote the health and welfare of Medicaid beneficiaries by ensuring continued provider participation in the Medicaid Program.

Effective February 10, 2023, the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities rescind the January 23, 2023 Emergency Rule which amended the provisions of the December 20, 2022 Emergency Rule governing reimbursement in the New Opportunities Waiver in order to amend the provisions governing direct service worker wages.

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

Dr. Courtney N. Phillips
Secretary

2302#082

DECLARATION OF EMERGENCY

Department of Health Bureau of Health Services Financing and Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers Residential Options Waiver Direct Service Worker Wages and Bonus Payments (LAC 50:XXI.16903 and 16905)

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend LAC 50:XXI.16903 and adopt §16905 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.

The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) approved the use of bonus payments for agencies providing Residential Options Waiver (ROW) services to home and community-based services (HCBS) waiver participants under section 9817 of the American Rescue Plan Act of 2021 (ARPA). The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities promulgated an Emergency Rule which amended and adopted provisions governing reimbursement in the ROW in order to establish workforce bonus payments for direct service workers and support coordination providers along with audit procedures and sanctions (*Louisiana Register*, Volume 48, Number 8). Upon further discussion with various stakeholders, the department determined that additional revisions were needed to the provisions governing the ARPA workforce bonus payments and subsequently promulgated an Emergency Rule that amended the provisions of the July 31, 2022 Emergency Rule (*Louisiana Register*, Volume 49, Number 1). The department has now determined that it is necessary to amend the December 20, 2022 Emergency Rule governing

reimbursement in the ROW in order to amend the provisions governing direct service worker wages.

This action is being taken to promote the health and welfare of Medicaid beneficiaries by ensuring continued provider participation in the Medicaid Program.

Effective January 23, 2023, the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend the provisions of the December 20, 2022 Emergency Rule governing reimbursement in the ROW in order to amend the provisions governing direct service worker wages.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE Part XXI. Home and Community-Based Services Waivers

Subpart 13. Residential Options Waiver

Chapter 169. Reimbursement

§16903. Direct Service Worker Wages and Bonus Payments

A. Establishment of Direct Service Worker Wage Floor for Medicaid Home and Community Based Services for Intellectual and Developmental Disabilities

1. Effective October 1, 2021, providers of Medicaid home and community-based waiver services operated through the Office for Citizens with Developmental Disabilities employing direct service workers will receive the equivalent of a \$2.50 per hour rate increase.

2. Effective October 1, 2021, this increase or its equivalent will be applied to all service units provided by direct service workers with an effective date of service for the identified home and community based waiver services provided beginning October 1, 2021.

3. LDH established a mandatory hourly wage enhancement for all DSW's employed in I-DD HCBS Services. The wage enhancement shall be a direct wage increase of 70 percent of the \$2.50 rate increase equal to \$1.75 per hour.

4. All providers of services affected by this rate increase shall be subject to a direct service worker wage floor of \$9 per hour. This wage floor is effective for all affected direct service workers of any work status, whether full-time or part-time.

5. The wage being received by DSWs who were working for an agency prior to October 1, 2021 and are still employed by that agency shall amount to a total of \$1.75 more per hour than they were receiving prior to October 1, 2021. In cases where this is applicable, the rate increase is not retroactive to October 1, 2021. If the current wage paid to DSWs who were working for an agency prior to October 1, 2021 and are still employed by that agency totals at least \$1.75 more per hour than the wage paid to the DSWs prior to October 1, 2021, no change to the DSW's wage is necessary to comply with the mandatory hourly wage enhancement.

6. The Department of Health reserves the right to adjust the direct service worker wage floor as needed through appropriate rulemaking promulgation consistent with the Louisiana Administrative Procedure Act.

B. Establishment of Direct Service Worker Workforce Bonus Payments

1. Providers who provided services from April 1, 2021 to October 31, 2022 shall receive bonus payments of \$300

per month for each direct service worker that worked with participants for those months.

2. The direct service worker who provided services to participants from April 1, 2021 to October 31, 2022 must receive at least \$250 of this \$300 bonus payment paid to the provider. This bonus payment is effective for all affected direct service workers of any working status, whether full-time or part-time.

3. Bonus payments will end October 31, 2022.

4. LDH reserves the right to adjust the amount of the bonus payments paid to the direct service worker as needed through appropriate rulemaking promulgation consistent with the Administrative Procedure Act.

5 - 5.b. Repealed.

C. Audit Procedures for Direct Service Worker Wage Floor and Workforce Bonus Payments

1. The wage enhancement and bonus payments reimbursed to providers shall be subject to audit by LDH.

a. - d. Repealed.

2. Providers shall provide to LDH or its representative all requested documentation to verify that they are in compliance with the direct service worker wage floor and bonus payments.

3. This documentation may include, but is not limited to, payroll records, wage and salary sheets, check stubs, etc.

4. Providers shall produce the requested documentation upon request and within the timeframe provided by LDH.

5. Non-compliance or failure to demonstrate that the wage enhancement and/or bonus payments were paid directly to direct service workers may result in the following:

a. sanctions; or

b. disenrollment from the Medicaid Program.

D. Sanctions for Direct Service Worker Wage Floor and Workforce Bonus Payments

1. The provider will be subject to sanctions or penalties for failure to comply with this Rule or with requests issued by LDH pursuant to this Rule. The severity of such action will depend upon the following factors:

a. failure to pay I/DD HCBS direct service workers the floor minimum of \$9 per hour and/or the \$250 monthly bonus payments;

b. the number of employees identified as having been paid less than the floor minimum of \$9 per hour and/or the 250 monthly bonus payments;

c. the persistent failure to pay the floor minimum of \$9 per hour and/or the \$250 monthly bonus payments; or

d. failure to provide LDH with any requested documentation or information related to or for the purpose of verifying compliance with this Rule.

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 for Citizens with Developmental Disabilities, LR 33:2456 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2169 (October 2015), LR 42:900 (June 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:42 (January 2022), LR 48:

§16905. Support Coordination

A. Establishment of Support Coordination Workforce Bonus Payments

1. Support coordination providers who provided services from April 1, 2021 to October 31, 2022 shall receive bonus payments of \$300 per month for each support coordination worker that worked with participants for those months.

2. The support coordination worker who provided services to participants from April 1, 2021 to October 31, 2022 must receive at least \$250 of this \$300 bonus payment paid to the provider. This bonus payment is effective for all affected support coordination workers of any working status, whether full-time or part-time.

3. - 4. Repealed.

B. Audit Procedures for Support Coordination Workforce Bonus Payments

1. The bonus payments reimbursed to support coordination providers shall be subject to audit by LDH.

2. Support coordination providers shall provide to LDH or its representative all requested documentation to verify that they are in compliance with the support coordination bonus payments.

3. This documentation may include, but is not limited to, payroll records, wage and salary sheets, check stubs, etc.

4. Support coordination providers shall produce the requested documentation upon request and within the timeframe provided by the LDH.

5. Noncompliance or failure to demonstrate that the bonus payments were paid directly to support coordination workers may result in the following:

a. sanctions; or

b. disenrollment from the Medicaid Program.

C. Sanctions for Support Coordination Workforce Bonus Payments

1. The support coordination provider will be subject to sanctions or penalties for failure to comply with this Rule or with requests issued by LDH pursuant to this Rule. The severity of such action will depend upon the following factors:

a. failure to pay support coordination workers the \$250 monthly bonus payments;

b. the number of employees identified as having been paid less than the \$250 monthly bonus payments;

c. the persistent failure to pay the \$250 monthly bonus payments; or

d. failure to provide LDH with any requested documentation or information related to or for the purpose of verifying compliance with this Rule.

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 and the Office for Citizens with Developmental Disabilities, LR 48:

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.

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

Dr. Courtney N. Phillips
Secretary

2302#011

DECLARATION OF EMERGENCY

Department of Health Bureau of Health Services Financing and Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
Residential Options Waiver
Direct Service Worker Wages and Bonus Payments
(LAC 50:XXI.16903 and 16905)

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities hereby rescind the January 23, 2023 Emergency Rule which amended LAC 50:XXI.16903 and adopted §16905 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. The Emergency Rule amended the provisions of the December 20, 2022 Emergency Rule governing reimbursement in the Residential Options Waiver in order to amend the provisions governing direct service worker wages.

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.

The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) approved the use of bonus payments for agencies providing Residential Options Waiver services to home and community-based services (HCBS) waiver participants under section 9817 of the American Rescue Plan Act of 2021 (ARPA). The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities promulgated an Emergency Rule which amended and adopted provisions governing reimbursement in the Residential Options Waiver in order to establish workforce bonus payments for direct service workers and support coordination providers along with audit procedures and sanctions (*Louisiana Register*, Volume 48, Number 8). Upon further discussion with various stakeholders, the department determined that additional revisions were needed to the provisions governing the ARPA workforce bonus payments and subsequently promulgated an Emergency Rule that amended the provisions of the July 31, 2022 Emergency Rule (*Louisiana Register*, Volume 49, Number 1). The department determined that further revisions were needed to the provisions governing direct service worker wages and promulgated an Emergency Rule that amended the provisions of the December 20, 2022 Emergency Rule (*Louisiana Register*, Volume 49, Number 2).

The department has now determined that it is necessary to rescind the January 23, 2023 Emergency Rule governing direct service worker wages in the Residential Options Waiver. This action is being taken to promote the health and welfare of Medicaid beneficiaries by ensuring continued provider participation in the Medicaid Program.

Effective February 10, 2023, the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities rescind the January 23, 2023 Emergency Rule which amended the provisions of the December 20, 2022 Emergency Rule governing reimbursement in the Residential Options Waiver in order to amend the provisions governing direct service worker wages.

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

Dr. Courtney N. Phillips
Secretary

2302#083

DECLARATION OF EMERGENCY

Department of Health Bureau of Health Services Financing and Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
Supports Waiver
Direct Service Worker Wages and Bonus Payments
(LAC 50:XXI.6101)

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend LAC 50:XXI.6101 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.

The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) approved the uses of bonus payments for agencies providing Supports Waiver services to home and community-based services (HCBS) waiver participants under section 9817 of the American Rescue Plan Act of 2021 (ARPA). The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disorders promulgated an Emergency Rule which amended the provisions governing reimbursement in the Supports Waiver in order to establish workforce bonus payments for direct service workers and support coordination providers along with audit procedures and sanctions (*Louisiana Register*, Volume 48, Number 8). Upon further discussion with various stakeholders, the department determined that

additional revisions were needed to the provisions governing the ARPA workforce bonus payments and subsequently promulgated an Emergency Rule that amended the provisions of the July 31, 2022 Emergency Rule (*Louisiana Register*, Volume 49, Number 1). The department has now determined that it is necessary to amend the December 20, 2022 Emergency Rule governing reimbursement in the Supports Waiver in order to amend the provisions governing direct service worker wages.

This action is being taken to promote the health and welfare of Medicaid beneficiaries by ensuring continued provider participation in the Medicaid Program.

Effective January 23, 2023, the Department of Health, Bureau of Health Services Financing and Office for Citizens with Developmental Disabilities amend the provisions of the December 20, 2022 Emergency Rule governing reimbursement in the Supports Waiver in order to amend the provisions governing direct service worker wages.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community-Based Services

Waivers

Subpart 5. Supports Waiver

Chapter 61. Reimbursement

§6101. Unit of Reimbursement

A. - G. ...

H. Direct Service Worker Wages and Bonus Payments

1. Establishment of Direct Service Worker Wage Floor for Medicaid Home and Community-Based Services for Intellectual and Developmental Disabilities

a. Effective October 1, 2021, providers of Medicaid home and community-based waiver services operated through the Office for Citizens with Developmental Disabilities employing direct service workers will receive the equivalent of a \$2.50 per hour rate increase.

b. Effective October 1, 2021, this increase or its equivalent will be applied to all service units provided by direct service workers with an effective date of service for the identified home and community-based waiver services provided beginning October 1, 2021.

c. The Department of Health (LDH) established a mandatory hourly wage enhancement for all direct service workers (DSWs) employed in I/DD HCBS services. The wage enhancement shall be a direct wage increase of 70 percent of the \$2.50 rate increase, equal to \$1.75 per hour.

d. All providers of services affected by this rate increase shall be subject to a direct service worker wage floor of \$9 per hour. This wage floor is effective for all affected direct service workers of any work status whether full-time or part-time.

e. The wage being received by DSWs who were working for an agency prior to October 1, 2021 and are still employed by that agency shall amount to a total of \$1.75 more per hour than they were receiving prior to October 1, 2021. In cases where this is applicable, the rate increase is not retroactive to October 1, 2021. If the current wage paid to DSWs who were working for an agency prior to October 1, 2021 and are still employed by that agency totals at least \$1.75 more per hour than the wage paid to the DSWs prior to October 1, 2021, no change to the DSW's wage is necessary to comply with the mandatory hourly wage enhancement.

f. LDH reserves the right to adjust the DSW wage floor as needed through appropriate rulemaking promulgation consistent with the Louisiana Administrative Procedure Act.

2. Establishment of Direct Support Worker Workforce Bonus Payments

a. Providers who provided services from April 1, 2021 to October 31, 2022 shall receive bonus payments of \$300 per month for each direct service worker that worked with participants for those months.

b. The direct service worker who provided services to participants from April 1, 2021 to October 31, 2022 must receive at least \$250 of this \$300 bonus payment paid to the provider. This bonus payment is effective for all affected direct service workers of any working status, whether full-time or part-time.

c. Bonus payments will end October 31, 2022.

d. LDH reserves the right to adjust the amount of the bonus payments paid to the direct service worker as needed through appropriate rulemaking promulgation consistent with the Administrative Procedure Act.

e. - e.ii. Repealed.

3. Audit Procedures for Direct Service Worker Wage Floor and Workforce Bonus Payments

a. The wage enhancement and bonus payments reimbursed to providers shall be subject to audit by LDH.

i. - iv. Repealed.

b. Providers shall provide to LDH or its representative all requested documentation to verify that they are in compliance with the direct service worker wage floor and bonus payments.

c. This documentation may include, but is not limited to, payroll records, wage and salary sheets, check stubs, etc.

d. Providers shall produce the requested documentation upon request and within the timeframe provided by LDH.

e. Non-compliance or failure to demonstrate that the wage enhancement and/or bonus payment were paid directly to direct service workers may result in the following:

i. sanctions; or

ii. disenrollment from the Medicaid program.

4. Sanctions for Direct Service Worker Wage Floor and Workforce Bonus Payments

a. The provider will be subject to sanctions or penalties for failures to comply with this Rule or with requests issued by LDH pursuant to this Rule. The severity of such an action will depend upon the following factors:

i. failure to pay I/DD HCBS direct service workers the floor minimum of \$9 per hour and/or the \$250 monthly bonus payments;

ii. the number of employees identified as having been paid less than the floor minimum of \$9 per hour and/or the \$250 monthly bonus payments;

iii. the persistent failure to pay the floor minimum of \$9 per hour and/or the \$250 monthly bonus payments; or

iv. failure to provide LDH with any requested documentation or information related to or for the purpose of verifying compliance with this Rule.

I. ...

1. Establishment of Support Coordination Workforce Bonus Payments

a. Support coordination providers who provided services from April 1, 2021 to October 31, 2022 shall receive bonus payments of \$300 per month for each support coordination worker that worked with participants for those months.

b. The support coordination worker who provided services to participants from April 1, 2021 to October 31, 2022 must receive at least \$250 of this \$300 bonus payment paid to the provider. This bonus payment is effective for all affected support coordination workers of any working status, whether full-time or part-time.

c. – d. Repealed.

2. Audit Procedures for Support Coordination Workforce Bonus Payments

a. The bonus payments reimbursed to support coordination providers shall be subject to audit by LDH.

b. Support coordination providers shall provide to LDH or its representative all requested documentation to verify that they are in compliance with the support coordination bonus payments.

c. This documentation may include, but is not limited to, payroll records, wage and salary sheets, check stubs, etc.

d. Support coordination providers shall produce the requested documentation upon request and within the timeframe provided by LDH.

e. Noncompliance or failure to demonstrate that the bonus payments were paid directly to support coordination workers may result in the following:

- i. sanctions; or
- ii. disenrollment from the Medicaid Program.

3. Sanctions for Support Coordination Workforce Bonus Payments

a. The support coordination provider will be subject to sanctions or penalties for failure to comply with this Rule or with requests issued by LDH pursuant to this Rule. The severity of such action will depend upon the following factors:

- i. failure to pay support coordination workers the \$250 monthly bonus payments;
- ii. the number of employees identified as having been paid less than the \$250 monthly bonus payments;
- iii. the persistent failure to pay the \$250 monthly bonus payments; or
- iv. failure to provide LDH with any requested documentation or information related to or for the purpose of verifying compliance with this Rule.

J. ...

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, Office for Citizens with Developmental Disabilities, LR 32:1607 (September 2006), amended LR 34:662 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:2281(October 2010), LR 37:2158 (July 2011), LR 39:1050 (April 2013), LR 40:82 (January 2014), LR 40:2587 (December 2014), LR 42:900 (June 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:43 (January 2022), amended by the Department of Health, Bureau of Health

Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:43(January 2022), LR 48:1579 (June 2022), 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.

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

Dr. Courtney N. Phillips
Secretary

2302#012

DECLARATION OF EMERGENCY

**Department of Health
Bureau of Health Services Financing
and
Office for Citizens with Developmental Disabilities**

Home and Community-Based Services Waivers
Supports Waiver
Direct Service Worker Wages and Bonus Payments
(LAC 50:XXI.6101)

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities hereby rescind the January 23, 2023 Emergency Rule which amended LAC 50:XXI.6101 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. The Emergency Rule amended the provisions of the December 20, 2022 Emergency Rule governing reimbursement in the Supports Waiver in order to amend the provisions governing direct service worker wages.

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.

The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) approved the uses of bonus payments for agencies providing Supports Waiver services to home and community-based services (HCBS) waiver participants under section 9817 of the American Rescue Plan Act of 2021 (ARPA). The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disorders promulgated an Emergency Rule which amended the provisions governing reimbursement in the Supports Waiver in order to establish workforce bonus payments for direct service workers and support coordination providers along with audit procedures and sanctions (*Louisiana Register*, Volume 48, Number 8). Upon further discussion with various stakeholders, the department determined that additional revisions were needed to the provisions governing

the ARPA workforce bonus payments and subsequently promulgated an Emergency Rule that amended the provisions of the July 31, 2022 Emergency Rule (*Louisiana Register*, Volume 49, Number 1). The department determined that further revisions were needed to the provisions governing direct service worker wages and promulgated an Emergency Rule that amended the provisions of the December 20, 2022 Emergency Rule (*Louisiana Register*, Volume 49, Number 2).

The department has now determined that it is necessary to rescind the January 23, 2023 Emergency Rule governing direct service worker wages in the Supports Waiver. This action is being taken to promote the health and welfare of Medicaid beneficiaries by ensuring continued provider participation in the Medicaid Program.

Effective February 10, 2023, the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities rescind the January 23, 2023 Emergency Rule which amended the provisions of the December 20, 2022 Emergency Rule governing reimbursement in the Supports Waiver in order to amend the provisions governing direct service worker wages.

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

Dr. Courtney N. Phillips
Secretary

2302#084

DECLARATION OF EMERGENCY

Department of Health Bureau of Health Services Financing

Medical Transportation Program
Non-Emergency Medical Transportation
American Rescue Plan Act
(LAC 50:XXVII.Chapter 5)

The Department of Health, Bureau of Health Services Financing amends LAC 50:XXVII.Chapter 5 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This 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 comes first.

The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) approved the use of funds provided under the American Rescue Plan Act of 2021 (ARPA) for bonus payments to providers of non-emergency medical transportation (NEMT) services. The Department of Health, Bureau of Health Services Financing adopts provisions in the Medical Transportation Program in order to establish guidelines for the administration and distribution of ARPA bonus payment funds to eligible NEMT providers.

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 estimated that implementation of this Emergency Rule will increase expenditures in the Medicaid Program by approximately \$3,600,000 for state fiscal year 2022-2023.

Effective January 20, 2023, the Department of Health, Bureau of Health Services Financing adopts provisions in the Medical Transportation Program in order to establish guidelines for the administration and distribution of ARPA bonus payment funds to eligible NEMT providers.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXVII. Medical Transportation Program

Chapter 5. Non-Emergency Medical Transportation

Subchapter A. General Provisions

§505. Requirements for Coverage

A. Payment shall only be authorized for the least costly means of transportation available. The least costly means of transportation shall be determined by the department or its designee and considered the beneficiary's choice of transportation, the level of service required to safely transport the beneficiary (e.g., ambulatory, wheelchair, transfer), and the following hierarchy:

1. - 3. ...

4. for-profit providers enrolled in the Medicaid Program.

B. - D. ...

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 47:1639 (November 2021), amended LR 49:

Subchapter C. Provider Responsibilities

§517. Provider Enrollment

A. - C. ...

D. All NEMT providers must agree to cover the entire parish or parishes for which he or she provides non-emergency medical transportation 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, Bureau of Health Services Financing, LR 47:1639 (November 2021), amended LR 49:

Subchapter E. Non-Emergency Medical Transportation

American Rescue Plan Act

§531. Non-Emergency Medical Transportation Bonus Payments

A. General Provisions

1. Non-emergency medical transportation (NEMT) providers that are fully credentialed in the Medicaid Program may be eligible to receive a bonus payment under the Department of Health's (LDH) American Rescue Plan Act (ARPA) NEMT Program until the program's federal funds are exhausted or through the conclusion of the program in March 2024.

2. Fully credentialed NEMT providers who meet all eligibility requirements are entitled to a monthly disbursement of \$500 per vehicle, for up to three vehicles per month, totaling a maximum payment of \$1,500 per month per transportation provider. LDH will determine eligibility for monthly payments based on the NEMT

provider's ongoing compliance for all provider, driver, and vehicle requirements set forth by the Medicaid Program and the LDH ARPA NEMT Program.

3. A NEMT provider is a provider of NEMT services and for the purpose of this bonus payment, includes non-profit and for-profit providers.

4. LDH will administer all payments for the LDH ARPA NEMT Program.

5. In order to receive payments under the LDH ARPA NEMT Program, the NEMT provider shall do the following:

a. accede to all provisions of the LDH ARPA NEMT Program and execute a contractual agreement with LDH, solely for the distribution of ARPA funds;

b. create an account with LAGov to ensure eligibility of payment,

c. maintain ongoing compliance for all provider, driver, and vehicle requirements set forth by the Medicaid Program;

d. submit reporting and credentialing documentation for all drivers and vehicles within their individual company used for NEMT services on a monthly basis. Failure to meet program time requirements shall result in loss of the monthly bonus payment; and

e. submit a monthly attestation to certify the accuracy of the submitted supporting and credentialing documentation.

6. NEMT services are ineligible and shall not be submitted as a completed service if the status of the NEMT service rendered results in one of the following:

a. the provider is a no-show;

b. no NEMT vehicle is available;

c. no NEMT driver is available; or

d. the NEMT provider is late which causes the beneficiary to miss his or her scheduled Medicaid covered service

B. Payments

1. Transportation providers that meet the requirements for both the LDH ARPA NEMT Program and Medicaid Program will receive a single lump sum payment of \$500 per vehicle, for a maximum of three vehicles, totaling a maximum payment of \$1,500 per month. Transportation providers must meet all requirements on a monthly basis for payment eligibility.

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:

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

Interested persons may submit written comments to 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 Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Dr. Courtney N. Phillips
Secretary

2302#004

DECLARATION OF EMERGENCY

Department of Health Bureau of Health Services Financing and Office of Aging and Adult Services and Office for Citizens with Developmental Disabilities

Programs and Services Amendments Due to the Coronavirus Disease 2019 (COVID-19) Public Health Emergency

On January 30, 2020, the World Health Organization declared a public health emergency of international concern and on January 31, 2020, U.S. Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the United States, effective as of January 27, 2020, in response to the recent coronavirus disease 2019 (hereafter referred to as COVID-19) outbreak. On March 11, 2020, Governor John Bel Edwards declared a statewide public health emergency to exist in the State of Louisiana as a result of the imminent threat posed to Louisiana citizens by COVID-19. Likewise, the presidential declaration of a national emergency due to COVID-19 has an effective date of March 1, 2020.

In response to these public health emergency declarations and the rapid advancement of COVID-19 throughout Louisiana, the Department of Health, Bureau of Health Services Financing, the Office of Aging and Adult Services (OAAS), and the Office of Behavioral Health (OBH) amended the provisions of Title 50 of the *Louisiana Administrative Code* in order to adopt temporary measures to provide for the continuation of essential programs and services to ensure the health and welfare of the citizens of Louisiana in accordance with the provisions of the Administrative Procedure Act (*Louisiana Register*, Volume 46, Number 4). This Emergency Rule, adopted on March 19, 2020, also amended the provisions governing the reimbursement methodology for nursing facilities to include an add-on rate to the per diem. The department subsequently promulgated an Emergency Rule, adopted on April 8, 2020, which further amended Title 50 to temporarily adopt additional provisions to ensure the continuation of essential programs and services, and rescinded and replaced the nursing facility add-on provisions of the previous Emergency Rule in order to clarify the eligible nursing facility providers (*Louisiana Register*, Volume 46, Number 4). The department determined that it was necessary to promulgate Emergency Rules on October 19, 2020 to amend the April 8, 2020 Emergency Rule in order to require an attestation for adult day center providers to receive retainer payments (*Louisiana Register*, Volume 46, Number 11) and on December 10, 2020 to amend the October 19, 2020 Emergency Rule in order to remove provisions allowing self-attestation of certain eligibility criteria information (*Louisiana Register*, Volume 46, Number 12). This Emergency Rule is being promulgated in order to continue the provisions of the April 8, 2020, October 19, 2020 and December 10, 2020 Emergency Rules and shall be in effect for the maximum period allowed under the Act or the duration of the COVID-19 public health emergency declaration, whichever comes first.

Effective February 13, 2023, the Department of Health, Bureau of Health Services Financing, the Office of Aging and Adult Services, and the Office for Citizens with Developmental Disabilities continue the provisions of the April 8, 2020, October 19, 2020, and December 10, 2020 Emergency Rules in order to amend Title 50 of the *Louisiana Administrative Code* throughout the duration of the COVID-19 public health emergency declaration:

**Nursing Facilities—Reimbursement Methodology
Reimbursement Adjustment (LAC 50:II.20006)**

The per diem rate paid to privately owned or operated nursing facilities shall include an add-on of \$12 for the duration of the COVID-19 public health emergency declaration or to end at the discretion of the state.

**Nursing Facilities—Reimbursement Methodology
Non-State, Government Owned or Operated Facilities
and State-Owned or Operated Facilities
(LAC 50:II.20009)**

Non-state, government-owned or operated nursing facilities will be paid a case-mix reimbursement rate in accordance with §20005 with the following exception.

State-owned or operated and non-state, government-owned or operated nursing facilities are not eligible for, and will not receive, the State and/or Federal declared emergency add-on rate.

**Nursing Facilities—Reimbursement Methodology
Leave of Absence Days (LAC 50:II.20021)**

State-owned or operated, and non-state government-owned or operated, facilities are not eligible for, and will not receive, the State and/or Federal declared emergency modification to leave of absence day payments.

**Home Health Program—Home Health Services
(LAC 50:XIII.Subpart 1)**

For the duration of the COVID-19 public health emergency declaration, non-physician practitioners (nurse practitioners and physician assistants) will be able to order and review home health services, including the completion of associated documentation, in order to meet the demand for services due to access issues and a shortfall in physician availability.

**Services for Special Populations—Applied Behavior
Analysis-Based Therapy Services—Covered Services
and Limitations (LAC 50:XV.301.D)**

Prior authorizations for persons currently approved to receive applied behavior analysis-based (ABA) therapy services will be extended for the duration of the COVID-19 public health emergency declaration.

**Services for Special Populations—Early and Periodic
Screening, Diagnosis and Treatment Personal Care
Services—Provider Qualifications
(LAC 50:XV.Subpart 5)**

For the duration of the COVID-19 public health emergency declaration, the qualifications for providers of personal care services (PCS) to recipients receiving early and periodic screening, diagnostic and treatment (EPSDT) services will be relaxed to allow:

Recipients and workers to live in the same setting so that the recipients may receive EPSDT PCS.

Legally responsible relatives/caregivers to be a temporary direct service worker (DSW) in the absence of DSW care.

The following individuals may provide services to the recipient of EPSDT PCS: the recipient's spouse; the recipient's curator; the recipient's tutor; the recipient's legal guardian; the recipient's responsible representative; or the person to whom the recipient has given representative and mandate authority (also known as power of attorney).

Payment to the legally responsible relatives/caregivers designated as the temporary DSW for EPSDT PCS, if necessary, during the absence of availability of agency DSW care.

LDH approval for these services will be required. Requests will be reviewed on a case-by-case basis. If approval is granted:

Providers will pay the temporary DSW directly for services rendered; and

Providers will follow hiring procedures that include background checks and training.

At a minimum, training must include abuse and neglect reporting and infection control prior to the temporary DSW providing services.

Family members, who live with the recipient and are being temporarily approved to provide services, are exempted from background check requirements.

**Services for Special Populations—Targeted Case
Management (LAC 50:XV.Subpart 7)**

For the duration of the COVID-19 public health emergency declaration, the state makes the following allowances for early and periodic screening, diagnostic and treatment targeted case management services:

Case managers may utilize telephone contacts (i.e., video or voice calls) in place of any required face-to-face contacts; and

Case managers may complete initial assessments, quarterly reassessments, and annual reassessments without signatures from recipients.

**Services for Special Populations—Pediatric Day Health
Care Program—Pediatric Day Health Care Services
(LAC 50:XV.27501.B)**

For the duration of the COVID-19 public health emergency declaration, Pediatric Day Health Care (PDHC) program requirements will be temporarily changed as follows to permit skilled staff of PDHC centers that are not exhibiting any signs or symptoms of the COVID-19 infection to render PDHC services to those children who require skilled nursing, when families are not able to provide such care:

The PDHC program will allow for services to be provided in the recipient's home;

The PDHC program will allow for billing and payment of procedure code T1026 (hourly PDHC services – six hours or less per day) when billed at place of service 12 (home); and

Providers must obtain LDH approval to implement the temporary PDHC provisions. Requests for approval will be reviewed on a case-by-case basis.

**Home and Community-Based Services Waivers
Adult Day Health Care Waiver (LAC 50:XXI.Subpart 3)**

Due to the Department of Health (LDH) directed closures during the state of emergency, the state may make retainer payments to adult day health care (ADHC) providers. The

purpose of such payments is to allow ADHC providers to retain staff and cover fixed expenses so that ADHC centers may reopen when allowed to by LDH.

LDH retains the right to recoup all or a portion of retainer payments from ADHC providers who furlough or lay off staff or fail to reopen.

LDH may review cost reports and other documentation of expenses in making this determination.

Home and Community-Based Services Waivers Supports Waiver (LAC 50:XXI.Subpart 5)

With approval from the Centers for Medicare and Medicaid Services (CMS) as applicable, the following provisions of the Supports Waiver are relaxed for the duration of the COVID-19 public health emergency declaration to:

Allow up to a total of 20 hours a week of respite services and/or habilitation services in lieu of day habilitation or vocational services for these programs that have been closed;

Allow participants and direct support workers (DSWs) to live in the same setting so that the recipient may receive necessary respite and habilitation services;

Allow legally responsible relatives to be temporary respite or habilitation direct support, if necessary, in the absence of DSW care;

Background checks for legally responsible relatives who live in the same home with the participant prior to the declared emergency will be waived;

Documentation of services rendered is required and will be verified by the support coordination agency;

For initial waiver participants, allow the current statement of approval (SOA) of intellectual disabilities/developmental disabilities (ID/DD) services to suffice for the level of care (LOC) until the declared emergency is resolved so as not to delay waiver services for those who are waiting for services;

Re-evaluation requires a visit to a doctor's office (well visit) to obtain medical eligibility determination (Form 90-L) for waiver services initially and annually. To reduce potential exposure to participants, allow the current evaluation to remain in effect until resolution of emergency if needed;

Add hazard premium increase for service of respite or habilitation for direct support workers who go into the homes of persons who are either positive, presumptive positive, or quarantined for the coronavirus;

Extend the 10-day requirement for the initial in-home visit for initial plans;

Extend the 30-day time frame for the assessment;

Allow plans of care to be extended beyond the one year (annual) requirement;

Allow quarterly visits to be conducted via phone contact, FaceTime, or skype;

Monthly phone contacts will still occur;

Allow support coordinators to substitute phone contact, FaceTime on computers, or Skype, in lieu of home visits for individuals at risk of exposure who are medically fragile, elderly, both or who have medically fragile caregivers;

Allow assessments to be conducted via FaceTime, Skype, or phone call to avoid delay in services;

Allow the comprehensive plan of care by the support coordinator to be conducted via FaceTime, Skype, or by phone to avoid a delay in services;

Allow the home certification visit by the Office for Citizens with Developmental Disabilities (OCDD) or its designee to be conducted via FaceTime, Skype, or phone call to avoid a delay in services; and

Allow the state to make retainer payments to adult day habilitation centers when these providers are ordered to close by local, state, or federal officials. The purpose of such payments is to allow adult day center providers to retain staff and cover fixed expenses so they may reopen.

Retainer payments will be a paid at 75 percent of the normal rate paid for the service provided.

LDH retains the right to recoup all or a portion of retainer payments from providers who furlough or lay off staff or fail to reopen.

LDH may review cost reports and other documentation of expenses in making this determination.

Home and Community-Based Services Waivers — Children's Choice Waiver (LAC 50:XXI.Subpart 9)

With approval from the Centers for Medicare and Medicaid Services (CMS) as applicable, the following provisions of the Children's Choice Waiver are relaxed for the duration of the COVID-19 public health emergency declaration to:

Allow expansion of the current Children's Choice Waiver cap to allow for an additional 20 hours per week of family support services as needed for health and safety due to school closures;

Allow participants and family support (FS) direct support workers (DSWs) to live in the same setting so that the participant may continue to receive services;

Allow legally responsible relatives to be temporary FS DSWs during the declared emergency, if necessary, in the absence of DSW care;

Documentation of services rendered is required and will be verified by the support coordination agency;

Reduce the minimum age of DSWs to 16 years of age, if necessary, in an emergency. Emergency being defined as no other staff or supports available;

Remove the requirement for DSWs to have a high school diploma or equivalent;

Temporarily suspend background checks for immediate family hired as DSWs who live in the same home as the recipient;

Re-evaluation requires a visit to a doctor's office (well visit) to obtain medical eligibility determination (Form 90-L) for waiver services initially and annually. To reduce potential exposure to participants, allow the current evaluation to remain in effect until resolution of emergency, if needed;

For initial waiver participants, allow the current statement of approval of intellectual disabilities/developmental disabilities (ID/DD) services to suffice for the level of care requirement to avoid a delay in services;

Add hazard premium increase for family support services for DSWs who go into the homes of persons who are either positive, presumptive positive, or quarantined for the coronavirus;

Extend the 10-day requirement for the initial in-home visit for initial plans;

Extend the 30-day time frame for the assessment;

Allow plans of care to be extended beyond the one year (annual) requirement;

Allow quarterly visits to be conducted via phone contact versus face-to-face contact;

Monthly phone contacts will still occur;

Allow support coordinators to substitute phone contact, FaceTime on computers, or Skype in lieu of home visits for individuals at risk of exposure who are medically fragile, elderly, both, or who have medically fragile caregivers;

Allow assessments to be conducted via FaceTime, Skype, or phone call to avoid delay in services;

Allow the comprehensive plan of care by the support coordinator to be conducted via FaceTime, Skype, or phone to avoid a delay in services; and

Allow the home certification visit by the Office for Citizens with Developmental Disabilities (OCDD) or its designee to be conducted via FaceTime, Skype, or phone to avoid a delay in services.

Home and Community-Based Services Waivers — New Opportunities Waiver (LAC 50:XXI.Subpart 11)

With approval from the Centers for Medicare and Medicaid Services (CMS) as applicable, the following provisions of the New Opportunities Waiver are relaxed for the duration of the COVID-19 public health emergency declaration to:

Allow conversion of day habilitation and vocational service program hours to individual and family support (IFS) for participants whose day habilitation and/or vocational programs have closed;

Allow sharing of direct support staff when necessary;

Add monitored in-home caregiving (MIHC) as a service;

Allow participants and individual and family support (IFS) direct support workers (DSWs) to live in the same setting so that the participant may continue to receive services;

Allow legally responsible relatives to be temporary IFS DSWs during the declared emergency, if necessary, in the absence of DSW care;

Documentation of services rendered is required and will be verified by the support coordination agency;

Temporarily suspend background checks for immediate family hired as DSWs who live in the same home as the recipient;

Reduce the minimum age of DSWs to 16 years of age, if necessary, in an emergency. Emergency being defined as no other staff or supports available;

Remove the requirement for DSWs to have a high school diploma or equivalent;

For initial waiver participants, allow the current statement of approval (SOA) of intellectual disability/developmental disability (ID/DD) services to suffice for the level of care (LOC) until the declared emergency is resolved so as not to delay waiver services for those who are waiting for services;

Re-evaluation requires a visit to a doctor's office (well visit) to obtain medical eligibility determination (Form 90-L) for annual waiver services. To reduce potential exposure to participants, allow the current evaluation to remain in effect until resolution of emergency if needed;

Add hazard premium increase for service of individual and family supports, community living supports, family support, respite, and habilitation for DSWs who go into the homes of persons who are either positive, presumptive positive, or quarantined for the coronavirus;

Extend the 10-day requirement for the initial in-home visit for initial plans;

Extend the 30-day time frame for the assessment;

Allow plans of care to be extended beyond the one year (annual) requirement;

Allow quarterly visits to be conducted via phone contact versus face-to-face contact;

Monthly phone contacts will still occur;

Allow support coordinators and supported living coordinators to substitute phone contact, FaceTime, or Skype in lieu of home visits for individuals at risk of exposure who are medically fragile, elderly, both or who have medically fragile caregivers;

Allow assessments to be conducted via FaceTime, Skype, or phone call to avoid a delay in services;

Allow the comprehensive plan of care by the support coordinator to be conducted via FaceTime, Skype or phone to avoid a delay in services;

Allow the home certification visit by the Office for Citizens with Developmental Disabilities (OCDD) or its designee to be conducted via FaceTime, Skype, or phone to avoid a delay in services; and

Allow the state to make retainer payments to adult day centers when these providers are ordered to close by local, state, or federal officials. The purpose of such payments is to allow adult day center providers to retain staff and cover fixed expenses so they may reopen.

Retainer payments will be a paid at 75 percent of the normal rate paid for the service provided.

The adult day center must provide a signed attestation developed by the department agreeing to the following during the period of the retainer payments: (1) not to furlough or lay off staff, (2) maintain wages at existing levels, (3) the ADC has not received funding from any other sources, including but not limited to, unemployment benefits and Small Business Administration loans, that would exceed their revenue for the last full quarter prior to the public health emergency, or that the retainer payments at the level provided by the state would not result in their revenue exceeding that of the quarter prior to the public health emergency. If a provider has already received revenues in excess of the pre-public health emergency level, retainer payments are not available.

If a provider had not already received revenues in excess of the pre-public health emergency level but receipt of the retainer payment in addition to those prior sources of funding results in the provider exceeding the pre-public health emergency level, any retainer payment amounts in excess may be recouped.

LDH retains the right to recoup all or a portion of retainer payments from providers who furlough or lay off staff or fail to reopen. LDH may review cost reports and other documentation of expenses in making this determination.

**Home and Community-Based Services Waivers
Residential Options Waiver
(LAC 50:XXI.Subpart 13)**

With approval from the Centers for Medicare and Medicaid Services (CMS) as applicable, the following provisions of the Residential Options Waiver are relaxed for the duration of the COVID-19 public health emergency declaration to:

- Allow sharing of direct support staff when necessary;
- Allow conversion of day habilitation and vocational services to community living supports (CLS) for participants whose day habilitation and or vocational program have been closed;
- Add monitored in-home caregiving (MIHC) as a service;
- Allow participants and community living support (CLS) direct support workers (DSWs) to live in the same setting so that the participant may continue to receive services;
- Documentation of services rendered is required and will be verified by the support coordination agency;
- Allow legally responsible relatives to be temporary community living support (CLS) DSWs during the declared emergency if necessary in the absence of DSW care;
- Temporarily suspend background checks for immediate family hired as DSWs who live in the same home as the recipient;
- Reduce the minimum age of DSWs to 16 years of age, if necessary, in an emergency. Emergency being defined as no other staff or supports available;
- Remove the requirement for DSWs to have a high school diploma or equivalent;
- For initial waiver participants, allow the current statement of approval (SOA) of intellectual disabilities/developmental disabilities (ID/DD) services to suffice for the level of care (LOC) until the declared emergency is resolved so as not to delay waiver services for those who are waiting for services;
- Re-evaluation requires a visit to a doctor's office (well visit) to obtain medical eligibility determination (Form 90-L) for annual waiver services. To reduce potential exposure to participants, allow the current evaluation to remain in effect until resolution of emergency if needed;
- Add hazard premium increase for service of individual and family supports, community living supports, family support, respite, and habilitation for DSWs who go into the homes of persons who are either positive, presumptive positive, or quarantined for the coronavirus;
- Extend the 10-day requirement for the initial in-home visit for initial plans;
- Extend the 30-day time frame for the assessment;
- Allow plans of care to be extended beyond the one year (annual) requirement;
- Allow quarterly visits to be conducted via phone contact versus face-to-face contact;
- Monthly phone contacts will still occur;
- Allow support coordinators to substitute phone contact, FaceTime on computers, or Skype in lieu of home visits for

individuals at risk of exposure who are medically fragile, elderly, or both or who have medically fragile caregivers;

Allow assessments to be conducted via FaceTime, Skype, or phone call to avoid a delay in services;

Allow the comprehensive plan of care by the support coordinator to be conducted via FaceTime, Skype, or by phone to avoid a delay in services;

Allow the home certification visit by the Office for Citizens with Developmental Disabilities (OCDD) or its designee to be conducted via FaceTime, Skype, or phone to avoid delay in services; and

Allow the state to make retainer payments to adult day centers and adult day health care centers when these providers are ordered to close by local, state, or federal officials. The purpose of such payments is to allow adult day center providers to retain staff and cover fixed expenses so they may reopen.

Retainer payments will be a paid at 75 percent of the normal rate paid for the service provided.

The adult day center must provide a signed attestation developed by the department agreeing to the following during the period of the retainer payments: (1) not to furlough or lay off staff, (2) maintain wages at existing levels, (3) the ADC has not received funding from any other sources, including but not limited to, unemployment benefits and Small Business Administration loans, that would exceed their revenue for the last full quarter prior to the public health emergency, or that the retainer payments at the level provided by the state would not result in their revenue exceeding that of the quarter prior to the public health emergency. If a provider has already received revenues in excess of the pre-public health emergency level, retainer payments are not available.

If a provider had not already received revenues in excess of the pre-public health emergency level but receipt of the retainer payment in addition to those prior sources of funding results in the provider exceeding the pre-public health emergency level, any retainer payment amounts in excess may be recouped.

LDH retains the right to recoup all or a portion of retainer payments from providers who furlough or lay off staff or fail to reopen. LDH may review cost reports and other documentation of expenses in making this determination.

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

Interested persons may submit written comments to 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 Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Dr. Courtney N. Phillips
Secretary

2302#064

DECLARATION OF EMERGENCY

**Department of Health
Bureau of Health Services Financing
and
Office of Aging and Adult Services
and
Office for Citizens with Developmental Disabilities**

Programs and Services Amendments

Due to the Coronavirus Disease 2019 (COVID-19)
Public Health Emergency—Home and Community-Based
Services Waivers and Long-Term Personal Care Services

On January 30, 2020, the World Health Organization declared a public health emergency of international concern and on January 31, 2020, U.S. Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the United States, effective as of January 27, 2020, in response to the recent coronavirus disease 2019 (hereafter referred to as COVID-19) outbreak. On March 11, 2020, Governor John Bel Edwards declared a statewide public health emergency to exist in the State of Louisiana as a result of the imminent threat posed to Louisiana citizens by COVID-19. Likewise, the presidential declaration of a national emergency due to COVID-19 has an effective date of March 1, 2020.

In response to these public health emergency declarations and the rapid advancement of COVID-19 throughout Louisiana, the Department of Health, Bureau of Health Services Financing, the Office of Aging and Adult Services (OAAS), the Office of Behavioral Health (OBH), and the Office for Citizens with Developmental Disabilities (OCDD) promulgated Emergency Rules which amended the provisions of Title 50 of the *Louisiana Administrative Code* in order to adopt temporary measures to provide for the continuation of essential programs and services to ensure the health and welfare of the citizens of Louisiana in accordance with the provisions of the Administrative Procedure Act (*Louisiana Register*, Volume 46, Number 4 and *Louisiana Register*, Volume 46, Number 7).

The department promulgated an Emergency Rule, adopted on August 25, 2020, to further amend the Adult Day Health Care (ADHC) Waiver and the Community Choices Waiver (CCW), and to amend the provisions governing long term-personal care services (LT-PCS) in order to ensure that these services continue uninterrupted throughout the COVID-19 public health emergency declaration. This Emergency Rule also clarified that the home and community-based services (HCBS) waiver provisions of the Emergency Rules published in the April 20, 2020 edition of the *Louisiana Register* which correspond to Louisiana's section 1915(c) Appendix K waiver will remain in effect for the duration of the Emergency Rules published in April 2020 or until the Appendix K waiver termination date of January 26, 2021, whichever is later (*Louisiana Register*, Volume 46, Number 9). This Emergency Rule is being promulgated in order to continue the provisions of the Emergency Rule adopted on August 25, 2020.

This Emergency Rule shall be in effect for the maximum period allowed under the Administrative Procedure Act or the duration of the COVID-19 public health emergency declaration, whichever is shorter.

Effective February 17, 2023, the Department of Health, Bureau of Health Services Financing, OAAS and OCDD hereby amend the provisions governing the ADHC Waiver, the CCW, and LT-PCS throughout the COVID-19 public health emergency declaration, and clarify that the HCBS waiver provisions which correspond to Louisiana's section 1915(c) Appendix K waiver will remain in effect for the duration of the Emergency Rules published in the April 20, 2020 *Louisiana Register* or until the Appendix K waiver termination date of January 26, 2021, whichever is later, in order to continue the provisions of the Emergency Rule adopted on August 25, 2020.

Services for Special Populations—Personal Care Services (LAC 50:XV.Subpart 9)

Due to the COVID-19 public health emergency declaration, the Office of Aging and Adult Services (OAAS) may also utilize the level of care eligibility tool (LOCET) to determine if an individual meets eligibility qualifications for long term-personal care services (LT-PCS) and to determine resource allocation while identifying his/her need for support in performance of activities of daily living (ADLs) and instrumental activities of daily living (IADLs).

The LOCET may also be used to generate a score that measures the recipient's degree of self-performance of late-loss activities of daily living during the period just before the assessment. Criteria used to generate the score will be consistent with criteria on the interRAI home care assessment tool currently used. This score will correspond with the same level of support category and allocation of weekly service hours associated with that level.

OAAS may use the LOCET until such time as the applicant/recipient is able to be assessed using the uniform interRAI home care assessment tool.

Home and Community-Based Services Waiver Adult Day Health Care (LAC 50:XXI.Subpart 3)

During the COVID-19 public health emergency declaration, and with approval from the Centers for Medicare and Medicaid Services (CMS), the following options may be available through the Adult Day Health Care (ADHC) Waiver:

The State may allow ADHC providers to provide services telephonically to waiver participants that cannot attend the ADHC center to ensure continuity of services.

The State is adding the following services in the ADHC Waiver:

Home Delivered Meals. The purpose of home delivered meals is to assist in meeting the nutritional needs of an individual in support of the maintenance of self-sufficiency and enhancing the quality of life. Up to two nutritionally balanced meals per day may be delivered to the home of the participant. This service may be provided by the ADHC provider.

Assistive Devices and Medical Supplies. Assistive devices and medical supplies are specialized medical equipment and supplies that include:

Devices, controls, appliances or nutritional supplements specified in the Plan of Care that enable participants to increase their ability to perform activities of daily living (ADLs);

Devices, controls, appliances or nutritional supplements that enable participants to perceive, control or

communicate with the environment in which they live or provide emergency response;

Items, supplies and services necessary for life support, ancillary supplies, and equipment necessary to the proper functioning of such items;

Supplies and services to assure participants' health and welfare;

Other durable and non-durable medical equipment and necessary medical supplies that are necessary but not available under the Medicaid State Plan;

Personal Emergency Response Systems (PERS);

Other in-home monitoring and medication management devices and technology;

Routine maintenance or repair of specialized equipment; and

Batteries, extended warranties and service contracts that are cost effective and assure health and welfare.

This includes medical equipment not available under the Medicaid State Plan that is necessary to address participant functional limitations and necessary medical supplies not available under the Medicaid State Plan.

Home and Community-Based Services Waiver

Community Choices Waiver (LAC 50:XXI.Subpart 7)

During the COVID-19 public health emergency declaration, and with approval from the Centers for Medicare and Medicaid Services (CMS), the state may allow ADHC providers to provide services telephonically to waiver participants that cannot attend the ADHC center to ensure continuity of services.

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

Interested persons may submit written comments to 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 Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Dr. Courtney N. Phillips
Secretary

2302#065

DECLARATION OF EMERGENCY

Department of Health Office of Public Health

Conditions that Shall Deem an
Unborn Child "Medically Futile"
(LAC 48:I.401)

The Louisiana Department of Health, Office of Public Health (DHH/OPH), pursuant to the rulemaking authority granted by R.S. 14:87.1, hereby adopts the following emergency rule. This Rule is being promulgated in accordance with the Administrative Procedure Act (R.S. 49:950 et seq.) generally, and R.S. 49:962 specifically.

The LDH/OPH finds it necessary to promulgate an Emergency Rule effective January 27, 2023. This emergency rule is necessary to prevent imminent peril to the public health, safety, or welfare. Without the list provided by this rule, physicians may be hesitant to terminate medically futile pregnancies, possibly resulting in significant physical harm or death to pregnant women exhibiting such medically futile pregnancies. Accordingly, the following Emergency Rule, effective January 27, 2023, shall remain in effect for a maximum of 180 days, or until the final Rule is promulgated, whichever occurs first.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 1. General

Chapter 4. Medically Futile Pregnancies

§401. Conditions that Shall Deem an Unborn Child "Medically Futile"

A. Pursuant to Act 545 of the 2022 Regular Session of the Louisiana Legislature, the Department of Health establishes the following exclusive list of anomalies, diseases, disorders, and other conditions that shall deem an unborn child "medically futile" for purposes of R.S. Title 14, Chap. 1, Part V, Subpart A:

1. achondrogenesis;
2. acrania;
3. anencephaly;
4. acardia;
5. body stalk anomaly;
6. campomelic dysplasia;
7. craniorachischisis;
8. dysencephalia splanchnocystica (Meckel-Gruber syndrome);
9. ectopia cordis;
10. exencephaly;
11. gestational trophoblastic neoplasia;
12. holoprosencephaly;
13. hydrops fetalis;
14. iniencephaly;
15. perinatal hypophosphatasia;
16. osteogenesis imperfecta (type 2);
17. renal agenesis (bilateral);
18. short rib polydactyly syndrome;
19. sirenomelia;
20. thanatophoric dysplasia;
21. triploidy;
22. trisomy 13;
23. trisomy 16 (full);
24. trisomy 18;
25. trisomy 22; and
26. a profound and irremediable congenital or chromosomal anomaly existing in the unborn child that is incompatible with sustaining life after birth in reasonable medical judgment as certified by two physicians that are licensed to practice in the State of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 14:87.1

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 49:

Public Comments

Interested persons may submit written comments to David McCay, Louisiana Department of Health, P.O. Box 3836, Baton Rouge, LA 70821-3836. He is responsible for responding to inquiries regarding this Emergency Rule.

Dr. Courtney N. Phillips
Secretary

2302#013

DECLARATION OF EMERGENCY

Department of Health Office of Public Health

Health Professional Development Program
(LAC 48:V.Chapter 133)

The Louisiana Department of Health, Office of Public Health, pursuant to the authority granted in R.S. 40:1205.7, hereby adopts the following Emergency Rule. This Rule is being promulgated in accordance with the Administrative Procedure Act (R.S. 49:950 et seq.) generally, and R.S. 49:962 specifically.

The LDH finds it necessary to make additions to the Louisiana Administrative Code as a consequence of funding allocated thru Act No. 167 of the 2022 Regular Session of the Louisiana Legislature, which provided funding related to R.S. 40:1205.1 et seq., Health Professional Development Program. The following changes will provide the LDH the authority and ability to effectively administer the Health Professional Development Program, which is vital to the health of Louisiana's citizens and visitors.

Accordingly, the following Emergency Rule, effective January 23, 2023, shall remain in effect for a maximum of 180 days, or until the final Rule is promulgated, whichever occurs first.

Title 48

PUBLIC HEALTH—GENERAL Part V. Preventive Health Services Subpart 49. Community Based and Rural Health Services

Chapter 133. Funding Eligibility

§13305. Health Professional Development Program

A. The Louisiana Department of Health ("LDH") has developed and shall administer a plan for recruitment and retention of primary health care practitioners to practice in health professional shortage areas or facilities. The plan will provide for identification of shortage areas, prioritize long-term and short-term goals and strategies, provide a special minority component, and provide for public input.

B. The Louisiana Department of Health shall implement the recruitment and retention plan, directly or through contract. Implementation may include advertising and promotion, professional recruitment services, travel, and all other necessary expenses.

C. Contingent upon available funding, the Louisiana Department of Health will establish a Rural Physician Loan Repayment Program, pursuant to R.S. 40:1205.3. The LDH may establish one or more application cycles during any state fiscal year. At the beginning of any application cycle, notice of application will be publicized through electronic

methods (email, newsletter, or the LDH website: <https://wellaheadla.com>).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1205.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 49:

§13307. Rural Physician Loan Repayment Program; Criteria

A. Criteria for Applicants. To be eligible for the loan repayment program, an applicant shall:

1. be licensed and qualified as a doctor of allopathic/osteopathic medicine (MD/DO) to practice in Louisiana;

2. provide primary care services in a federally designated health professional shortage area (family practice, general practice, internal medicine, pediatrics, obstetrics/gynecology, psychiatry);

3. be a United States citizen/national;

4. agree to serve a minimum of five years in a federally designated health professional shortage area (HPSA) appropriate for their discipline;

5. work full-time (40 hours/week), with a minimum of 32 hours per week providing clinical services in an outpatient/ambulatory care setting or providing comprehensive patient care;

6. not have an outstanding contractual obligation to provide a health professional service to the federal government (e.g. an active military obligation, National Health Services Corp (NHSC) Loan Repayment Program, NHSC Scholarship Program), or any other entity unless that service obligation will be completely satisfied before the contract has been signed;

7. not have breached a health professional service contract with the federal, state, or local government, or other entities;

8. not have defaulted on their educational loans at any time, unless corrective actions have been made and loans are now in good standing;

9. not have a lien levied against their property for a debt to the United States government;

10. not be arrears on child support payments; and

B. Criteria for Practice Sites. To be an eligible practice site, the site must:

1. be public, non-profit, or for-profit;

2. be located in federally-designated HPSA;

3. accept reimbursement from Medicare, Medicaid, and the Children's Health Insurance Program, provide discounts for individuals with limited incomes by use of a sliding fee scale, and see all patients regardless of their ability to pay;

4. charge for professional services at the usual and customary prevailing rates except free clinics;

5. have photos of signage located in the lobby/check-out area stating "We offer a sliding fee scale based on family size and income", "We accept all patients regardless of ability to pay" and "This facility does not discriminate based on race, color, sex, national origin, disability, age, religion, sexual orientation, gender identity, or inability to pay."

C. Examples of eligible practice sites types include but are not limited to:

1. federally qualified health centers (FQHCs);

2. FQHC look-a-likes;

3. centers for Medicare and Medicaid Services certified rural health clinics;
4. community mental health facilities;
5. state and county health department clinics;
6. Immigration and Customs Enforcement Health Service Corps;
7. free clinics offering comprehensive primary care services;
8. mobile units (must be associated with a brick-and-mortar facility);
9. school-based health clinics;
10. critical access hospitals affiliated with a qualified outpatient clinic;
11. long-term care facilities;
12. state mental health facilities;
13. Indian Health Service Facilities, Tribally-Operated 638 Health Programs, and Urban Indian Health Programs;
14. correctional or detention facilities; or
15. private medical practices (solo or group).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1205.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 49:

§13309. Award Amounts

A. Award amounts are contingent upon available funding and the amount of qualifying student loan debt.

B. LDH will contract directly with the award recipient.

C. Award amount may be up to \$150,000 for a five-year contract (or the amount of the principle balance of the educational loan if less than the total eligible to receive).

D. Participants who complete their original five-year commitment in compliance, remain in an eligible site in a HPSA, and still have educational loans to repay, may be able to extend their commitment with a two-year renewal to receive up to \$15,000 annually.

E. Disbursement of funds will occur quarterly upon receipt of loan verification of payment (LPV) for the funds paid the prior quarter.

F. If the contractor breaches their obligation, the contractor will be subject to pay an amount equal to the sum of the following:

1. the total amount paid by the LDH to, or on behalf of, the participant for loan repayment for any period of obligated service not served;
2. an amount equal to the number of months of obligated service not completed multiplied by \$7,500; and
3. interest on the above amounts at the judicial interest rate pursuant to R.S. 13:4202, from the date of breach.

NOTE: The minimum amount that LDH is entitled to recover will not be less than \$31,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1205.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 49:

§13311. Application

A. Program guidance and required forms will be updated as necessary on an annual basis and posted on the LDH website. Applications and other required documents shall be submitted directly to the Louisiana Department of Health at the address or using the electronic upload method

noted in the program guidance. All applications (hard copy or on-online application) must include the following:

1. copy of executed employment contract for the length of years participating in this program or a letter verifying employment, if an employment contract is not available;
2. resume;
3. copy of current professional license;
4. documentation of the current principle balance of the applicant's certified educational debt, including name and account number for each loan;
5. signed practice site information form for all sites at which the applicant provides services, completed by employer;
6. signed practice site agreement form for all participating sites, completed by employer;
7. signed attestation of no other obligation form;
8. signed certification regarding environmental tobacco smoke form;
9. signed release from liability form;
10. signed consent for release of information waiver of confidentiality form;
11. copy of employer's sliding fee scale/discount fee policy;
12. copy of employer's sliding fee scale/discount fee schedule-actual scale;
13. photos of signs in a conspicuous place in the waiting room of the practice that states:
 - a. "We offer a sliding fee scale based on family size and income.";
 - b. "We accept all patients regardless of ability to pay."; and
 - c. "This facility does not discriminate based on race, color, sex, national origin, disability, age, religion, sexual orientation, gender identity, or inability to pay.";
14. copy of current Louisiana Medicaid Provide ID Number or a copy or application for this number (if provider does not have individual number, the facility number is acceptable);
15. completed IRS Form W-9 Request for Taxpayer ID Number that matches applicant address;
16. completed Electronic Funds Transfer Form with voided blank check or direct deposit form from a financial institution. The bottom of this form should be completed by your financial institution. Please make sure the box on the middle left page is checked;
17. if applicable, proof of site's non-profit and/or public status (IRS Form 501c3 or board resolution); and
18. for public employee(s), a letter of agreement with the governmental agency and verification of employment will be accepted in lieu of an employment contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1205.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 49:

§13313. Selection Criteria

A. This program utilizes the criteria described in Subsection C of this Section to determine how individuals are selected to participate in the program. A point-based

system is used to review/select recipients. All applications and scores will be compiled and presented to program leadership.

B. Upon receipt of applications and scores, program leadership will have five business days to make final selection. All who applied will be notified of acceptance or denial within five business days of final selection. Submitting an application does not guarantee selection. Support may be provided for up to two physicians per site per year. At the end of the application period, if there are remaining funds then additional physicians may be supported per site. In the event of a tie, additional points will be provided if:

1. primary service site HSPA Score 20 or higher = 1 point;
2. Medicaid at primary site 75 percent or higher = 2 points;
3. applicant previously applied (past 3 years) to the state loan repayment program and was not selected = 1 point.

C. The following criteria will be used to score applicants:

1. applicant completed the Rural Health Scholars Program (RHSP)
 - a. completed the RHSP = 2 points;
 2. applicant's primary service site serves a high percentage of underserved patients, including those who have a Medicaid managed health plans and Medicare, those who are uninsured and indigent or underinsured and unable to find treatment:
 - a. primary service site is a school based health clinic or correctional facility = 2 points;
 - b. Medicaid at primary site 51 percent or higher = 2 points.
 - c. Medicaid at primary site 15 percent to 50 percent = 1 point;
 - d. Medicare at primary site 15 percent or higher = 1 point;
 - e. uninsured and indigent or underinsured at primary site 15 percent or higher = 1 point.
 3. Applicant's primary service site is in a HPSAs with the highest degree of shortage, rural, and whose service will have the greatest impact on underserved populations in these high-needs parishes (see maps of Louisiana HPSAs):
 - a. primary service site HSPA Score 10 or higher = 1 point;
 - b. primary service site is in a High Needs HPSA = 1 point;
 4. applicant's primary service site serves Louisiana's targeted populations. (see maps of Louisiana HPSAs or targeted populations):
 - a. primary service site has 25 percent or higher of HIV/AIDS patients = 2 points;
 - b. primary service site's "SUD Population" is greater than 25 percent = 2 point.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1205.1 et seq.
HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 49:

§13315. Rural Health Scholars Program

A. Contingent upon available funding, the Louisiana Department of Health may establish a Rural Health Scholars Program pursuant to R.S. 40:1205.3. The Rural Health

Scholars Program encourages health professions students to practice in Louisiana's Health Professional Shortage Areas (HPSAs) by building partnerships between rural and underserved healthcare facilities and colleges and universities. The program will pay stipends to eligible and selected students and their eligible schools as set forth in this Section. LDH may establish one or more application cycles at any state fiscal year. At the beginning of any application cycle, notice of application cycle will be publicized through electronic methods (email, newsletter, or on the LDH website: <https://wellaheadla.com>).

B. Eligibility Criteria for Students. Students are eligible for the program if they are currently enrolled in one of the following healthcare profession programs:

1. MD/DO physicians (family or general practice, internal medicine, obstetrics/gynecology and pediatrics);
2. DDS/DMD: general and pediatric dentistry;
3. NP: nurse practitioner;
4. PA: physician assistant; or
5. RDH: registered dental hygienist.

C. Student service requirements are as follows:

1. must complete, during the term of the written agreement required by this Section, a 180-hour rotation in a rural healthcare facility that meets the eligible practice site criteria set forth in this Section;
2. must participate in an on-line seminar (assigned by LDH) that details health disparities, discusses health equity, and provide information on chronic disease prevention efforts in rural Louisiana;
3. must submit an experience essay detailing their experience in the healthcare facility;
4. must participate in a pre and post survey following the completion of the program.

D. Criteria for eligible practice sites. Eligible practice sites must:

1. be located in a federally designated HPSA;
2. accept reimbursement from Medicare, Medicaid, and the Children's Health Insurance Program (CHIP), utilize a sliding fee scale, and see all patients regardless of their ability to pay; and
3. must provide discounts for individuals with limited incomes (i.e. use a sliding fee scale).

E. Criteria for eligible university/schools of higher education:

1. accredited medical program at an in-state university or school of higher education;
2. ability to provide healthcare facilities with preceptor roles, responsibilities, and mandatory qualifications;
3. ability to mentor/work directly with students;
4. ensure that students meet standards for immunization, CPR, liability insurance, background, drug testing, etc. prior to beginning their rotations;
5. facilitate open communication between the college/university and each healthcare facility; and
6. ensure that the student's clinical rotation aligns with college/university goals.

F. Award Amounts. LDH shall enter into mandatory written agreements with the chosen healthcare facility, university/school of higher education, and student. Students who fulfill all requirements of this Section will receive a stipend not to exceed \$6,000 and an additional \$2,000

toward living expenses for a total of \$8,000 for the entirety of the agreement. The hosting healthcare facility will receive a maximum of \$5,000 per each student participant hosted. Each university/school of higher education will receive \$5,000 for program participation. Number of students selected and stipend amounts may vary depending on funding.

G. Student Application/Selection. All applications and scores will be compiled and presented to program leadership. Program leadership will have five business days to make a final selection. Applicants who apply will be notified of acceptance or denial within five business days of final selection. In the event of a tie, equal distribution of students from universities will be made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1205.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 49:

Interested persons may submit written comments to Nicole Coarsey, State Office of Rural Health Officer, Well Ahead Louisiana, Office of Public Health, Louisiana Department of Health, P.O. Box 4489, Baton Rouge, LA 70821-4489. She is responsible for responding to inquiries regarding this Emergency Rule.

Dr. Courtney N. Phillips
Secretary

2302#008

DECLARATION OF EMERGENCY

Department of Health Office of Public Health

Registration of Foods, Drugs, Cosmetics and Prophylactic Devices (LAC 49:I.Chapter 5)

The Louisiana Department of Health, Office of Public Health (LDH/OPH), pursuant to rulemaking authority granted by R.S. 3:1483(L), including the emergency rulemaking authority granted therein, and to the emergency rulemaking authority granted by R.S. 40:4(A)(13), 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 January 20, 2023. This Emergency Rule is necessary to prevent imminent peril to the public health, safety, or welfare. 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 Emergency 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 Emergency 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.

Accordingly, the following Emergency Rule, effective January 20, 2023, shall remain in effect for a maximum of 180 days, or until the final Rule is promulgated, whichever occurs first.

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 or money order 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 paper or electronic format;
4. laboratory accreditation verification documentation;
5. laboratory Certificate of Analysis for each separate and distinct product;
6. 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;

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; and

9. a list of all products the applicant seeks to register with the department.

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 issue to the applicant an FD-8a Certificate of Consumable Hemp Product Registration and the application information shall be entered into the Consumable Hemp Products Database.

E. No person is authorized to distribute any consumable hemp product in the State of Louisiana unless that person has first obtained a Certificate of Consumable Hemp Product Registration from the department, except that if a firm submits product labeling and supporting documentation for review to the department and does not receive a 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.

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;

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, or to facilitate same; 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 state health officer within 20 calendar days of receipt of the Notice. Any such request timely received shall be forwarded by the state health officer 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 51 LAC Part I §109.

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), amended LR 48:1290 (May 2022), amended 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 51 LAC Part I §109.

C. An Order Revoking Registration 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 state health officer within 20 calendar days of receipt of the Order. If such a written request is timely filed, then it shall be forwarded by the state health officer to the Louisiana Division of Administrative Law and the Order shall be stayed pending the decision of the Division of Administrative Law, subject as applicable to Subsection D of this Section.

D. If the state health officer determines, in their sole discretion, that the violation(s) result in the product

constituting a nuisance dangerous to the public health or a danger to the public life and health and health-safety, and includes that finding in the Order Revoking Registration, then the Order shall be deemed an Emergency Order and shall not be stayed pending the decision of the Division of Administrative Law.

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 January 20, 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 46:359 (March 2020), amended, LR 47:479 (April 2021), amended, LR 48:1290 (May 2022), amended, LR 49:

Interested persons may submit written comments to Michael Vidrine, Director, Sanitarian Services, Office of Public Health, Louisiana Department of Health, P.O. Box 4489, Baton Rouge, LA 70821-4489. He is responsible for responding to inquiries regarding this Emergency Rule.

Dr. Courtney N. Phillips
Secretary

2302#003

DECLARATION OF EMERGENCY

Department of Insurance Office of the Commissioner

Emergency Rule 48—Insure Louisiana Incentive Program
(LAC 37:XI.Chapter 48)

Emergency Rule 48 is issued to address the current crisis in the availability and affordability of insurance for residential and commercial properties in the state. Louisiana property owners and their insurers sustained catastrophic losses in 2020 and 2021 from Hurricanes Laura, Delta, Zeta, and Ida. As a result of their losses and their assessment of the risk of loss from future storms, many property insurers have substantially reduced their participation in the voluntary market for residential and commercial property insurance. With fewer property insurers in the voluntary market, competitive pressure on premium rates is reduced. Current underwriting practices have resulted in a substantial increase in the number of Louisiana property owners forced to obtain their property insurance coverage or their coverage for wind peril from Louisiana Citizens Property Insurance Corporation, the state insurer of last resort.

The Insure Louisiana Incentive Program was enacted through the passage of Act 754 of the 2022 Regular Session of the Louisiana Legislature for the purpose of cooperative economic development and stability in Louisiana by encouraging additional property insurers to participate in the voluntary property insurance market to increase the availability of property insurance, increase competitive pressure on insurance rates, and reduce the volume of business written by the Louisiana Citizens Property Insurance Corporation.

Emergency Rule 48 sets forth standards and procedures relative to a property insurer's participation in the Insure

Louisiana Incentive Program. Through cooperative endeavor agreements, property insurers participating in the program may be awarded matching grant funds in order to achieve the requirements of Act 754. Emergency Rule 48 further specifies these requirements and conditions thereof for qualified property insurers.

Accordingly, Emergency Rule 48 shall apply to all authorized insurers as defined in R.S. 22:46(3) operating and writing insurance for residential and commercial properties in the state, and to any approved unauthorized insurer as defined in R.S. 22:46(2) operating and writing insurance for residential and commercial properties in the state, an eligible unauthorized insurer as defined in R.S. 22:46(10) operating and writing insurance for residential and commercial properties in the state, or a domestic surplus lines insurer as provided for in R.S. 22:436.1 operating and writing insurance for residential and commercial properties in the state or collectively known as a surplus lines insurer as defined in R.S. 22:46(27).

This emergency created by Hurricanes Laura, Delta, Zeta, and Ida has disrupted the residential and commercial insurance market on a statewide basis for Louisiana citizens. The crisis of the affordability and availability of insurance for residential and commercial properties that exist in the state of Louisiana poses an imminent threat to Louisiana citizens. Emergency Rule 48 is being issued due to this current crisis that poses an imminent peril and threat to the public health, safety, or welfare because of the extensive impact that catastrophic losses from 2020 and 2021 hurricanes have had on Louisiana's property insurance market. As such, Emergency Rule 48 is issued under the authority of the Commissioner of Insurance for the State of Louisiana, pursuant to Act No. 1 and Act No. 2 of the 2023 Extraordinary Session that was signed by Governor John Bel Edwards.

Title 37 INSURANCE Part XI. Rules

Chapter 48. Emergency Rule 48—Insure Louisiana Incentive Program

§4801. Purpose

A. The purpose and intent of Emergency Rule 48 is to exercise the authority and carry out the duties and responsibilities of the commissioner for implementation and regulation of the Insure Louisiana Incentive Program, hereinafter referred to as the "Incentive Program." Emergency Rule 48 sets forth rules and procedural requirements which the commissioner deems necessary for participation in the Incentive Program by qualified property insurers.

AUTHORITY NOTE: Promulgated in accordance with Act No. 1 of the 2023 Extraordinary Session and Act No. 2 of the 2023 Extraordinary Session, R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§4803. Applicability and Scope

A. Emergency Rule 48 shall apply to all authorized insurers as defined in R.S. 22:46(3) operating and writing insurance for residential and commercial properties in the state, and to any approved unauthorized insurer as defined in R.S. 22:46(2) operating and writing insurance for residential

and commercial properties in the state, an eligible unauthorized insurer as defined in R.S. 22:46(10) operating and writing insurance for residential and commercial properties in the state, or a domestic surplus lines insurer as provided for in R.S. 22:436.1 operating and writing insurance for residential and commercial properties in the state and collectively referred to as a surplus lines insurer as defined in R.S. 22:46(27).

B. Emergency Rule 48 governs all aspects of the Incentive Program including, but not limited to, the invitation and application process for grants, the qualifications of grantees, the award of grants, the use of grant funds, the reporting requirements for grantees, the requirements for matching capital funds, the requirements for minimum capital and surplus, the requirements for earned capital, the requirements for default, and other regulation and administration of the Incentive Program.

AUTHORITY NOTE: Promulgated in accordance with Act No. 1 of the 2023 Extraordinary Session and Act No. 2 of the 2023 Extraordinary Session, R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§4805. Definitions

A. For the purposes of Emergency Rule 48, the following terms are defined as follows:

Authorized Insurer—an insurer with a certificate of authority in Louisiana.

Commissioner—the Commissioner of Insurance of the state of Louisiana.

Department—the Department of Insurance of the state of Louisiana.

Domestic Insurer—an insurer formed under the laws of the state of Louisiana that has been authorized by the department to sell insurance products in the state of Louisiana.

Earning Period—the timeframe, including any extension granted by the commissioner, in which the grantee can earn 20 percent or the pro rata share of the grant award.

Grantee—a property insurer to whom a grant is made from the Incentive Program Fund.

Incentive Program (where capitalized)—the Insure Louisiana Incentive Program as created, authorized and administered pursuant to R.S. 22:2361 et seq., and Emergency Rule 48.

Incentive Program Fund (where capitalized)—the Insure Louisiana Incentive Fund established and created pursuant to R.S. 22:2371 and Emergency Rule 48.

Legal Interest—interest at the rate fixed in R.S. 13:4202.

Net Written Premiums—the total premiums, exclusive of assessments and other charges, paid by policyholders to an insurer for policies that comply with Emergency Rule 48, minus any return premiums or other premium credits due policyholders, as defined in R.S. 22:2369(A). Premium received from participation in the depopulation or take-out program of Louisiana Citizens Property Insurance Corporation shall be included in net premiums written.

Newly Allocated Insurer Capital—capital committed by an insurer to match any grant funds received from the Incentive Program Fund.

Reporting Period—the financial statement reporting date of March 31, June 30, September 30, and December 31 of each respective year in the Incentive Program.

Surplus Lines Insurer—an insurer without a certificate of authority that meets the eligibility criteria of R.S. 22:435(A)(2) and (B) and from which a licensed surplus lines broker may procure insurance under the provisions of R.S. 22:432.

AUTHORITY NOTE: Promulgated in accordance with Act No. 1 of the 2023 Extraordinary Session and Act No. 2 of the 2023 Extraordinary Session, R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§4807. Matching Capital Grants

A. From funds appropriated by the legislature for the Incentive Program Fund established and created in the state treasury under R.S. 22:2371, the commissioner may grant matching capital funds to qualified property insurers in accordance with the requirements of R.S. 22:2361 through 2371 and Emergency Rule 48.

AUTHORITY NOTE: Promulgated in accordance with Act No. 1 of the 2023 Extraordinary Session and Act No. 2 of the 2023 Extraordinary Session, R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§4809. Public Invitation for Grant Applications

A. Pursuant to R.S. 22:2361 et seq., and Emergency Rule 48, the commissioner shall issue an initial public invitation to property insurers to submit applications for grants under the Incentive Program.

B. The invitation shall be published for at least a 30-day period on the department's web site and in state and national insurance journals and publications as the commissioner deems appropriate.

C. The invitation shall describe the Incentive Program and provide general information about the grant application process.

D. The invitation shall set a deadline for receipt of grant applications. All grant applications should be submitted to the department either by certified mail, return receipt requested, actual delivery by a commercial interstate courier, or electronic mail. Failure to timely submit a grant application may render the property insurer ineligible to participate in the Incentive Program. However, for good cause shown, the commissioner may extend the deadline and consider applications received after the deadline or give a property insurer the opportunity to cure a non-substantive deficiency in the application.

E. In the event that all monies in the Incentive Program Fund are not allocated in response to the first invitation, the commissioner may issue a second invitation for grant applications in the form and pursuant to the procedures utilized for the first invitation.

F. In the event that all monies in the Incentive Program Fund are not allocated in response to the second invitation, the commissioner may issue a third invitation for grant applications in the form and pursuant to the procedures utilized for the first and second invitations.

AUTHORITY NOTE: Promulgated in accordance with Act No. 1 of the 2023 Extraordinary Session and Act No. 2 of the 2023

Extraordinary Session, R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§4811. Applications

A. The department shall provide an application form to be fully completed by grant applicants. The application form may be revised by the department as it deems appropriate.

B. The grant application shall require the property insurer to designate a point of contact with a telephone number, email address and physical address to represent the property insurer on all matters pertaining to the grant process and the Incentive Program.

C. The grant application shall be filed contemporaneously with the application for licensure with the department by a surplus lines insurer. The application for licensure expresses the applicant's intent to become licensed in this state as an authorized insurer and, if specifically requested in writing by the grant applicant in the application for licensure, will be processed contingent upon approval of the allocation of a grant award.

D. Only fully completed grant applications or those deemed acceptable by the commissioner shall be considered for a grant award.

E. The grant application shall be submitted to the department's Office of Financial Solvency, as outlined in the invitations issued under §4809.

AUTHORITY NOTE: Promulgated in accordance with Act No. 1 of the 2023 Extraordinary Session and Act No. 2 of the 2023 Extraordinary Session, R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§4813. Qualifications for Applying for Grant Funds

A. Minimum Solvency Requirements. Grants shall be made only to property insurers who initially satisfy and thereafter maintain the following minimum solvency requirements:

1. capital and surplus in an amount not less than \$10,000,000;

2. a property insurer with a financial strength rating that meets the following requirements:

a. AM Best Company "B+" or better; or

b. Demotech, Inc. "A" or better; or

c. AM Best Company "A" or better for licensed surplus lines insurers.

NOTE: Property insurers rated by more than one rating company need only meet one of the rating requirements.

3. risk-based capital ratio of 400 percent at the initial grant award, which shall be maintained during the property insurer's participation in the Incentive Program; and

4. sufficient reinsurance to demonstrate that its reinsurance program is sufficient for the amount of business to be written pursuant to the Incentive Program.

B. Certificate of Authority

1. A property insurer must have an existing certificate of authority in Louisiana for the line or lines of insurance that the property insurer applicant will write pursuant to the Incentive Program or documentation that an application for such licensure has been filed with the Company Licensing Division of the department contemporaneous with the filing of the grant application.

C. Satisfactory Prior Experience

1. Grants shall be made only to property insurers with satisfactory prior experience in writing property insurance or to new property insurers whose management has satisfactory experience in property insurance. The grant application shall accurately disclose the prior experience of property insurers and their management. The commissioner may request additional information from the applicant property insurer and conduct such investigation of prior experience as the commissioner deems appropriate.

2. The commissioner shall determine whether an applicant property insurer has adequate or satisfactory prior experience.

D. Other Requirements

1. Applicant shall maintain premium to surplus ratio, net of reinsurance, no greater than 3 to 1.

2. Applicant shall not insure more than 10 percent of its surplus in any one risk pursuant to R.S. 22:573.

3. Applicant shall maintain gross premium to surplus ratio no greater than 8 to 1.

4. Without prior approval of the commissioner, applicant shall not write more than 15 percent of the net written premiums in any one parish.

5. Applicant shall make a commitment of capital of not less than two million dollars to write property insurance in this state that complies with the requirements of R.S. 22:2369 and §4821 of Emergency Rule 48. Grants from the Incentive Program Fund shall match the newly allocated property insurer capital funds at a ratio of one dollar of allocated property insurer capital funds for each dollar of state capital grant funds.

E. Notwithstanding any provision of law, regulation or rule to the contrary, the following are ineligible to receive any portion of funds from the Incentive Program Fund:

1. Any insurance company or property insurer with an officer, director, or controlling shareholder who was an officer, director, or controlling shareholder of an insurance company or property insurer licensed in Louisiana that filed for bankruptcy or was declared insolvent.

2. Any insurance company or property insurer whose parent company controlled all or part of an insurance company or property insurer licensed in Louisiana that filed for bankruptcy or was declared insolvent.

AUTHORITY NOTE: Promulgated in accordance with Act No. 1 of the 2023 Extraordinary Session and Act No. 2 of the 2023 Extraordinary Session, R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§4815. Award and Allocation of Grants

A. Subject to the requirements of this Section, to carry out the purpose and intent of the Incentive Program, the commissioner shall award and allocate grants as the commissioner deems appropriate among qualified property insurers who have applied for grants. The commissioner has the discretion to create an advisory committee to assist in the analysis of grant applications. If created, the advisory committee will be composed of up to five members, designated to serve thereon by the commissioner.

B. The factors considered in awarding grants shall include, but are not limited to, the following:

1. the financial strength and satisfactory prior experience of the applicant;

2. the ability of the applicant to invest new capital and to comply with the other requirements of the grant;

3. the potential of the applicant for providing property insurance as required by the Incentive Program at reasonable and competitive rates, particularly for property owners in the following Louisiana parishes: Acadia, Allen, Ascension, Assumption, Beauregard, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, Sabine, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Vernon, Washington, West Baton Rouge, and West Feliciana;

4. the marketing and claims handling capability and experience of the applicant, and particularly its ability to market property insurance in the parishes listed in §4815.B.3 and to handle future claims that may arise;

5. the applicant's longevity in the Incentive Program, including a statement or plan of operation by the applicant demonstrating its intent to remain in this state following the completion of the Incentive Program;

6. the current licensure of the applicant where preference and priority will be given to those admitted property insurers that are currently licensed to do business in this state for the line or lines of business that are the subject of the grant; and

7. any other factors that the commissioner deems applicable, relevant and appropriate in carrying out the purpose and intent of the Incentive Program.

C. For grant applications in response to the initial invitation, the commissioner shall not allocate individual grants of less than \$2,000,000 nor in excess of \$10,000,000.

D. For the initial allocation of grants only, the commissioner shall allocate at least 20 percent of the total amount available for grants to domestic property insurers unless the commissioner has not received sufficient applications from qualified domestic property insurers to allocate such sum.

E. If the commissioner issues a second invitation for grant application, the commissioner shall not allocate individual grants of less than \$2,000,000 nor in excess of \$10,000,000. Property insurers who have been allocated a grant in response to the first invitation may apply for and receive an additional grant, provided the total of the grants to a property insurer does not exceed \$10,000,000.

F. If the commissioner issues a third invitation for grant application, the commissioner shall not allocate individual grants of less than \$2,000,000 nor in excess of \$10,000,000. Property insurers who have been allocated a grant in response to the first or second invitations may apply for and receive an additional grant, provided the total of the grants to a property insurer does not exceed \$10,000,000.

1. Grants made pursuant to a third invitation may be made to property insurers providing coverage against damage to an existing dwelling. Such grant shall be made only as to those policies transferred from an existing dwelling to a new dwelling, provided the risk of catastrophe associated with the new dwelling is the same as or no greater

than the level of risk of catastrophe associated with the existing dwelling.

2. Grants shall also be made under the provisions of this Subsection to any property insurer that was forced to reduce coverage, or drop coverage entirely, on existing dwellings in order that the property insurer maintain its financial stability or solvency. A grant made pursuant to this Paragraph shall be contingent on the property insurer reinstating such former coverage or better coverage on the existing dwellings.

G. In no event shall the total amount of the grant to a property insurer exceed 20 percent of that property insurer's capital and surplus as reported to and verified by the department.

H. Prior to the award of any grant pursuant to the provisions of this Chapter, the grant shall be subject to the review and approval of the Joint Legislative Committee on the Budget. The commissioner shall provide written notice to the committee of the grant awards that have been approved. Upon written approval by the committee, the commissioner will be authorized to award the grant and deliver the amount of the grant to the grantee from monies in the Incentive Program Fund.

I. In the event that monies remain in the Incentive Program Fund after allocations pursuant to the third invitation, the commissioner shall cause all remaining monies to be returned to the state general fund.

AUTHORITY NOTE: Promulgated in accordance with Act No. 1 of the 2023 Extraordinary Session and Act No. 2 of the 2023 Extraordinary Session, R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§4817. Authorized Insurers

A. A surplus lines insurer may apply for a grant, provided that the surplus lines insurer shall, contemporaneously with the grant application, file an application for licensure with the department for the line or lines of insurance for which it must be authorized and licensed to write for a grant award. If specifically requested in writing by the grant applicant in the application for licensure, such application will be processed contingent upon approval of a grant award.

B. A surplus lines insurer must obtain a certificate of authority to do business in Louisiana as an authorized insurer before it may actually receive grant funding.

C. If the surplus lines insurer does not apply timely to be admitted or subsequently is not approved for a certificate of authority, the surplus lines insurer shall not be entitled to receive a grant.

AUTHORITY NOTE: Promulgated in accordance with Act No. 1 of the 2023 Extraordinary Session and Act No. 2 of the 2023 Extraordinary Session, R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§4819. Certification of Deposit

A. Within 10 days of receipt of any Incentive Program Funds, the grantee shall provide to the commissioner written certification signed by two principal officers of the grantee that the Incentive Program Funds have been deposited in an account held in the name of the grantee and pledged to the department.

AUTHORITY NOTE: Promulgated in accordance with Act No. 1 of the 2023 Extraordinary Session and Act No. 2 of the 2023 Extraordinary Session, R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§4821. Property Insurance Requirements

A. The grantee shall write new property insurance in Louisiana of the types described in R.S. 22:2369 and this Section of Emergency Rule 48 with net written premiums of at least a ratio of \$2 of premium for each \$1 of the total of newly allocated property insurer capital combined with the grant from the Incentive Program Fund. Thus, if the grantee allocates \$2,000,000 in capital and receives a matching state grant of \$2,000,000, the grantee must write property insurance in Louisiana with net premiums of at least \$8,000,000.

B. To comply with the requirements of the grant, new property insurance written by the grantee shall be residential, commercial, mono-line, or package property insurance policies in this state and shall include coverage for wind and hail with limits equal to the limits provided for other perils insured under such policies.

C. The net written premium requirements of this Section shall be satisfied only by new property insurance coverages reported on the Annual Statement State Page filed with the department under lines 1 (Fire), 2.1 (Allied Lines), 3 (Farmowners), 4 (Homeowners), or 5.1 (Commercial Multi-peril Non-liability).

D. Grantees shall also comply with the following.

1. In the first 24 months after receipt of matching capital fund grants, the grantee shall write at least 50 percent of the net written premiums for policyholders whose insured property is located in the parishes listed in §4815.B.3. The grantee shall maintain this net written premium ratio over five years to fully earn the matching capital fund grant in accordance with R.S. 22:2370 unless an extension has been granted by the commissioner under R.S. 22:2370.B or §4827.C of Emergency Rule 48.

2. The net written premium ratio of §4821.D.1 applies only to the net minimum premium required under §4821.A. Thus, the grantee may write additional Louisiana property coverage without regard to the ratio required by §4821.D.1.

E. The requirements of the grant that must be satisfied by the grantee are illustrated by the following example assuming a grant of \$2,000,000.

1. Example

a. The grantee is awarded a \$2,000,000 grant. Within 10 days of receipt of the grant of Incentive Program Funds, the grantee must match the grant with newly allocated capital funds of at least \$2,000,000 and provide written certification of compliance to the department. In the first 24 months after receipt of the grant, the grantee must write property insurance in Louisiana with net written premiums of at least \$8,000,000. In the first 24 months after receipt of the grant, the grantee must write at least \$4,000,000 of the net written premiums for policyholders whose insured property is located in the parishes listed in §4815.B.3. Grantees shall maintain this net written premium ratio over five years to fully earn the matching capital fund grant in accordance with R.S. 22:2370. Compliance with the

requirements for the second year and for each succeeding year must be demonstrated on the grantee's annual reports.

F. Grantees shall also satisfy the requirements for licensing, form filings, rate filings, and any other applicable provisions contained in Title 22.

AUTHORITY NOTE: Promulgated in accordance with Act No. 1 of the 2023 Extraordinary Session and Act No. 2 of the 2023 Extraordinary Session, R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§4823. Funding Schedule

A. Unless expedited funding is requested by the grantee and authorized by the commissioner, a grant that has been fully approved shall be funded on the next regular quarterly period thereafter, i.e., January 1, April 1, July 1, or October 1.

AUTHORITY NOTE: Promulgated in accordance with Act No. 1 of the 2023 Extraordinary Session and Act No. 2 of the 2023 Extraordinary Session, R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§4825. Reporting Requirements

A. Grantee shall segregate and report any grants received on the line titled "Aggregate Write-In for Special Surplus Funds" in the NAIC Annual and Quarterly Statement Blanks.

B. Grantee shall report annually by March 1 and quarterly by May 15, August 15, and November 15 of each year on a form acceptable to the commissioner the following information for the preceding year and quarter ends:

1. the amount of premium written by parish under the Incentive Program;
2. the amount of premium by parish associated with properties located in the parishes listed in §4815.B.3.
3. the amount of premium by parish taken-out from the Louisiana Citizens Property Insurance Corporation.
4. the amount of premium by parish, including and in addition to that written under the Incentive Program.

C. Grantee shall report quarterly May 15, August 15, and November 15 and annually by June 1, detail on the catastrophe reinsurance program maintained, including premium to surplus ratio, net of reinsurance, gross premium to surplus ratio, detail on the catastrophe reinsurance program maintained by grantee, including retentions, limits, reinstatements, current rating of the grantee, as well as the current ratings of each reinsurer. In addition, the report shall contain the modeled Probable Maximum Loss for a 1 in 50, 1 in 100, 1 in 150, 1 in 200 and 1 in 250 event, including the models for at least five different scenarios and versions utilized.

1. Within 30 days of the end of each reporting period, the Department shall aggregate all responses and submit them as a report to the legislature.

D. Grantee shall report quarterly by May 15, August 15, and November 15 risk-based capital for the preceding quarter.

AUTHORITY NOTE: Promulgated in accordance with Act No. 1 of the 2023 Extraordinary Session and Act No. 2 of the 2023

Extraordinary Session, R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§4827. Compliance

A. The commissioner shall conduct an examination under R.S. 22:1981, financial analysis under R.S. 22:1984 and/or investigation annually, or more often as the commissioner deems necessary to determine the grantee's compliance with the requirements of the grant, as per R.S. 22:2361 et seq., and Emergency Rule 48. In addition to the requirements of R.S. 22:2361 et seq., the Department may require such reports and/or conduct such examinations, financial analysis or investigations as the commissioner deems necessary to verify compliance with the property insurance requirements set forth in the Incentive Program and Emergency Rule 48.

B. The commissioner shall submit annual and quarterly reports on the Incentive Program to the House Committee on Appropriations, the Senate Committee on Finance, and the House and Senate Committees on Insurance containing information for the preceding year and quarter, respectively, detailing the following:

1. the amount of premium written by parish and by grantee under the Incentive Program;
2. the amount of premium by parish and by grantee associated with the property located in the parishes listed in §4815.B.3;
3. the amount of premium by parish and by grantee taken-out from the Louisiana Citizens Property Insurance Corporation; and
4. the total amount of premium for each grantee by parish, including the premium written under the Incentive Program.

C. If the commissioner determines that a grantee has complied with the terms of the grant, the commissioner shall notify the grantee in writing that the grantee has earned the 20 percent portion of the grant pursuant to R.S. 22:2370.

D. If the commissioner determines that the grantee shows promise of future compliance, the commissioner may grant an extension of not more than one year to a grantee who has failed to satisfy all requirements of the grant.

AUTHORITY NOTE: Promulgated in accordance with Act No. 1 of the 2023 Extraordinary Session and Act No. 2 of the 2023 Extraordinary Session, R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§4829. Monitoring

A. The commissioner shall expedite the approval of certificates of authority, rate filings, form filings, and other necessary regulatory approvals of qualified insurers to facilitate the underwriting of new policies pursuant to the Incentive Program.

B. The commissioner shall monitor the financial solvency of grantees by evaluating the adequacy of insurer reinsurance programs using catastrophe model stress tests of the grantee's book of business.

C. The commissioner shall take any action necessary to ensure that grantees remain financially solvent.

AUTHORITY NOTE: Promulgated in accordance with Act No. 1 of the 2023 Extraordinary Session and Act No. 2 of the 2023 Extraordinary Session, R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§4831. Earned Capital

A. A grantee who has received a grant is entitled to earn the grant at the rate of 20 percent per earning period for the last 12 months of that earning period in which the grantee is in compliance with the requirements of R.S. 22:2361 et seq., and Emergency Rule 48, such that the grantee may earn the entire grant after five years of full compliance with the requirements.

B. The grantee may begin to earn the grant from the reporting period in which the grantee first demonstrates that its net written premiums have reached compliance with all requirements of §4821.D.1. The grantee will earn 20 percent of the grant in each 12-month period thereafter in which the grantee demonstrates that it has maintained compliance with all requirements for net written premiums. Thus, if in compliance with §4821.D.1, the grantee may begin to earn the grant at the end of the first year.

C. Upon verification of the net written premium requirements during the preceding 12 months, the commissioner will issue written declaration that the grantee has earned 20 percent of the grant or a pro rata share thereof awarded to the grantee. No funds may be earned by the grantee until it receives official notification from the commissioner.

D. If the grantee does not meet the grant requirements during any year but shows promise of future compliance based on good cause having been demonstrated, the commissioner may extend the period of time from five years in order for the grantee to earn the entire grant. The extension may be granted for up to one year.

AUTHORITY NOTE: Promulgated in accordance with Act No. 1 of the 2023 Extraordinary Session and Act No. 2 of the 2023 Extraordinary Session, R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§4833. Declaration of Default

A. The commissioner may declare a grantee in default of the requirements for a grant should it be found that any of the following exists.

1. The grantee fails at any time to meet the specific minimum requirements of §4813.A.1-4. The commissioner may take into consideration the effects of the Incentive Program, including efforts demonstrated by the grantee, when monitoring compliance with this criteria.

2. The grantee fails to maintain a certificate of authority for the line or lines of insurance written pursuant to the grant program.

3. The grantee fails to meet the specific requirements of §4821.

4. The grantee fails to comply with any other applicable provisions of R.S. 22:2361 et seq., or Emergency Rule 48.

B. If the commissioner determines that the grantee is in default, the commissioner shall notify the grantee in writing of such default. Any grantee declared in default by the commissioner shall have 30 days from the date of the declaration of default to request reconsideration by the commissioner. The written request for reconsideration shall set forth, in detail, each and every reason why the grantee is entitled to the relief requested, including any documents

tendered in support thereof. The commissioner shall have 30 days from the mailing of the request for reconsideration to review it and render a decision. The commissioner's decision upon reconsideration may be appealed to the division of administrative law in accordance with R.S. 22:2191 *et seq.* Unless modified on reconsideration or appeal, the default is effective from the date of the original declaration, and the grantee shall not be eligible to continue its participation in the Incentive Program unless the default is for failure to meet the requirements referenced in §4833.A.3.

C. The grantee in default is liable for and shall repay all grant funds that have not been earned by the grantee, plus legal interest as defined in R.S. 13:4202(B) from the date of the commissioner's default declaration. In the event of default, a portion of the grant award for the current year may be earned on a pro rata basis to give credit for premiums written under the Incentive Program. Repayment on a pro rata basis shall be determined using a method prescribed by the commissioner. If a request for reconsideration is not timely made, repayment is due upon the expiration of 30 days from the declaration of default. If a request for reconsideration is timely made and denied, repayment is due within 10 days of the denial of the reconsideration request.

Example: [The required amounts of premium for each of the two categories are listed in the table below under "Requirement." Each requirement equates to 50 percent of the earned capital for the earning period or \$500,000. The "Actual" column represents the actual amount of writings by the grantee. The "Factor" column is the actual amount of writings divided by the requirement in each category. The "Earned" column represents the factor multiplied by \$500,000. Thus, under this example, the amount of money earned by the grantee on a pro rata basis is \$775,000.]

Category	Requirement	Weight	Actual	Factor	Earned
Total Net Written Premium	\$20,000,000	50%	\$15,000,000	.75	\$375,000
Parishes listed in §4815.B.3	\$10,000,000	50%	\$8,000,000	.80	\$400,000
				Total:	\$775,000

F. The commissioner may institute legal action to recover all sums due by the grantee in default in the 19th Judicial District Court.

AUTHORITY NOTE: Promulgated in accordance with Act No. 1 of the 2023 Extraordinary Session and Act No. 2 of the 2023 Extraordinary Session, R.S. 22:11, 22:2361 *et seq.*, and the Administrative Procedure Act, R.S. 49:950 *et seq.*

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§4835. Cooperative Endeavor Agreements

A. In furtherance of R.S. 22:2361 *et seq.*, and in accordance with R.S. 22:2363.A, the grantee shall execute a cooperative endeavor agreement with and in a form prescribed by the commissioner subject to approval by the Office of State Procurement of the Division of Administration.

AUTHORITY NOTE: Promulgated in accordance with Act No. 1 of the 2023 Extraordinary Session and Act No. 2 of the 2023 Extraordinary Session, R.S. 22:11, 22:2361 *et seq.*, and the Administrative Procedure Act, R.S. 49:950 *et seq.*

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

D.1. In determining the pro rata earnings, the commissioner shall divide the actual amount of written premiums by the amount required to be written under the Incentive Program, in each of the following categories:

- a. policyholders whose insured property is located in the parishes listed in §4815.B.3; and
- b. the total amount of net premiums written by the grantee under the Incentive Program.

2. Each category is weighted equally at 50 percent, and credit shall be given based on the percentage of premiums written per category. The resulting factor is then multiplied by 50 percent of the amount the grantee is entitled to earn per category for each year of compliance under the Incentive Program (earned capital). The factor shall not exceed 1.00 for additional writings in any category. The sum of all categories shall equal the pro rata amount earned by the grantee.

E. The requirements for earning on a pro rata basis are illustrated by the following example assuming a grant of \$5,000,000, presuming a maximum earned capital of \$1,000,000 (20 percent per year entitlement assuming full compliance), and the grantee is declared in default.

§4837. Severability

A. If any provision of Emergency Rule 48 or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of Emergency Rule 48 that can be given effect without the invalid provision or application, and to that end, the provisions of Emergency Rule 48 are severable.

AUTHORITY NOTE: Promulgated in accordance with Act No. 1 of the 2023 Extraordinary Session and Act No. 2 of the 2023 Extraordinary Session, R.S. 22:11, 22:2361 *et seq.*, and the Administrative Procedure Act, R.S. 49:950 *et seq.*

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§4839. Confidentiality

A. Any and all records, documents and information associated with the Incentive Program that are deemed confidential or privileged pursuant to R.S. 44:1 *et seq.*, Title 22 or any state or federal law will remain confidential or privileged.

AUTHORITY NOTE: Promulgated in accordance with Act No. 1 of the 2023 Extraordinary Session and Act No. 2 of the 2023 Extraordinary Session, R.S. 22:11, 22:2361 *et seq.*, and the Administrative Procedure Act, R.S. 49:950 *et seq.*

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§4841. Effective Date

A. Emergency Rule 48 shall be effective on February 6, 2023.

AUTHORITY NOTE: Promulgated in accordance with Act No. 1 of the 2023 Extraordinary Session and Act No. 2 of the 2023 Extraordinary Session, R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

James J. Donelon
Commissioner

2302#080

DECLARATION OF EMERGENCY

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

Shrimp Season Closure in Additional State Inside Waters

The secretary of the Department of Wildlife and Fisheries has been notified that recent biological sampling conducted by the department has indicated a decrease in marketable white shrimp and that the average white shrimp size within these waters to be closed is smaller than the minimum possession count and this action is being taken to protect these small white shrimp and provide opportunity for growth to larger and more valuable sizes. R.S. 56:498 provides that the possession count on saltwater white shrimp for each cargo lot shall average no more than 100 (whole specimens) per pound except during the time period from October fifteenth through the third Monday in December.

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; R.S. 56:497 which allows the Wildlife and Fisheries Commission to delegate to the secretary of the Department of Wildlife and Fisheries the powers, duties and authority to set shrimp seasons; and in accordance with a Declaration of Emergency adopted by the commission on August 4, 2022, which authorizes the secretary of the department to close the fall inshore shrimp season when biological and technical data indicate the need to do so or if enforcement problems develop, the secretary does hereby declare:

The 2022 fall inshore shrimp season shall close on January 23, 2023, at official sunset in the following portions of inside state waters: Chef Menteur and Rigolets Passes, Lake Borgne, Mississippi Sound, Mississippi River Gulf Outlet (MRGO), and a section of the Gulf Intracoastal Waterway (GIWW) in Orleans parish from the GIWW East Closure Sector Gate westward to the GIWW intersection with the Inner Harbor Navigation Canal. With this Declaration of Emergency, all inside waters will be closed to shrimping with the exception of the open waters of Breton and Chandeleur Sounds as bounded by the double-rig line described in R.S. 56:495.1(A)2.

Existing data do not currently support shrimping closures in additional state inside and outside waters. However, historic data suggest additional closures may be necessary and the department will continue monitoring shrimp populations in these 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.

Jack Montoucet
Secretary

2302#02

DECLARATION OF EMERGENCY

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

Shrimp Season Closure in Portions of State Outside Waters

The secretary of the Department of Wildlife and Fisheries has been notified that recent biological sampling conducted by the department has indicated that the average white shrimp size within these waters to be closed is smaller than the minimum possession count. This action is being taken to protect these small white shrimp and provide opportunity for growth to larger and more valuable sizes. R.S. 56:498 provides that the possession count on saltwater white shrimp for each cargo lot shall average no more than 100 (whole specimens) per pound except during the time period from October fifteenth through the third Monday in December.

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; R.S. 56:497 which allows the Wildlife and Fisheries Commission to delegate to the secretary of the Department of Wildlife and Fisheries the powers, duties and authority to set shrimp seasons; and in accordance with a Declaration of Emergency adopted by the commission on August 4, 2022, which authorizes the secretary of the department to close shrimp season in all or parts of state outside waters when biological and technical data indicate the need to do so or if enforcement problems develop, the secretary does hereby declare:

The 2022 shrimp season shall close on February 6, 2023, at official sunset, in portions of state outside waters between Caillou Boca and the Atchafalaya River Ship Channel at Eugene Island. The eastern boundary line originates on the northwest shore of Caillou Boca at 29 degrees 02 minutes 46.00 seconds north latitude, 90 degrees 50 minutes 27.00 seconds west longitude and ends at a point on the three mile line as described in R.S. 56:495(A) at 28 degrees 59 minutes 30.00 seconds north latitude, 90 degrees 51 minutes 57.00 seconds west longitude. The western boundary line originates at the Atchafalaya River Ship Channel at Eugene Island as delineated by the red buoy line at 29 degrees 22 minutes 14.93 seconds north latitude, 91 degrees 22 minutes 58.92 seconds west longitude and ends at a point on the three-mile line as described in R.S. 56:495(A) at 29 degrees 18 minutes 33.89 seconds north latitude, 91 degrees 26 minutes 16.05 seconds west longitude.

Existing data do not currently support shrimping closures in additional state outside waters. However, historic data suggest additional closures may be necessary and the department will continue monitoring shrimp populations in these 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.

Jack Montoucet
Secretary

2302#020

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Sister Lake Public Oyster Seed Reservation to Reopen to Market Size Oyster Harvest

In accordance with the emergency provisions of Revised Statutes (R.S.) 49:962, under the authority of R.S. 56:433, and under the authority of a Declaration of Emergency passed by the Wildlife and Fisheries Commission on September 1, 2022, which authorized the secretary of the Department of Wildlife and Fisheries to take emergency action to reopen public oyster seed grounds or reservations if sufficient quantities of oysters are available and to adjust sack limits and sacking only areas, notice is hereby given that the secretary of Wildlife and Fisheries hereby declares that the Sister Lake Public Oyster Seed Reservation as described in R.S. 56:434(E) shall open a special season for the purposes of market oyster harvest at one-half hour before sunrise on Monday, February 13, 2023 and close at one-half hour after sunset on Friday, February 17, 2023, with the following conditions:

1. Any vessel from which any person(s) takes or attempts to take oysters from the public oyster seed reservations described above shall be limited to a daily take not to exceed 20 whole sacks of oysters per vessel. A sack of oysters for the purposes of this Declaration of Emergency shall be defined as the size described in R.S. 56:440. If sacks smaller than the size described in R.S. 56:440 are used, the daily harvest and possession limit shall be based on the number of sacks used, not the size of the sack or other measures.

2. This opening is limited to harvesting only market oysters for direct sale (sacking).

3. If any person on a vessel takes or attempts to take oysters from the public oyster reservation described above, all oysters contained on that vessel will be deemed to have been taken from said seed ground or reservation from the time harvest begins until all oysters are off-loaded dockside.

4. All oysters harvested from public areas, seed grounds or reservations for the purpose of market shall be uncontaminated, sealed and not gaping as described in R.S. 56:433.

5. All oysters harvested from public areas, seed grounds or reservations for the purpose of direct sale shall measure a minimum of 3 inches from hinge to bill as described in R.S. 56:433.

6. Market oysters harvested from any public oyster area, seed ground or reservation must be sacked, the number of sacks recorded in a log book, and each sack properly tagged prior to leaving said public oyster area, seed ground, or reservation.

7. All vessels located in public oyster areas, seed grounds or reservations during those times between one-half hour after sunset and one-half hour before sunrise must have all oyster scrapers unshackled.

8. Every vessel harvesting oysters from the Public Oyster Areas for market shall report harvest information to the Department of Wildlife and Fisheries before 9 p.m. each day fished. Vessels shall provide the following information: Captain's name, oyster harvester number, boat number, the total number of sacks harvested that day, and the public oyster area fished. Call 1-800-442-2511 or send email to oyster@wlf.la.gov to submit harvest reports. This reporting does not substitute for trip ticket reporting. The following area shall remain closed for the entire 2022/2023 oyster season:

1. The 2021 Sister Lake Cultch Plant within the following coordinates:

- a. 29 degrees 14 minutes 25.211 seconds
90 degrees 56 minutes 19.177 seconds
- b. 29 degrees 14 minutes 3.351 seconds
90 degrees 56 minutes 19.203 seconds
- c. 29 degrees 14 minutes 25.075 seconds
90 degrees 55 minutes 34.537 seconds
- d. 29 degrees 14 minutes 3.214 seconds
90 degrees 55 minutes 34.626 seconds

2. The 2022 Drum Bay Cultch Plant with the following coordinates:

North Plant

- a. 29 degrees 53 minutes 24.837 seconds
89 degrees 17 minutes 08.500 seconds
- b. 29 degrees 53 minutes 50.990 seconds
89 degrees 16 minutes 30.541 seconds
- c. 29 degrees 54 minutes 12.658 seconds
89 degrees 16 minutes 43.889 seconds
- d. 29 degrees 53 minutes 55.360 seconds
89 degrees 17 minutes 30.601 seconds

South Plant

- a. 29 degrees 52 minutes 32.400 seconds
89 degrees 19 minutes 18.340 seconds
- b. 29 degrees 52 minutes 36.238 seconds
89 degrees 18 minutes 40.818 seconds
- c. 29 degrees 53 minutes 07.579 seconds
89 degrees 19 minutes 36.541 seconds
- d. 29 degrees 53 minutes 18.409 seconds
89 degrees 19 minutes 07.703 seconds

3. Lake Tambour, Lake Chien, Lake Felicity, Deep Lake and Baratavia Bay Public Oyster Seed Grounds as described in LAC 76:VII:517.

4. The Little Lake Public Oyster Seed Grounds as described in LAC 76:VII.521.

5. Oyster harvest on the Sabine Lake Public Oyster Area is prohibited as described in R.S. 56:435.1.

Notice of any opening, delaying, or closing of a season will be provided by public notice at least 72 hours prior to such action, unless such closure is ordered by the Department of Health for public health concerns.

Jack Montoucet
Secretary

2302#019

Rules

RULE

**Department of Agriculture and Forestry
Office of Animal Health and Food Safety
and
Board of Animal Health**

Chronic Wasting Disease (LAC 7:XXI.Chapter 17)

In accordance with the Administrative Procedure Act, R.S. 49:950, et seq., and pursuant to the authority set forth in R.S. 3:3101 et seq., the Department of Agriculture and Forestry ("Department"), through the Office of Animal Health and Food Safety, has amended LAC 7:XXI.1705 and has promulgated LAC 7:XXI.1727-1737, relative to Chronic Wasting Disease, as it relates to Alternative Livestock within the state of Louisiana. The Rule changes are being made in accordance with R.S. 3:3101, which authorizes the commissioner to promulgate rules and regulations setting forth the requirements for the raising, slaughtering, and sale of imported deer and antelope, elk, farm-raised white tail deer, and other exotic cervidae for commercial purpose in this state. The Rule changes establish provisions for preventive measures to impede the spread CWD into alternative livestock populations within the state.

The amendments to Section 1705 provide additional definitions relative to CWD, to include the terms "certified herds," "enrolled herds," "surveillance zone," and "USDA," and provides amended definition of the term "Chronic Wasting Disease." Section 1727 sets forth the requirements and procedures by which the commissioner of agriculture and forestry may establish a surveillance zone whenever any cervid within the state has tested positive for CWD, as well as the cancellation or modification of any such surveillance zone. Section 1729 establishes a prohibition on the export of any cervid carcass or part thereof from within a surveillance as well as certain enumerated exceptions to that prohibition. Section 1731 establishes a prohibition on the transport of live cervids into, out of, and within a surveillance zone as well as certain exceptions and the procedures by which a transport permit may be obtained. Section 1733 establishes an exception to the general prohibition on the transport of live cervids into, out of, and within a surveillance zone for certified and enrolled herds, who have voluntarily enrolled in the USDA APHIS Herd Certification Program if certain requirements are met. Section 1735 sets forth requirements for permits to transport alternative livestock within a surveillance zone as well as licenses to establish new herds. Section 1737 set forth enforcement procedures for violations of R.S. 3:3101 et seq. or LAC 7:XXI.Chapter 17, Alternative Livestock. This Rule is hereby adopted on the day of promulgation.

Title 7

AGRICULTURE AND ANIMALS

Part XXI. Animals and Animal Health

Chapter 17. Alternative Livestock—White-Tailed Deer and Captive Cervids (Formerly Chapter 15)

§1705. Definitions (Formerly §1503)

A. ...

* * *

Certified Herds—a herd that has enrolled in the Herd Certification Program and has attained certified status as defined in 9 CFR part 55.

Chronic Wasting Disease (CWD)—a neurodegenerative disease found in most deer species, including white-tailed deer, mule deer, elk, red deer, moose, and caribou. It is infectious, always, fatal, and has no treatment. CWD is part of a group of diseases known as transmissible spongiform encephalopathies (TSEs) and is similar to BSE (mad cow disease) in cattle and scrapie in sheep. These diseases cause irreversible damage to brain tissue in the animal, which leads to excessive salivation, neurological symptoms, emaciation, and death of the animal.

* * *

Enrolled Herds—a herd that has enrolled in a Herd Certification Program and met the minimum requirements defined in 9 CFR part 55.

* * *

Surveillance Zone—an LDAF-designated area consisting of a 25-mile radius from the positive animal in which mitigation measures and regulations are applied to alternative livestock facilities.

* * *

USDA—the United States Department of Agriculture.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:282 (February 1998), amended LR 24:1671 (September 1998), amended by the Department of Agriculture and Forestry, Board of Animal Health, LR 38:961 (April 2012), repromulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety and the Board of Animal Health, LR 40:971 (May 2014), amended LR 42:1864 (November 2016); amended LR 49:234 (February 2023).

§1727. Chronic Wasting Disease; Surveillance Zones

A. Whenever the commissioner or his designee has been notified that any cervid, whether in an alternative livestock facility or not, has tested positive for CWD anywhere within

the state, he may establish a surveillance zone by the following procedures:

1. by giving notice, in writing, to any and all alternative livestock facilities within the surveillance zone;
2. by publishing notice of the surveillance zone in the *Louisiana Register*; and
3. by posting notice of the surveillance zone on the LDAF website.

B. Once imposed, a surveillance zone will remain in effect unless and until otherwise cancelled or modified by the commissioner or his designee.

C. LDAF shall annually, on or before December 31, publish in the *Louisiana Register* a list of all areas of Louisiana which are included in surveillance zones.

D. The commissioner or his designee may, at his discretion, cancel a surveillance zone or modify an area from a surveillance zone when it is proven to his satisfaction that the area has been mitigated and no longer warrants surveillance zone restrictions, by the following procedures:

1. by giving notice, in writing, to any and all alternative livestock facilities within the surveillance zone;
2. by publishing notice of the surveillance zone in the *Louisiana Register*; and
3. by posting notice of the surveillance zone on the LDAF website.

E. Surveillance zones in this state include:

1. an area consisting of a 25-mile radius from the positive animal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety, LR 49:234 (February 2023).

§1729. Chronic Wasting Disease; Export of Carcasses from a Surveillance Zone

A. The export of any cervid carcass or part of a cervid carcass originating from a facility, as defined in this Chapter, located within a surveillance zone, is prohibited, except for:

1. meat that has been cut and wrapped;
2. meat that has been boned out;
3. quarters or other portions of meat with no spinal column or head attached;
4. antlers;
5. cleaned skull plates with antlers;
6. cleaned skulls without tissue attached;
7. capes;
8. tanned hides;
9. finished taxidermy mounts; and
10. cleaned cervid teeth.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety, LR 49:235 (February 2023).

§1731. Chronic Wasting Disease; Transport of Cervids in Surveillance Zone

A. The transport of alternative livestock into, out of, and within an LDAF-designated surveillance zone is prohibited, except as indicated in this Chapter.

B. Alternative livestock may be transported into, out of, and within an LDAF-designated surveillance zone only with

prior authorization of LDAF in the form of an LDAF-issued permit.

C. Permits to transport into, out of, or within an LDAF-designated surveillance zone may be obtained by contacting the Office of Animal Health.

D. Failure to obtain a permit prior to transporting alternative livestock to or from a facility located within an LDAF-designated surveillance zone shall constitute a violation of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety, LR 49:235 (February 2023).

§1733. Chronic Wasting Disease; Certified Herds; Non-Certified/Non-Enrolled Herds

A. Alternative livestock facilities who have voluntarily enrolled in the USDA/APHIS Herd Certification Program may transport cervids into, out of, and within the surveillance zone subject to the following requirements.

1. Certified Herds who have been in good standing with the USDA/APHIS CWD Program for a period of at least 60 months may transport cervids into, out of and within the surveillance zone only upon the prior issuance of an LDAF-issued movement permit.

2. Enrolled Herds who have been in good standing with the USDA/APHIS CWD Program for a period of at least 24 months may transport cervids into, out of, and within the surveillance zone only:

- a. upon the prior issuance of an LDAF-issued transport permit; and
- b. in accordance with same guidelines and procedures set forth in Appendix II, USDA-APHIS CWD Program Standards (May 2019).

B. Alternative livestock facilities located within a surveillance zone shall stock any new herds with cervids from a USDA/APHIS-certified herd and shall first obtain a license from LDAF to do so.

C. Movement is prohibited in non-enrolled herds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety, LR 49:235 (February 2023).

§1735. Chronic Wasting Disease: Permits and Licenses

A. Permits to transport alternative livestock within an LDAF-designated surveillance zone, and licenses to establish new herds, may be obtained by application to the Office of Animal Health.

B. Permits to transport and/or permits to establish new herds may be cancelled by the commissioner or his designee whenever, in his sole judgment, such cancellation is necessary to prevent the spread of CWD.

C. Permits to transport shall specify the origin, destination, proposed date(s) of transport, and individual official identification for each animal being transported.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety, LR 49:235 (February 2023).

§1737. Chronic Wasting Disease; Enforcement

A. Any person violating the provisions of R.S. 3:3101 et seq. or this Chapter shall be subject to enforcement action

B. The commissioner may suspend or revoke any license issued under the provisions of R.S. 3:3108 and this Chapter. The commissioner may also assess a civil penalty for violation of any provision of R.S. 3:1461 et seq., or any violation of any regulation enacted under the authority of said statutes.

C. Whenever the commissioner has reason to believe that any person has violated any provision of the R.S. 3:3101 et seq., or this Chapter, the commissioner shall notify the person of the alleged violation as well as an opportunity to respond thereto, by certified mail, prior to any scheduled hearing date.

D. Each separate day on which any violation occurs shall be considered a separate violation.

E. No penalty may be assessed, nor may any license be suspended or revoked by the commissioner, prior to the holding of an adjudicatory hearing before a hearing officer. Such adjudicatory hearing shall be conducted in accordance with the requirements of the Administrative Procedure Act; any person alleged to have violated any provision of R.S. 3:3101 et seq., or this Chapter shall be accorded all rights and privileges under said Act.

F. The hearing officer shall make an initial determination on alleged violations and recommend findings of fact and conclusions of law together with penalties, if applicable, in writing.

G. The commissioner shall make the final determination on the disposition of alleged violations.

H. Reinstatement of a revoked license shall be by a formal hearing before a hearing officer held pursuant to the Administrative Procedure Act and shall require the approval of the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety, LR 49:236 (February 2023).

Mike Strain, DVM
Commissioner

2302#059

RULE

**Department of Agriculture and Forestry
Office of Animal Health and Food Safety
and
Board of Animal Health**

Trichomoniasis (LAC 7:XXI.101, 103, 701, and 751)

In accordance with the Administrative Procedure Act, R.S. 49:950, et seq., and pursuant to the authority set forth in R.S. 3:2093 et seq., the Department of Agriculture and Forestry (“Department”), through the Office of Animal Health and Food Safety, has amended LAC 7:XXI.101, 103, 701, and 751, and has promulgated LAC 7:XXI.752, relative to Trichomoniasis. The Rule changes are being made in accordance with R.S. 3:2093, which authorizes the board to promulgate rules and regulations necessary to implement

and enforce the powers and duties assigned to the board by law. The Rule changes clarify requirements for handling trichomoniasis-positive animals, updating the language in the existing rules and adding definitions. The Rule changes also identify violations of rules and regulations relative to handling trichomoniasis-positive animals as well as clarifying requirements and procedures for identification and quarantine of trichomoniasis-positive animals. This Rule is hereby adopted on the day of promulgation.

Title 7

AGRICULTURE AND ANIMALS

Part XXI. Animals and Animal Health

Chapter 1. General Provisions; Administrative Matters

Subchapter A. General Provisions

§101. Definitions

A. As used in this Part, the following terms shall have the following meanings ascribed to them.

* * *

Accredited Veterinarian—a licensed veterinarian *accredited* by the United States Department of Agriculture (USDA).

AIN—animal identification number issued by the USDA.

* * *

Board—the Louisiana Board of Animal Health.

* * *

Bull—an uncastrated male of domestic cattle.

1. - 2. ...

* * *

Cattle—all dairy and beef animals of the genus *Bos* and bison of the genus *Bison*.

* * *

Department—Louisiana Department of Agriculture and Forestry

* * *

GIN—group identification number.

* * *

Individually Identified—cattle that is identified with official identification number assigned to each individual animal.

* * *

LADDL—Louisiana Animal Disease Diagnostic Lab.

* * *

NAHLN—National Animal Health Laboratory Network.

* * *

NUES—National Uniform Eartag System, established by the USDA.

Official Animal Identification—identification of animals through the use of an official eartag conforming to the USDA NUES or AIN numbering systems, breed registry brand, breed registry tattoo, or microchip. Animals may be either individually identified by assigning each animal a unique official identification number or through group identification wherein a GIN is assigned to a unit of animals.

* * *

Official Identification Number—a nationally unique number that is permanently associated with an animal or group of animals that adheres to, but is not limited to, one of the following USDA-approved systems:

- a. the National Uniform Eartagging System (NUES) with metal silver eartags or orange calfhod vaccination tags; or

b. the Animal Identification Number (AIN) with an official 840 Radio Frequency Identification Device (RFID).

PCR Test—Polymerase-Chain Reaction Test

Permit—a permit issued annually by the Louisiana Board of Animal Health.

RFID—radio frequency identification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Livestock Sanitary Board, LR 11:230 (March 1985), amended LR 11:615 (June 1985), LR 12:289 (May 1986), amended by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 12:498 (August 1986), LR 14:217 (April 1988), LR 15:811 (October 1989), LR 16:391 (May 1990), LR 17:29 (January 1991), LR 18:840 (August 1992), LR 23:949 (August 1997), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:1677 (September 1998), LR 28:1170 (June 2002), amended by the Department of Agriculture and Forestry, Board of Animal Health, LR 34:2336 (November 2008), LR 35:1465 (August 2009), amended by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety, Board of Animal Health, LR 39:3246 (December 2013), repromulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety and the Board of Animal Health, LR 40:935 (May 2014), amended LR 43:1276 (July 2017), LR 49:236 (February 2023).

§103. Prohibited Removal of Official or Permanent Animal Identification

A. It shall be a violation of this regulation for anyone to remove any type of official animal identification from any animal. It will be a separate violation for each animal that has had its official or permanent individual animal identification removed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 15:812 (October 1989), repromulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety and the Board of Animal Health, LR 40:938 (May 2014), LR 49:237 (February 2023).

Chapter 7. Cattle, Bison, and other Bovine (Formerly Chapter 3)

Subchapter A. General Provisions

§701. Definitions

A. As used in this Chapter, the following terms shall have the following meanings ascribed to them, unless otherwise indicated herein:

Annual Test—tests conducted at intervals of not less than 10 months or more than 14 months.

Bovine Tuberculosis—a disease in cattle, bison, or dairy goats caused by *Mycobacterium bovis*.

Confirmatory Test—an additional PCR test requested by the owner of an animal that has previously tested positive for trichomoniasis; the test must be requested within five business days of receipt of positive result from lab to the state veterinarian and samples must be submitted to LADDL. If the confirmatory test is positive, the animal will be classified as infected with Trichomoniasis. If the confirmatory test is negative, the animal shall be tested again in not less than seven days of receipt of positive test from

lab to determine its disease status. Two negative tests are required to reclassify a positive bull as negative.

Department—Louisiana Department of Agriculture and Forestry.

Mexican Cattle—cattle that originated in Mexico.

PCR Test—Polymerase-Chain Reaction Test

Trichomoniasis-Infected Herd—a herd in which any cattle have been determined by an official test to be infected with trichomoniasis-

Virgin Bull—a bull of less than 18 months of age, whose permanent central incisor teeth are not present, and who has never been commingled with breeding females.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety and the Board of Animal Health, LR 49:237 (February 2023).

Subchapter E. Trichomoniasis

§751. Trichomoniasis Testing and Movement

Requirements for Cattle

(Formerly §339)

A. Every bull moved into this state and every bull which is sold, exchanged, leased, rented, or otherwise transferred in ownership or possession (hereinafter collectively referred to as “transferred”) from one person or entity to another within this state shall be accompanied by a test result showing that the bull is free from trichomoniasis (hereinafter referred to as “negative test result” or “testing negative”) except for the following bulls:

1. exhibition and rodeo bulls that are temporarily in the state for the sole purpose of an event and will be leaving the state immediately after the event;

2. bulls going directly to slaughter or sold to go directly to slaughter;

3. virgin bulls accompanied by a certificate of virgin status, including the bull’s official animal identification number (“AIN”), and signed by the owner of the bull, the owner's agent, or a Category II accredited veterinarian;

4. bulls being transported through this state in interstate commerce, unless offloaded and commingled with female cattle already in this state that are not going directly to slaughter; and

5. untested bulls traveling to a trichomoniasis quarantine facility with an official permit or quarantine notice.

B. Every bull required to be accompanied by a negative test result shall be tested no later than 60 days prior to being moved into the state or the date of transfer, except for bulls that are in a trichomoniasis-free certification program or a semen certification program recognized by the state veterinarian. Such bulls must not have commingled with breeding females within 60 days from the date the lab reported the sample.

C. Every bull moved into this state and every bull within this state which is transferred from one person or entity to another shall have official animal identification. This requirement does not apply to bulls going directly to slaughter or to bulls being sold to go directly to slaughter.

D. The requirements for testing cattle for trichomoniasis are as follows.

1. All test samples shall be drawn by a Category II accredited veterinarian.

2. The official test for *trichomoniasis* shall be one negative PCR for *Trichomonas foetus* that is performed at an NAHLN-approved laboratory. Pooled tests are not considered official tests in Louisiana;

3. Test results indicating that the tested animal has trichomoniasis (hereinafter referred to as “positive test results” or “testing positive”) shall immediately cause the tested animal to be classified as trichomoniasis-infected and subject to the restrictions of this Subchapter.

4. For trichomoniasis-positive bulls to be reclassified as negative or non-infected, two additional negative PCR tests must be obtained. The request for the confirmatory testing must be made to the state veterinarian within 5 business days of notification of the positive test result. Samples for retesting must be drawn a minimum of 7 days apart and must be submitted to the LADDL for testing.

a. If the confirming tests are negative, then the tested animal is considered negative for trichomoniasis and may be moved as such.

b. If either of the confirming tests reveal a positive result, then the tested animal shall be classified as trichomoniasis-positive and is subject to the restrictions for trichomoniasis-positive animals set forth in this Subchapter.

5. A bull tested for trichomoniasis shall be kept separate from female cattle at all times during the entire test period from the sample collection until receipt of the results from the initial test. A bull testing negative on the initial test shall be kept separate from all female cattle prior to change of possession. If a bull has been commingled with female cattle, all official tests for trichomoniasis prior to the commingling are invalid.

6. All test results for trichomoniasis, whether negative or positive, shall be reported to the state veterinarian within 24 hours after receipt of the results.

7. When a positive test result is received, the attending veterinarian shall consult with the state veterinarian on the first business day after receipt of the test results to determine a plan of action regarding the animal testing positive.

E. Bulls that are required to be tested for trichomoniasis prior to being moved into this state or prior to being transferred from one person to another but which have not been tested, shall be kept separate from female cattle over 12 months of age until a negative result is obtained.

F. A bull being moved directly to slaughter or sold to go directly to slaughter may be comingled with breedable-type cattle also being moved directly to slaughter or being sold to go direct to slaughter.

G. Bulls classified as trichomoniasis-infected are subject to the following restrictions:

1. no known trichomoniasis-infected bull shall be moved into or within this state or transferred within this state from one person to another, unless the bull is going directly to slaughter or sold to go directly to slaughter;

2. no known trichomoniasis-infected bull, whether being moved into or within this state, shall be used for breeding purposes and shall be kept separate from female cattle, from the time the first positive test result is received;

3. a trichomoniasis-infected bull shall be moved directly to slaughter or sold to go directly to slaughter within

30 days from receipt of the positive results of the original test or the results of the confirming test, whichever is later, unless otherwise specified by the state veterinarian; and

4. a trichomoniasis-infected bull may be moved only after a USDA form VS 1-27 permit is issued by the state veterinarian, or the state veterinarian’s representative. The VS 1-27 permit shall accompany the bull upon movement of the animal.

H. If a trichomoniasis-infected bull has been in a herd with female cattle, then the infected bull and the other bulls in the herd, are subject to the following requirements.

1. The trichomoniasis-infected bull shall be immediately separated from the herd and all other bulls in the herd and shall be moved or transferred only as allowed by this Section.

2. If there is any other bull or bulls in the herd, then those bulls shall be immediately separated from, and kept separate from, all female cattle.

3. Each bull shall be tested for trichomoniasis within 30 days from separation from all female cattle. Test samples shall not be pooled.

4. A bull testing negative in an infected herd shall be immediately removed from all other bulls that have not been tested, or for which the test results have not been received, and shall have one additional official test with negative results, for a total of two negative tests, to be considered negative for trichomoniasis. The additional official test sample shall be drawn a minimum of seven days from the original test and must be submitted to LADDL for testing.

5. Bulls testing positive in an infected herd may be retested but shall have two additional negative PCR tests to be reclassified as negative or non-infected bulls and the request for the confirmatory testing must be made to the state veterinarian within five business days of notification of the positive test result. Samples for retesting shall be drawn a minimum of seven days apart and shall be submitted to the LADDL for testing.

a. If the confirming tests are negative, then the tested animal is considered negative for trichomoniasis and may be moved as such.

b. If either of the confirming tests reveal a positive result, then the tested animal shall be classified as trichomoniasis-infected and subject to the restrictions for trichomoniasis-infected animals set forth in this Subchapter.

I. A trichomoniasis infected herd is a herd known to contain or have contained a trichomoniasis infected bull or cow. If a virgin bull or bull that has tested negative for trichomoniasis is comingled with female cattle from a trichomoniasis-infected herd, then the virgin bull or bull with a negative test results shall be tested twice for and found to be free of trichomoniasis as set forth in this Subchapter before being moved, placed into another herd, or transferred from one person to another.

J. A cow is not required to be tested for trichomoniasis before being moved into this state or transferred from one person to another; but if a cow is tested then the same procedure set forth in this Section for testing a bull shall apply to testing a cow.

K. A cow testing positive for trichomoniasis shall be subject to the following restrictions.

1. A cow testing positive for trichomoniasis shall not be moved into this state, except to go directly to slaughter or sold to go directly to slaughter.

2. A cow within this state that has tested positive for trichomoniasis shall be immediately separated from, and kept separate from, all bulls.

a. The cow shall be moved directly to slaughter or sold to go directly to slaughter within 30 days from receipt of the positive result of the original test or the confirmatory test, whichever is later, unless placed under a quarantine program approved by the state veterinarian.

b. If the cow is quarantined, it may not be removed from quarantine until released in writing by the state veterinarian. The cow may be released from quarantine only by an order from the state veterinarian or the state veterinarian's representative if the cow is subsequently tested in accordance with the procedures set forth in this Subchapter and found to be free from trichomoniasis, or if the cow is to be moved directly to slaughter or sold to go directly to slaughter.

3. A trichomoniasis-infected cow may be moved only after a VS 1-27 permit is issued by the state veterinarian, or the state veterinarian's representative. The VS 1-27 permit shall accompany the cow upon movement.

L. The state veterinarian may grant a written exception or variance to the provisions of this Section, with such conditions as the state veterinarian deems appropriate, if such action is necessary to provide for unforeseen situations or circumstances. Any exception or variance shall balance the need to protect cattle from trichomoniasis with the need to allow cattle to move in commerce.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093, 3:2095, and 3:2097.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Board of Animal Health, LR 35:1466 (August 2009), amended LR 36:2518 (November 2010), repromulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety and the Board of Animal Health, LR 40:958 (May 2014), LR 49:237 (February 2023).

§752. Trichomoniasis Quarantine Facility

A. Permit Required. No person may operate a trichomoniasis quarantine facility without first obtaining a permit from the Board of Animal Health. Approval for a trichomoniasis quarantine facility may be given after initial inspection by an authorized agent of the board. The purpose of a facility shall be to hold bulls being moved into this state or being sold in this state until they can be tested for trichomoniasis.

B. A trichomoniasis quarantine facility shall meet the following requirements:

1. The fencing or railing of the facility must be of sufficient strength to keep bulls properly contained and prevent escape from the facility. There shall be no adjacent fence-line contact between quarantine bulls and female cattle.

2. Facility owners and operators shall generate and maintain records for a minimum of 12 months. All records shall be provided to an authorized agent of the Department upon request. The records shall include the following information.

- a. first and last name of the seller of the animal;
- b. address of the seller;
- c. first and last name of the owner of the animal;
- d. address of the owner;
- e. date each bull was placed into and removed from the facility;
- f. official animal identification;
- g. trichomoniasis testing date, testing veterinarian and results; and
- h. disposition after testing, including resale date and destination.

C. The facility shall be inspected and approved by the state veterinarian or the state veterinarian's representative prior to being placed into use and may be inspected thereafter as deemed necessary.

D. Bulls in a facility shall not be used for breeding purposes of any kind.

E. Within 30 days of purchase, bulls in a facility shall either be tested for Trichomoniasis in accordance with this Subchapter or resold to slaughter at a USDA-approved livestock market or recognized slaughter establishment.

F. A trichomoniasis quarantine facility permit may be canceled upon written notice that the operation does not meet the requirements of this Section, or when the owner or operator of such facility has been found to be in violation of a rule in this Subchapter or has been found to be in violation of any provision of Chapter 16 of Title 3 of the Louisiana Revised Statutes.

1. The board shall give written notice of the cancellation of a facility permit to the operator thereof.

2. Any owner or operator of a trichomoniasis quarantine facility whose permit is canceled may appeal the cancellation thereof by written notice to the board within ten days of receipt of the notice of cancellation. Any owner or operator of a facility who appeals cancellation of his permit shall be entitled to a hearing before the board. The decision of the board will be final and may be appealed to a court of competent jurisdiction in accordance with the Administrative Procedure Act, R.S. 49:961 et seq.

G. Closure of a Trichomoniasis Quarantine Facility

1. Upon termination of a permit, the owner or operator shall dispose of all animals at the facility in accordance with the provisions of this Subchapter within 14 days of receipt of the notice of cancellation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093 and 3:2133.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety and the Board of Animal Health, LR 49:239 (February 2023).

Mike Strain, DVM
Commissioner

2302#060

RULE

Department of Children and Family Services Child Support Enforcement Section

Criminal History Records Checks for Access to Federal Tax Information (LAC 67:I.205)

In accordance with the provisions of the Administrative Procedure Act R.S. 49:953 (A), the Department of Children and Family Services (DCFS) has amended LAC 67:I, Chapter 2 Criminal Background and State Central Registry Checks, Section 205 Criminal History Records Checks for Access to Federal Tax Information.

Pursuant to IRS statute 26 USCS 6103(p)(4) and its supplemental publication 1075, the department must conduct fingerprinting, along with national, state and local criminal history record checks on all individuals handling and those who may handle Federal Tax Information (FTI). The criminal history record checks are used to determine the suitability of individuals to access FTI in performance of their job duties or services for the department. Section 205 has been amended to obtain the authority to terminate or remove current employees who are determined to be FTI unsuitable as unauthorized use or disclosure of FTI could result in agency penalties and sanctions being imposed by the Administration of Children and Families, Office of Child Support Enforcement. This Rule is hereby adopted on the day of promulgation.

Title 67

SOCIAL SERVICES

Part I. General Administration

Chapter 2. Criminal Background and State Central Registry Checks

§205. Criminal History Records Checks for Access to Federal Tax Information

A. Purpose

1. As required by the IRS statute found at 26 USCS 6103(p)(4) and its supplemental publication 1075, the Department of Children and Family Services (DCFS) will conduct fingerprinting, along with national, state and local criminal history record checks on all individuals handling and those who may handle Federal Tax Information (FTI). The criminal history record checks will be used to determine the suitability of individuals to access FTI in performance of their job duties or services for the Department of Children and Family Services.

B. Applicability

1. Pursuant to R.S. 46:51.3, this regulation applies to all current and prospective employees, contractors, or subcontractors of the office of family support or child support enforcement that have access to federal tax information (FTI). This provision shall also apply to employees of contractors, as well as, subcontractors of the office of family support or child support enforcement who require access to FTI.

C. Definitions

Criminal History Record Check—a review of an individual's criminal history using fingerprints and other identifying information sent to the Louisiana Bureau of Criminal Identification and Information for submission to

the Federal Bureau of Investigation (FBI) and compilation of data from state and local law enforcement agencies.

Federal Tax Information (FTI)—consists of federal tax returns and return information (and information derived from it) that is in the department's possession or control which is covered by the confidentiality protections of the Internal Revenue Code and subject to its safeguarding requirements, including IRS oversight.

FTI Suitable (no reports)—an employee, contractor or subcontractor whose criminal history records check results in a report containing no information and who is permitted to access FTI in the performance of his duties, function or service to the department.

FTI Suitable (with reports)—an employee, contractor or subcontractor whose criminal history records check results in a report containing criminal cases, convictions, or arrests and access to FTI for the performance of his duties, functions or service of the department is permitted after determination.

FTI Unsuitable—an employee, contractor or subcontractor whose criminal history records check results in a report containing criminal cases, convictions or arrests who deemed not suitable to access federal tax information in the performance of his duties, function or service of the department after determination.

D. General Provisions

1. All current or prospective employees, contractors, or subcontractors within the office of family support and child support enforcement requiring access to FTI shall be required to submit to a criminal history records check by providing authorization, fingerprints and other identifying information to DCFS.

2. Fingerprints and other identifying information shall be submitted to the Louisiana Bureau of Criminal Identification and Information for performance of the criminal history records check.

3. The department may request local criminal history from any jurisdiction where the current or prospective employee, contractor, or subcontractor has lived, worked, or attended school.

4. Criminal history records checks shall be used by the department to determine the suitability of current or prospective employees, contractors, or subcontractors within the office of child support enforcement and family support sections to access FTI and records.

a. Prospective employees shall be subject to criminal history records checks only after a conditional offer of employment has been made.

b. Current employees, contractors and subcontractors shall be subject to fingerprinting and national, state, and local criminal history records checks, at a minimum of every 10 years.

c. Criminal history record checks on prospective contractors or prospective employees of contracts must be performed prior to obtaining access to FTI.

5. The costs of providing the criminal history records check for current employees, contractors, or subcontractors within the office of child support enforcement and family support shall be charged to the department by the Louisiana Bureau of Criminal Identification and Information for furnishing information contained in its criminal history and

identification files, including any additional costs of providing the national and local criminal history records checks, which pertains to the current or prospective employee, contractor or subcontractor.

E. Suitability Standards

1. Any criminal history record check resulting in a report containing criminal cases, convictions, or arrests must receive a case by case assessment.

2. The case by case assessment must consider:

- a. the nature of the offense;
- b. the relation of the offense to the duties of the employee, contractor or subcontractor;
- c. any aggravating or mitigating circumstances, including the passage of time; and
- d. any evidence of rehabilitation of the subject or the lack thereof.

3. An individual is deemed to be FTI suitable or FTI unsuitable based on the following table.

Criminal History Record Check Result	FTI Access Determination
No Reports	
Report resulting from criminal history records check contains no information.	FTI Suitable
Reports	
A case-by-case assessment must be performed.	
<p>Reports of criminal cases, convictions, arrests or serious misconduct that includes but is not limited to:</p> <ul style="list-style-type: none"> • Misappropriation Crimes (as designated in Louisiana Revised Statutes) • Computer Related Crimes (as designated in Louisiana Revised Statutes) • Offenses Affecting Organized Government, subparts B through F (as listed in Louisiana Revised Statutes) • Tax, Alcohol Beverage, Tobacco or Charitable Gaming offenses where the federal or state statute exposes the offender to a penalty of imprisonment with or without hard labor. <p>Compelling mitigation documentation to show the offense irrelevant to duties of the position or FTI suitability may be provided during appeal.</p>	FTI Unsuitable
<p>No reports of open criminal cases, convictions, or arrests with relevance to the duties of the position requiring access to FTI.</p> <p>Reports of open criminal cases, convictions, or arrests related to the duties of the position or access to FTI but compelling mitigation documentation has been provided during appeal.</p>	FTI Suitable (with reports)

F. Impact of Suitability Determination

1. Individuals who have been deemed FTI suitable (no reports) or FTI suitable (with reports) will be able to exercise one of the options below that is applicable to their status:

- a. continue to or be allowed to access FTI in the performance of job duties;
- b. continue to or be allowed to access FTI in the performance of job duties with special restrictions or caveats; or

c. be considered for a vacant position with FTI access.

2. If a current or prospective employee, contractor or subcontractor has been deemed FTI unsuitable, the department will exercise one or more of the options below:

- a. access or use of FTI will immediately be denied, suspended or prevented;
- b. the job offer may be rescinded;
- c. the contract may be terminated;
- d. the contractor or subcontractor’s employee may be removed or prohibited from performing work on the contract; or
- e. current employee may be terminated and/or removed from employment.

3. - G.3. ...

AUTHORITY NOTE: Promulgated in accordance with Act 147 of the 2017 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Child Support Enforcement Section, LR 45:651 (May 2019), LR 46:1543 (November 2020), LR 49:240 (February 2023)

Marketa Garner Walters
Secretary

2302#076

RULE

Board of Elementary and Secondary Education

BESE/8(g) Operations
(LAC 28:I.305 and 1103)

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:I, BESE/8(g) Operations. The revisions provide for revisions to the emergency contracting process, as recommended by the Legislative Auditor. This Rule is hereby adopted on the day of promulgation.

Title 28

EDUCATION

Part I. BESE/8(g) Operations

Subpart 1. Board of Elementary and Secondary Education

Chapter 3. Composition and General Authority

§305. Election of Officers and Their Duties

A. ...

B. The president shall conduct board meetings and perform duties designated by the board or by statute. The president shall appoint members of committees of the board. The president shall sign, on behalf of the board, contracts, agreements, and/or official documents approved by the board. The president is authorized to make ad hoc decisions for the board in emergency situations when the board is not in regular or special session and where policies and statutes are silent. However, excluding emergency contract approval outlined in §1103.C.5 of this Part, any such decisions that constitute an obligation, official position, or action of the board are subject to ratification by the board at the next scheduled meeting.

B.1. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3 and R.S. 17:22.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:409 (March 2008), amended LR 38:3149 (December 2012), LR 39:3262 (December 2013), LR 48:2558 (October 2022), LR 49:241 (February 2023).

Chapter 11 Finance and Property
§1103. Purchasing, Auditing, and Contracts for Professional/Consulting/Social Services

A. - C.4.d.iv. ...

5. In the event that there is an emergency, as defined in applicable law and BESE policy below and prior to execution, issuance, or payment, the chairman of the Board Finance Committee and the board president may jointly approve, upon signature, a contract, contract amendment, or allocation, upon the receipt of a written memorandum from the state superintendent of education or his/her designee, setting forth the request for approval.

a. The request shall be forwarded to the BESE Executive Director to include the following:

- i. the reason for the request, the name of the contractor/recipient, the amount of the contract/allocation;
- ii. the contract/allocation period; and
- iii. a description of the services to be provided.

b. The emergency approval shall be communicated, to the extent possible, electronically, including all of the aforementioned information, to all board members within 24 hours of approval, as well as presented at its next meeting.

c. An emergency condition is a situation which creates a threat to public health, welfare, safety, or public property such as may arise by reason of floods, epidemics, riots, equipment failures, or such other reason as proclaimed by the state superintendent. The existence of such condition creates an immediate and serious need for supplies, services, or major repairs that cannot be met through normal procurement methods and the lack of which would seriously threaten:

- i. the functioning of Louisiana government;
- ii. the preservation or protection of property; or
- iii. the health or safety of any person.

d. The state superintendent shall require that a record be created of all emergency declarations by making a written determination stating the basis for an emergency procurement, in addition to BESE emergency approval, as well as the selection of a particular contractor/recipient. In addition to the written determination describing the basis for the emergency procurement and issuance, the record shall also contain:

- i. each contractor's/recipient's name;
- ii. the amount and type of each contract/recipient;

and

iii. a listing of services procured under each contract or allocated to each recipient; and

iv. the written memorandum from the state superintendent of education or his designee setting forth the request for BESE approval, the reason for the request, the name of the contractor, the amount of the contract, the contract period, and a description of the services to be provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:424 (March 2008), amended LR 38:3155 (December 2012), LR 39:3266 (December 2013), LR 48:2559 (October 2022), LR 49:242 (February 2023).

Shan N. Davis
Executive Director

2302#051

RULE

Board of Elementary and Secondary Education

Bulletin 111—The Louisiana School, District, and State Accountability System—Alternative Education (LAC 28:XI.3503)

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:XI, *Bulletin 111—The Louisiana School, District, and State Accountability System*. The revisions relate to alternative school accountability and adjust the way points are awarded in the Dropout/Credit Accumulation index to allow points based on credits earned in a single semester, remove from the Core Credit Attainment Index seniors in need of minimal core credits to graduate, and update student inclusion rules for the credential attainment index. This Rule is hereby adopted on the day of promulgation.

Title 28

EDUCATION

Part XI. Accountability/Testing

Subpart 1. Bulletin 111—The Louisiana School, District, and State Accountability System

Chapter 35. Inclusion of Alternative Education Schools and Students in Accountability

§3503. Alternative Schools Including Alternative Charter Schools
[Formerly LAC 28:LXXXIII.3503]

A. - D.6.b ...

c. Students who are considered dropouts will be included in the calculation for the semester of drop out and earn 0 points. Calculations will follow the table below with the updated points starting in 2025-2026.

* * *

7. - 7.b. ...

c. Points will be allocated according to the following table.

Number of Carnegie Units	Index Point Award
3.5 or more	150
3	125
2.5	100
2	75
1.5	50
1	25
0.5	0
0 or Dropout	0

8. - 8.b. ...

c. Beginning in 2017-2018 (2016-2017 cohort) and through 2022-2023 (2021-2022 cohort), points will be assigned for each student according to the following table.

* * *

d. Beginning in 2023-2024 (2022-2023 cohort) and beyond, points shall be assigned for each member of a cohort according to the following table.

2013), LR 40:2240 (November 2014), LR 45:396 (March 2019), LR 47:449 (April 2021), LR 49:242 (February 2023).

Shan N. Davis
Executive Director

2302#052

RULE

Board of Elementary and Secondary Education

Bulletin 119—Louisiana School Transportation Specifications and Procedures (LAC 28:CXIII.903, 1701, and 2305)

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: CXIII, Bulletin 119—*Louisiana School Transportation Specifications and Procedures*. The revisions align BESE policy with legislation enacted by the 2022 Regular Legislative Session regarding school bus equipment usage, salary compensation calculation, and definitions of school bus types. This Rule is hereby adopted on the day of promulgation.

**Title 28
EDUCATION**

Part CXIII. Bulletin 119—Louisiana School Transportation—Specifications and Procedures

**Chapter 9. Vehicle Operation
§903. Loading and Unloading**

A. - A.1. ...

2. Amber and red Eight-Light Flashing Warning System. For buses equipped with an amber and red eight-light flashing warning system, drivers must activate the amber flashing lights at least 100 feet but not more than 500 feet before coming to a stop. Red flashing warning lights, stop signal arms, and the crossing control device must be activated when the bus is stopped and lights must continue flashing while children board, alight, and/or cross roadways.

B. - B.5. ...

C. Operations: Preparing to Safely Load or Unload Students

1. The bus driver must activate warning lights, stop signal arms, and the crossing control device after the bus has stopped and before students are permitted to board or alight from the bus. When traveling on undivided roadways, the Louisiana "School Bus Stop Law" (R.S. 32:80) requires drivers of vehicles meeting or overtaking school buses stopped on a highway for the purpose of loading or unloading students to stop the vehicle not less than 30 feet from the school bus when flashing warning lights and stop arms have been activated and to remain stopped until the signals have been deactivated and the bus has resumed motion. (Bus drivers must deactivate signals before resuming motion.)

C.2. - D.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166, R.S. 32:80, and R.S. 32:318.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:835 (May 1999), amended LR 25:2169 (November 1999), LR 36:1470 (July 2010),

Student Result	Points
HS Diploma plus: (a) Associate's Degree or (b) Fast Forward Apprenticeship Pathway (Advanced Plus) or (c) Statewide Advanced Plus Level III/IV Jump Start credential	175
HS Diploma plus: (a) At least 12 Board of Regents-recognized TOPS CORE College credit hours attained via dual enrollment, AP, CLEP, IB, or Cambridge or (b) Statewide Advanced Jump Start credential or Tech Diploma (TD)	150
HS Diploma plus: (a) At least 6 Board of Regents-recognized TOPS CORE College credit hours attained via dual enrollment, AP, CLEP or IB, or Cambridge or (b) Statewide Basic Jump Start credential or Certificate of Tech Studies (CTS)	125
Four-year graduate (includes Career Diploma student with a regional Jump Start credential)	100
Five-year graduate with any diploma *Five-year graduates who earn at least 12 Board of Regents-recognized TOPS CORE College credit hours attained via dual enrollment, AP, CLEP, IB, or Cambridge, or a Statewide Advanced Jump Start credential or Tech Diploma (TD) will generate 140 points. Five-year graduates who earn an Associate's Degree will generate 150 points.	75
Six-year graduate with any diploma	50
HiSET plus Jump Start credential	40
HiSET	25
Non-graduate without HiSET	0

NOTE: Students that begin the year in the eleventh grade and exit as a twelfth grader with a diploma and/or credential based on the table above will be included in both the numerator and denominator.

e. Students counted in the graduation cohort for the alternative education school will continue to be included in the school system cohort, not the sending school.

9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2753 (December 2003), amended 31:423 (February 2005), LR 34:868 (May 2008), LR 35:1472 (August 2009), LR 37:2119 (July 2011), LR 37:3202 (November 2011), LR 38:1213 (May 2012), LR 39:472 (March

Chapter 17. Compensation of School Bus Drivers

§1701. Salary Compensation Based on School Bus Routes

A. The term *route* shall apply to the combined total daily trips (or “runs”) regularly assigned to the bus driver.

B. Bus routes are measured in terms of "paid mileage." Paid mileage for contract drivers begins when the first student is picked up and ends when the final student discharge destination or school is reached.

C. When one-way mileage differs in the afternoon from that of the morning route, the one-way mileage for the morning and afternoon is totaled and divided by two. The result is the average one-way mileage for that particular route.

D. The rate of compensation is determined in accordance with R.S. 17:497.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166 and R.S. 17:497.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:633 (April 1999), amended LR 36:1475 (July 2010), LR 49:244 (February 2023).

Chapter 23. Bus Body Standards for School Buses

§2305. Definitions and Descriptions of School Bus Types

A. School buses must meet both federal and state definitions.

1. Federal Definition. *School Bus*—a passenger motor vehicle designed to carry a driver and more than 10 passengers, which the Secretary of Transportation decides is likely to be used significantly to transport preprimary, primary, and secondary students to or from school or an event related to school.

2. State Definition. *School Bus*—every motor vehicle that is used to transport students to and from school or in connection with school activities, but not including a charter bus or transit bus.

B. - B.4. ...

5. *Multifunction school activity bus (MFSAB)*—school bus whose purposes do not include transporting students to and from home or school bus stops, as defined in 49 CFR 571.3. This subcategory of school bus meets all FMVSS for school buses except the traffic control requirements of alternately flashing signal and stop arm.

6. *Specially Equipped*—a school bus designed, equipped, or modified to accommodate students with special needs.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:644 (April 1999), amended LR 36:1478 (July 2010), LR 37:2125 (July 2011), LR 49:244 (February 2023).

Shan N. Davis
Executive Director

2302#053

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators
(LAC 28:CXV.719)

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:CXV, Bulletin 741—*Louisiana Handbook for School Administrators*. The revisions require the website of each public school to contain a link to the school attendance data page designated by the LDOE no later than December 1, 2023. Attendance data is used as a measure of student engagement and success, as well as an early indicator of students at-risk for academic deficits and drop out. This Rule is hereby adopted on the day of promulgation.

Title 28

EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 7. Records and Reports

§719. Reports to the Supervisors of Child Welfare and Attendance

A. The principals, or administrators, and the teachers of all schools shall report the names, birth dates, race, parents, and residence of all students in attendance at their schools or classes in writing to the central office within 30 days after the beginning of the school term or session, and at such other times as may be required by BESE or the LDE.

B. No later than December 1, 2023, the website of each public school shall contain a link to the school attendance data page designated by the LDE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:232.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1271 (June 2005), amended LR 39:2204 (August 2013), LR 49:244 (February 2023).

Shan N. Davis
Executive Director

2302#054

RULE

Board of Elementary and Secondary Education

Bulletin 1566—Pupil Progression Policies and Procedures
(LAC 28:XXXIX.705)

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:XXXIX, Bulletin 1566—*Pupil Progression Policies and Procedures*. The revision requires third and fourth grade students that score below grade-level

on the end-of-the-year LDOE-approved literacy assessment, to receive a minimum of 30 hours of explicit literacy instruction during the summer. The revision will begin with the 2022-2023 school year and continue through the summer following the 2023-2024 school year. This Rule is hereby adopted on the day of promulgation.

Title 28

EDUCATION

Part XXXIX. Bulletin 1566—Pupil Progression Policies and Procedures

Chapter 7. Promotion and Support Policy

§705. Supports for Students

A. - B.3. ...

C. Beginning with the 2022-2023 school year, and continuing through the summer following the 2023-2024 school year, any student enrolled in third or fourth grade and scoring below grade-level on the end-of-the-year LDOE-approved literacy assessment shall receive a minimum of 30 hours of explicit literacy instruction inclusive of targeted interventions during the summer. The literacy instruction shall be based on the science of reading.

1. No tuition or fees can be charged for the attendance of an eligible student, and transportation must be offered.

2. Summer learning shall be provided by an LDOE-approved tutoring vendor or by a teacher who is enrolled in or has completed the required foundational literacy skills course required per LAC 28: CXV.509 and who has achieved a rating of “effective: proficient” or greater on the most recent evaluation.

3. Students not participating in the required summer literacy interventions may be retained in the grade level during the subsequent school year. Such retention shall be included in each local pupil progression plan. A student qualifying for summer literacy interventions who fails to participate in the program but scored Basic or higher on the ELA portion of the most recent LEAP assessment may be promoted to the next grade level.

4. The LEA may waive the state policy for students scoring below grade-level on the end-of-the-year LDOE-approved literacy assessment for students with an IEP at the discretion of the IEP team.

5. Prior to retaining a student pursuant to this Section, a meeting of the SBLC committee may be called by the school or parent to determine whether retention or another option for additional student support is in the best interest of the student.

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 36:2005 (September 2010), amended LR 40:2533 (December 2014), LR 44:482 (March 2018), LR 44:1004 (June 2018), LR 46:18 (January 2020), LR 49:245 (February 2023).

Shan N. Davis
Executive Director

2302#055

RULE

Board of Elementary and Secondary Education

Bulletins Regarding Administration of Educational Programs

(LAC 28:XXXV.103; LAC 28:XXXIX.700; LAC 28:XLV.743 and 745; LAC 28:LXXIX.1311 and 2120; LAC 28: CXV.325, 337, 517, 901, 915, 1303, 2305, 2307, 2319, 3305, and 3503; LAC 28:CXXXIX.4305; and LAC 28:CXLVII.305)

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:XXXV, Bulletin 1903—*Louisiana Handbook for Students with Dyslexia*, LAC 28:XXXIX, Bulletin 1566—*Pupil Progression Policies and Procedures*, LAC 28:XLV, Bulletin 996—*Standards for Approval of Teacher and/or Educational Leader Preparation Programs*, LAC 28:LXXIX, Bulletin 741(Nonpublic) —*Louisiana Handbook for Nonpublic School Administrators*, LAC 28: CXV, Bulletin 741—*Louisiana Handbook for School Administrators*, LAC 28:CXXXIX, Bulletin 126—*Charter Schools*, and LAC 28:CXLVII, Bulletin 130—*Regulations for the Evaluation and Assessment of School Personnel*. The revisions are in response to Acts of the 2022 Regular Session of the Louisiana Legislature. These Acts relate to the administration of educational programs and require revisions to policy regarding such programs. Local policy and procedures will need to be amended in accordance with statutory requirements. This Rule is hereby adopted on the day of promulgation.

Title 28

EDUCATION

Part XXXV. Bulletin 1903—Louisiana Handbook for Students with Dyslexia

Chapter 1. General Provisions

§103. Local Education Agency (LEA) Responsibilities

A. - B. ...

C. No later than December 15 annually, LEAs shall report to the LDOE the numbers of students of all grade levels identified as dyslexic or exhibiting characteristics of dyslexia.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7(11), R.S. 392.1 and 392.3.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 47:723 (June 2021), repromulgated LR 47:1287 (September 2021), LR 49:245 (February 2023).

Title 28

EDUCATION

Part XXXIX. Bulletin 1566—Pupil Progression Policies and Procedures

Chapter 7. Promotion and Support Policy

§700. Support Standard for Grades Kindergarten-3

A. Beginning with the 2022-2023 school year and every school year thereafter, each local education agency shall

identify all students in kindergarten, first, second, and third grade who score below grade-level on the literacy screener.

B. - B.4. ...

C. Beginning with the 2023-2024 school year, a student in grades kindergarten through three, within thirty days of being identified as having literacy skills that are below grade level based on the results of the literacy screener, shall receive an individual reading improvement plan. The plan shall be created by the teacher, principal, other pertinent school personnel, and the parent or legal guardian; describe the evidence-based reading intervention services the student will receive; and give suggestions for strategies parents can use at home.

1. The department may audit a random sampling of individual reading improvement plans in each local education agency.

D. The school shall provide mid-year and end-of-the-year updates to the parent or legal custodian of students identified in §700.A of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6; R.S. 17:7; R.S. 17:24.4; and R.S. 14:24.10.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 48:1760 (July 2022), LR 49:245 (February 2023).

Title 28 EDUCATION

Part XLV. Bulletin 996—Standards for Approval of Teacher and/or Educational Leader Preparation Programs

Chapter 7. Louisiana State Standards for Educator Preparation Programs

Subchapter C. Teacher Preparation Programs

§743. Minimum Requirements for Traditional Teacher Preparation Programs

A. A traditional teacher preparation program is a baccalaureate degree program that includes a minimum of 120 credit hours of coursework and required practice experiences. Beginning with the 2024-2025 school year, an approved teacher education program shall be no more than 120 credit hours unless designated by the Board of Regents as dual degrees or dual certifications. A portion of the total hours must include the minimum number of credit hours in the teaching of reading and literacy as follows:

1. - 4. ...

5. Beginning with the 2024-2025 school year, for all certification areas, candidates must spend three credit hours within the existing credit hour requirements engaged in coursework regarding teaching students with dyslexia, taught by a faculty member who has been provided specialized training in instructing teacher candidates on pedagogical methods for teaching students with dyslexia. The coursework shall include but need not be limited to the following:

a. an overview of the body of scientific work regarding dyslexia, including the history, epidemiology, and clinical presentation, including early clinical indicators of dyslexia and common, persistent classroom presentation;

b. an overview of evidence-based instruction for individuals with dyslexia including remediation of weaknesses, fortification of strengths, and common accommodations to help mediate between the two; and

c. an introduction to the process of becoming a dyslexia practitioner or dyslexia therapist, pursuant to R.S. 17:392.2.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), 17:391.1-391.10, and 17:411, and 17:7.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:1330 (July 2017), amended LR 43:2492 (December 2017), LR 45:229 (February 2019), LR 48:1274 (May 2022), LR 48:1758 (July 2022), LR 49:246 (February 2023).

§745. Minimum Requirements for Alternate Teacher Preparation Programs

A. - B.4. ...

5. Beginning with the 2024-2025 school year, for all certification areas, candidates must spend three credit hours within the existing credit hour requirements, or 45 contact hours, engaged in coursework regarding teaching students with dyslexia, taught by a faculty member who has been provided specialized training in instructing teacher candidates on pedagogical methods for teaching students with dyslexia. The coursework shall include but need not be limited to the following:

a. an overview of the body of scientific work regarding dyslexia, including the history, epidemiology, and clinical presentation, including early clinical indicators of dyslexia and common, persistent classroom presentation;

b. an overview of evidence-based instruction for individuals with dyslexia including remediation of weaknesses, fortification of strengths, and common accommodations to help mediate between the two; and

c. an introduction to the process of becoming a dyslexia practitioner or dyslexia therapist, pursuant to R.S. 17:392.2.

C. - G.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), 17:391.1-391.10, and 17:411; and 17:7.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:1331 (July 2017), amended LR 43:2492 (December 2017), LR 45:1751 (December 2019), LR 46:324 (March 2020), LR: 48:1274 (May 2022), LR 48:1759 (July 2022), LR 49:41 (January 2023), LR 49:246 (February 2023).

Title 28 EDUCATION

Part LXXIX. Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators Subchapter B. Reopening School Facilities for the 2020- 2021 School Year

Chapter 13. Preventive Programs

§1311. Bullying

A. Policy. Each LEA shall develop and adopt a policy that prohibits the bullying of a student by another student.

1. The bullying policy shall be implemented in a manner that is ongoing throughout the year and integrated with a school's curriculum, a school's discipline policies, and other violence prevention efforts.

2. The policy shall contain the definition of bullying found in this Section and shall address the following:

a. behavior constituting bullying;

b. the effect the behavior has on others, including bystanders; and

c. the disciplinary and criminal consequences of bullying another student.

B. Training for School Personnel. Each LEA shall create a program to provide a minimum of four hours of training each year for new school employees who have contact with students, including bus drivers, with respect to bullying. The training shall be two hours each following year for all school employees who have contact with students and have received the four-hour training. The training shall specifically include the following:

1. how to recognize the behaviors defined as bullying;
2. how to identify students at each grade level who are most likely to become victims of bullying, while not excluding any student from protection from bullying;
3. how to use appropriate intervention and remediation techniques and procedures;
4. the procedures by which incidents of bullying are to be reported to school officials; and
5. information on suicide prevention, including the relationship between suicide risk factors and bullying.

C. Definition of Bullying

1. *Bullying* is defined as a pattern of one or more of the following behaviors:

- a. gestures, including but not limited to obscene gestures and making faces;
- b. written, electronic, or verbal communications, including but not limited to calling names, threatening harm, taunting, malicious teasing, or spreading untrue rumors;
- c. physical acts, including but not limited to hitting, kicking, pushing, tripping, choking, damaging personal property, or unauthorized use of personal property; and
- d. repeatedly and purposefully shunning or excluding from activities.

2. Behavior defined as bullying is exhibited toward a student, more than once, by another student or group of students and occurs, or is received by, a student while on school property, at a school-sponsored or school-related function or activity, in any school bus or van, at any designated school bus stop, in any other school or private vehicle used to transport students to and from schools, or any school-sponsored activity or event.

3. Bullying must have the effect of physically harming a student, placing the student in reasonable fear of physical harm, damaging a student's property, placing the student in reasonable fear of damage to the student's property, or must be sufficiently severe, persistent, and pervasive enough to either create an intimidating or threatening educational environment, have the effect of substantially interfering with a student's performance in school, or have the effect of substantially disrupting the orderly operation of the school.

D. Notice of Bullying Policy to Students and Parents. The LEA shall inform each student orally and in writing of the prohibition against the bullying of a student by another student, the nature and consequences of such actions, including the potential criminal consequences and loss of driver's license, and the proper process and procedure for reporting any incidents of bullying. A copy of the written notice shall also be delivered to each student's parent or legal guardian.

E. Reporting Incidents of Bullying. The LEA shall develop a procedure for the reporting of incidents of bullying using the bullying report form approved by BESE and available on the DOE website and the school website. The procedure shall include the following.

1. Students and Parents

a. Any student who believes that he or she is or has been the victim of bullying, or any student or parent or legal guardian, who witnesses bullying or has good reason to believe bullying is taking place, may report the bullying to a school official.

b. A student, or parent or guardian, may also report concerns regarding bullying to a teacher, counselor, other school employee, or to any parent chaperoning or supervising a school function or activity.

c. Any report of bullying shall remain confidential.

2. School Personnel and Chaperones. Any teacher, counselor, bus driver, or other school employee, whether full or part time, and any parent chaperoning or supervising a school function or activity, who witnesses or who learns of bullying of a student, shall report the incident to a school official. A verbal report shall be submitted by the school employee or parent on the same day as the school employee or parent witnessed or otherwise learned of the bullying incident, and a written report must be filed no later than two days thereafter.

3. Retaliation. Retaliation against any person who reports bullying in good faith, who is thought to have reported bullying, who files a complaint, or who otherwise participates in an investigation or inquiry concerning allegations of bullying is prohibited conduct and subject to disciplinary action.

4. False Reports. Making false reports about bullying to school officials is prohibited conduct and will result in disciplinary action.

F. Investigation Procedure. When a report of the bullying of a student by another student is received, the school shall conduct an investigation using the following procedure.

1. Timing. The investigation shall begin the next school day following the day on which the written report was received and shall be completed no later than 10 school days after receipt of the report. If additional information is received after the end of the 10-day period, the school official shall amend all documents and reports to reflect such information.

2. Parental Notification of Allegation of Bullying

a. Upon receiving a report of bullying, the school shall notify the parents or legal guardians of the alleged offender and the alleged victim no later than the following school day.

b. Under no circumstances shall the delivery of this notice to the parent or legal guardian, be the responsibility of an involved student. Delivery of notice by an involved student shall not constitute notice as is required by this Section.

c. Before any student under the age of 18 is interviewed, his parents or legal guardians shall be notified of the allegations made and shall have the opportunity to attend any interviews conducted with their child as part of the investigation. If, after three attempts in a 48-hour period,

the parents or legal guardians of a student cannot be reached or do not respond, the student may be interviewed.

d. All meetings with the parents or legal guardians of an alleged victim or an alleged offender shall be in compliance with the following:

i. separate meetings with the parents or legal guardians of the alleged victim and the alleged offender;

ii. parents or legal guardians of the alleged victim and alleged offender must be notified of the potential consequences, penalties and counseling options.

e. In any case where a school official is authorized to require a parent or legal guardian of a student under the age of 18 to attend a conference or meeting regarding the student's behavior, and after notice willfully refuses to attend, the principal or designee shall file a complaint with a court of competent juvenile jurisdiction, pursuant to *Children's Code* article 730(8) and 731.

f. A principal or designee may file a complaint pursuant to *Children's Code* article 730(1) or any other applicable ground when, in his judgment, doing so is in the best interests of the student.

3. Scope

a. The investigation shall include documented interviews by the designated school official of the reporter, the alleged victim, the alleged offender, and any witnesses.

b. The school official shall collect and evaluate all facts using the bullying investigation form approved by BESE and available on the DOE website.

c. The school official shall obtain copies or photographs of any audio-visual evidence.

4. Documentation. At the conclusion of a bullying investigation, and after meeting with the parents or legal guardians, the school official or school board shall:

a. prepare a written report containing the findings of the investigation, including input from students' parents or legal guardians, and the decision by the school official or school system official. The document shall be placed in the school records of both students. If completed entirely, the bullying investigation form may serve as the report;

b. promptly notify the reporter/complainant of the findings of the investigation and whether remedial action has been taken, if such release of information does not violate the law;

c. keep reports/complaints and investigative reports confidential, except where disclosure is required by law;

d. maintain reports/complaints and investigative reports for three years;

e. provide a copy of any reports and investigative documents to the LEA, as necessary; and

f. provide a copy of any reports and investigative documents to the appropriate law enforcement officials, as applicable.

5. Disciplinary Action. If the school official has determined bullying has occurred, and after meeting with the parents or legal guardians of the students involved, the school official shall take prompt and appropriate disciplinary action against the offender and report criminal conduct to law enforcement, if appropriate.

6. LEA Reporting

a. The LEA shall electronically report all such documented incidences of bullying to the DOE using the DOE behavior report and incidence checklist to document the details of each reported incident of bullying.

7. Appeal

a. If the school official does not take timely and effective action, the student, parent, or school employee may report the bullying incident to the school board. The school board shall begin an investigation of any properly reported complaint of bullying no later than the next school day after the board receives the report.

b. If the school board does not take timely and effective action, the student, parent, or other school employee may report the bullying incident to the DOE. The DOE shall track the number of reports, shall notify the superintendent and the president of the LEA, and shall publish the number of reports by school district on its website.

8. Parental Relief. If four or more reports of separate incidents of bullying have been made, and no investigation has occurred, the parent or legal guardian of the alleged victim shall have the option to request that the student be transferred to another school operated by the LEA.

a. In order to exercise this option, the parent or legal guardian shall file a request with the superintendent of the LEA for the transfer of the student to another school under the LEA's jurisdiction.

b. The LEA shall make a seat available at another of its schools within 10 school days of receipt of the request for a transfer. If the LEA has no other school serving the grade level of the student, then within 15 school days of receipt of the request, the superintendent of the LEA shall:

i. inform the student and the student's parents or legal guardians and facilitate the student's enrollment in a statewide virtual school;

ii. offer the student placement in a full-time virtual program or virtual school under the jurisdiction of the LEA;

iii. enter into a memorandum of understanding with the superintendent of another LEA to secure a placement and provide for the transfer of the student to a school serving the grade level of the student, pursuant to R.S. 17:105 and 105.1.

c. If no seat or other placement is made available within 30 calendar days of the receipt of the request by the superintendent, the parent or legal guardian may request a hearing with the school board, which shall be public or private at the option of the parent or legal guardian. The school board shall grant the hearing at its next scheduled meeting or within 60 calendar days, whichever is sooner.

d. At the end of any school year, the parent or legal guardian may request that the LEA transfer the student back to the original school. The LEA shall make a seat available at the school.

G. Failure to Act.

1. Any teacher, counselor, bus operator, administrator, or other school employee, whether full-or part-time, who witnesses bullying or who receives a report of bullying from

an alleged victim, and who fails to report the incident to a school official, shall be investigated by the school governing authority.

2. Any school administrator or official who fails to do any of the following shall be investigated by the school governing authority:

- a. notify a parent or legal guardian of a report of bullying;
- b. investigate a report of bullying in a timely manner;
- c. take prompt and appropriate disciplinary action against a student that was determined to have engaged in bullying; or
- d. report criminal conduct to the appropriate law enforcement official.

3. Upon finding a reasonable expectation that the individual failed to act, the school governing authority shall suspend the individual without pay.

a. The length of the suspension shall be determined by the school governing authority based on the severity of the bullying inflicted on the victim.

b. The school governing authority shall report each finding of a failure to report bullying or to act on such a report to the LDE no later than August first annually, beginning with August 1, 2023.

c. The report shall include the length of suspension issued to each employee who failed to report or to act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:416.13.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 49:246 (February 2023).

Chapter 21. Curriculum and Instruction

Subchapter C. Secondary Schools

§2120. Credit Recovery

A. Credit recovery refers to instructional programs for students who have failed courses taken previously.

B. Schools may implement credit recovery programs.

1. Students may earn a maximum of seven credit recovery units applied towards diploma graduation requirements and no more than two Carnegie units annually. The school system must annually report to LDE the rationale for any student:

a. receiving more than two credit recovery credits annually; and/or

b. applying more than seven total credit recovery Carnegie units towards graduation requirements.

2. Students earning Carnegie credit in a credit recovery course must have previously taken and failed the course. Previously-attempted coursework is considered an academic record and must be recorded on the official transcript.

3. Completed credit recovery courses must be recorded and clearly labeled on the official transcript.

4. Students enrolled in credit recovery courses are not required to meet the instructional minute requirements found in §117.A of this Part.

5. Credit recovery courses taught in a classroom setting using online courses designed for credit recovery

must be facilitated by a qualified teacher of record or a qualified teacher of record recognized through reciprocity agreement with the entity facilitating the instruction.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2348 (November 2009), amended LR 39:1447 (June 2013), LR 49:249 (February 2023).

Title 28

EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 3. Operation and Administration

§325. Kindergarten and Prekindergarten

A. - D.2. ...

E. Beginning with the 2023-2024 school year, each LEA shall work to develop a mixed-provider delivery model for full-day, year-round, high-quality prekindergarten instruction to each child residing within the boundaries of the school district and obtaining four years of age by September 30 of the year in which the child enrolls for prekindergarten, in accordance with the guidelines set forth in R.S. 17:24.8.

1. As used in this Section, the following words shall have the following meanings.

a. *Full-Day* means at least eight hours.

b. *Mixed Provider Delivery Model* means a program between the school board and one or both of the following:

i. Child care providers rated proficient and above on the most recent performance rating in accordance with LAC 28:CLXVII.509, operating and overseeing programs on school property, pursuant to an agreement with a city, parish, or other local public school board.

ii. Child care providers rated proficient and above on the most recent performance rating in accordance with LAC 28:CLXVII.509, operating and overseeing private child care within the boundaries of the school district with at least one infant and one toddler classroom and offering prekindergarten seats in the private program, pursuant to an agreement with a city, parish, or other local public school board.

c. *Year-Round* means for a full calendar year, excluding weekends and holidays, or 260 days a year.

2. Each LEA shall submit student data in the same manner as described in LAC 28:I.1107 for all students served through prekindergarten and early childhood programs offered by the school board, including the seats provided through the mixed provider delivery model.

3. No later than March 1, 2024, and annually thereafter by March 1, each LEA shall report to the LDOE the following information.

a. The distribution of seats among each school and quality rated child care provider.

b. Input from at least the majority of providers in the community network, including how the distribution of seats has impacted the stability of infant and toddler care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.8, R.S. 17:151.3, and R.S. 17:391.11.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1260 (June 2005), amended LR 39:2196 (August 2013), LR 49:249 (February 2023).

§337. Written Policies and Procedures

A. - B.31. ...

32. at least one hour of annual in-service training on recognizing adverse childhood experiences and the utilization of adverse childhood experience educational practices, provided on a day that other types of in-service training will be provided and including research-based information regarding the following:

- a. the impact of adverse childhood experiences on student educational experiences and on the school and classroom culture;
- b. how to identify the signs and symptoms of adverse childhood experiences;
- c. best practices for schools and classrooms regarding adverse childhood experience considerations in education; and
- d. recognition of the impact of secondary trauma on school employees.

33. check-in and check-out procedures for student attendance which shall be reviewed at least every three years;

34. annual completion by any school nurse, coach, athletic trainer, and athletic director, whether employed or serving as a volunteer, of sudden cardiac arrest education program;

35. provision for each high school senior who is at least seventeen years old to register to vote via electronic voter registration or mail-in form;

36. attendance policy for pregnant and parenting students regarding excused absences of a minimum of 10 days after the birth of a child, reasonable amount of time for completing missed assignments, accommodations for breastfeeding, and access to child care providers;

37. submission of a seizure management and treatment plan, duly documented and signed, for use when a student is at school or while participating in a school activity;

38. release of a minor into protective custody requiring the official to whom the minor is being released provides information about the minor to include first and last name, address, and date of birth, unless custody is an arrest for which there is probable cause;

39. maintaining a supply of auto-injectable epinephrine in a secure location in each classroom assigned to a student deemed by a physician to be at high risk for anaphylactic reaction and incapable of self-administration of auto-injectable epinephrine, in accordance with R.S. 17:436.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6, R.S. 17:7(29), R.S. 17:81, R.S. 17:240, R.S. 17:100.8, 17:184, and R.S.17:437.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1261 (June 2005), amended LR 33:429 (March 2007), LR 35:1101 (June 2009), LR 36:1224 (June 2010), LR 37:1141 (April 2011), LR 37:1380, 1380 (May 2011), LR 37:2134 (July 2011), LR 38:40, 41 (January 2012), LR 39:2197 (August 2013), LR 40:2530 (December 2014), LR 48:1273 (May 2022), LR 49:33 (January 2023), LR 49:250 (February 2023).

Chapter 5. Personnel

§517. Acceptable Work Experience for Teacher Pay

A. - A.4.a. ...

5. Military

a. Credit for military service shall be in accordance with R.S. 17:423, and salary schedule placement shall be in accordance with R.S. 17:423.1.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:423; R.S. 17:424; R.S. 17:424.1; R.S. 17:424.2; R.S. 17:424.3, R.S. 17:423.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1267 (June 2005), LR 49:250 (February 2023).

Chapter 9. Scheduling

§901. Scheduling

A. - B.7. ...

8. The school counselor shall inform and assist students and their parents in the selection and scheduling of advanced courses and early college opportunities, such as dual enrollment, advanced placement, Cambridge, or international baccalaureate courses, as educational options.

C. - F.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:175 ; R.S. 17:183.2; and R.S. 17:2926.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1271 (June 2005), amended LR 36:1498 (July 2010), LR 39:2204 (August 2013), LR 40:2522 (December 2014), LR 42:557 (April 2016), LR 43:2483 (December 2017), LR 46:1083 (August 2020) , amended LR 48:31 (January 2022), LR 49:250 (February 2023).

§915. Student Activities

A. - F.3. ...

G. A patriotic organization listed as a patriotic society in Title 36 of the United States Code may use any public school building or property for student participation in its activities at times other than instructional time during the school day.

1. The organization shall provide verbal or written notice to the school principal of its intent to speak to the students and shall submit proof of liability insurance for the organization.

2. The school principal shall provide verbal or written approval of the specific day and time for the organization to address the students.

3. The organization may speak with and recruit students during school hours for the purpose of informing students about the scholastic and civic benefits of participation in the organization.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:176 and R.S. 17:2119.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1272 (June 2005), amended LR 39:2205 (August 2013), LR 49:250 (February 2023).

Chapter 13. Discipline

§1303. Bullying

A. Policy. Each LEA shall develop and adopt a policy that prohibits the bullying of a student by another student.

1. The bullying policy shall be implemented in a manner that is ongoing throughout the year and integrated

with a school's curriculum, a school's discipline policies, and other violence prevention efforts.

A.2. - D....

E. Reporting Incidents of Bullying. The LEA shall develop a procedure for the reporting of incidents of bullying using the bullying report form approved by BESE and available on the DOE website and the website of each elementary and secondary school. The procedure shall include the following.

E.1. - F.4.d. ...

e. provide a copy of any reports and investigative documents to the LEA, as necessary; and

f. provide a copy of any reports and investigative documents to the appropriate law enforcement officials, as applicable.

E.5. - 8.d. ...

G. Failure to Act.

1. Any teacher, counselor, bus operator, administrator, or other school employee, whether full-or part-time, who witnesses bullying or who receives a report of bullying from an alleged victim, and who fails to report the incident to a school official, shall be investigated by the school governing authority.

2. Any school administrator or official who fails to do any of the following shall be investigated by the school governing authority:

a. notify a parent or legal guardian of a report of bullying;

b. investigate a report of bullying in a timely manner;

c. take prompt and appropriate disciplinary action against a student that was determined to have engaged in bullying; or

d. report criminal conduct to the appropriate law enforcement official.

3. Upon finding a reasonable expectation that the individual failed to act, the school governing authority shall suspend the individual without pay.

a. The length of the suspension shall be determined by the school governing authority based on the severity of the bullying inflicted on the victim.

b. The school governing authority shall report each finding of a failure to report bullying or to act on such a report to the LDE no later than August first annually, beginning with August 1, 2023.

c. The report shall include the length of suspension issued to each employee who failed to report or to act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:415, R.S. 17:416, R.S. 17:416.13, and R.S. 17:416.14.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:477 (March 2013), amended LR 39:3259 (December 2013), LR 49:250 (February 2023).

Chapter 23. Curriculum and Instruction

Subchapter A. Standards and Curricula

§2305. Ancillary Areas of Instruction

A. - F.4.a. ...

G. Historical Programs. Each school shall hold an educational program pertaining to the United States Constitution on Constitution Day, September 17, of each year. The purpose of the program is to commemorate the September 17, 1787 signing of the Constitution. When September 17 falls on a Saturday, Sunday, or holiday, the

Constitution Day program shall be held during the preceding or following week.

1. In conjunction with Constitution Day and Constitution Week, each public school governing authority shall observe Celebrate Freedom Week.

2. Students shall receive age and grade appropriate instruction on topics related to freedom, the nation's founding, and the intent, meaning, and importance of the Declaration of Independence, the U.S. Constitution, and the Bill of Rights.

H. - I. ...

J. Adoption Awareness. Each LEA shall provide instruction on adoption awareness to all high school students that shall include:

1. the benefits to society;

2. types of adoption;

3. differences between foster care and infant adoption;

4. resources and agencies available for pregnant mothers, for parents, and to assist in the adoption process; and

5. statistical data on abortion, adoption, and childbirth.

K. Child Abuse and Assault Awareness and Prevention. Each LEA shall provide age- and grade-appropriate classroom instruction to all students relative to child assault awareness and prevention. Such instruction shall be limited to:

1. education on what constitutes abuse or an assault;

2. how students may safely and confidentially report to a school official the circumstances surrounding any such abuse or assault; and

3. how students may report abuse or assault to the child protection toll-free hotline operated by DCFS and where the number is found on the school website.

4. Each LEA shall annually report to the LDE a grade-level listing of each course that includes instruction on child abuse and assault awareness and prevention, and shall include verification of DCFS child protection toll-free hotline notification on LEA and school websites.

L. - M. ...

N. Eating Disorder Awareness. Each public school LEA shall provide age and grade appropriate instruction regarding eating disorder awareness and prevention integrated into the curriculum of an existing required course.

O. Suicide, Safety, and Violence Education. An LEA offering a youth suicide prevention program shall include student safety, violence prevention, and social isolation prevention training via in-person, video, or a hybrid of both methods. Instruction shall include how to identify signs and signals of depression, suicide, and self-injury in themselves and peers, as well as the importance of seeking help and the process for reporting harmful or potentially harmful activity.

1. Each public school LEA shall provide a minimum of one hour or one class period of age and grade appropriate instruction to students in grades 6 through 12.

2. Instruction shall be evidence-based through high-quality research findings that show a statistically significant effect on relevant outcomes.

3. Strategies for social inclusion in the classroom and community shall be utilized and may include instruction in self-esteem and peer mediation.

4. A student shall be excused from any of the training upon written request of the parent or legal guardian.

5. For each school enrolling students in grades 6 through 12, the LEA shall allow the creation of a student-led and employee-advised club open to any member of the student population to develop and maintain awareness activities of this Subsection.

P. Water Safety. Each public school LEA shall provide age and grade appropriate instruction regarding water safety integrated into the curriculum of an existing required course, and shall include:

1. proper use of flotation devices;
2. awareness of water conditions and safe behaviors in and around water;
3. supervision and barriers/fencing in pool areas;
4. importance of formal swim lessons;
5. avoidance of alcohol and substance use during water activities; and
6. administering CPR to a drowning victim.

Q. Mental Health. Each public school LEA shall provide age and grade appropriate instruction to students in kindergarten through twelfth grade regarding preventative mental health measures including but not limited to:

1. proper diet, exercise, risk avoidance, and stress reduction;
2. the relationship between mental health and physical health as well as brain health and emotional health;
3. identifying trauma and stress and the impact on mental and physical health; and
4. resources and services available to assist people with mental health issues.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6, 17:81, 17:154, 17:261 et seq., 17:263, 17:270, 17:280, 17:281 et seq., 17:404, and 17:405 et seq., and 36 USC 106.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1288 (June 2005), amended LR 33:2353 (November 2007), LR 39:2214 (August 2013), LR 39:3259 (December 2013), LR 40:2531 (December 2014), LR 44:1443 (August 2018), LR 44:1868 (October 2018), LR 45:36 (January 2019), LR 45:1746 (December 2019), amended LR 48:33 (January 2022), LR 49:251 (February 2023).

§2307. Literacy Assessment and Screener

A. Each LEA shall require that every child enrolled in kindergarten-third grade be given the BESE-approved literacy screener three times per school year: within the first 30 days of the school year, in December, and in April. The results of this screener shall be used to plan instruction and provide appropriate and timely intervention. The results of the screener will also provide information required by R.S. 17:24.9, student reading skills; requirements; reports.

1. Each student administered a literacy screener will be identified as reading below, at, or above grade level. Students scoring above grade level may be considered for evaluation into a gifted program.

2. For students with significant hearing or visual impairment, nonverbal students, or students with significant cognitive impairment, the LEA will provide an alternate assessment recommended by the LDE.

3. Each LEA will report to the LDE screener results by child within the timeframes and according to the guidance established by the LDE.

4. For grades 1-3, the school should use the prior year's latest screener level to begin appropriate intervention until the new screener level is determined.

A.5. - A.5.c. ...

B. Each LEA shall administer the literacy screener provided by the LDE for each grade level to meet kindergarten-third grade literacy assessment requirements.

C. Beginning June 1, 2023, and triennially thereafter, each school shall use data from the literacy screener in order to develop and submit to LDE the school foundational literacy plan for students in kindergarten through third grade pursuant to R.S. 17:24.9.

C.1. - C.1.d. ...

D. Each LEA shall provide for literacy coaches for reading teachers in kindergarten through third grade for the purposes of providing on-site teacher training on evidence-based reading instruction, demonstrating lessons, co-teaching or observation, and providing feedback for improving instruction subject to the appropriation of funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6; R.S.17:24.4; R.S. 17:24.9; and R.S.17:24.10.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1289 (June 2005), amended LR 38:1224 (May 2012), LR 39:2214 (August 2013), LR 42:1878 (November 2016), LR 45:36 (January 2019), LR 48:1747 (July 2022), LR 49:252 (February 2023).

§2319. The Career Diploma

A. - B.7.d. ...

C. Minimum Course Requirements

1. The minimum course requirements for a career diploma for incoming freshmen in 2014-2015 through 2022-2023 shall be the following:

a. English—4 units:

i. one of the following:

- (a). English I;
- (b). English language part 1: Cambridge IGCSE;
- (c). English literature part 1: Cambridge IGCSE.

ii. one of the following:

- (a). English II;
- (b). English language part 2: Cambridge IGCSE;

or

(c). English literature part 2: Cambridge IGCSE.

iii. the remaining units shall come from the following:

(a). technical writing;

(b). business English;

(c). English III;

(d). English language part 1: Cambridge AICE—AS (honors);

(e). literature in English part 1: Cambridge AICE—AS (honors);

(f). English IV;

(g). any AP or IB English course;

(h). English language part 2: Cambridge AICE—AS (honors);

(i). literature in English part 2: Cambridge AICE—AS (honors); or

(j). comparable Louisiana technical college courses offered by Jump Start regional teams as approved by BESE;

b. Mathematics—4 units:

i. Algebra I (1 unit), Applied Algebra I (1 unit), or Algebra I-Pt. 2 (the elective course Algebra I-Pt. 1 is a pre-requisite);

ii. The remaining units shall come from the following:

- (a). geometry;
- (b). financial literacy (formerly financial math);
- (c). math essentials;
- (d). Algebra II;
- (e). advanced math-functions and statistics;
- (f). advanced math - pre-calculus;
- (g). Algebra III;
- (h). pre-calculus;
- (i). business math;
- (j). probability and statistics; ~~or~~
- (k). statistical reasoning;
- (l). transition to college mathematics; or
- (m). comparable Louisiana technical college

courses offered by Jump Start regional teams as approved by BESE;

(n). Integrated Mathematics I, II, and III may be substituted for Algebra I, geometry, and Algebra II and shall count as three math credits;

- (o). additional math—Cambridge IGCSE; or
- (p). math 1 (pure math): Cambridge AICE—AS

(honors);

c. Science 2 units:

- i. 1 unit of biology;
- ii. 1 unit from the following:

- (a). Chemistry I;
- (b). physical science
- (c). earth science;
- (d). Agriscience II;

NOTE: Agriscience I is a prerequisite for Agriscience II and is an elective course.

- (e). environmental science;
 - (f). principles of engineering;
 - (g). any AP or IB science course PLTW
- principles of engineering;
- (h). principles of engineering (LSU partnership);
 - (i). any AP or IB science course;
 - (j). physics I: Cambridge IGCSE;
 - (k). biology II: Cambridge AICE—AS (honors);
 - (l). chemistry II: AICE—AS (honors); or
 - (m). physics II: Cambridge AICE—AS (honors);

d. social studies 2 units:

- i. 1 of the following:
 - (a). U.S. history;
 - (b). AP U.S. history;
 - (c). IB history of the Americas I;
- ii. 1 unit of the following:
 - (a). civics;
 - (b). government;
 - (c). AP U.S. government and politics:

comparative; or

(d). AP U.S. government and politics: United States;

e. Health Education—1/2 unit:

i. JROTC I and II may be used to meet the Health Education requirement. Refer to §2347.

f. Physical Education—1 1/2 units:

- i. shall be Physical Education I and
- ii. 1/2 unit from among the following:
 - (a). physical education II;
 - (b). marching band;

(c). extracurricular sports;

(d). cheering; or

(e). dance team;

iii. ROTC may be substituted;

iv. adaptive PE for eligible special education students may be substituted;

g. at least nine credits in the Jump Start course sequence, workplace experiences, and credentials;

i. Jump Start 1.0 course sequences will be available for incoming freshmen through 2020-2021; and

ii. Jump Start 2.0 course sequences will be available for incoming freshmen beginning in 2020-2021 and beyond;

h. Total—23 units.

2. The minimum course requirements for a career diploma for incoming freshmen in 2023-2024 and beyond shall be the following:

a - b.i. ...

ii. geometry or applied geometry;

iii. The remaining units shall come from the following:

(a). financial literacy (formerly financial math);

(b). math essentials;

(c). algebra II;

(d). advanced math-functions and statistics;

(e). advanced math pre-calculus;

(f). algebra III;

(g). pre-calculus;

(h). business math;

(i). probability and statistics;

(j). statistical reasoning;

(k). transition to college mathematics; or

(l) comparable Louisiana technical college courses offered by Jump Start regional teams as approved by BESE;

(m). integrated mathematics I, II, and III may be substituted for algebra I, geometry, and algebra II and shall count as three math credits;

(n). additional math—Cambridge IGCSE; or

(o). math 1 (pure math): Cambridge AICE—AS (honors);

C.2.c. - C.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6, 17:7, 17:24.4, 17:183.2, 17:183.3, 17:274, 17:274.1, and 17:395.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1291 (June 2005), amended LR 31:2211 (September 2005), LR 31:3070 (December 2005), LR 31:3072 (December 2005), LR 32:1414 (August 2006), LR 33:429 (March 2007), LR 33:432 (March 2007), LR 33:2050 (October 2007), LR 33:2354 (November 2007), LR 33:2601 (December 2007), LR 34:1607 (August 2008), LR 35:1230 (July 2009), LR 35:1876 (September 2009), LR 35:2321 (November 2009), LR 35:2750 (December 2009), LR 36:1490 (July 2010), LR 37:548 (February 2011), LR 37:1130 (April 2011), LR 37:2130 (July 2011), LR 37:3197 (November 2011), LR 38:761 (March 2012), LR 38:1005 (April 2012), LR 40:2522 (December 2014), LR 41:1482 (August 2015), LR 41:2594 (December 2015), LR 42:232 (February 2016), LR 43:1287 (July 2017), LR 43:2132 (November 2017), LR 43:2484 (December 2017), LR 44:1868 (October 2018), LR 45:1747 (December 2019), LR 46:557 (April 2020), LR 46:1086 (August 2020), LR 47:860 (July 2021), LR 48:39 (January 2022), repromulgated LR 48:1093 (April 2022), LR 48:2560 (October 2022), LR 49:252 (February 2023).

Chapter 33. Home Study Programs

§3305. Application Process

A. - C. ...

D. Within 30 days of initial approval of an application, denial of an application, or failure to receive an annual renewal application for a previously approved home study program, LDE shall provide notification of the child's legal name, date of birth, and physical residential address to the city, parish, or other local school system in which the child was most recently enrolled and, if different, the school system in which the child resides.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and 17:236.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1312 (June 2005), amended LR 39:2229 (August 2013), LR 45:226 (February 2019), LR 49:254 (February 2023).

Chapter 35. Public School Enrollment Choice

§3503. Public High School Program of Choice

A. The governing authority of each public high school shall work to grow programs of choice as defined by R.S. 17:4035.2.

B. A student may enroll in a program of choice offered within the assigned school district, without regard to attendance zones, contingent upon the following:

1. the program of choice and the high school offering the program have available capacity at the appropriate grade level;
2. the program of choice is not offered at the public high school in which the student was most recently enrolled or would otherwise attend;
3. the enrollment of the student in the public school of choice does not violate an order of a court of competent jurisdiction; and
4. the student meets the published admission requirements, if any, of the program of choice.

C. The governing authority of each public high school shall include in the district policy regarding student transfers:

1. a definition of capacity for each program of choice;
2. admission requirements, if any, for each program of choice; and
3. the process for requesting BESE review of any denied request to transfer to a program of choice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:4035.1 and R.S. 17:4035.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 49:254 (February 2023).

Title 28 EDUCATION

Part CXXXIX. Bulletin 126—Charter Schools

Chapter 43. Discipline

§4305. Bullying

A. - D. ...

E. Reporting Incidents of Bullying. The charter school shall develop a procedure for the reporting of incidents of bullying using the bullying report form approved by charter school and available on the LDE website and the school website. The procedure shall include the following.

E.1. - F.4.d. ...

e. provide a copy of any reports and investigative documents to the charter school, as necessary; and

f. provide a copy of any reports and investigative documents to the appropriate law enforcement officials, as applicable.

F.5. - 8.d. ...

G. Failure to Act

1. Any teacher, counselor, bus operator, administrator, or other school employee, whether full-or part-time, who witnesses bullying or who receives a report of bullying from an alleged victim, and who fails to report the incident to a school official, shall be investigated by the school governing authority.

2. Any school administrator or official who fails to do any of the following shall be investigated by the school governing authority:

- a. notify a parent or legal guardian of a report of bullying;
- b. investigate a report of bullying in a timely manner;
- c. take prompt and appropriate disciplinary action against a student that was determined to have engaged in bullying; or
- d. report criminal conduct to the appropriate law enforcement official.

3. Upon finding a reasonable expectation that the individual failed to act, the school governing authority shall suspend the individual without pay.

a. The length of the suspension shall be determined by the school governing authority based on the severity of the bullying inflicted on the victim.

b. The school governing authority shall report each finding of a failure to report bullying or to act on such a report to the LDE no later than August 1 annually, beginning with August 1, 2023.

c. The report shall include the length of suspension issued to each employee who failed to report or to act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:415, R.S. 17:416, and R.S. 17:416.13.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 48:1000 (April 2022), LR 49:254 (February 2023).

Title 28 EDUCATION

Part CXLVII. Bulletin 130—Regulations for the Evaluation and Assessment of School Personnel

Chapter 3. Personnel Evaluation

§305. Measures of Growth in Student Learning—Learning Targets

A. - B. ...

C. Evaluators shall meet with each evaluatee for the purpose of discussing the student learning targets of each student. Student learning targets not discussed in a meeting between a person and the evaluator shall not be used in the evaluation of the person.

D. Teachers. A minimum of two student-learning targets shall be identified for each teacher. The department shall provide an evaluative tool for evaluators to use in assessing the quality and attainment of student learning targets.

RULE

Board of Elementary and Secondary Education

Teacher Preparation Program Entry
(LAC 28:CXXXI.528 and LAC 28:XLV.745)

1. State-approved common assessments shall be used as part of the body of evidence measuring students' attainment of learning targets, where available.

2. Where no state-approved common assessments are available, evaluatees and evaluators shall decide upon the appropriate assessment or assessments to measure students' attainment of learning targets.

3. LEAs may define consistent student learning targets across schools and classrooms for teachers with similar assignments, provided that they allow for ample flexibility to address the specific needs of students in each classroom.

4. ...

E. Principals and Administrators. A minimum of two student learning targets shall be identified for each administrator.

1. For principals, the LDE shall provide recommended targets to use in assessing the quality and attainment of both student learning targets, which will be based upon a review of "similar" schools. The LDE will annually publish the methodology for defining "similar" schools.

2. For principals, at least one learning target shall be based on overall school performance improvement in the current school year, as measured by the school performance score.

a. for the 2020-2021 academic year only, overall school performance improvement may be measured by the school performance score or by formative assessment data.

3. For principals, at least one learning target shall be based on growth in a component (e.g., ELA or math improvement) of school performance score.

a. for the 2020-2021 academic year only, overall school performance improvement may be measured by the school performance score or by formative assessment data.

4. Principals at schools with special populations (e.g. alternative schools) or those that do not have grades with standardized testing and available value-added data (e.g., K-2 schools) may define learning targets based on LDE guidance.

F. The department shall provide annual updates to LEAs relating to:

1. the expansion of state-standardized testing and the availability of value-added data, as applicable;

2. the expansion of state-approved common assessments to be used to build to bodies of evidence for student learning where the value-added model is not available; and

3. the revision of state-approved tools to be used in evaluating student learning targets.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:391.10, R.S. 17:3881-3886, and R.S. 17:3901-3904, R.S. 17:3997, and R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1216 (May 2012), amended LR 38:2359 (September 2012), LR 39:1273 (May 2013), LR 41:1267 (July 2015), LR 47:354 (March 2021), LR 49:254 (February 2023).

Shan N. Davis
Executive Director

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* and LAC 28:XLV, Bulletin 996—*Standards for Approval of Teacher and/or Educational Leader Preparation Programs*. The revisions relate to the availability of a provisional enrollment option for teacher candidates who do not meet the minimum grade point average requirement for entry into alternate preparation programs. Entry would be contingent upon a satisfactory personal interview and mastery of competencies as outlined. 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 B. Nonstandard Teaching Credentials

§528. Pre-Practitioner License

A. The pre-practitioner license is a temporary, non-renewable certificate issued in accordance with provisional admittance into an alternate certification program pursuant to LAC 28:XLV.

1. For certification purposes, non-university providers and colleges or universities will submit signed statements to the LDOE indicating that the student was provisionally admitted into the practitioner teacher, certification-only, or master's degree program alternative certification path and meets the following requirements:

a. minimum of a non-education baccalaureate degree from a college or university accredited in accordance with 34 CFR 602;

b. 2.50 or higher undergraduate grade point average (GPA) on a 4.00 scale to enter a non-university provider program; or a 2.20 or higher undergraduate GPA on a 4.00 scale to enter a college or university program; or be granted conditional admittance into an alternate teacher preparation program following a satisfactory personal interview by the program admission officer; and

c. passing scores on content area exam(s), or if no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 30 semester hours of coursework specific to the content area for admission to the program. See §303 of this part for exam requirements.

d. Special education mild/moderate certification candidates must qualify for admission to alternate programs by passing a Praxis specialty area exam, and secondary education candidates (grades 6-12) must pass a Praxis core

subject area exam, or if there is no content Praxis exam adopted by the state in the specific secondary core subject area, candidates must demonstrate content mastery by presenting 30 semester credit hours in the core subject area.

2. The approved teacher preparation program provider shall submit the request for the pre-practitioner license directly to the LDOE.

3. Teacher candidates receiving mentoring while on the pre-practitioner license by a certified mentor in accordance with Sections 515, 553, and 1369 of this Part and completing all other certification requirements for issuance of the initial standard level teaching certificate may advance from the pre-practitioner license to the standard level teaching certificate.

4. Teacher candidates not receiving mentoring while on the pre-practitioner license by a certified mentor in accordance with Sections 515, 553, and 1369 of this Part must serve on the practitioner license and be mentored by a certified mentor for a year and meet all other certification requirements prior to advancing to the standard level teaching certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6; 17:7(6), and 17:22(6).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 49:255 (February 2023).

Title 28 EDUCATION

Part XLV. Bulletin 996—Standards for Approval of Teacher and/or Educational Leader Preparation Programs

Chapter 7. Louisiana State Standards for Educator Preparation Programs

Subchapter C. Teacher Preparation Programs

§745. Minimum Requirements for Alternate Teacher Preparation Programs

A. - F.3. ...

G. Beginning 6/1/2022, candidates may be provisionally enrolled into an alternate teacher preparation program provided teacher candidates meet the following requirements:

1. possess a non-education baccalaureate degree from a university accredited in accordance with 34 CFR 602;

2. meet minimum GPA requirements:

a. 2.50 or higher undergraduate grade point average (GPA) on a 4.00 scale to enter a non-university program;

b. 2.20 or higher undergraduate GPA on a 4.00 scale to enter a college or university program;

c. an applicant who does not meet the requirements of Subparagraph a or b of this Paragraph may be certified if the applicant meets the following requirements in an alternate teacher preparation program:

i. satisfactory completion of a personal interview by the program admissions officer;

ii. if the program awards credit hours, the applicant shall achieve a minimum grade point average (GPA) of 3.00 in alternate teacher preparation program courses by the end of the first 12 credit hours and successfully complete the program;

iii. if the program does not award credit hours, the applicant shall demonstrate mastery of competencies as required by the program administrator and by the school system in which the applicant completes required clinical practice;

iv. satisfactory completion of all program requirements as set forth by BESE, including any requirements for clinical practice, at graduation;

3. pass the required content examinations or meet alternate requirements pursuant to Bulletin 746. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 30 semester hours of coursework specific to the content area;

4. preparation provider informs teacher candidate of the risk of provisional enrollment; and

5. provisional admittance rules end at the conclusion of the 2023 legislative session.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:1331 (July 2017), amended LR 43:2492 (December 2017), LR 45:1751 (December 2019), LR 46:324 (March 2020), LR: 48:1274 (May 2022), LR 49:41 (January 2023), LR 49:256 (February 2023).

Shan N. Davis
Executive Director

2302#057

RULE

Office of the Governor Board of Pardons

Parole
(LAC 22:XI.307, 504, 510, and 705)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950), and pursuant to R.S. 15:573.1, the Board of Pardons has amended LAC XI.307, 504, 510, and 705. The amendment to §307 outlines when an offender can be reconsidered for medical parole or medical treatment furlough. The amendment to §504 changes who notifies the board if an offender needs to be rescinded. The amendment to §510 improves the methods for notifying victims by adding electronic communications such as text messaging and e-mail. The amendments to §705 increases the time for individuals that a crime of violence in R.S. 14:2(B) and crimes against person in R.S. 14-29-47 brings language associated with applying for a rehearing in-line with Act 102 of the 2022 Regular Session. These changes will assist victims and survivors navigating the post-conviction process. This Rule is hereby adopted on the day of promulgation.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part XI. Committee on Parole

Chapter 3. Parole—Eligibility and Types

§307. Medical Parole/Medical Treatment Furlough

A. - C.3. ...

4. An offender who is denied medical parole or medical treatment furlough may apply for a rehearing within the time frame applicable to a denial of parole under any

other provision of this Part if still deemed eligible by the Department of Public Safety and Corrections.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2297 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2270 (August 2013), LR 41:43 (January 2015), LR 42:1283 (August 2016), amended by the Office of the Governor, Board of Pardons and Committee on Parole, LR 43:2495 (December 2017), LR 44:575 (March 2018), LR 44:2141 (December 2018), LR 49:256 (February 2023).

Chapter 5. Meetings and Hearings of the Committee on Parole

§504. General Procedures

A. - J.2. ...

K. Upon notification that an offender has violated the terms of the decision granted by the committee or has engaged in misconduct prior to the inmate's release, the committee may rescind its decision to grant parole. In such cases, the inmate shall promptly receive another parole hearing.

1. The board may choose to automatically rescind and change the decision for granting of parole under the below conditions:

- a. offender has received a disciplinary report prior or subsequent to the hearing, but prior to parole release;
- b. time calculation adjustments by the Department of Corrections that changes the parole eligibility date, causing the offender to become ineligible for parole or pushing his parole eligibility dates beyond the allowed time frame for parole release or rescheduling;
- c. refusing to comply with post and/or prior to release conditions set forth by the panel.

2. If it is determined prior to an offender's parole release that proper notification requirements were not met, the board may rescind its decision to grant parole.

- a. If the board rescinds its decision to grant parole, the offender shall promptly receive another parole hearing.
- b. In the event that the offender has been granted parole, the board may rescind its decision and promptly schedule a hearing in accordance with §510.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, Committee on Parole, LR 41:44 (January 2015), amended LR 45:1063 (August 2019), amended LR 46:42 (January 2020), LR 47:360 (March 2021), LR 49:257 (February 2023).

§510. Victims

A. - F. ...

G. Should a hearing be re-scheduled by the board for any reason other than the victim's request, the board shall notify the victim as soon as possible by their preferred method of notification.

H. The direct victim, the guardian of the victim, or close relative of a deceased victim shall have the right to make a written or oral statement as to the impact of the crime.

I. The direct victim, the guardian of the victim, or close relative of a deceased victim or a victim's advocacy group, and the district attorney or his representative may also appear before the panel by means of teleconference or telephone communication.

J. If more than one person is entitled to appear for a parole hearing, the person chosen by all persons entitled to appear may serve as a spokesperson for all those entitled to appear. Any person making an oral presentation to the parole panel will be allowed no more than five minutes. However, at the parole panel chairman's discretion more than one person may present a written or oral statement to the panel.

1. All persons making oral presentations in favor of an applicant shall be allowed cumulatively no more than 10 minutes. All persons making oral presentations against an applicant, including victims, shall be allowed cumulatively no more than 10 minutes.

K. There is no limit on written correspondence in favor of and/or opposition to a candidate for parole release.

L. The Committee on Parole shall notify all persons who have filed a victim notice and registration form with the Department of Public Safety and Corrections of an offender's release from incarceration by parole. Such written notice shall be sent by mail or electronic communication.

M. Notice to Crime Victim Services Bureau of Parole Hearings. The committee shall provide notice to the Department of Public Safety and Corrections Crime Victims Services Bureau at least 30 days prior to parole hearings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2263 (August 2013), amended by the Office of the Governor, Board of Pardons and Committee on Parole, LR 43:47 (January 2017), LR 44:575 (March 2018), LR 44:2142 (December 2018), LR 47:1107 (August 2021), LR 49:257 (February 2023).

Chapter 7. Parole Decisions

§705. Application for Parole Rehearing or Request for Reconsideration of Decision

A. If denied at the initial parole hearing, an offender must apply in writing for a subsequent parole hearing, referred to as a "parole rehearing". The written request must be submitted by the offender or his attorney.

B. Application for a parole rehearing will be allowed only under the following conditions.

1. The offender must not have had a major (schedule B) disciplinary misconduct report in the six months prior to the reapplication request;

2. The offender must not have been in disciplinary lockdown status for a period of six months prior to the reapplication request.

3. If both criteria in §705.B.1 and 2 are met, an offender may apply to the committee for a rehearing at the following intervals.

Type of Crime	Request for Rehearing
Nonviolent, except as otherwise restricted	6 mos after most recent denial
Crime of Violence enumerated in R.S. 14:2(B)	Every 2 yrs after most recent denial
Crime Against Person enumerated in R.S. 14:29-47	Every 2 yrs after most recent denial
Sex Offense as defined in §903	Every 2 yrs after most recent denial
Murder, 1st or 2nd degree	Every 2 yrs after most recent denial
Manslaughter	Every 2 yrs after most recent denial

C. Reconsideration. An offender may request that the committee reconsider its decision to deny parole as outlined herein. However, this process does not establish a formal appeal process as parole is an administrative discretionary decision that is not subject to appeal.

1. A parole panel may reconsider a decision of any parole panel at the request of the board chairman.

2. An offender whose parole is denied or rescinded, or whose parole supervision is revoked may request reconsideration by the committee.

a. The request for reconsideration shall be made in writing by the offender (or the offender's authorized legal representative) and shall be postmarked no later than twenty-one calendar days from the date of the hearing during which the parole panel action was taken.

b. If the request for reconsideration is not postmarked within 21 calendar days, it shall be denied.

c. Reconsideration review shall be at the discretion of the committee and shall not be available except for the following reasons:

i. if there is an allegation of misconduct by a committee member that is substantiated by the record;

ii. if there is a significant procedural error by a committee member; or

iii. if there is significant new evidence that was not available when the hearing was conducted. A request based on the availability of new evidence or information shall be accompanied by adequate documentation.

d. A request based on an allegation of misconduct or significant procedural error shall clearly indicate the specific misconduct or procedural error being alleged.

e. A written request for reconsideration postmarked within the time period set forth in §705.D.2.a. shall be screened by the chairman or designee to determine whether the request for reconsideration raises substantial grounds to believe that one or more of the reasons for reconsideration set forth in §705.D.2.c. may be present. The request for reconsideration shall be denied by the chairman or designee, if in his or her discretion, it is determined that the request does not raise adequate grounds to believe that one or more of the reasons for reconsideration set forth in §705.D.2.c. are present.

3. If the chairman or designee determines upon screening that a request for reconsideration raises adequate grounds to believe that one or more of the reasons for reconsideration set forth in §705.D.2.c are present.

a. The case shall be set for administrative review at the next available parole panel hearing date. The review shall be conducted from the record of the first hearing. The appearance of the offender shall not be necessary.

b. The reviewing panel may vote to:

i. grant a new parole hearing and staff will make every attempt to schedule the hearing with a different parole panel than that which rendered the original decision; or

ii. affirm the original decision.

c. The applicant shall be advised, in writing, of the results of the review.

4. If the chairman or designee determine there is no basis to grant the request for reconsideration, the applicant will be advised in writing.

D. Disciplinary Removals

1. If the Offender has one or more major (schedule B) disciplinary report(s) in the 12 months prior to their parole eligibility date, they will generally not be considered a good risk for early release and will, therefore, not be given parole consideration until such time as the offender has been disciplinary report free for twelve consecutive months. Offenders may be removed from a parole docket if they receive a schedule B disciplinary report during the investigation period. The offender will be notified if they are not considered for placement on or removed from a docket.

a. The offender may request reconsideration of this decision in writing in accordance with the process outlined in this policy. Such request must include any mitigating factors that the offender wishes be considered during the review process.

b. The offender is responsible for notifying the board in writing when they are disciplinary report free for 12 consecutive months to be reconsidered for scheduling.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2301 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2266 (August 2013), amended by the Office of the Governor, Board of Pardons, LR 40:58 (January 2014), LR 45:1065 (August 2019), LR 47:363 (March 2021), LR 49:257 (February 2023).

Sheryl M. Ranatza
Chairman

2302#005

RULE

**Office of the Governor
Division of Administration
Office of Facility Planning and Control**

Building Code for State-Owned Buildings (LAC 34:III.131)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950, et seq.) and the provisions of RS 39:121, the Division of Administration, Facility Planning and Control has amended Title 34, Government Contracts, Procurement and Property Control, Part III. Facility Planning and Control, Chapter 1. Capital Improvement Projects, Section 131, Louisiana Building Code for State Owned Buildings. These Rule changes are the result of a review by Facility Planning and Control of the editions of the codes specified by RS 40:1722 and the most recent editions of these codes. This review has led to the determination that new editions of these codes will provide a higher standard than the currently referenced editions. Facility Planning and Control is, therefore, establishing the

appropriate editions of these codes as the standards. This Rule is hereby adopted on the day of promulgation.

Title 34

**GOVERNMENT CONTRACTS, PROCUREMENT
AND PROPERTY CONTROL**

Part III. Facility Planning and Control

Chapter 1. Capital Improvement Projects

Subchapter A. Procedure Manual

§131. Louisiana Building Code

A. R.S. 40:1722 establishes the Louisiana building code and directs that the following codes be established as the standards as minimum standards for this code. These codes shall be established as constituting the code in the editions indicated:

1. the *Life Safety Code*, standard 101, 2015 edition as published by the National Fire Protection Association;
2. the *International Plumbing Code*, 2021 edition as published by the International Code Council and amended by R.S. 40:1730.28.1;
3. the *International Building Code*, 2021 edition as published by the International Code Council, not including chapter 1, administration, chapter 11, accessibility, and chapter 27, electrical;
4. the *International Mechanical Code*, 2021 edition as published by the International Code Council;
5. the *National Electric Code* (NFPA no. 70), 2020 edition as published by the National Fire Protection Association.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Department of Facility Planning and Control, LR 8:473 (September 1982), amended by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 11:849 (September 1985), amended by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 33:2649 (December 2007), LR 37:3260 (November 2011), LR 39:86 (January 2013), LR 39:2493 (September 2013), effective on January 1, 2014, LR 43:1163 (June 2017), effective on July 1, 2017, LR 49:259 (February 2023), effective on March 1, 2023.

Jason D. Sooter
Director

2302#015

RULE

**Office of the Governor
Office of Financial Institutions**

**Virtual Currency Business Activity
(LAC 10:XV.Chapter 19)**

On October 20, 2022, the Office of Financial Institutions (“OFI”) adopted an Emergency Rule, pursuant to R.S. 49:962A(1)(a). OFI’s Declaration of Emergency prevented imminent peril to the public health, safety, or welfare in implementation of licensure and registration to engage in virtual currency business activities in the State of Louisiana, as provided by the Virtual Currency Businesses Act (“VCBA”), R.S. 6:1381, et seq., enacted by Act 341 of the 2020 Regular Session of the Louisiana Legislature, without interruption, limitation or restriction of exchange and

transfer of virtual currency during the initial application and renewal application processes. OFI is concurrently proceeding with adoption of this Rule, pursuant to R.S. 49:961A and 962A(5).

This Rule amends LAC 10:I.1901, 1905, 1913, 1917, and 1923; and repeals LAC 10:I.1903, 1907, 1909, 1919, 1921 and 1925, in accordance with provisions of the Administrative Procedure Act, R.S. 49:950, et seq. This Rule is intended to provide clear and concise guidance for implementation and enforcement of provisions of the VCBA, as required by R.S. 6:1394. The amendment of LAC 10:I.1901 addresses industry concerns expressed to OFI. LAC 10:I.1903, 1917 and 1919 are consolidated into the surviving §1917; and LAC 10:I.1907, 1909, 1921 and 1925 are repealed in the interest of streamlining the initial application and renewal processes. LAC 10:I.1931 is amended in consistency with the amendment of §1901.

In considering industry concerns, OFI determined that it would be in the best interest of the industry and persons in Louisiana seeking to engage in the exchange and transfer of virtual currency to revisit the Rule. After further review, OFI determined that it is in the best interest of both the industry and persons wishing to exchange and transfer virtual currency to repeal LAC 10:1.1907, 1909, 1921 and 1925 in the interest of streamlining the initial application and renewal process. This Rule is hereby adopted on the day of promulgation.

Title 10

**FINANCIAL INSTITUTIONS, CONSUMER CREDIT,
INVESTMENT SECURITIES AND UCC**

Part XV. Other Regulated Entities

Chapter 19. Virtual Currency

§1901. Definitions

A. In addition to the definitions provided in Section 1382 of the Virtual Currency Businesses Act, (“VCBA”), R.S. 6:1381 et seq., as enacted by Act 341 of the 2020 Regular Session of the Louisiana Legislature, the following definitions are applicable to this Chapter.

Acting in Concert—persons knowingly acting together with a common goal of jointly acquiring control of a licensee whether or not pursuant to an express agreement.

Commissioner—the commissioner of the office of financial institutions.

Control—includes, but is not limited to the following:

- a. any and all circumstances inherent within the scope of section 1382(2) of the VCBA;
- b. power to directly or indirectly vote at least 25 percent of outstanding voting shares or voting interests of any:
 - i. applicant, licensee or registrant; or
 - ii. applicant’s, licensee’s or registrant’s responsible individual or responsible individuals, including persons acting in concert;
- c. power to directly or indirectly elect, appoint or remove any applicant’s, licensee’s or registrant’s responsible individual or a majority of responsible individuals including persons acting in concert;
- d. power to directly or indirectly participate in a licensee’s or registrant’s day-to-day decisions or operations, including persons acting in concert; and
- e. any other set of facts or circumstances that may constitute control.

Nationwide Multistate Licensing System and Registry (NMLS)—the multistate system developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators and owned and operated by the State Regulatory Registry, LLC, or any successor or affiliated entity, for the licensing and registration of persons in financial services industries.

Net Worth—the difference between total business assets and total business liabilities, after deducting estimated income taxes on the differences between the estimated current values of business assets and the current amounts of business liabilities and their tax bases.

Tangible Net Worth—includes all business assets minus liabilities minus intangible assets (goodwill and other intangible assets, such as favorable leasehold rights, trademarks, trade names, internet domain names, and non-compete agreements.)

Unfair or Deceptive Act or Practice—failure to provide any disclosure or disclosures described in this Chapter is an unfair or deceptive act or practice by a licensee, registrant, or person that is neither a licensee nor registrant but is engaging in virtual currency business activity or activities, pursuant to R.S. 6:1393(3)(b).

Unsafe or Unsound Act or Practice—inability of any applicant, licensee or registrant to meet its withdrawal requests; violation of the applicant's, licensee's or registrant's articles of incorporation; or violation of any law or any regulation governing the applicant, licensee or registrant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1386, R.S. 6:1387, R.S. 6:1388, R.S. 6:1391, R.S. 6:1392, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2561 (October 2022), amended LR 49:259 (February 2023).

§1903. Implementation

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1383, R.S. 6:1385, R.S. 6:1386, R.S. 6:1387, R.S. 6:1388, R.S. 6:1391, R.S. 6:1392, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2562 (October 2022), repealed LR 49:260 (February 2023).

§1905. Application for License or Notice of Registration

A. The department shall begin accepting initial applications for licensure and notices of registration through the NMLS on January 1, 2023.

B. Completed applications for licensure and notices of registration submitted on or before April 1, 2023 will be approved, conditionally approved or denied on or before June 30, 2023.

C. This rule shall become effective on July 1, 2023.

D. Applications for licensure and notices of registration pursuant to this Section shall not be complete until the department:

1. receives all information required by applicable provisions of the VCBA; and

2. completes its investigation pursuant to R.S. 6:1385D.

E. By force of law, no applicant shall have a right of appeal, as provided by R.S. 6:1387, before the 30th day after the effective date of this rule.

F. After July 1, 2023, initial and renewal applications shall be submitted in accordance with the VCBA and this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1383, R.S. 6:1385, R.S. 6:1386, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2562 (October 2022), amended LR 49:260 (February 2023).

§1907. Approval of Control Person

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1386, R.S. 6:1387, R.S. 6:1388, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2562 (October 2022), repealed LR 49:260 (February 2023).

§1909. Approval of Change of Control

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1386, R.S. 6:1387, R.S. 6:1388, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2562 (October 2022), repealed LR 49:260 (February 2023).

§1913. Renewal of License or Notice of Registration

A. Any application for renewal of a license or notice of registration issued pursuant to provisions of the VCBA shall be submitted through the NMLS and satisfy all renewal requirements of the VCBA, including but not limited to those required by R.S. 6:1388.

B. Beginning July 1, 2023, the period for submitting applications for renewal of all licenses and notices of registration to engage in virtual currency business activities shall begin—on the first day of November of each calendar year.

C. A renewal application submitted on or before the thirty-first day of December shall be considered timely and the license or notice of registration seeks to renew shall remain in force and effect, as provided by the VCBA.

D.1. An application for renewal of any license or notice of registration shall be accompanied by both:

- a. the renewal fee; and
- b. the late fee.

2. If a licensee or registrant does not submit an application for renewal on or before the last day of February, the license or notice of registration shall lapse on the first day of March and the licensee or registrant shall cease engaging in virtual currency business in Louisiana, with persons and individuals in Louisiana or on behalf of persons or individuals in Louisiana, as provided by R.S. 6:1384.

3. Any person whose license or notice of registration has lapsed may apply for a new license or notice of registration, in accordance with the VCBA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1386, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2564 (October 2022), amended LR 49:260 (February 2023).

§1917. Examination

A. The commissioner may:

1. conduct on-site examination or investigation of the books, records, and accounts used in the business of every a licensee or registrant;

2. consider results of an inspection conducted by a comparable official in any in which the books, records, and accounts used in a licensee's or registrant's virtual currency business are located;

3. enter into agreements or relationships with other government officials or state and federal regulatory agencies;

4. consider licensing or examination reports prepared by other governmental agencies or officials, within or outside Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1386, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, R.S. 6:1391, R.S. 6:1392, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2564 (October 2022), amended LR 49:261 (February 2023).

§1919. Network Examination

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1386, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, R.S. 6:1391, R.S. 6:1392, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2564 (October 2022), repealed LR 49:261 (February 2023).

§1921. Renewal/Quarterly Reports

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, R.S. 6:1391; and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2565 (October 2022), repealed LR 49:261 (February 2023).

§1923. Records

A. Licensees engaging in virtual currency business activity in Louisiana shall maintain and preserve such books, records, and accounts of its virtual currency business activities, pursuant to R.S. 6:1391, for a period of five years, or longer, if required by the commissioner to resolve any examination, investigation, or complaint.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, R.S. 6:1391, R.S. 6:1393, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2561 (October 2022), amended LR 49:261 (February 2023).

§1925. Policies and Procedures

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, R.S. 6:1391, R.S. 6:1393, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2565 (October 2022), repealed LR 49:261 (February 2023).

§1927. Consent Agreements

A. The commissioner may enter into a consent agreement at any time with a person to resolve a matter arising under the VCBA, or a rule adopted, or an agreement entered into, under the VCBA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1386, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, R.S. 6:1391, R.S. 6:1392, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2561 (October 2022), repromulgated LR 49:261 (February 2023).

§1929. Civil Penalties

A. The commissioner, in his discretion, may assess a civil penalty against a person that violates the VCBA or any rule promulgated pursuant to the VCBA, or any order issued by the commissioner pursuant thereto, not to exceed \$1,000 for each violation, plus the department's costs and expenses for the investigation and prosecution of the matter, including reasonable attorney's fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1387, R.S. 6:1388, R.S. 6:1392, R.S. 6:1393, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2561 (October 2022), repromulgated LR 49:261 (February 2023).

§1931. Miscellaneous Provisions

A. Failure to comply with this Rule, or any other rule, or with any order issued by the department within a reasonable period of time may be considered in determining whether to waive any regulatory fee or to allow the filing of additional information relating to the application process. Noncompliance with any provisions of the VCBA, including but not limited to any provision or provisions pertaining to ownership, control, security, net worth, registration, or failure to pay any fee may likewise be considered in determining whether to deny issuance or renewal of a license or notice of registration, or the commissioner's institution of any investigative, administrative, or regulatory action within the scope of his authority.

B. All persons must be properly registered with the Louisiana Secretary of State, if required, prior to engaging in virtual currency business activity in the State of Louisiana.

C. Licensees engaging in virtual currency business activity in Louisiana are to provide proper disclosures to persons wishing to transfer or exchange virtual currency through the licensee or registrant. Disclosures are to be made separately from any other information provided by the licensee to such persons in a clear and conspicuous manner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, R.S. 6:1392, R.S. 6:1393, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2561 (October 2022), amended LR 49:261 (February 2023).

§1933. Fees

A. Pursuant to the authority granted under R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, and R.S. 6:1391, the following fee structure is hereby established to cover necessary costs associated with the administration of the VCBA, R.S. 6:1381, et seq., as enacted by Act 341 of the 2020 Regular Session of the Louisiana Legislature.

Description	Fee
1. Initial Application Fee (\$2,500) and Investigation/Review Fee (\$2,500)	\$5,000
2. License Renewal Fee (\$2,000) and Investigation/Review Fee (\$2,000)	\$4,000/\$1,500 late fee
3. Examination Fee	\$50 per/hour for each examiner, plus the actual cost of subsistence, lodging, and transportation for out-of-state exams, not to exceed the amounts provided for in Division of Administration travel regulations in force at the time of such exam
4. Registration Fee	\$750 for initial application
5. Registration Renewal Fee	\$500 for any subsequent annual renewals /\$250 late fee

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1385, R.S. 6:1388, R.S. 6:1389, R.S. 6:1392, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2565 (October 2022), repromulgated LR 49:262 (February 2023).

§1935. Exceptions

A. Any request for an exception and/or waiver must be submitted in writing and requires the written approval of the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1386, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, R.S. 6:1392, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2566 (October 2022), repromulgated LR 49:262 (February 2023).

§1937. Severability

A. If any provision or item of this regulation, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of the regulation which can be given effect without the invalid provisions, items, or applications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1386, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, R.S. 6:1392, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2566 (October 2022), repromulgated LR 49:262 (February 2023).

Stanley M. Dameron
Commissioner

2302#061

RULE

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

Early and Periodic Screening, Diagnosis and Treatment Personal Care Services—Personal Care Workers Wage Enhancement (LAC 50:XV.7321)

The Department of Health, Bureau of Health Services Financing has amended LAC 50:XV.7321 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 73. Personal Care Services

§7321. Reimbursement

A. - A.2. ...

B. - B.1.b. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:179 (February 2003), amended LR 33:2202 (October 2007), repromulgated LR 33:2425 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2561 (November 2010), amended by the Department of Health, Bureau of Health Services Financing, LR 45:908 (July 2019), LR 49:262 (February 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

2302#071

RULE

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

Healthcare Services Provider Fees
Hospital Fee Assessments
(LAC 48:I.4001 and 4007)

The Department of Health, Bureau of Health Services Financing has amended LAC 48:I.4001 and §4007 as authorized by R.S. 36:254. 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 48
PUBLIC HEALTH—GENERAL
Part I. General Administration
Subpart 1. General

Chapter 40. Provider Fees

§4001. Specific Fees

A. - E.3.a. ...

F. Hospital Services

1. Effective July 1, 2022, a hospital stabilization assessment fee shall be levied and collected in accordance with article VII, section 10.13 of the Constitution of Louisiana, any legislation setting forth the hospital stabilization formula, and departmental requirements relative to directed payments.

a. Subject to written approval by the Centers for Medicare and Medicaid Services (CMS) of a directed payment arrangement pursuant to 42 C.F.R. 438.6, the Department of Health shall levy and collect an assessment from those hospitals subject to the approved directed payment arrangement. Each approved directed payment arrangement is effective for one Healthy Louisiana Medicaid managed care contract rating period.

i. Prior to the levy of any assessment pursuant to this Subsection, the Department of Health shall submit a Medicaid assessment report to the Joint Legislative Committee on the Budget. The Medicaid assessment report shall include a description of the proposed assessment, the basis for the calculation of the assessment, and a listing of each hospital included in the proposed assessment. The hospital assessment shall be calculated in accordance with the annual hospital stabilization formula set forth by the Legislature of Louisiana and enacted pursuant to article VII, section 10.13 of the Constitution of Louisiana.

ii. An assessment levied pursuant to this Subsection shall be levied only for the quarters that directed payments are actually paid to qualified hospitals pursuant to 42 C.F.R. 438.6 directed payment arrangements approved by CMS.

2. Individual hospitals subject to an assessment under this Subsection shall be obligated to pay such assessment regardless of whether a directed payment is actually paid to the hospital for the quarter for which the assessment is levied.

3. The assessment will be levied and collected on a quarterly basis and at the beginning of each quarter that the assessment is due.

4. - 5. Repealed.

AUTHORITY NOTE: Promulgated in accordance with Chapter 45 of Title 46 as enacted in 1992, 46:2601-2605, redesignated as Chapter 47 of Title 46, containing R.S. 46:2621 to 46:2625 and P.L. 102-234, R.S. 36:254, and Article VII, Section 10.13 of the Constitution of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, LR 19:347 (March 1993), amended LR 20:51 (January 1994), LR 26:1478 (July 2000), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:100 (January 2007), amended by the Department of Health, Bureau of Health Services Financing, LR 42:1887, 1888 (November 2016), LR 43:73 (January 2017), repromulgated LR 43:323 (February 2017), amended LR 44:1015 (June 2018), LR 44:1894 (October 2018), LR 45:1597 (November 2019), LR 49:263 (February 2023).

§4007. Delinquent and/or Unpaid Fees

A. - C. ...

D. In accordance with departmental requirements relative to directed payments, hospitals that fail to pay the assessment due, or any portion thereof, may be subject to one or more of the following:

1. exclusion from participation in any directed payment arrangement approved by the Centers for Medicare and Medicaid Services pursuant to 42 C.F.R. 438.6;

2. revocation of the hospital's license; or

3. termination of the hospital's enrollment in the Medical Assistance Program (Medicaid).

AUTHORITY NOTE: Promulgated in accordance with Chapter 45 of Title 46 as enacted in 1992, 46:2601-2605, redesignated as Chapter 47 of Title 46, containing R.S. 46:2621 to 46:2625 and PL 102-234.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, LR 19:347 (March 1993), amended LR 20:1114 (October 1994), LR 26:1479 (July 2000), amended by the Department of Health, Bureau of Health Services Financing, LR 42:1887 (November 2016), LR 44:1017 (June 2018), LR 49:263 (February 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

2302#072

RULE

Department of Health
Bureau of Health Services Financing

Inpatient Hospital Services—Urban Metropolitan
Statistical Area Facility—New Orleans Area
(LAC 50:V.Chapter 21)

The Department of Health, Bureau of Health Services Financing has adopted LAC 50:V.Chapter 21 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 V. Hospital Services

Subpart 1. Inpatient Hospitals Services

**Chapter 21. Urban Metropolitan Statistical Area
(MSA) Facility—New Orleans Area**

§2101. Qualifying Criteria

A. In order to qualify as an urban metropolitan statistical area (MSA) facility—New Orleans area, effective as of October 5, 2022, the hospital must:

1. be designated a non-rural hospital service district located in LDH region 1, with a facility type code of acute, Medicaid enrolled, with an original hospital license date before July 13, 2014, but after July 1, 2014, located in zip code 70127;

2. be a hospital that is located an urban MSA as defined by United States Office of Management and Budget;
3. have an operational emergency room; and
4. not add additional locations under this license, without prior written approval of the department.

a. The addition of any off-site campus, beyond an outpatient primary care clinic, to the license of this hospital will invalidate the provisions of this reimbursement methodology.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing LR 49:263 (February 2023).

§2103. Reimbursement Methodology

A. The inpatient hospital per diem rate paid for acute care services to qualifying urban MSA hospitals–New Orleans area who meet all of the criteria in §2101 shall be increased by indexing annually to 95 percent of the small rural hospital acute per diem rate in effect.

B. The inpatient hospital per diem rate paid for psychiatric services to qualifying urban MSA hospitals–New Orleans area who meet all of the criteria in §2101 shall be increased by indexing annually to 95 percent of the small rural hospital psychiatric per diem rate in effect.

C. These rates are conditional on the hospital continuing to meet all qualifying criterial included in §2101. If the hospital no longer qualifies, payments will revert back to appropriate non-rural, non-state hospital assigned rates effective on the date that the qualification(s) in §2101 are no longer met.

D. The department may review all above provisions every three years, at a minimum to evaluate continuation of these enhanced reimbursements.

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 49:264 (February 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

2302#073

RULE

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

**Managed Care for Physical and Behavioral Health
Hospital Directed Payments (LAC 50:I.3113)**

The Department of Health, Bureau of Health Services Financing has adopted LAC 50:I.3113 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 I. Administration
Subpart 3. Managed Care for Physical
and Behavioral Health**

Chapter 31. General Provisions

§3113. Directed Payments

A. Hospital Directed Payments

1. Subject to written approval by the Centers for Medicare and Medicaid Services (CMS), the Department of Health (hereafter referred to as “the department” and/or “LDH”) shall provide directed payments to qualifying hospitals that participate in the Healthy Louisiana Medicaid managed care program, in accordance with the applicable section 438.6(c) preprint(s) approved by CMS, federal regulations, and departmental requirements. Each CMS approved directed payment arrangement is effective for one Healthy Louisiana Medicaid managed care contract rating period.

2. *Qualifying Hospital*—either of the following:

a. an in-state provider of inpatient and outpatient hospital services (excluding freestanding psychiatric hospitals, freestanding rehabilitation hospitals, and long-term acute care hospitals) that meets the criteria specified in the applicable section 438.6(c) preprint approved by CMS and departmental requirements; or

b. an in-state hospital provider of long-term acute care, psychiatric services, and rehabilitation services for both inpatient and outpatient hospital services that meet the criteria specified in the applicable section 438.6(c) preprint approved by CMS and departmental requirements.

3. The department shall assign qualifying hospitals to provider classes based upon criteria specified in the applicable section 438.6(c) preprint(s) approved by CMS, in accordance with departmental requirements.

a. Qualifying hospitals shall have no right to an administrative appeal regarding any issue related to provider classification, including, but not limited to, provider class assignment, the effective date of provider class assignment, or qualifying determinations.

4. The department shall utilize an interim payment process, whereby interim directed payments will be calculated based on provider class assignment utilizing the data and methodology specified in the applicable section 438.6(c) preprint(s) approved by CMS, in accordance with departmental requirements.

a. Qualifying hospitals shall have no right to an administrative appeal regarding calculation of interim directed payments.

5. The department shall cause interim directed payments to be paid on a quarterly basis to the Healthy Louisiana Medicaid managed care organizations (MCOs), in accordance with departmental requirements.

a. The MCOs shall pay interim directed payments to qualified hospitals within 10 business days of receipt of quarterly interim directed payment information from LDH. If a barrier exists that will not allow the MCO to pay the interim directed payments within 10 business days of receipt, the MCO shall immediately notify LDH. LDH at its sole discretion will determine if penalties for late payment may be waived.

b. The qualifying hospital may request that the MCOs deposit their interim directed payments into a separate bank account owned/held by the qualifying hospital. Interim directed payments shall not be deposited into a bank account that is owned/held by more than one qualifying hospital.

6. In accordance with the applicable section 438.6(c) preprint(s) approved by CMS, federal regulations, and departmental requirements, directed payments must be based on actual utilization and delivery of services during the applicable contract period.

a. Within 12 months of the end of each state fiscal year (SFY), LDH shall perform a reconciliation as specified in the applicable section 438.6(c) preprint approved by CMS and departmental requirements.

i. Qualifying hospitals shall have no right to an administrative appeal regarding any issue related to reconciliation, including, but not limited to, the timing and process.

b. Qualified hospitals are strongly encouraged to submit claims as quickly as possible after SFY end.

7. If a qualifying hospital that is subject to a reconciliation will not be participating in a directed payment arrangement in the future, the qualified hospital shall pay all amounts owed to LDH, if any, within 30 calendar days' notice of the amount owed, in accordance with departmental requirements.

a. In addition to all other available remedies, LDH has the authority to offset all amounts owed by a qualifying hospital due to a reconciliation against any payment owed to the qualifying hospital, including, but not limited to, any payment owed by the MCOs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:245 and Title XIX of the Social Security Act

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:264 (February 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

2302#074

RULE

Department of Health Bureau of Health Services Financing

Outpatient Hospital Services—Urban Metropolitan Statistical Area Facility—New Orleans Area (LAC 50:V.Chapter 75)

The Department of Health, Bureau of Health Services Financing has adopted LAC 50:V.Chapter 75 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 V. Hospital Services Subpart 5. Outpatient Hospital Services Chapter 75. Urban Metropolitan Statistical Area (MSA) Facility—New Orleans Area

§7501. Qualifying Criteria

A. In order to qualify as an urban metropolitan statistical area (MSA) facility—New Orleans area, effective October 5, 2022, a hospital must:

1. be designated a non-rural hospital service district located in LDH region 1, with a facility type code of acute, Medicaid enrolled, with an original hospital license date before July 13, 2014, but after July 1, 2014, located in zip code 70127;

2. be a hospital that is located in an MSA as defined by United States Office of Management and Budget;

3. have an operational emergency room; and

4. not add additional locations under this license, without prior written approval of the department.

a. The addition of any off-site campus, beyond an outpatient primary care clinic, to the license of this hospital will invalidate the provisions of this reimbursement methodology.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:265 (February 2023).

§7503. Reimbursement Methodology

A. Payments for outpatient services to qualifying urban MSA hospitals—New Orleans area who meet all of the criteria in §7501 shall be made as follows:

1. **Outpatient Surgery.** The reimbursement amount for outpatient hospital surgery services shall be an interim payment equal to the Medicaid fee schedule amount on file for each service, and a final reimbursement amount of 95 percent of allowable Medicaid cost as calculated through the cost report settlement process.

2. **Clinic Services.** The reimbursement amount for outpatient clinic services shall be an interim payment equal to the Medicaid fee schedule amount on file for each service, and a final reimbursement amount of 95 percent of allowable Medicaid cost as calculated through the cost report settlement process.

3. **Laboratory Services.** The reimbursement amount for outpatient clinical diagnostic laboratory services shall be the Medicaid fee schedule amount on file for each service.

4. **Rehabilitation Services.** The reimbursement amount for outpatient rehabilitation services shall be an interim payment equal to the Medicaid fee schedule amount on file for each service, and a final reimbursement amount of 95 percent of allowable Medicaid cost as calculated through the cost report settlement process.

5. **Other Outpatient Hospital Services.** The reimbursement amount for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services, and outpatient hospital facility fees shall be an interim payment equal to 95 percent of allowable Medicaid cost as calculated through the cost report settlement process.

B. The department may review all above provisions every three years, at a minimum, to evaluate continuation of these enhanced reimbursements.

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 49:265 (February 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

2302#075

RULE
Department of Health
Emergency Response Network

LERN Destination Protocol: TRAUMA (LAC 48:I.19123)

The Emergency Response Network Board has exercised the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and codifies in LAC 48:I.Chapter 191, Section 19123, a protocol adopted and promulgated on August 18, 2022, by the Emergency Response Network Board for the transport of trauma and time sensitive ill patients, adopted by authorized by R.S. 9:2798.5 (to replace the protocol adopted by December 10, 2015, codified in LAC 42:904 (December 10, 2015)) as LAC 48:I.Chapter 191, Section 19123. The Rule was effective January 1, 2023. This Rule is hereby adopted on the day of promulgation.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 15. Emergency Response Network

Chapter 191. Trauma Protocols

§19123. LERN Destination Protocol: TRAUMA

A. On August 18, 2022, the Louisiana Emergency Response Network Board [R.S. 40:2842(1) and (3)] adopted and promulgated “LERN Destination Protocol: TRAUMA”, and replacing the “LERN Destination Protocol: TRAUMA” adopted and promulgated December 10, 2015, as follows:

1. Call LERN Communication Center at (866) 320-8293 for patients meeting the following criteria.

Assess for Extremis		
<ul style="list-style-type: none"> • Unmanageable airway • Tension pneumothorax • Traumatic cardiac arrest • Burn patient without patent airway • Burn patient > 40 percent BSA without IV or IO Access 	Yes→	Closest ED/Trauma Center
No↓		
Measure vital signs and Mental Status		
<ul style="list-style-type: none"> • Unable to follow commands (Motor GCS < 6) • RR <10 or > 29 breaths per minute (<20 in infant aged <1 year) 	Yes→	Transport to Trauma Center/Trauma Program These patients should be transported to the highest level of care within the defined

<ul style="list-style-type: none"> • Respiratory distress or need for support • Room air pulse oximetry <90% • Age 0-9: SBP <70 mmHG + (2 x age in years) • Age 10-64: SBP <90 mmHG or HR > SBP • Age ≥ 65: SBP <110 mmHG or HR > SBP 		trauma system. This is a Level 1 or a Level 2 Trauma Center or Trauma Program. * If distance or patient condition impedes transport to Level 1 or 2, consider transport to a Level 3 Trauma Center/Trauma Program or most appropriate resourced hospital.
No↓		
Assess Injury Patterns		
<ul style="list-style-type: none"> • All penetrating injuries to head, neck, torso, and extremities proximal to elbow or knee • Chest wall instability or deformity or suspected flail chest • Suspected fracture of two or more proximal long-bones • Crushed, de-gloved, mangled, or pulseless extremity • Amputation proximal to wrist or ankle • Suspected pelvic fracture • Skull deformity or suspected skull fracture • Suspected spinal injury with new motor or sensory loss • Active bleeding requiring a tourniquet or wound packing with continuous pressure 	Yes→	Transport to Trauma Center/Trauma Program These patients should be transported to the highest level of care within the defined trauma system. This is a Level 1 or a Level 2 Trauma Center or Trauma Program. * If distance or patient condition impedes transport to Level 1 or 2, consider transport to a Level 3 Trauma Center/Trauma Program or most appropriate resourced hospital
No↓		
Assess mechanism of injury		
<ul style="list-style-type: none"> • Falls from height >10 feet (all ages) • High-risk auto crash <ul style="list-style-type: none"> -- Intrusion, including roof: <ul style="list-style-type: none"> - 12 inches occupant site; - 18 inches any site; - need for extrication for patient entrapped - Ejection (partial or complete) from automobile - Death in the same passenger compartment - Child (Age 0-9) unrestrained or in unsecured child safety seat - Vehicle telemetry data consistent with a high risk of injury • Auto vs. pedestrian/bicyclist thrown, run over, or with significant (>20 mph) impact • Rider separated from transport vehicle with significant impact (ex: motorcycle, ATV, Horse, etc.) 	Yes→	Transport to Trauma Center/Trauma Program which, depending upon the defined trauma system, need not be the highest level trauma center/program. If no Trauma Center/Trauma Program in the region, LCC may route to the most appropriate resourced hospital.
No↓		
Assess special patient or system considerations		
<ul style="list-style-type: none"> • Older Adults <ul style="list-style-type: none"> - Age ≥ 65 with evidence of traumatic injury - Fall from any height with evidence of significant head impact 	Yes→	Transport to Trauma Center/Trauma Program or hospital capable of timely and thorough evaluation and initial management of potentially serious injuries. Consider

<ul style="list-style-type: none"> - Use of anticoagulant or antiplatelet drugs • Children <ul style="list-style-type: none"> - Age ≤ 5 with evidence of traumatic injury - Fall from any height with evidence of significant head impact • Burns <ul style="list-style-type: none"> - In conjunction with trauma - High voltage electrical injuries • Pregnancy >20 weeks • Major joint dislocations (hip, knee, ankle, elbow) • EMS provider judgment 		consultation with medical control.
No↓		
Multi/Mass Casualty Incident	No→	Transport according to protocol

2. When in doubt, transport to a trauma center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:2798.5 and R.S. 40:2846(A).

HISTORICAL NOTE: Promulgated by the Department of Health, Emergency Response Network, LR 49:265 (February 2023).

Paige Hargrove
Executive Director

2302#027

RULE

Department of Insurance Office of the Commissioner

Regulation 42—Group Self-Insurance Funds (LAC 37:XIII.Chapter 11)

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 amended Regulation 42—Group Self-Insurance Funds. The Department of Insurance has amended Regulation 42 to update statutory references and revise language to align with current law.

The purpose of the amendment of Regulation 42 is to make changes to bring Regulation 42 into alignment with current law. Definitions have been updated. The requirements for an application to create a group self-insurance fund have been revised. The language regarding filing and use of rates has been updated. The procedure for addressing fund insolvencies has been updated. Language regarding required examinations of group self-insurance funds has been added. This Rule is hereby adopted on the day of promulgation.

Title 37 INSURANCE

Part XIII. Regulations

Chapter 11. Regulation Number 42—Group Self-Insurance Funds

§1101. 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.

Fiscal Agent—an individual, partnership, or corporation engaged by a group self-insurance fund to carry out the fiscal policies of the fund, invest and disburse assets, and oversee the financial matters of the fund. An administrator may be a fiscal agent.

Gross Premium—premium determined by multiplying the payroll (segregated into the proper workers’ compensation job classifications) by the manual premium rates approved by the commissioner.

Group Self-Insurance Fund or Fund—employers who enter into agreements to pool their workers compensation liabilities in accordance with Louisiana Revised Statutes 23:1195.

* * *

Insolvency—the condition existing when the fund’s liabilities before member distribution payable or dividend payable are greater than the fund’s assets determined in accordance with generally accepted accounting principles as delineated in the fund’s financial statement audited by an independent certified public accountant. For the purposes of determining insolvency, assets will not include intangible property, such as patents, trade names, or goodwill.

* * *

Standard Premium—gross premium adjusted by experience modifiers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1200.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1403 (December 1992), amended LR 47:52 (January 2021), LR 49:267 (February 2023).

§1103. Application to Create a Group Self-Insurance Fund

A. All applications to create a group self-insurance fund shall meet the requirements of Louisiana Revised Statutes Title 23, §1195 et seq., any other applicable laws of the state of Louisiana, and this regulation.

B. Applications shall be made in writing on a form provided by the department.

C. Applications shall be submitted to the department at least 90 days prior to the effective date for establishment of a fund. Any application submitted with less than 90 days remaining before the desired effective date, or which does not contain answers to all questions, or which is not sworn to and subscribed before a notary public, or which does not contain all required documents, statements, reports, and required information, may be returned without review by the department.

D. All applications shall be accompanied by:

1. a properly completed indemnity agreement in a form acceptable to the department, pursuant to §1111 of this regulation;

2. security as required by Louisiana Revised Statutes Title 23, §1195 et seq. and this regulation;

3. copies of acceptable excess insurance or reinsurance policies, pursuant to Louisiana Revised Statutes Title 23, §1195 et seq. and this regulation;

4. a bond covering each third party administrator, pursuant to Louisiana Revised Statutes Title 23, §1195 et seq.;

5. ...

6. copies of the fund bylaws and trust agreement or other governance documents;

7. individual application of each member of the fund applying for membership in the fund on the effective date of the fund, and copies of their executed indemnity agreements;

8. evidence of financial strength and liquidity of the members dated as of the date of the filing of the application to satisfy the financial strength and liquidity requirements of Louisiana Revised Statutes Title 23, §1195 et seq. and this regulation;

9. proof that the fund shall have the minimum annual earned normal premium as specified in Louisiana Revised Statutes Title 23, §1195 et seq.;

10. the current annual report or financial statement of any casualty insurance company providing excess or reinsurance coverage for the fund, which meets the requirements of Louisiana Revised Statutes Title 23, §1195 et seq. if such statement is not already on file with the department;

11. the name, address, and telephone number of the attorney representing the fund, of the qualified actuary for the fund, and of the certified public accountant who will be auditing the annual financial statements of the fund, as well as evidence of appointment of each by the fund;

12. the domicile address in this state where the books and records of the fund will be maintained, and the state from which the fund will be administered;

13. proof of advance payment to the fund by each initial member of the fund of not less than 25 percent of that member's first year estimated annual earned normal premium;

14. a feasibility study, or other analysis, prepared by a qualified actuary utilizing actual loss history of the initial members of the fund;

15. pro forma financial statements projecting the first three years of operations of the fund based upon a feasibility study or other analysis prepared by a qualified actuary, pursuant to Louisiana Revised Statutes Title 23, §1195 et seq. and §5(A) hereof. Such pro forma financial statements shall include a pro forma balance sheet, income statement, and statement of cash flow. Each shall be prepared in accordance with generally accepted accounting principles;

16. a copy of the fund's premium billing policy indicating whether the premium payments to the fund will be paid by members annually, monthly, quarterly, or any combination thereof.

E. Upon receipt of the application and other required materials, the department will review the application and will request any additional information which is required in a letter to the applicant.

F. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1200.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1403 (December 1992), LR 49:267 (February 2023).

§1105. Conditions for Retaining the Self-Insurance Privilege

A. The certificate of authority shall be continuous until revoked or suspended by the department, or until it is voluntarily surrendered by the fund.

B. All funds shall be required to submit the following documents and reports:

1. - 2. ...;

3. annual actuarial reports prepared by a qualified actuary;

4. changes in items required to be furnished under §1103.D.1, 2, 3, 4, 6, 10, 11, and 12 within 10 days of the effective date of such change;

5. any other documents permitted or required by regulation or statute.

C. - F. ...

G. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1200.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1403 (December 1992), LR 49:268 (February 2023).

§1107. Financial and Actuarial Reports for Group Self-Insurance Funds

A. Each fund shall submit a current 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 annual financial statement audited by an independent certified public accountant 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 annual financial statement audited by an independent certified public accountant 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, on a form acceptable to 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.

D. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1200.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1403 (December 1992), LR 49:268 (February 2023).

§1109. Excess Insurance Requirements for Group Self-Insurance Funds

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. ...

C. - E. Repealed.

F. The commissioner shall deny the use of a retention requested by a fund if he finds:

F.1. - G. ...

H. Repealed.

I. - L. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1200.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1403 (December 1992), LR 49:269 (February 2023).

§1111. Indemnity Agreement

A. ...

B. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1200.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1403 (December 1992), LR 49:269 (February 2023).

§1113. Rates and Reporting of Rates

A. Each fund shall file rates on an actuarially justified class code basis with the department and may use the rates 90 days after filing, unless the department disapproves the use of such rates within the 90-day period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1200.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1403 (December 1992), LR 49:269 (February 2023).

§1115. Authorized Investments for Group Self-Insurance Funds

A. Amounts not needed for current obligations may be invested by the board of trustees in deposits in federally insured banks or savings and loan associations or in direct obligations of the United States government or direct obligations of the state of Louisiana, or in any other investments permissible under R.S. 23:1196.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1200.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1403 (December 1992), LR 49:269 (February 2023).

§1117. Premium Audit

A. All self-insurance funds shall determine the normal premium due from each member in each policy year based on actual audited payroll. Audits shall consist of physical on-site audits, mail self-audits, telephone audits, or virtual audits. The requirements set forth herein shall apply to the fund and its present or former members. Funds shall be responsible for compliance with this Subsection by either an independent payroll audit firm or by the fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1200.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1403 (December 1992), LR 49:269 (February 2023).

§1121. Group Membership; Termination, Liability

A. An employer joining a fund after the group has been issued a certificate of approval shall:

A.1. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1200.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1403 (December 1992), LR 49:269 (February 2023).

§1127. Deficits and Insolvencies

A. In the event that a fund is insolvent, the fund shall file a written plan within 60 days, signed by the board of trustees, detailing the means by which the fund intends to eliminate the insolvency. The means of eliminating the insolvency may include an assessment of the members of the fund. The fund shall also include the timetable for implementation and requirements for reporting to the department. Within 30 days of receiving the plan, the department shall review the plan and notify the fund of the approval or disapproval of the plan.

B. If the department disapproves a plan submitted by the fund or determines that a fund is not implementing a plan in accordance with the plan terms, the department shall notify the fund in writing of such decision or determination.

C. If the fund fails to file a plan to eliminate an insolvency, or should the department notify a fund that a plan has been disapproved or that the fund is not implementing the plan according to the plan, the department shall have the following powers and authority in addition to any other powers and authority granted under law:

1. The department may order the fund to immediately levy an assessment upon its members that will eliminate the insolvency.

2. If the fund fails or refuses to assess its members, the department may levy an assessment upon fund members in the name of the fund.

D. Repealed.

E. Repealed.

F. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1200.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1403 (December 1992), LR 49:269 (February 2023).

§1129. Review of Rate Determination

A. Funds shall provide reasonable means whereby any member aggrieved by the application of the fund's rating system may, in writing, request a review of the manner in which such rating system has been applied in connection with the coverage afforded. The fund shall have 30 days from receipt to grant or deny the request, in writing. If the fund rejects such request or fails to grant or reject such request within such 30-day period, the member may, within 30 days following the expiration of such 30-day period, appeal to the commissioner, who, after a hearing held upon not less than 10 days' written notice to the member and to the fund, may affirm, modify, or reverse such action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1200.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1403 (December 1992), LR 49:269 (February 2023).

§1131. Cease and Desist Orders and Other Penalties

A.1. The department shall have authority to issue cease and desist orders and suspend or revoke the certificate of authority of any fund which the department determines is not in compliance.

2. Upon finding, after notice and opportunity for a hearing, that any person or group has violated any cease and desist order, the commissioner may revoke the group's certificate of authority.

B. Upon the determination that a fund failed to comply with any provision of R.S. 23:1195-1200.17, 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. 23:1200.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1403 (December 1992), amended LR 49:270 (February 2023).

§1135. 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. 23:1191 et seq. The expenses of such examinations shall be paid by the fund being examined.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1200.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1403 (December 1992), amended LR 49:270 (February 2023).

James J. Donelon
Commissioner

2302#063

RULE

**Department of Insurance
Office of the Commissioner**

**Regulation 125—Insure Louisiana Incentive Program
(LAC 37:XIII.Chapter 189)**

The Department of Insurance, pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby amends Regulation 125 regarding the Insure Louisiana Incentive Program.

Louisiana is currently experiencing a crisis in the availability and affordability of insurance for residential and commercial properties. Louisiana property owners and their insurers sustained catastrophic losses in 2020 and 2021 from hurricanes Laura, Delta, Zeta, and Ida. As the result of their losses and their assessment of the risk of loss from future storms, many property insurers have substantially reduced their participation in the voluntary market for residential and commercial property insurance. With fewer property insurers in the voluntary market, competitive pressure on premium rates is reduced. Current underwriting practices have resulted in a substantial increase in the number of Louisiana

property owners forced to obtain their property insurance coverage or their coverage for wind peril from Louisiana Citizens Property Insurance Corporation, the state insurer of last resort.

The Insure Louisiana Incentive Program was enacted through the passage of Act 754 of the 2022 Regular Session of the Louisiana Legislature for the purpose of cooperative economic development and stability in Louisiana by encouraging additional property insurers to participate in the voluntary property insurance market to increase the availability of property insurance, increase competitive pressure on insurance rates, and reduce the volume of business written by the Louisiana Citizens Property Insurance Corporation.

Regulation 125 sets forth standards and procedures relative to a property insurer's participation in the Insure Louisiana Incentive Program. Through cooperative endeavor agreements, property insurers participating in the program may be awarded matching grant funds in order to achieve the requirements of Act 754. Regulation 125 further specifies these requirements and conditions thereof for qualified property insurers. This Rule is hereby adopted on the day of promulgation.

Title 37

INSURANCE

Part XIII. Regulations

**Chapter 189. Regulation Number 125—Insure
Louisiana Incentive Program**

§18901. Purpose

A. The purpose and intent of Regulation 125 is to exercise the authority and carry out the duties and responsibilities of the commissioner for implementation and regulation of the Insure Louisiana Incentive Program, hereinafter referred to as the "Incentive Program". Regulation 125 sets forth rules and procedural requirements which the commissioner deems necessary for participation in the Incentive Program by qualified property insurers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:270 (February 2023).

§18903. Authority

A. Regulation 125 is promulgated pursuant to the authority and responsibility delegated to the commissioner under R.S. 22:2361 through 2371 and pursuant to the general powers granted by law to the commissioner and the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:270 (February 2023).

§18905. Applicability and Scope

A. Regulation 125 applies to all property insurers with respect to their qualification and participation in the Incentive Program.

B. Regulation 125 governs all aspects of the Incentive Program including, but not limited to, the invitation and application process for grants, the qualifications of grantees, the award of grants, the use of grant funds, the reporting

requirements for grantees, the requirements for matching capital funds, the requirements for minimum capital and surplus, the requirements for earned capital, the requirements for default, and other regulation and administration of the Incentive Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:270 (February 2023).

§18907. Definitions

A. For the purposes of Regulation 125, the following terms are defined as follows:

Authorized Insurer—an insurer with a certificate of authority in Louisiana.

Commissioner—the Commissioner of Insurance of the state of Louisiana.

Department—the Department of Insurance of the state of Louisiana.

Domestic Insurer—an insurer formed under the laws of the state of Louisiana that has been authorized by the department to sell insurance products in the state of Louisiana.

Earning Period—the timeframe, including any extension granted by the commissioner, in which the grantee can earn 20 percent or the pro rata share of the grant award.

Grantee—a property insurer to whom a grant is made from the Incentive Program Fund.

Incentive Program (where capitalized)—the Insure Louisiana Incentive Program as created, authorized and administered pursuant to R.S. 22:2361 et seq., and Regulation 125.

Incentive Program Fund (where capitalized)—the Insure Louisiana Incentive Fund established and created pursuant to R.S. 22:2371 and Regulation 125.

Legal Interest—interest at the rate fixed in R.S. 13:4202.

Net Written Premiums—the total premiums, exclusive of assessments and other charges, paid by policyholders to an insurer for policies that comply with Regulation 125, minus any return premiums or other premium credits due policyholders, as defined in R.S. 22:2369(A). Premium received from participation in the depopulation or take-out program of Louisiana Citizens Property Insurance Corporation shall be included in net premiums written.

Newly Allocated Insurer Capital—capital committed by an insurer to match any grant funds received from the Incentive Program Fund.

Reporting Period—the financial statement reporting date of March 31, June 30, September 30, and December 31 of each respective year in the Incentive Program.

Surplus Lines Insurer—an insurer without a certificate of authority that meets the eligibility criteria of R.S. 22:435(A)(2) and (B) and from which a licensed surplus lines broker may procure insurance under the provisions of R.S. 22:432.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:271 (February 2023).

§18909. Matching Capital Grants

A. From funds appropriated by the legislature for the Incentive Program Fund established and created in the state treasury under R.S. 22:2371, the commissioner may grant matching capital funds to qualified property insurers in accordance with the requirements of R.S. 22:2361 through 2371 and Regulation 125.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:271 (February 2023).

§18911. Public Invitation for Grant Applications

A. Pursuant to R.S. 22:2361 et seq., and Regulation 125, the commissioner shall issue an initial public invitation to property insurers to submit applications for grants under the Incentive Program.

B. The invitation shall be published for at least a 30-day period on the department's web site and in state and national insurance journals and publications as the commissioner deems appropriate.

C. The invitation shall describe the Incentive Program and provide general information about the grant application process.

D. The invitation shall set a deadline for receipt of grant applications. All grant applications should be submitted to the department either by certified mail, return receipt requested, actual delivery by a commercial interstate courier, or electronic mail. Failure to timely submit a grant application may render the property insurer ineligible to participate in the Incentive Program. However, for good cause shown, the commissioner may extend the deadline and consider applications received after the deadline or give a property insurer the opportunity to cure a non-substantive deficiency in the application.

E. In the event that all monies in the Incentive Program Fund are not allocated in response to the first invitation, the commissioner may issue a second invitation for grant applications in the form and pursuant to the procedures utilized for the first invitation.

F. In the event that all monies in the Incentive Program Fund are not allocated in response to the second invitation, the commissioner may issue a third invitation for grant applications in the form and pursuant to the procedures utilized for the first and second invitations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:271 (February 2023).

§18913. Applications

A. The department shall provide an application form to be fully completed by grant applicants. The application form may be revised by the department as it deems appropriate.

B. The grant application shall require the property insurer to designate a point of contact with a telephone number, email address and physical address to represent the property insurer on all matters pertaining to the grant process and the Incentive Program.

C. The grant application shall be filed contemporaneously with the application for licensure with the department by a surplus lines insurer. The application for licensure expresses the applicant's intent to become licensed in this state as an authorized insurer and, if specifically requested in writing by the grant applicant in the application for licensure, will be processed contingent upon approval of the allocation of a grant award.

D. Only fully completed grant applications or those deemed acceptable by the commissioner shall be considered for a grant award.

E. The grant application shall be submitted to the department's Office of Financial Solvency, as outlined in the invitations issued under §18911.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:271 (February 2023).

§18915. Qualifications for Applying for Grant Funds

A. Minimum Solvency Requirements. Grants shall be made only to property insurers who initially satisfy and thereafter maintain the following minimum solvency requirements:

1. capital and surplus in an amount not less than \$10,000,000;

2. a property insurer with a financial strength rating that meets the following requirements:

- a. AM Best Company "B" or better; or
- b. Demotech, Inc. "A" or better; or
- c. Kroll Bond Rating Agency "BBB" or better; or
- d. S&P Global "BBB" or better.

Property insurers rated by more than one rating company need only meet one of the rating requirements.

3. risk-based capital ratio of 400 percent at the initial grant award, which shall be maintained during the property insurer's participation in the Incentive Program; and

4. sufficient reinsurance to demonstrate that its reinsurance program is sufficient for the amount of business to be written pursuant to the Incentive Program.

B. Certificate of Authority

1. A property insurer must have an existing certificate of authority in Louisiana for the line or lines of insurance that the property insurer applicant will write pursuant to the Incentive Program or documentation that an application for such licensure has been filed with the Company Licensing Division of the department contemporaneous with the filing of the grant application.

C. Satisfactory Prior Experience

1. Grants shall be made only to property insurers with satisfactory prior experience in writing property insurance or to new property insurers whose management has satisfactory experience in property insurance. The grant application shall accurately disclose the prior experience of property insurers and their management. The commissioner may request additional information from the applicant property insurer and conduct such investigation of prior experience as the commissioner deems appropriate.

2. The commissioner shall determine whether an applicant property insurer has adequate or satisfactory prior experience.

D. Other Requirements

1. Applicant shall maintain premium to surplus ratio, net of reinsurance, no greater than 3 to 1.

2. Applicant shall not insure more than 10 percent of its surplus in any one risk pursuant to R.S. 22:573.

3. Applicant shall maintain gross premium to surplus ratio no greater than 8 to 1.

4. Without prior approval of the commissioner, applicant shall not write more than 15 percent of the net written premiums in any one parish.

5. Applicant shall make a commitment of capital of not less than two million dollars to write property insurance in this state that complies with the requirements of R.S. 22:2369 and §18923 of Regulation 125. Grants from the Incentive Program Fund shall match the newly allocated property insurer capital funds at a ratio of one dollar of allocated property insurer capital funds for each dollar of state capital grant funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:272 (February 2023).

§18917. Award and Allocation of Grants

A. Subject to the requirements of this Section, to carry out the purpose and intent of the Incentive Program, the commissioner shall award and allocate grants as the commissioner deems appropriate among qualified property insurers who have applied for grants. The commissioner has the discretion to create an advisory committee to assist in the analysis of grant applications. If created, the advisory committee will be composed of up to five members, designated to serve thereon by the commissioner.

B. The factors considered in awarding grants shall include, but are not limited to, the following:

1. the financial strength and satisfactory prior experience of the applicant;

2. the ability of the applicant to invest new capital and to comply with the other requirements of the grant;

3. the potential of the applicant for providing property insurance as required by the Incentive Program at reasonable and competitive rates, particularly for property owners in the following Louisiana parishes: Acadia, Allen, Ascension, Assumption, Beauregard, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, Sabine, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Vernon, Washington, West Baton Rouge, and West Feliciana;

4. the marketing and claims handling capability and experience of the applicant, and particularly its ability to market property insurance in the parishes listed in §18917.B.3 and to handle future claims that may arise;

5. the applicant's longevity in the Incentive Program, including a statement or plan of operation by the applicant demonstrating its intent to remain in this state following the completion of the Incentive Program;

6. the current licensure of the applicant where preference and priority will be given to those admitted property insurers that are currently licensed to do business in this state for the line or lines of business that are the subject of the grant; and

7. any other factors that the commissioner deems applicable, relevant and appropriate in carrying out the purpose and intent of the Incentive Program.

C. For grant applications in response to the initial invitation, the commissioner shall not allocate individual grants of less than \$2,000,000 nor in excess of \$10,000,000.

D. For the initial allocation of grants only, the commissioner shall allocate at least 20 percent of the total amount available for grants to domestic property insurers unless the commissioner has not received sufficient applications from qualified domestic property insurers to allocate such sum.

E. If the commissioner issues a second invitation for grant application, the commissioner shall not allocate individual grants of less than \$2,000,000 nor in excess of \$10,000,000. Property insurers who have been allocated a grant in response to the first invitation may apply for and receive an additional grant, provided the total of the grants to a property insurer does not exceed \$10,000,000.

F. If the commissioner issues a third invitation for grant application, the commissioner shall not allocate individual grants of less than \$2,000,000 nor in excess of \$10,000,000. Property insurers who have been allocated a grant in response to the first or second invitations may apply for and receive an additional grant, provided the total of the grants to a property insurer does not exceed \$10,000,000.

1. Grants made pursuant to a third invitation may be made to property insurers providing coverage against damage to an existing dwelling. Such grant shall be made only as to those policies transferred from an existing dwelling to a new dwelling, provided the risk of catastrophe associated with the new dwelling is the same as or no greater than the level of risk of catastrophe associated with the existing dwelling.

2. Grants shall also be made under the provisions of this Subsection to any property insurer that was forced to reduce coverage, or drop coverage entirely, on existing dwellings in order that the property insurer maintain its financial stability or solvency. A grant made pursuant to this Paragraph shall be contingent on the property insurer reinstating such former coverage or better coverage on the existing dwellings.

G. In no event shall the total amount of the grant to a property insurer exceed 20 percent of that property insurer's capital and surplus as reported to and verified by the department.

H. Prior to the award of any grant pursuant to the provisions of this Chapter, the grant shall be subject to the review and approval of the Joint Legislative Committee on the Budget. The commissioner shall provide written notice to the committee of the grant awards that have been approved. Upon written approval by the committee, the commissioner will be authorized to award the grant and deliver the amount of the grant to the grantee from monies in the Incentive Program Fund.

I. In the event that monies remain in the Incentive Program Fund after allocations pursuant to the third

invitation, the commissioner shall cause all remaining monies to be returned to the state general fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:272 (February 2023).

§18919. Authorized Insurers

A. A surplus lines insurer may apply for a grant, provided that the surplus lines insurer shall, contemporaneously with the grant application, file an application for licensure with the department for the line or lines of insurance for which it must be authorized and licensed to write for a grant award. If specifically requested in writing by the grant applicant in the application for licensure, such application will be processed contingent upon approval of a grant award.

B. A surplus lines insurer must obtain a certificate of authority to do business in Louisiana as an authorized insurer before it may actually receive grant funding.

C. If the surplus lines insurer does not apply timely to be admitted or subsequently is not approved for a certificate of authority, the surplus lines insurer shall not be entitled to receive a grant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:273 (February 2023).

§18921. Certification of Deposit

A. Within 10 days of receipt of any Incentive Program Funds, the grantee shall provide to the commissioner written certification signed by two principal officers of the grantee that the Incentive Program Funds have been deposited in an account held in the name of the grantee and pledged to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:273 (February 2023).

§18923. Property Insurance Requirements

A. The grantee shall write new property insurance in Louisiana of the types described in R.S. 22:2369 and this Section of Regulation 125 with net written premiums of at least a ratio of \$2 of premium for each \$1 of the total of newly allocated property insurer capital combined with the grant from the Incentive Program Fund. Thus, if the grantee allocates \$2,000,000 in capital and receives a matching state grant of \$2,000,000, the grantee must write property insurance in Louisiana with net premiums of at least \$8,000,000.

B. To comply with the requirements of the grant, new property insurance written by the grantee shall be residential, commercial, mono-line, or package property insurance policies in this state and shall include coverage for wind and hail with limits equal to the limits provided for other perils insured under such policies.

C. The net written premium requirements of this Section shall be satisfied only by new property insurance coverages reported on the Annual Statement State Page filed with the

department under lines 1 (Fire), 2.1 (Allied Lines), 3 (Farmowners), 4 (Homeowners), or 5.1 (Commercial Multi-peril Non-liability).

D. Grantees shall also comply with the following.

1. In the first 24 months after receipt of matching capital fund grants, the grantee shall write at least 50 percent of the net written premiums for policyholders whose insured property is located in the parishes listed in §18917.B.3. The grantee shall maintain this net written premium ratio over five years to fully earn the matching capital fund grant in accordance with R.S. 22:2370 unless an extension has been granted by the commissioner under R.S. 22:2370.B or §18929.C of Regulation 125.

2. The net written premium ratio of §18923.D.1 applies only to the net minimum premium required under §18923.A. Thus, the grantee may write additional Louisiana property coverage without regard to the ratio required by §18923.D.1.

E. The requirements of the grant that must be satisfied by the grantee are illustrated by the following example assuming a grant of \$2,000,000.

1. Example

a. The grantee is awarded a \$2,000,000 grant. Within 10 days of receipt of the grant of Incentive Program Funds, the grantee must match the grant with newly allocated capital funds of at least \$2,000,000 and provide written certification of compliance to the department. In the first 24 months after receipt of the grant, the grantee must write property insurance in Louisiana with net written premiums of at least \$8,000,000. In the first 24 months after receipt of the grant, the grantee must write at least \$4,000,000 of the net written premiums for policyholders whose insured property is located in the parishes listed in §18917.B.3. Grantees shall maintain this net written premium ratio over five years to fully earn the matching capital fund grant in accordance with R.S. 22:2370. Compliance with the requirements for the second year and for each succeeding year must be demonstrated on the grantee's annual reports.

F. Grantees shall also satisfy the requirements for licensing, form filings, rate filings, and any other applicable provisions contained in Title 22.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:273 (February 2023).

§18925. Funding Schedule

A. Unless expedited funding is requested by the grantee and authorized by the commissioner, a grant that has been fully approved shall be funded on the next regular quarterly period thereafter, i.e., January 1, April 1, July 1, or October 1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:274 (February 2023).

§18927. Reporting Requirements

A. Grantee shall segregate and report any grants received on the line titled "Aggregate Write-In for Special Surplus

Funds" in the NAIC Annual and Quarterly Statement Blanks.

B. Grantee shall report annually by March 1 and quarterly by May 15, August 15, and November 15 of each year on a form acceptable to the commissioner the following information for the preceding year and quarter ends:

1. the amount of premium written by parish under the Incentive Program;

2. the amount of premium by parish associated with properties located in the parishes listed in §18917.B.3.

3. the amount of premium by parish taken-out from the Louisiana Citizens Property Insurance Corporation.

4. the amount of premium by parish, including and in addition to that written under the Incentive Program.

C. Grantee shall report annually by June 1, detail on the catastrophe reinsurance program maintained, including retentions, limits, reinstatements, as well as the current ratings of each reinsurer. In addition, the report shall contain the modeled Probable Maximum Loss for a 1 in 50, 1 in 100, 1 in 150, 1 in 200 and 1 in 250 event, including the models and versions utilized.

D. Grantee shall report quarterly by May 15, August 15, and November 15 risk-based capital for the preceding quarter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:274 (February 2023).

§18929. Compliance

A. The commissioner shall conduct an examination under R.S. 22:1981, financial analysis under R.S. 22:1984 and/or investigation annually, or more often as the commissioner deems necessary to determine the grantee's compliance with the requirements of the grant, as per R.S. 22:2361 et seq., and Regulation 125. In addition to the requirements of R.S. 22:2361 et seq., the department may require such reports and/or conduct such examinations, financial analysis or investigations as the commissioner deems necessary to verify compliance with the property insurance requirements set forth in the Incentive Program and Regulation 125.

B. If the commissioner determines that a grantee has complied with the terms of the grant, the commissioner shall notify the grantee in writing that the grantee has earned the 20 percent portion of the grant pursuant to R.S. 22:2370.

C. If the commissioner determines that the grantee shows promise of future compliance, the commissioner may grant an extension of not more than one year to a grantee who has failed to satisfy all requirements of the grant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:274 (February 2023).

§18931. Earned Capital

A. A grantee who has received a grant is entitled to earn the grant at the rate of 20 percent per earning period for the last 12 months of that earning period in which the grantee is in compliance with the requirements of R.S. 22:2361 et seq., and Regulation 125, such that the grantee may earn the

entire grant after five years of full compliance with the requirements.

B. The grantee may begin to earn the grant from the reporting period in which the grantee first demonstrates that its net written premiums have reached compliance with all requirements of §18923.D.1. The grantee will earn 20 percent of the grant in each 12-month period thereafter in which the grantee demonstrates that it has maintained compliance with all requirements for net written premiums. Thus, if in compliance with §18923.D.1, the grantee may begin to earn the grant at the end of the first year.

C. Upon verification of the net written premium requirements during the preceding 12 months, the commissioner will issue written declaration that the grantee has earned 20 percent of the grant or a pro rata share thereof awarded to the grantee. No funds may be earned by the grantee until it receives official notification from the commissioner.

D. If the grantee does not meet the grant requirements during any year but shows promise of future compliance based on good cause having been demonstrated, the commissioner may extend the period of time from five years in order for the grantee to earn the entire grant. The extension may be granted for up to one year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:274 (February 2023).

§18933. Declaration of Default

A. The commissioner may declare a grantee in default of the requirements for a grant should it be found that any of the following exists:

1. The grantee fails at any time to meet the specific minimum requirements of §18915.A.1-4. The commissioner may take into consideration the effects of the Incentive Program, including efforts demonstrated by the grantee, when monitoring compliance with this criteria.

2. The grantee fails to maintain a certificate of authority for the line or lines of insurance written pursuant to the grant program.

3. The grantee fails to meet the specific requirements of §18923.

4. The grantee fails to comply with any other applicable provisions of R.S. 22:2361 et seq., or Regulation 125.

B. If the commissioner determines that the grantee is in default, the commissioner shall notify the grantee in writing of such default. Any grantee declared in default by the commissioner shall have 30 days from the date of the declaration of default to request reconsideration by the commissioner. The written request for reconsideration shall set forth, in detail, each and every reason why the grantee is entitled to the relief requested, including any documents tendered in support thereof. The commissioner shall have 30 days from the mailing of the request for reconsideration to review it and render a decision. The commissioner's decision upon reconsideration may be appealed to the division of administrative law in accordance with R.S. 22:2191 et seq. Unless modified on reconsideration or appeal, the default is effective from the date of the original declaration, and the

grantee shall not be eligible to continue its participation in the Incentive Program unless the default is for failure to meet the requirements referenced in §18933.A.3.

C. The grantee in default is liable for and shall repay all grant funds that have not been earned by the grantee, plus legal interest as defined in R.S. 13:4202(B) from the date of the commissioner's default declaration. In the event of default, a portion of the grant award for the current year may be earned on a pro rata basis to give credit for premiums written under the Incentive Program. Repayment on a pro rata basis shall be determined using a method prescribed by the commissioner. If a request for reconsideration is not timely made, repayment is due upon the expiration of 30 days from the declaration of default. If a request for reconsideration is timely made and denied, repayment is due within 10 days of the denial of the reconsideration request.

D.1. In determining the pro rata earnings, the commissioner shall divide the actual amount of written premiums by the amount required to be written under the Incentive Program, in each of the following categories:

a. policyholders whose insured property is located in the parishes listed in §18917.B.3; and

b. the total amount of net premiums written by the grantee under the Incentive Program.

2. Each category is weighted equally at 50 percent, and credit shall be given based on the percentage of premiums written per category. The resulting factor is then multiplied by 50 percent of the amount the grantee is entitled to earn per category for each year of compliance under the Incentive Program (earned capital). The factor shall not exceed 1.00 for additional writings in any category. The sum of all categories shall equal the pro rata amount earned by the grantee.

E. The requirements for earning on a pro rata basis are illustrated by the following example assuming a grant of \$5,000,000, presuming a maximum earned capital of \$1,000,000 (20 percent per year entitlement assuming full compliance), and the grantee is declared in default.

Example: [The required amounts of premium for each of the two categories are listed in the table below under "Requirement." Each requirement equates to 50% of the earned capital for the earning period or \$500,000. The "Actual" column represents the actual amount of writings by the grantee. The "Factor" column is the actual amount of writings divided by the requirement in each category. The "Earned" column represents the factor multiplied by \$500,000. Thus, under this example, the amount of money earned by the grantee on a pro rata basis is \$775,000.]

Category	Requirement	Weight	Actual	Factor	Earned
Total Net Written Premium	\$20,000,000	50 percent	\$15,000,000	.75	\$375,000
Parishes listed in §18917.B.3	\$10,000,000	50 percent	\$8,000,000	.80	\$400,000
				Total:	\$775,000

F. The commissioner may institute legal action to recover all sums due by the grantee in default in the Nineteenth Judicial District Court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:275 (February 2023).

§18935. Cooperative Endeavor Agreements

A. In furtherance of R.S. 22:2361 et seq., and in accordance with R.S. 22:2363.A, the grantee shall execute a cooperative endeavor agreement with and in a form prescribed by the commissioner subject to approval by the Office of State Procurement of the Division of Administration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:276 (February 2023).

§18937. Severability

A. If any provision of Regulation 125 or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of Regulation 125 that can be given effect without the invalid provision or application, and to that end, the provisions of Regulation 125 are severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:276 (February 2023).

§18939. Confidentiality

A. Any and all records, documents and information associated with the Incentive Program that are deemed confidential or privileged pursuant to R.S. 44:1 et seq., Title 22 or any state or federal law will remain confidential or privileged.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:276 (February 2023).

§18941. Effective Date

A. This regulation shall become effective upon final publication in the *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:276 (February 2023).

James J. Donelon
Commissioner

2302#026

RULE

**Department of Natural Resources
Office of Conservation**

Rule Reorganization
(LAC 43:XI:Chapters 1-65)

The Department of Natural Resources, Office of Conservation has reorganized rules in Part XI by moving Sections into topic-driven Chapters to improve readability.

Title 43

NATURAL RESOURCES

Part XI. Office of Conservation—Pipeline Division

Subpart 1. Natural Gas and Coal

Chapter 1. General

§103. Reports

(Formerly §117)

A. All reports required to be submitted to the commissioner under the Act shall be on forms approved by him and filed in accordance with schedules set by him. The commissioner may at his discretion grant extensions of time to file said reports upon good cause shown.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501-599, 601-606.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 4:77 (March 1978), amended LR 7:81 (March 1981), repromulgated LR 49:276 (February 2023).

Chapter 3. Applications

§301. General

(Formerly §103)

A. All applications to the commissioner, pursuant to Chapter 7 of Title 30 of Louisiana Revised Statutes of 1950, or Article IX of the Louisiana Constitution 1974, shall comply with these rules of procedure.

B. Except as otherwise provided in these rules of procedure or in the commissioner's regulations implementing the Natural Resources and Energy Act of 1973, all applications shall be made in duplicate in the form required by the commissioner and to the extent required, shall contain an outline and explanation of the nature of the proposal and shall be accompanied by such attachments, if any, as are required for such applications under the provisions of Chapter 7 of Title 30 of Louisiana Revised Statutes of 1950 and applicable regulations adopted by the commissioner pursuant thereto, and Article IX of the Louisiana Constitution 1974. In those situations where a public hearing is required, applications shall be submitted to the commissioner in triplicate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501-599, 601-606.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 4:76 (March 1978), amended LR 7:80 (March 1981), repromulgated LR 49:276 (February 2023).

§303. Applications Not Requiring Public Notice (Formerly §105)

A. Applications to the commissioner for which no public notice is required shall be made in writing and shall be in the form required by the commissioner and shall contain such information as is required for such applications under the applicable regulations.

B. If, in applicant's opinion, the public interest requires immediate action, the applicant may request a decision by telephone, and if approval is granted, the application must be submitted in writing within 72 hours thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501-599, 601-606.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 4:76 (March 1978), amended LR 7:80 (March 1981), repromulgated LR 49:277 (February 2023).

§305. Applications Requiring Public Notice (Formerly §107)

A. Public notice with respect to all applications for which a public hearing is required shall be given by publication of a notice of said hearing in the official journal of the state of Louisiana not less than 10 days prior to the hearing. Public notice shall be in writing and shall include:

1. a statement of the time, place and nature of the hearing and the time within which a response is required;
2. a statement of the legal authority and jurisdiction under which the hearing is to be held;
3. a reference to the particular sections of the statutes, rules and regulations involved; and
4. a concise statement of the matters asserted.

B. The commissioner shall mail a copy of the public notice to the applicant by certified mail. A copy of the public notice, with a copy of the application, shall be mailed by the applicant to all interested parties within two working days of the receipt of said public notice from the commissioner.

C. Notice to owners of land to be traversed by a pipeline, for all purposes under the Act and these regulations, shall be sufficient and shall be reasonable notice if mailed to the persons and to the addresses identified in the ad valorem tax records of the parishes as owners of the traversed lands.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501-599, 601-606.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 4:76 (March 1978), amended LR 7:80 (March 1981), repromulgated LR 49:277 (February 2023).

§307. Applications Requiring Public Hearing (Formerly §109)

A. No order, ruling or finding may be made or other action taken with respect to R.S. 30:553, 554, 555(A) (C), 555(F), 555(H), 556, 557, 558, 571 through 576, 593, 596, 598(E), 599, 722, 723, and 607 without a public hearing after due notice to all interested parties unless the right to a public hearing is waived pursuant to the provisions of the Administrative Procedure Act, as amended, (R.S. 49:951-968) or the Natural Resources and Energy Act of 1973 expressly provides that no hearing is required in that instance.

B. Applications to the commissioner of conservation for which a public hearing is required shall be submitted in writing, be verified under oath, and shall be in a form and contain such information as is required by the commissioner. The hearing on the application shall be noticed in accordance with §311. The hearing date of the application shall not be less than 10 days following the date of publication of notice.

C. Interested parties who wish to object to said application or participate in the hearing must file a petition or notice with the commissioner and the applicant within five days following the receipt by such interested parties of notice of the hearing. Petitions or notices filed in connection with the application shall set forth clearly and concisely the facts from which the nature of the petitioner's alleged right or interest can be determined, the grounds of the proposed participation, and the position of the petitioner in the proceeding so as to fully and completely advise the parties and the commissioner as to the specific issues of fact or law to be raised concerning public interest, provided however, that the right to participate in a proceeding commenced under this Chapter shall not extend to objections directed solely to the matters involving rights-of-way including, but not limited to, the public purpose and necessity to be served in an expropriation thereof or the compensation therefor which is a judicial question pursuant to the Constitution of the state of Louisiana 1974, Article 1, Section 4.

D. The commissioner, either upon his own motion, or at the request of an interested party or the applicant, may call a conference of the parties to a proceeding at any time, if in his opinion, such a conference would resolve or narrow the issues in controversy or assist in the conduct of the hearing.

E. If no objection to the application is timely filed by an interested party, in accordance with the provisions of this rule, it will be unnecessary for the applicant to be present or to be represented at the hearing, and evidence shall be filed by affidavit or in such other form as is acceptable to or permitted by the commissioner who shall render an order based upon the record in the proceeding. The order of the commissioner shall be final, subject to reconsideration by him upon application for rehearing by the applicant or interested party filed within 10 days from the date of its entry.

F. If the commissioner, in his judgment, determines that an emergency exists, which in the public interest, requires action on the application prior to the hearing date or the minimum 10-day notice period herein required, the commissioner may act on the application and issue a temporary order; however, such emergency authorization shall remain in force no longer than 15 days from its effective date in any event, a temporary order shall expire when the commissioner's decision on the application after notice and hearing becomes effective.

G. An interested party who fails to comply with the requirements of the this rule, may, at the commissioner's discretion, be precluded from introducing witnesses or from presenting evidence at the hearing; however, any person shall be permitted to cross-examine witnesses and make statements confined to his position in the matter.

H. Hearings on applications for approval to connect an intrastate natural gas pipeline, gas gathering line or coal slurry pipeline to an interstate natural gas pipeline or coal slurry pipeline filed pursuant to R.S. 30:555.H and 607 and Article IX of the Louisiana Constitution 1974 shall be held not less than 10 days after notice given in the manner provided in §311. Provided, however, that if the commissioner, in his judgment, determines that an emergency exists, which, in the interest of public health, safety or welfare, requires that said hearing be held on shorter notice, said emergency hearing may be held on any abbreviated notice, but not less than three days following the date of publication of notice of said hearing in the official journal of the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501-599, 601-606.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 4:77 (March 1978), amended LR 7:80 (March 1981), repromulgated LR 49:277 (February 2023).

§309. Applications and Notices (Formerly §111)

A. All applications and notices filed pursuant to these rules of procedure shall contain a list of the names and addresses of the interested parties and show that a diligent effort has been made to obtain this list.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501-599, 601-606.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 4:77 (March 1978), amended LR 7:81 (March 1981), repromulgated LR 49:278 (February 2023).

§311. Approvals by the Commissioner for Certain Matters under the Act (Formerly §113)

A. All matters under the Act requiring the approval for permission of the commissioner, and for which no objection thereto has been received within 15 days after due notice, if required, and no public hearing is specifically required may be approved by the commissioner without a public hearing by the issuance of an order, or administratively, on forms and in a manner determined by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501-599, 601-606.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 4:77 (March 1978), amended LR 7:81 (March 1981), repromulgated LR 49:278 (February 2023).

§313. Approvals by the Commissioner for Matters Involving Public Hearing (Formerly §115)

A. As to matters under the Act requiring the approval of the commissioner after a public hearing, the commissioner shall issue his order and findings relative thereto on forms and in a manner determined by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501-599, 601-606.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 4:77 (March 1978), amended LR 7:81 (March 1981), repromulgated LR 49:278 (February 2023).

§315. Applicability of Rules of Procedure (Formerly §119)

A. The rules of procedure set out herein apply only to the provisions of the Act (Chapter 7, Title 30), as implemented by applicable regulations. All other rules of procedure applicable to chapters of Title 30 other than Chapter 7 shall not apply in any manner whatsoever to the Act, or regulations implementing same.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501-599, 601-606.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 4:77 (March 1978), amended LR 7:81 (March 1981), repromulgated LR 49:278 (February 2023).

Chapter 5. Requirements

§501. Certificate of Transportation or License to be Issued Pursuant to the Provisions of §554 or 722 of the Act (Formerly §121)

A. This regulation shall apply to a certificate of transportation issued to a qualified person(s) in accordance with the provisions of Section 554 of the Act or to a license to operate a coal slurry pipeline in accordance with the provisions of Section 722 of the Act.

B. All certificates of transportation heretofore issued by the commissioner of conservation pursuant to Section 554 of the Act, as implemented by §501, shall remain in force and effect pursuant to the terms and conditions thereof.

C. Any qualified person desiring a certificate of transportation, except those covered by Subsection B above or license shall apply to the commissioner for an order therefor upon such forms and in such manner as the commissioner prescribes, and shall furnish such data and information as the commissioner may direct; provided, however, that if a person has filed documents and evidence with the commissioner in accordance with Section 555.C of the Act, as required by -§505, such filing shall be considered by the commissioner in his determination with respect to the issuance of an order hereunder.

D. The commissioner shall issue an order granting a certificate of transportation or license to any qualified applicant if after hearing with due notice by publication in the official state journal and if he finds that the applicant is able and willing to perform properly the service proposed and to conform to the provisions of Chapter 7 of Title 30 of the Revised Statutes of the state of Louisiana and the requirements, rules and regulations of the commissioner thereunder, and that the proposed issuance of the certificate or license is or will be required by the present or future public interest.

E. All persons receiving a certificate of transportation or license shall be vested with all of the rights and privileges granted and extended under Section 554 or 722 of the Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501-599, 601-606.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 4:77 (March 1978), amended LR 7:82 (March 1981), repromulgated LR 49:278 (February 2023).

§503. Requirements for Abandonment of All or Any Portion of a Facility, or Any Service Rendered by Means of Such Facility under §§555.B and 722 of the Act (Formerly §123)

A. This regulation shall apply to requirements of an intrastate natural gas or coal slurry transporter to abandon all or any portion of a facility, or any service rendered by means of such facility, pursuant to the provisions of Section 555.B or 722 of the Act; provided, however, that this regulation shall not apply to any coal slurry transporter then being regulated by a federal agency having jurisdiction. Application for abandonment shall be filed in accordance with the regulation and §§305 and 307. However, an application for the abandonment of a sale or transportation contract or related facility shall be submitted to the commissioner at least 30 days, but no more than six months, prior to the contract termination date, or prior to the proposed date of termination of a service or abandonment of a facility in the absence of a contract. The commissioner may for good cause shown grant an exception to said time limitations.

B. Where an abandonment of service or facility is proposed, the interested parties shall be the signatory parties to the contracts affecting said services or facilities and the owners or operators of such facility to be abandoned.

C. The commissioner shall issue his permission and approval for the abandonment of all or any portion of the facilities of an intrastate natural gas or coal slurry transporter subject to the jurisdiction of the commissioner, or any service rendered by means of such facilities, only after the intrastate natural gas or coal slurry transporter shall have demonstrated, to the satisfaction of the commissioner, that the available supply of natural gas, coal, or lignite is depleted to the extent that the continuance of service is unwarranted or that the public interest and energy needs permit such abandonment. However, the commissioner may deny abandonment based upon satisfactory evidence that a user of gas or coal or lignite located in the state, a majority of which users' employees are Louisiana residents, or which user produces goods or services for Louisiana residents, including gas or electric service, is or will be unable to secure adequate supplies of natural gas or coal or lignite to maintain employment, production, or service levels if abandonment is granted. Application for abandonment shall be made to the commissioner in writing, executed under oath by an individual having authority to execute same with a copy to all interested parties and shall include the following information:

1. description and location, if applicable, of the facility, or portion thereof, or the service rendered by such facility, or portion thereof, to be abandoned;
2. if a gas, coal or lignite sale or transportation contract:
 - a. the exact legal name and status of the seller and purchaser and the name, title and mailing address of the person(s) to whom communications concerning the notice are to be addressed;
 - b. date of contract;
 - c. term of contract;
 - d. quantities of gas, coal or lignite:

- i. maximum daily quantity seller is obligated to deliver: thousands of cubic feet per day (MCF/Day), millions of British thermal units per day (MMBTU/Day) or tons per day (TON/Day);

- ii. minimum daily quantity purchaser is obligated to receive: MCF/Day, MMBTU/Day or tons per day (TON/Day);

- iii. measurement—pressure base;

- iv. service—firm or interruptible. Give conditions under which deliveries or receipts can be interrupted or curtailed and minimum level of daily volume during interruption or curtailment;

- e. type of service: (industrial sale, sale for resale, transportation or other);

- f. point(s) of delivery;

- g. delivery pressures—minimum, maximum;

- h. price;

3. reasons for abandonment;

4. prospective date of abandonment;

5. where an agreement as to the terms and conditions of abandonment has been reached between the transporter and the person or persons who are parties to a contract relating to the use of facilities or services to be abandoned, the application for abandonment shall be accompanied by a letter of agreement, signed by the parties or an authorized agent of the parties, verified under oath;

6. Forms PL-1(A) for abandonment of service and PL-1(B) for abandonment of facility may be obtained from the Office of Conservation.

D. Applications for pre-granted abandonment of emergency or temporary sales and connections necessitated thereby, including those sales to supply an immediate and necessary demand for gas, coal, or lignite, shall contain the information required under Subsection C above, and may be administratively approved by the commissioner.

E. The commissioner may request such additional information as in his opinion is reasonably necessary in order to properly evaluate the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501-599, 601-606.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 4:79 (March 1978), amended LR 7:82 (April 1981), repromulgated LR 49:279 (February 2023).

§505. Transportation of Intrastate Natural Gas, Coal or Lignite and the Construction, Extension, Acquisition, and Operation of Facilities or Extension Thereof Pursuant to Provisions of §§555.C and 722 of the Act (Formerly §125)

A. This regulation shall apply to the requirements placed by Sections 555.C and 722 of the Act upon a person relative to the transportation of intrastate natural gas, coal or lignite, and the construction, extension, acquisition and operation of facilities or extensions thereof.

B. All applications by a person required to be filed with the commissioner of conservation pursuant to the provisions of Sections 555.C and 722 of the Act shall be in writing, verified under oath by an individual having authority to execute same, shall be in the form approved by the commissioner, and shall contain the following information:

1. the exact legal name of the applicant; its principal place of business; whether an individual, partnership, corporation or otherwise; the state under the laws of which applicant was organized or authorized; if a corporation, a certificate of good standing and authorization to do business from the secretary of state of Louisiana, the location and the mailing address of applicant's registered office, the name and post office address of each registered agent in Louisiana, and the names and addresses of all its directors and principal officers; if a partnership or other similar organization, the names and addresses of its partners of record, officer or other responsible parties of record; applicant's current financial statement or such other information which may be submitted by the applicant and accepted by the commissioner concerning the ability of the applicant to construct, acquire, or operate the proposed facility or extension thereof; and the name, title and mailing address of the person or persons to whom communications concerning the application are to be addressed;

2. the nature of the service rendered by applicant (industrial sale, sale for resale, transportation or other of gas, coal or lignite);

3. a concise description of applicant's existing operations;

4. a table of contents which shall list all exhibits and documents filed with the application;

5. a map(s), of its pipeline system(s), which shall reflect the location and capacity of all compressor sites, all points of connection between such system(s) and pipelines, or pipeline system(s) of other persons, the date of such connections, and all major points of supply;

6. a listing of applicant's gas, coal or lignite sales contracts and gas, coal or lignite transportation contracts within the state of Louisiana on prescribed forms containing the following data:

- a. parties: seller, purchaser, owner, transporter;
- b. date of contract;
- c. term of contract;
- d. quantities of gas, coal or lignite:
 - i. maximum daily quantity seller is obligated to deliver: MCF/Day, MMBTU/Day or TON/Day;
 - ii. minimum daily quantity purchaser is obligated to receive: MCF/Day, MMBTU/Day or TON/Day;
 - iii. measurement—pressure base;
 - iv. service—firm or interruptible;
 - v. give conditions under which deliveries or receipts can be interrupted or curtailed and minimum level of daily volume during interruption or curtailment;
- e. type of service: (industrial, sale for resale, transportation or other);
- f. points of delivery;
- g. delivery pressures: minimum, maximum;
- h. price;

7. a listing of the location of interconnects between applicant's pipeline system(s) and pipeline or pipeline system(s) of other persons.

C. Subsequent filings may be required by the commissioner to complete an evaluation of each pipeline system for the purposes of Sections 555.C and 722 or other Sections of the Act.

1. A person authorized to operate as an intrastate natural gas or coal slurry transporter may incorporate the information required to be filed under Paragraphs B.1, 3, 5, 6 and 7 of this regulation by reference to prior hearing evidence, presented to the commissioner, specifically identifying such prior evidence and the items to be incorporated therefrom.

D. All applications filed shall be noticed on interested parties, and all hearings required under Section 555.C or 722 of the Act shall be in accordance with the rules of procedure of the commissioner. Interested parties shall be as follows:

1. where a new supply of gas, coal or lignite from a producing field(s) or mine in Louisiana is to be connected by a new pipeline, the interested parties shall be:

- a. the owner(s) of the proposed new pipeline;
- b. the owner(s) of an existing pipeline (if different from owner(s) of proposed new pipeline), if any, to which the proposed new pipeline is to be connected;
- c. each seller and each purchaser to the contract or contracts covering the new supply of gas, coal or lignite to be connected, or in the case of gas, coal or lignite to be transported or exchanged, the parties from whom the gas, coal or lignite is to be received, and the parties to whom the gas, coal or lignite is to be delivered;
- d. owner(s) of the land to be traversed by the proposed pipeline in Louisiana;

2. where a new pipeline customer(s) is to be connected, the interested parties shall be:

- a. the owner(s) of the proposed new pipeline;
- b. the owner(s) of an existing pipeline, if any, (if different from the owner or owners of the proposed new pipeline) to which the proposed new pipeline is to be connected and from which pipeline gas, coal or lignite will flow to the proposed new pipeline;
- c. each seller and each purchaser to the contract(s) under which gas, coal or lignite delivered by the new pipeline is to be sold in Louisiana, or in the case of gas, coal or lignite to be transported or exchanged in Louisiana, each party to each transportation or exchange agreement;
- d. owner(s) of the land to be traversed by the proposed pipeline.

E. The commissioner, upon proper showing, shall issue his order in accordance with the application submitted. Provided, however, the order shall expire on its first anniversary date if construction of facilities authorized by said order has not commenced. The commissioner may, upon written request and for good cause shown, extend the expiration date of said order. The commissioner shall be given timely written notice when the construction authorized under this regulation is completed.

F. The commissioner may issue, upon application by a person(s) a temporary order in cases of emergency without notice or hearing pending the application for a permanent order, all in accordance with the rules of procedure of the commissioner.

G. Each transporter shall annually file by April 1 an updated map of its intrastate natural or coal slurry gas pipeline facilities depicting the location and size of all compressors, all points of connection between such facilities

and pipelines of other persons, all major points of supply, and the nominal size of all lines. If none of the above data has changed during the previous year, the applicant shall so notify the commissioner in writing by April 1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501-599, 601-606.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 4:80 (March 1978), amended LR 7:80 (March 1981), repromulgated LR 49:279 (February 2023).

**§507. Intrastate Natural Gas
(Formerly §127)**

A. This regulation shall apply to the price of intrastate natural gas sold by a natural gas company under contracts executed after December 8, 1973, under the provisions of Part V of the Natural Resources and Energy Act of 1973, being Sections 591 through 606 thereof. No contract shall be exempt under the provisions of Section 595.

B. Any and all hearings, investigations, and proceedings conducted or held under Part V of the Act shall be in accordance with the rules of procedure of the commissioner of conservation.

C. Each natural gas company who enters into a contract for the sale of intrastate natural gas shall file with the commissioner, within 30 days after the execution of such contract, one complete copy of said contract and one complete copy of all classifications, practices, and regulations affecting such prices.

D. All notices of contracts, agreements, or understandings, or proposed contracts, agreements, or understandings, which may be submitted to the commissioner pursuant to the provisions of Section 597 of the Act shall be filed on forms approved by the commissioner, shall contain the following information:

1. the exact legal name and status of the purchaser and seller and the name, title, and mailing address of the person(s) to whom communications concerning the notice are to be addressed;

2. parties: seller, purchaser, owner, transporter;
3. date of contract;
4. term of contract;
5. quantities of gas;

a. maximum daily quantity seller is obligated to deliver (MCF/Day or MMBTU/Day);

b. minimum daily quantity purchaser is obligated to receive (MCF/Day or MMBTU/Day);

c. measurement: pressure base;

d. service firm or interruptible. (Give conditions under which deliveries or receipts can be interrupted or curtailed and minimum level of daily volume during interruption or curtailment);

6. type of sale: industrial, sale for resale, transportation or other;

7. point(s) of delivery;

8. delivery pressures: minimum, maximum;

9. price.

E. Unless the commissioner gives notice to the contrary to the parties within 15 days from the date of filing hereunder, any contract, agreement or understanding, or proposed contract, agreement or understanding, filed pursuant to the provisions of Section 597 of the Act shall be deemed to have been accepted or approved by the commissioner without objection and to be in compliance

with the provisions of Part V of the Act. If, however, the commissioner deems it advisable to consider the proposal further, he shall notify the parties accordingly and the matter shall thereafter be processed by the commissioner in accordance with his rules and regulations.

F. All reports to be filed under the provisions of Part V of the Act, exclusive of those permitted or required under Section 597 thereof, shall be filed upon such forms and in such manner as prescribed by the commissioner and as directed by him.

G. The commissioner, upon receipt of a petition from any party to a contract or sale complaining of anything done or omitted to be done by any natural gas company in contravention of the provisions of Part V of this Act, shall pursuant to the provisions of Section 602 of this Act, forward a statement of the complaint to the natural gas company which shall have 20 days from receipt to satisfy the complaint or to answer the same in writing. In the event additional time to answer the complaint is requested by the natural gas company, in writing, the commissioner may, for good cause shown, grant same, but in no case shall the additional time granted exceed 30 days.

H. In connection with filings made with the commissioner by a natural gas company under provisions of Part V of the Act, interested parties shall be the parties to each such contract so filed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501-599, 601-606.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:355 (November 1979), repromulgated LR 49:281 (February 2023).

**§509. Requirements for Connections Pursuant to §§555.H and 722 of the Act and Louisiana Constitution 1974
(Formerly §129)**

A. All applications to the commissioner requesting approval for an intrastate natural gas or coal slurry transporter to connect its system with, move gas, coal or lignite into or receive gas, coal or lignite from another pipeline system in the state of Louisiana, including pipelines or pipeline systems owned by it within the terms of Sections 555.H and 722 of the Act, and Louisiana Constitution 1974, shall contain the following information:

1. point of connection or connections;

2. status or character of each pipeline, specifying whether said line or lines carry intrastate gas, coal or lignite or interstate gas, coal or lignite and whether they have been deemed jurisdictional by the Federal Energy Regulatory Commission or other federal agency;

3. anticipated volumes of natural gas, coal or lignite to be transferred or exchanged from one pipeline to another;

4. term of exchange or transfer;

5. reasons for interconnections;

6. the commissioner may request such additional information as in his opinion is reasonably necessary to properly evaluate the application.

B. No order, ruling or finding may be made or other action taken with respect to this regulation without a public hearing after due notice to all interested parties unless the right to a public hearing is waived pursuant to the provisions of Administrative Procedure Act, as amended (R.S. 49:951-968).

C. Public interest does not require the issuance of an order authorizing any action taken by an intrastate natural gas or coal slurry transporter which would be covered by the provisions of Sections 555.H and 722 of the Act where imminent danger of life and property can be eliminated by such action. Provided, however, that every person undertaking such action shall so advise the commissioner immediately by telegram stating briefly the circumstances and shall within 10 days file a statement in writing and under oath, together with four conformed copies thereof, setting forth the purpose and character of the action, the facts warranting invocation of this Section, and the anticipated period of the stated emergency. Emergency operations undertaken without an order pursuant to this Section shall be discontinued upon the expiration of the emergency or as otherwise ordered by the commissioner. All facilities installed for such temporary action shall be promptly removed after expiration of the exempt period of operation. Every person shall advise the commissioner in writing and under oath within 10 days following the removal of facilities constructed for emergency operations that such removal of facilities has been completed pursuant to this Section. Every person undertaking any such action pursuant to this Section desiring to continue such action shall file an application with the commissioner prior to the expiration of the exempt period provided herein.

D. The commissioner may issue, upon application by a person(s) a temporary order for the connection of intrastate facilities in cases of emergency without notice or hearing pending the application for a permanent order, all in accordance with the rules of procedure of the commissioner.

E. Interested parties for the purpose of this regulation shall be owners and operators of the pipeline concerned and the owners and operators of all other pipelines to which either of the pipelines concerned are already connected. If the commissioner determines in connection with any application under §555.H or §722 that a pipeline or pipelines other than defined immediately above may be an interested party, he may direct the applicant to serve notice of its application to such other pipeline or pipelines.

F. This regulation shall not apply to any coal slurry transporter, the operations of which are then being regulated by a federal agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501-599, 601-606.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 4:81 (March 1978), amended LR 7:84 (March 1981), repromulgated LR 49:281 (February 2023).

§511. Governing the Issuance of Orders Relative to the Transporting of Gas Using the Excess Capacity of Intrastate Gas Pipelines Pursuant to §501 et seq. of the Act (Formerly §131)

A. All definitions in this regulation are in accordance with those of §101.

B. This regulation shall apply to the rights of the commissioner of conservation pursuant to Section 501 et seq., of the Act to determine whether or not excess capacity exists and to investigate the need for using said excess capacity of an intrastate natural gas transporter hereinafter identified as transporter with respect to transporting a gas

supply owned by a person other than the proposed transporter.

C. All applications to the commissioner by an owner(s) of intrastate natural gas for an order directing a transporter to transport said owner's gas in the transporter's intrastate pipeline system hereinafter identified as transporter's pipelines, pursuant to the provisions of Section 553 of the Act shall be in writing, verified under oath by an individual having authority, shall be in the form approved by the commissioner, shall be noticed upon the proposed transporter by certified mail, and shall contain the following information:

1. the legal status of the applicant as shown below and a statement in writing of applicant's financial capabilities to construct, operate, maintain, and terminate any required connecting lines onto the transporter's pipelines;

a. if a sole proprietorship, state the name and address of the person owning said company;

b. if a partnership, state:

i. name, address and percentage of interest of each and every partner owning 20 percent or more interest;

ii. if said partnership is an affiliate of another entity, state the name and address and legal status of said affiliate;

c. if the applicant's legal status is a corporation, state:

i. the name and address of each shareholder owning 20 percent or more of the shares, together with the number and percentage of any class of voting shares of the corporation which such shareholder is authorized to vote; and

ii. the name and address of each affiliate of the corporation who could derive direct benefit from the proposed use of transporter's pipelines, together with, in the case of an affiliate controlled by the corporation, the number of shares and percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that corporation and, in the case of an affiliate which controls that corporation, the number of shares and the percentage of any class of voting stock of that corporation, directly or indirectly owned by the affiliate;

iii. the nature of the services rendered by the applicant and those affiliates identified in Clause c.ii above and to whom;

iv. state of incorporation;

2. the operating capability of the applicant;

a. evidence of approval to construct, operate, and maintain any connecting pipeline facilities from the applicable state and federal agencies;

b. design information and details to conclusively demonstrate that all of the applicant's connecting lines are properly sized for the proposed flow volumes and in full accordance with all state and federal laws, rules and regulations, including but not limited to Parts 191 and 192, Title 49, of the *Code of Federal Regulations*, as amended;

c. a concise description of applicant's existing operations pertaining to the application;

3. excess capacity requested for which the proposed user thereof is willing to pay whether such capacity is used or not;

4. the period of time that the gas is to be transported;

5. if gas proposed for transportation is to be delivered to the transporter's pipeline from a third party's pipeline, where the third party is a certified intrastate natural gas transporter or has been authorized by the commissioner to construct and operate facilities for the transportation of natural gas in the state of Louisiana, and the subject gas is to be purchased from said third party, the applicant is not required to furnish the information as set forth in Paragraphs C.6-10, but Subparagraph 7.e is required;

6. complete geological information on the productive zone(s) which is proposed to supply the gas reserve subject to this application, including structural maps, fault trace maps, isopachous maps, and copies of all logs used in the geologic evaluation;

7. all well history, well test, reservoir and production data including, but not limited to, the following:

a. basic well information including total depth, plug-back total depth, perforated interval, net productive sand, sand top and base or water level, electrical survey (1-inch and 5-inch), porosity logs, side wall and conventional core analysis, and any other logs or well surveys (including bottom-hole pressure survey information);

b. complete well test information including deliverability tests obtained on each well completed or tested in the productive zone(s);

c. complete monthly production history and production test reports on all wells which have produced from the productive zone(s);

d. estimated deliverability from well(s) to be connected during the period gas is transported hereunder;

e. complete chromatographic gas analysis of the gas to be transported, the content of sulphur, inert components and water, heating value, gravity, and temperature;

f. measurement basis for all data submitted;

8. copies of all lease information including unitization data, lease expiration dates, royalty and any special provisions pertaining to leases from which gas is to be produced and delivered to the transporter's pipelines;

9. history of any past gas deliveries from well(s) to be connected to the transporter's pipelines, and whether past deliveries were made into pipelines under the control of the Federal Energy Regulatory Commission as of the date of application;

10. copies of abandonment orders from any previous gas deliveries;

11. a conformed copy of the gas sales contract(s) involving the gas to be transported and a detailed statement concerning the end use of the gas. If the gas proposed for transportation:

a. is to be delivered from applicant's pipeline:

i. the applicant shall provide the sources of all gas in the said pipeline and all dispositions therefrom unless applicant is a certified intrastate natural gas transporter or has been authorized by the commissioner to construct and operate facilities for the transportation of natural gas in the state of Louisiana;

b. is to be delivered from a third party's pipeline:

i. the applicant shall provide the sources of all gas in the said pipeline and all dispositions therefrom unless the third party is a certified intrastate natural gas transporter or has been authorized by the commissioner to construct and

operate facilities for the transportation of natural gas in the state of Louisiana;

ii. the applicant shall provide a conformed copy of all gas sales and transportation contracts which in any way could affect the jurisdictional status of any of the transporter's facilities;

12. schematic flow diagram of the producing facilities to be used by the applicant for connecting onto the transporter's pipelines. The schematic should include all wellhead equipment, lines, valves, separating and scrubbing equipment, all safety and shutdown controls, all liquid and gas metering equipment complete with capacity and pressure specifications for all above mentioned equipment;

13. map showing location of all facilities to be used in the installation along with:

a. proposed point(s) of entry onto the transporter's pipelines;

b. proposed point(s) of discharge of the gas from the transporter's pipelines;

c. location of any other interconnects on the applicant's intrastate system with other pipeline systems;

14. maximum pressure at which applicant can deliver gas at proposed inlet, and maximum pressure required by applicant at proposed outlet point(s) of transporter's pipelines, and maximum and minimum daily volumes of gas to be transported;

15. schematic flow diagram showing all facilities to be installed at the outlet point(s) indicating all necessary control, metering and emergency shutdown devices.

D. The applicant shall furnish all the foregoing information pertaining to the application for excess capacity to the proposed transporter. Where any of this information is on file with the commissioner, the applicant shall so state, and not be required to submit same with its application.

E. As a prerequisite to filing an application, it is required that the applicant provide written evidence to the commissioner that the applicant has explored in good faith with the proposed transporter the feasibility of utilizing the transporter's pipelines.

F. Upon receipt of the application referenced in Subsection C hereinabove, the commissioner shall notice and hear the matter in accordance with the commissioner's applicable rules of procedure. In determining whether or not excess capacity exists in the specific segment(s) of the transporter's pipelines in which the applicant's gas is to physically flow, the commissioner shall take into consideration the following matters:

1. the specific intrastate pipeline system(s) in which the gas is proposed to be transported, and the point(s) that the gas is to enter the transporter's pipelines and is to be discharged therefrom;

2. the period of time that said gas is to be transported;

3. whether or not the quality specifications of the gas to be transported, including the content of sulphur, inert components, water, ethane and heavier hydrocarbons, heating value, gravity and temperature meet or exceed the highest quality specifications of the gas then being transported in the transporter's pipelines;

4. the volume of gas required for the transporter's own use;

5. the existing character, pressure, gas flows, condition and all operating data relative to transporter's

pipelines and whether any of the involved pipeline(s) now, or has ever been engaged in the transportation of interstate gas;

6. pressure required by the transporter to receive the gas and the pressure(s) at which the gas would have to be redelivered for the applicant or for the account of the applicant;

7. pressure limitations and all other limitations of the transporter's pipelines determined in accordance with all applicable state, federal and local laws and agency rules, regulations and orders including but not limited to such matters as population density along the transporter's pipelines and good engineering procedures, practices and calculations;

8. any and all matters applicable to or in any way connected with the applicant's gas, well(s) from which the gas is derived, facilities involved with the foregoing, or otherwise which could possibly subject the proposed transporter's pipelines, facilities or gas, to control by or within the jurisdiction of the Federal Energy Regulatory Commission, or any federal regulatory body having similar jurisdiction;

9. any requirement which would cause the transporter to alter or modify any of its existing pipeline facilities or operating pressures, gas flows, or procedures in such a way as to result in the abridgment, violation or abrogation of any of its existing contract obligations whatsoever whether such agreements or obligations are due to gas purchases, gas sales or gas transportation, and whether serviced by the involved or another segment(s) of the transporter's pipeline;

10. any requirement which would cause the transporter to alter or modify any involved segment of its pipeline(s), or facilities either by way of installing, operating or maintaining additional pipelines or compression facilities, looping of existing pipelines, or otherwise, so as to create or increase pipeline capacity;

11. all contractual obligations by a transporter existing as of 30 days after the date of application or date of hearing, whichever is sooner, requiring the utilization of pipeline capacity, including but not limited to the following:

a. the maximum existing contract purchase obligations of the transporter under contracts for the purchase of gas supplies, subject to change based on actual maximum deliverability under the gas purchase contracts;

b. the maximum existing contract delivery obligations of the transporter pursuant to its contracts for the sale of gas, which obligation shall always mean the transporter's maximum contractual delivery obligation, reduced solely by an amount equal to the physical inability of each purchaser of the transporter to receive its maximum contract quantity;

c. the maximum existing contract obligations of a transporter to receive and redeliver gas or equivalent gas under gas transportation or gas exchange contracts, subject to the provisions of Subparagraph b immediately above;

d. the maximum contract delivery obligations of transporter under any and all outstanding bonafide offers by the transporter to third parties which would require the utilization of any of transporter's pipelines, and affect transporter's pipeline capacity, which offer(s) is outstanding as of 30 days after the date of application or date of hearing, whichever is sooner;

e. the maximum existing contract purchase and delivery obligations of the transporter under all contracts including but not limited to gas purchase, sales, and transportation agreements. In determining the maximum contract purchase and delivery obligations, the greater of the sums of transporter's maximum purchase or delivery obligations will control, subject only to the provisions of Subparagraphs a and b above;

12. any adverse effect utilization of capacity in the segment(s) specifically involved would have on the transporter's ability to operate its pipeline system and meet its existing contractual obligations.

G. Where it is found that excess capacity exists within a pipeline on a part-time or temporary basis and the commissioner accordingly orders the transportation of gas during the periods when such excess capacity may be available, it shall be the responsibility of the owner of the gas being transported in the available excess capacity, and its buyer or the recipient of such gas, to adjust production and purchase or utilization of said gas so as not to impair the transporter's ability to render adequate service to its customers.

H. Prior to the issuance of any order hereunder, the applicant shall prove to the commissioner's satisfaction that the gas proposed to be carried in the excess capacity of the transporter's pipelines and the involved and related facilities of all parties, have not been, are not now, nor will be subject to control by or within the jurisdiction of the Federal Energy Regulatory Commission, or any federal regulatory body having similar jurisdiction, or any successor agency thereof. Further, any order issued hereunder shall provide that if, pursuant to such order, any gas carried or to be carried by a transporter or any involved or related facilities of any party has been, is, or could be subject to the jurisdiction of the Federal Energy Regulatory Commission, or any successor agency thereof, said order shall be considered violated thereby, and shall ipso facto terminate, and end all obligations and duties of the transporter required thereunder without further action by the transporter or the commissioner.

I. Every order issued by the commissioner hereunder shall set the effective term thereof, quality, quantity, measurement and balancing, and further, after notice and hearing, if the parties cannot agree, shall fix the rates and charges to be paid by the owner of the gas to the transporter for the transportation of the gas, all in accordance with Section 555.E of the Act.

J. The applicant whose gas is being carried in the transporter's pipelines shall retain title to its gas at all times while in transit. Every order by the commissioner directing that a transporter carry the gas of the applicant in the excess capacity of the transporter's pipelines shall provide that said order shall not be effective unless and until the owner of the gas has executed in favor of the transporter a written indemnity and hold harmless agreement, in form as prescribed by the commissioner, with good and sufficient surety, in an amount as determined by the commissioner, protecting and indemnifying such transporter from and against any and all responsibilities, claims, losses, liabilities, damages of any nature or kind whatsoever, as well as any and all costs associated therewith, and whether for personal

injury, property damage, or otherwise, including those of the transporter, the owner of the gas, third parties, or gas customers of the transporter, which may arise by virtue of any compliance by the transporter with such order, except that the written indemnity and hold harmless agreement shall not exonerate the transporter for any liability arising from his own negligence or fault.

K. Every order issued by the commissioner hereunder shall provide that in the event the transporter ordered to carry the applicant's gas has a specific need for the excess capacity of its pipeline(s), or a part thereof, to transport its own gas or the gas of its subsidiaries or of its parent or of a subsidiary of its parent, or to satisfy the requirements of its own transportation or sales contracts for which it then possesses adequate gas supply to fulfill, may in whole or in part terminate said order by giving written notice. Said notice shall be served by certified mail by the transporter on the commissioner and the applicant, shall specify the date on which effective, which shall be not less than 90 days of the date of said notice. If no opposition thereto is filed with the commissioner by the applicant, or the commissioner issues no objection in writing to the transporter and applicant, it shall be conclusively presumed for all purposes that all requirements of the Act are satisfied, that the transporter has a bona fide need for the excess capacity as stated in the notice, and that the public interest and the purposes of the Act would be best served by termination of the use of the excess capacity of the transporter's pipelines in whole or in part, and the order shall ipso facto terminate in accordance with the provisions of the notice. The above 90-day requirement may be waived by a written agreement filed with the commissioner and approved by the commissioner, said agreement to be signed by the interested parties or an authorized agent of the parties and verified under oath.

1. Either upon the filing of opposition by any party affected by the proposed termination, or upon his own initiative without opposition, the commissioner shall investigate the purported need of the transporter to so utilize its excess capacity and to disapprove the transporter's termination of the contract if, in fact, the transporter does not have a bonafide need for the excess capacity; or if, in the opinion of the commissioner, the public interest and the purposes of the Act would best be served by continuation of the transportation of the gas of the other person user. Any such opposition made by parties affected or by the commissioner shall be made within 30 days from the date of receipt by the commissioner of notice of termination from the transporter and such opposition shall be in writing and served by certified mail on the transporter and the commissioner. The commissioner may call a public hearing in order to obtain additional information required to approve or disapprove the proposed termination. Notice of any such opposition shall suspend the proposed termination of use of transporter's excess capacity until such time as the commissioner issues an order approving or disapproving same.

L. Every order issued by the commissioner hereunder shall provide that in the event of any emergency which could cause danger to person or property, a transporter may without any order or permission of anyone, including the commissioner, and without liability to any person, including the owner of gas being transported in excess capacity of the

transporter's pipelines, terminate in whole or in part the transportation of said gas during the period of the emergency. The transporter as soon as practicable must notify the owner of said gas and the commissioner, of said emergency, the reason therefore, and the expected duration thereof. Upon the termination of the emergency, the transporter shall notify the commissioner and the owner of the gas, and shall forthwith comply with applicable order(s) of the commissioner.

M. If either the transporter or applicant is rendered unable, wholly or in part, by force majeure to carry out its obligations, on such party's giving notice and reasonably full particulars of such force majeure, in writing or by telegraph, to the other party within a reasonable time after the occurrence of the cause relied on, then the obligations of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused.

N. If for any reason conditions occur during the term of the applicable order which would render continued compliance with the order impracticable, dangerous to person or property, or illegal, the transporter may apply immediately to the commissioner for relief from all or a portion of the requirements of the order.

O. Every order issued by the commissioner shall identify the source(s) of gas approved for transportation in the transporter's pipelines and the gas shall be limited to the sources so identified.

P. Every order issued by the commissioner shall provide for the filing of periodic reports including but not limited to reports necessary to determine the quantity, quality and balancing of gas being transported in the excess capacity of transporter's pipelines.

Q. In the event the applicant is unable to demonstrate to the satisfaction of the commissioner that it has the necessary financial standing so as not to jeopardize the financial position of the transporter, then the applicant will be given an opportunity to provide and file a performance bond with the commissioner in favor of the transporter:

1. the amount of the bond shall in no event be less than the amount sufficient to cover the greater of the sums determined from Subparagraphs a and b or c and d below:

a. an amount determined as the product of:

i. applicant's estimated peak day volume;

ii. 60 days; and

iii. estimated rate and charges for the transportation service; plus

b. an estimated amount to reimburse the proposed transporter for the cost involved in establishing input and output points (delivery points) and related facilities for receiving and delivering gas as proposed by the applicant;

c. an amount determined as the product of:

i. the excess capacity (expressed as a daily volume) for which applicant is to pay transporter whether used or not;

ii. 60 days; and

iii. the estimated rates and charges for the transportation service; plus

d. an estimated amount to reimburse the proposed transporter for the cost involved in establishing input and output points (delivery points) and related facilities for receiving and delivering gas as proposed by the applicant.

2. The estimated rates and charges and estimated costs involved in establishing delivery points and related facilities shall be the applicant's best estimate at the time of application, but the actual amount of surety and bonding capability of the applicant shall be subject to revision by the commissioner at such time as actual rates and charges and volume of gas to be transported, if any, have been determined by the commissioner or have been agreed upon as between applicant and transporter or transporters.

R. Every order issued by the commissioner shall provide that the excess capacity obtained by the applicant shall not be assigned in whole or in part unless agreed to in writing by the transporter and approved by the commissioner.

S. The following general rules will affect all proceedings initiated under Subsections A-S of this regulation.

1. Except as provided herein, by law, or by the Act, all applications, reports, approvals, orders and notices to interested parties, the method of serving same, and all public hearings conducted under the Act shall be in accordance with the rules of procedure of the commissioner, this regulation, applicable law, and the Act.

2. This regulation set out herein applies only to the provisions of the Act (Chapter 7, Title 30).

3. Unless prohibited by specific provisions of the Act or by law, the commissioner may waive any or all of the requirements of the foregoing regulation and grant additional time to comply with any provision of the Act on written request, and upon reasonable cause shown if he finds that the application and enforcement thereof will make undue hardship on the person affected, or will seriously impede the efficiency of the commissioner's administration of the Act and that the application or enforcement thereof is not necessary to the accomplishment of the purposes of the Act.

4. This regulation, in the absence of an emergency, may not be amended, or new regulation promulgated without notice and opportunity for public hearing, as provided for in Title 30, Chapter 1, Section 6 of the Louisiana Revised Statutes of 1950, as amended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501-599, 601-606.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 1:477 (November 1975), amended LR 4:81 (March 1978), repromulgated LR 49:282 (February 2023).

§513. Transportation of Intrastate Natural Gas and the Construction, Extension, Acquisition and Operation of Facilities or Extensions Thereof for the Purpose of Acquisition of Gas Supplies within a Gas Supply Acquisition Service Area or Transportation of Gas Supplies for Others within a Gas Supply Transportation Service Area Pursuant to the Provisions of §555(F) of the Act (Formerly §133)

A. This regulation shall apply to the requirements placed by Section 555(F) of the Act upon an intrastate natural gas transporter relative to the transportation of intrastate natural gas and the construction, extension, acquisition and operation of facilities, or extensions thereof, for the purpose of acquisition of gas supplies within a gas supply acquisition service area or transportation of gas supplies for others within a gas supply transportation service area.

B. Each transporter owning or operating an intrastate pipeline, the construction and operation of which has been approved by order of the commissioner under Section 555.C of the Act, shall have the right to apply to the commissioner for the establishment of a gas supply acquisition service area or gas supply transportation service area. Within such gas supply acquisition service area or gas supply transportation service area a transporter may at its option enlarge or extend its facilities— by construction or acquisition, for the purpose of acquiring or transporting for others additional supplies of natural gas. All applications by the transporter filed with the commissioner requesting the establishment of a gas supply acquisition service area or gas supply transportation service area shall be in writing, verified under oath by an individual having authority, shall be in the form approved by the commissioner, shall be noticed upon interested parties by publication in the official journal of the state of Louisiana and the official journal of each parish within which the gas supply acquisition service area or gas supply transportation service area will be located, and shall contain the information required by §505. All information required to be included within the application which has been presented to the commissioner through prior hearing evidence and all records and documents in the possession of the commissioner filed pursuant to the Natural Resources and Energy Act of 1973 may be incorporated in the application by reference. Each application shall include a map depicting the location of the transporter's existing intrastate pipeline to which facilities constructed or acquired pursuant to this regulation shall connect.

C. All orders of the commissioner establishing gas supply acquisition service areas or gas supply transportation service areas shall be subject to the following limitations and restrictions.

1. Location. A gas supply acquisition service area or gas supply transportation service area shall be located adjacent to the applicant's existing pipeline facilities.

2. Size. Facilities constructed or acquired pursuant to this regulation shall not exceed 5 miles in length and nominal 8 inches diameter pipe.

3. Duration. An order of the commissioner establishing a gas supply acquisition service area or gas supply transportation service area shall remain in effect until terminated by subsequent order of the commissioner.

4. Interconnections. An order of the commissioner establishing a gas supply acquisition service area or gas supply transportation service area shall not permit a transporter to connect its facilities located within the gas supply acquisition service area or gas supply transportation service area to another pipeline system, including other pipelines or pipeline systems owned by the transporter.

5. Sales. An order of the commissioner establishing a gas supply acquisition service area or gas supply transportation service area shall not permit a transporter to construct, extend, acquire or operate facilities, or extensions thereof, within such gas supply acquisition service area or gas supply transportation service area for the purpose of connecting such transporter's facilities to a customer and making sales of gas to such customer.

6. Abandonment of Facilities. An order of the commissioner establishing a gas supply acquisition service area or gas supply transportation service area shall not

permit a transporter to abandon all or any portion of its facilities subject to the jurisdiction of the commissioner, or any service rendered by means of such facilities, within such gas supply acquisition service area or gas supply transportation service area.

7. Facilities Not Subject to Jurisdiction of Commissioner. An order of the commissioner shall not establish gas supply acquisition service areas or gas supply transportation service areas in conjunction with facilities which are not subject to the jurisdiction of the commissioner under the Act.

8. Notice and Prohibition of Proposed Enlargement or Extension. Prior to enlarging or extending its facilities within a gas supply acquisition service area or gas supply transportation service area, a transporter shall give the commissioner 20 days notice, on a form approved by the commissioner, of the location, size, nature and purpose of the proposed enlargement or extension. The notice shall be contemporaneously mailed to those persons who are identified in the ad valorem tax records of the parish as the owners of the land to be traversed by the proposed facility with notice that objections to the proposed facility, must be made to the commissioner, in writing, within 10 days of the date of the notice. The commissioner may, within such 20-day period, beginning on the date of receipt of the written notice in the Office of Conservation, prohibit the proposed construction or acquisition under the order establishing the gas supply acquisition service area or gas supply transportation service area and require the transporter to apply for an order to construct and operate the proposed facilities pursuant to Section 555.C of the Act. Upon request by the transporter, the commissioner may notify the transporter verbally, to be immediately confirmed in writing prior to the end of the 20-day notice period that he has no objection to the construction or acquisition of the proposed facility and that the transporter may immediately construct or acquire and operate the proposed facility.

D. The commissioner upon proper showing, shall issue his order in accordance with the application submitted.

E. A transporter who has been issued an order establishing a gas supply acquisition service area or gas supply transportation service area may make application for an extension or the establishment of additional gas supply acquisition service area or gas supply transportation service area in connection with an application made pursuant to Section 555(C) of the Act.

F. The commissioner shall issue written confirmation to a transporter that the proposed construction, extension, acquisition and operation of facilities, or extensions thereof, within a gas supply acquisition service area or gas supply transportation service area is authorized by and in compliance with the order establishing the gas supply acquisition service area or gas supply transportation service area. Such confirmation shall be on a form adopted by the commissioner and shall be issued within 10 days after the end of the notification period provided in Paragraph C.8 of this regulation.

G. All hearings under Section 555(F) of the Act shall be in accordance with the rules of procedure of the commissioner, except that notification of interested parties shall be in accordance with this regulation.

H. Nothing contained in this regulation shall be construed as a limitation upon the power of the commissioner to order overlapping gas supply acquisition service areas or gas supply transportation service areas for service of an area already being served by another transporter.

I. Any action taken by a transporter within a gas supply acquisition service area or gas supply transportation service area shall be subject to all other rules and regulations pursuant to R.S. 30:501 et seq., and the Louisiana Constitution of 1974.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501-599, 601-606.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 4:85 (March 1978), amended LR 7:80 (March 1981), LR 21:824 (August 1995), repromulgated LR 49:286 (February 2023).

Chapter 7. Interstate Coal Slurry Transportation Rates

§701. Prohibition of Rate Discrimination by Coal Slurry Transporters Pursuant to §723(H) of the Act (Formerly §135)

A. No owner or owners of an interstate coal or lignite slurry pipeline constructed in part in Louisiana pursuant to Part IX of the Act, shall discriminate or otherwise offer preferences or advantages as between rates or charges for product or services purchased by users in the state of Louisiana and rates and charges for comparable product or services purchased by users in any other state.

B. The commissioner may, upon his own motion or upon the receipt of a complaint from a Louisiana shipper of an interstate coal or lignite slurry pipeline, require by order the submission of such documents as may be necessary to demonstrate compliance with this regulation. The commissioner may also call a public hearing in order to obtain additional information required to evaluate compliance by a coal slurry transporter with this regulation.

C. This regulation shall not apply to such coal slurry transporters whose rates or charges for product or services are regulated by a federal agency charged with that responsibility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501-599, 601-606.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 7:86 (March 1981), repromulgated LR 49:287 (February 2023).

Chapter 9. Coal Slurry Water Usage and Disposal

§901. Governing the Use of Louisiana Water in Coal or Lignite Slurry Pipeline Operations Pursuant to §723(F) of the Act (Formerly §137)

A. This regulation shall apply to the requirements placed by Section 723(F) of the Act upon a coal slurry transporter relative to the use of Louisiana water in coal slurry pipeline operations.

B. Any coal slurry transporter desiring to use water from any source in Louisiana in conjunction with the transportation, maintenance or operation of coal slurry pipeline, other than that for drinking, toilet, bath or other personal uses, must file an application with the commissioner and receive the approval of the commissioner.

C. Applications requesting approval for such use of Louisiana water all be made in writing, executed under oath by an individual having authority to execute same and shall contain the following information:

1. description of proposed water supply source;
2. anticipated quantities of water to be used daily and annually;
3. term of use;
4. whether or not the proposed water supply source is being used by other individuals or municipalities;
5. proposed use of water.

D. The commissioner may grant such application after a public hearing held in accordance with §307 of the rules of procedure upon a showing that such use will not be detrimental to the water supply of the area from which the water is sought to be extracted.

E. For purposes of this regulation, the term *interested parties*, as said term is used in the rules of procedure, shall include all users of the water sought to be extracted and all owners of water rights which could be affected by the approval of the application called for hereunder.

F. Nothing in this Part shall authorize expropriation of water or water rights.

G. In the event the commissioner shall have authorized use of water as provided herein, he shall annually thereafter, and so long as such use continues, review the use of such water in order to determine if such continued use of such water will be detrimental to the water supply of the area from which the water is being extracted. Further, if the local governing body of the parish from which the water is being extracted makes a formal motion to the commissioner suggesting that continued use of such water will be detrimental to the water supply of the area from which the water is being extracted, the commissioner shall immediately call a public hearing in accordance with §307 of the rules of procedure to determine whether such continued use will be detrimental to the water supply of such area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501-599, 601-606.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 7:86 (March 1981), repromulgated LR 49:287 (February 2023).

§903. Requirements for Disposal of Water Resulting from Coal Slurry Pipeline Operations under §723(G) of the Act (Formerly §139)

A. Water used in the transportation of coal by pipeline to any point in Louisiana shall conform to regulations of the Office of Environmental Affairs of the Department of Natural Resources prior to its discharge into rivers or streams or holding pits from which seepage can occur.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501-599, 601-606.

HISTORICAL NOTE: Promulgated by the Department of Natural Resource, Office of Conservation, LR 7:86 (March 1981), repromulgated LR 49:288 (February 2023).

Chapter 11. Transportation, Usage, and Allocations
§1101. Establishment, Promulgation, and Implementation of Emergency Gas Shortage Allocation Plan (Formerly §141)

A. This regulation shall apply to the establishment, promulgation, implementation and administration of a plan for statewide emergency intrastate natural gas conservation, allocation or rationing pursuant to Part IV of the Act.

B. The policy of the state of Louisiana, pursuant to Part IV of Act 16, is to maintain, preserve and protect all those vital services and human needs which depend upon intrastate natural gas.

1. The governor of Louisiana has the authority pursuant to Part IV of the Act to declare, from time to time, that as a result of extreme shortages of existing intrastate natural gas needed to maintain, protect and preserve human needs, that a state of emergency exists.

2. Upon a declaration by the governor of the state of Louisiana that a state of emergency exists, the commissioner shall immediately implement by written order the emergency gas shortage allocation plan provided for in this regulation. The commissioner's order shall specify the nature and cause of the gas shortage emergency which resulted in the governor's declaration and shall require each intrastate natural gas transporter with a shortage of natural gas on its system to curtail and to reallocate intrastate natural gas in the custody and control of such intrastate natural gas transporter and may require other intrastate natural gas transporters to curtail such intrastate natural gas for reallocation to such transporter with a shortage all in accordance with the emergency gas shortage allocation plan as necessary:

a. in the event any person makes a request of the governor of the state of Louisiana or the commissioner for the declaration of a gas shortage emergency or issuance of any order in connection therewith ("applicant"), such applicant shall certify under oath that supplies of gas necessary to meet priorities one through five are physically unavailable from any other source. Such applicant also shall provide the commissioner with the following information in writing not more than 24 hours after making such request:

i. the precise nature of the gas shortage, the estimated amount of supply that is or may be curtailed and the estimated volume which must be made available to meet priorities one through five;

ii. the reasons such gas shortage exists;

iii. that applicant's efforts to secure alternate supplies of gas including a list of all pipelines, producers, marketing companies, or other specific potential suppliers contacted together with details as to the prices, terms and conditions offered by or requested from such potential suppliers and any rejection by such applicant of proposals for sale;

iv. an explanation of that applicant's inability to obtain alternate supplies of gas from any source;

v. a list of all pipelines connected to the plant, pipeline, or any other facilities of that applicant;

vi. in the event the applicant making such request is an intrastate natural gas transporter or local distribution company, he shall specify the level of curtailments by priority of customer on his system at the time the request is made and anticipated thereafter. Such entities may not make such a request for an emergency declaration unless they have adopted and filed with the commissioner a gas shortage allocation plan comparable to that of the state and are prepared upon issuance of an order to curtail all priorities six through nine categories of gas, using the gas curtailed to meet priorities one through five. The commissioner's order may not reallocate gas from other transporters until the commissioner is satisfied that there is insufficient gas available by curtailment of the gas available to the applicant's system or facility or for purchase from any source to meet priorities one through five;

vii. in the event the applicant is an end user of gas, he shall specify those volumes of gas available to him at the time the request is made and anticipated thereafter, whether those volumes constitute plant protection gas, and what alternative fuel capabilities exist; such information shall be furnished in the form of a sworn affidavit duly executed before a notary public by the appropriate person or corporate officer possessing such knowledge, as the case may be. The commissioner may make further inquiry or require additional information as necessary prior to the issuance of any order;

b. should the commissioner issue any order pursuant to such request, the applicant for whose benefit such order was issued and all intrastate natural gas transporters affected by such order shall inform the commissioner daily regarding the gas shortage emergency and its effect on those applicants. At such time as the commissioner may determine that the person for whose benefit such order was issued and all intrastate natural gas transporters affected by such order no longer have a gas shortage, the commissioner's order and the governor's declaration shall be terminated;

c. upon the declaration of a gas shortage emergency by the governor of the state of Louisiana and the issuance of any order in connection therewith by the commissioner, the commissioner immediately shall notify all affected intrastate natural gas transporters by telephone and, subsequently, in writing of such declaration or order. Such notice shall specify the curtailment procedures, orders, rules, or regulations of the commissioner to be implemented;

d. the commissioner, in his discretion, may notify such other persons of the existence of a gas shortage emergency as he deems appropriate, including local distribution companies, end users, and any other persons who have specifically requested that they be so notified. In addition, the commissioner shall request the governor's office to notify the media and the general public of such emergency and may request that citizens adopt measures to conserve the use of gas during the period of gas shortage;

e. upon receipt of notification from the commissioner of the declaration of a gas shortage emergency and the issuance of any order in connection therewith, each intrastate natural gas transporter affected by such order immediately shall notify its affected transportation and sales

customers by telephone and, subsequently, in writing of such declaration or order. Such notice shall specify the curtailment procedures, orders, rules, or regulations of the commissioner to be implemented;

f. in order to implement this regulation, the commissioner shall require that each intrastate natural gas transporter annually submit a contact sheet containing the names, addresses, office and home telephone numbers of those senior officers or other persons to be contacted by the commissioner in the event a gas shortage emergency is declared. The contact sheet also shall contain the telecopy number of such intrastate natural gas transporter, if applicable. The commissioner may accept similar contact sheets containing necessary information from any person who wishes to be notified of such declaration. A contact sheet for the commissioner's office and staff shall be distributed to all intrastate natural gas transporters;

g. upon the finding by the governor that an emergency exists, the commissioner shall set a public hearing to be held not later than five days after the date the governor declares the emergency. The purpose of such hearing will be to investigate the cause of the emergency and evaluate the response thereto. Notice of the public hearing shall be published in the official journal of the state of Louisiana at least three days prior to the date of hearing. At that hearing, any person affected by the emergency shall be permitted to appear, testify, adduce evidence, and cross examine the persons requesting the emergency declaration and those to whom intrastate natural gas is to be reallocated. Parties affected may request the commissioner to require parties to whom gas is being reallocated to produce information and documents relating to the need, availability, price and end use of gas;

h. the commissioner may, among other things, as a result of that hearing, change one or more of the priorities in the emergency gas shortage allocation plan, grant individual exceptions, alter the volumes of intrastate natural gas being reallocated, change the number of transporters from whom gas is to be reallocated, find that the circumstance of the person seeking a declaration of emergency did not or no longer warrants continuance of the order, take such action as is necessary to protect parties affected by reallocation and/or recommend to the governor that he declare that the emergency no longer exists.

C. The following plan is established and promulgated by the commissioner of conservation, which is to take effect in the event the governor of Louisiana declares a state of emergency and the commissioner issues an order implementing the plan, unless otherwise provided below, as a result of extreme shortages of existing intrastate natural gas for human needs, in order to maintain, preserve and protect all vital services in Louisiana depending upon intrastate natural gas and, to the extent applicable, for the curtailment of unnecessary and lesser priority uses of intrastate natural gas. The plan and any orders issued by the commissioner are herein referred to as the emergency gas shortage allocation plan.

1. The commissioner hereby adopts the following priority system:

a. first priority shall be given to the protection of public health, safety, and welfare including maintenance of gas and electrical service for hospitals, juvenile and adult

correctional institutions, nursing homes, dormitories, educational facilities, hotels, motels, and residences such as individual homes, apartments and similarly occupied dwelling units, publicly owned water, sewerage, and storm water drainage systems producing their own energy, which systems supply services to the aforesaid, property owners who, through contract lease, or otherwise, reserve unto themselves a share of the natural gas produced from their property to serve their needs, and plant protection gas;

b. second priority shall be given to the maintenance of agricultural operations, and the processing of agricultural products, including farming, ranching, dairy, water conservation and commercial fishing activities, and services directly related thereto, operations of food processing plants, businesses and facilities processing products for human consumption;

c. third priority shall be given to exploration, production, processing, and refining efforts to attain maximum production or extraction of oil, natural gas, other hydrocarbons, and minerals mined by the Frasch process;

d. fourth priority shall be given to the maintenance of commercial and industrial activities utilizing less than 1.5 million cubic feet of gas on a peak day;

e. fifth priority shall be given to the maintenance of all public services, including facilities and services provided by municipal cooperative, or investor-owned utilities required for customers who come under priorities two, three or four, or by any state or local government or authority, and including transportation facilities and services which serve the public at large. This priority shall not apply to those publicly-owned water, sewer and storm water drainage systems referred to under the first priority;

f. sixth priority shall be given to the preservation of an economically sound and competitive petroleum, petrochemical and chemical industry. Those industries requiring the use of intrastate natural gas for feedstock or process needs, and public utilities generating electricity for sale to consumers listed above under priorities one, two, three, four and five, which own or have acquired at the wellhead their own source of intrastate natural gas supply, or which acquire such gas supply or any portion thereof from a wholly-owned subsidiary company, or which have acquired such gas supply from any source in its name or in the name of its wholly-owned subsidiary and have stored it in an intrastate storage facility, and which are using such supply in the operation of their own facilities, shall, as long as they continue to use said gas for feedstock or process needs, or for generating electricity for sale to consumers listed above under priorities one, two, three, four and five, have and be recognized as possessing first priority, above all others in sixth priority, for use of said gas. Industrial companies not owning intrastate natural gas reserves for their own use for feedstock or process needs shall be subject to curtailment first, and those companies owning intrastate natural gas reserves for their own use, or which acquire such gas supply or any portion thereof from a wholly-owned subsidiary company, or which have acquired such gas supply from any source in its name or in the name of its wholly-owned subsidiary and have stored it in an intrastate storage facility for such purposes shall be subject to curtailment second and may not be curtailed except as to meet priorities one through

five on the intrastate natural gas transporter serving such industrial companies or any other intrastate natural gas transporter; provided, further, that any person to whom those industries requiring the use of intrastate natural gas for feedstock or process needs which own their own source of intrastate natural gas may have heretofore contracted to sell a portion of their own gas for feedstock or process needs shall have a priority for the use of said gas for feedstock or process needs equal to the priority accorded to their vendor by this Paragraph;

g. seventh priority shall be given to the maintenance of industrial requirements not specified in Priority 6, except for boiler fuel;

h. subject to the plants and facilities covered by the first and second priorities, eighth priority shall be given to industrial plants, including electrical generating plants to the extent not provided for in Priority 5, having a present requirement for use of intrastate natural gas for boiler fuel not possessing present alternate fuel capabilities. Such plant may, however, be required by the commissioner to convert to alternate fuels within a reasonable time, considering all pertinent circumstances, or suffer curtailment by order of the commissioner of its use of intrastate natural gas. The commissioner may require the industry affected to submit to him evidence as to why the industrial plant cannot convert to alternate fuels within the delay specified; and, if the user alleges otherwise, and if required by the commissioner, why the industrial plant cannot be operated on a profitable basis with the use of alternate fuels.

i. The commissioner may authorize the use of intrastate natural gas for use as boiler fuel if the industry demonstrates that it cannot convert to alternate fuel capability by reason of the fact that it is economically not feasible, that the industrial plant would otherwise have to close, because it could not operate with a margin of profit considered reasonable in the particular industry, or that the cost of converting to alternate fuels is totally disproportionate to the existing investment in plant facilities. If the commissioner determines that for those reasons the industrial plant cannot reasonably be converted to the use of alternate fuel capabilities and remain in business, the commissioner may, if he determines that intrastate natural gas is available for such use, grant to that industry a higher priority of use than is herein provided;

j. ninth priority shall be given to industrial plants including electrical generating plants to the extent not provided for in priorities five and eight, having a present requirement for boiler fuel use, in those instances where alternate fuel capabilities now exist, or may be installed with relatively minimal cost and delay. Industries possessing existing alternate fuel capabilities or, if the commissioner determines that alternate fuel capability can be installed with relatively minimal cost or delay, may be curtailed in their gas supply by the commissioner, and directed by the commissioner to change from use of intrastate natural gas to use of alternate fuels within a limited time to be fixed by the commissioner considering all pertinent circumstances. The commissioner may, if he determines that intrastate natural gas is available for such use, and if the commissioner determines that it is economically infeasible to operate a plant with alternate fuels, grant to the plant a higher priority of use.

2. Each intrastate natural gas transporter and local distribution company shall annually file with the commissioner an allocation plan (consistent with the state's emergency gas shortage allocation plan) to be implemented in the event the commissioner so orders, which plan shall provide for the conservation and allocation of gas in accordance with the priorities and exemptions established herein. Such plan further shall assign curtailment priorities and volumes to each end use or local distribution customer of that intrastate natural gas transporter or local distribution company. Copies of the allocation plan shall be furnished to each intrastate natural gas transporter or made available to each local distribution company's customers, who may challenge the assigned priority status before the commissioner. Unless the commissioner determines otherwise after notice and hearing, each end user of natural gas will be considered to have the priority assigned by its intrastate natural gas transporter or local distribution company:

a. the allocation plan must identify by customer type the end use of all gas delivered by the intrastate natural gas transporter including a classification by curtailment priority and volume deliverable to all then current end use and local distribution customers of the transporter. Customers which use natural gas for more than one purpose or end use must be classified under separate curtailment priorities by volume. Such information must be updated and supplemented annually;

b. such allocation plan also shall contain procedures to be implemented by such person or entity to encourage the conservation of intrastate natural gas by its customers or employees in the event an emergency is declared.

3. In the event the governor of Louisiana declares a state of emergency pursuant to R.S. 30:571, as amended, then and for the duration of such emergency or as otherwise ordered by the commissioner each intrastate natural gas transporter with a shortage of natural gas on its system shall curtail deliveries to its customers and shall allocate its natural gas, pursuant to order of the commissioner, so that all natural gas deliveries to its Priority 9 customers are curtailed before any curtailment of its Priority 8 customers. If all of the intrastate pipeline's Priority 9 customers are being curtailed to the maximum extent required by law and further curtailment is necessary, then deliveries of natural gas to all of its Priority 8 customers shall be curtailed before any curtailment of its Priority 7 customers. If deliveries of natural gas to all of the intrastate pipeline's Priority 8 customers are being curtailed to the maximum extent required by law and further curtailment is necessary, then deliveries of natural gas to all of its Priority 7 customers shall be curtailed before any curtailment of its Priority 6 customers. If deliveries of natural gas to all of the intrastate pipeline's Priority 7 customers are being curtailed to the maximum extent required by law and further curtailment is necessary, then deliveries of natural gas to all of its Priority 6 customers shall be curtailed before any of its Priority 5 customers, provided however, that all Priority 6 customers that do not own their own gas supply or do not acquire such supply from a wholly-owned subsidiary company for feedstock or process shall be curtailed 100 percent before gas owned by Priority 6 customers for feedstock and process use may be curtailed at all. All such curtailments shall be by

the order of the commissioner issued pursuant to Paragraph B.2.

4. If after the curtailments required in Paragraph C.3 have been effectuated, any intrastate natural gas transportation system still has a shortage of natural gas in its system that would require the curtailment of its Priority 5 and higher customers, then, and in that event, the commissioner shall order such additional curtailments and redeliveries of natural gas as he deems advisable and necessary to the extent authorized by law.

D. The commissioner may, as he deems necessary, change the emergency gas shortage allocation plan and/or the priorities contained therein, but in the absence of a serious immediate emergency as is hereinafter provided, may only do so after public hearings.

1. All applicable procedures required by Section 953 of the Administrative Procedure Act, R.S. 49:951-962, for the adoption of administrative rules, shall be complied with for the establishment and promulgation of any such changes to said plan and/or priorities.

2. The plan shall be implemented as so changed and promulgated in the event the state of emergency is or has been declared by the governor as specified in Subsection B.

3. All intrastate natural gas transporters directly affected by any such change in the plan, priority assignments, curtailments procedures, orders, rules or regulations of the commissioner and purchasers from and/or such transporters' system shall be notified in writing by the commissioner of such change, specifying the curtailment procedures, orders, rules or regulations they must now comply with and/or are now subject to.

E. If after a state of emergency has been declared by the governor as specified in Subsection B, the commissioner finds to exist a serious immediate emergency, which requires a change in the plan and/or the priorities therein, he may change the plan and/or the priorities without first having a hearing by issuing an emergency order providing for such changes.

1. All applicable procedures set forth in the Administrative Procedure Act, R.S. 49:951-968, shall be complied with.

2. All intrastate natural gas transporters directly affected by any such emergency order providing for any change in the plan, priority assignments, curtailment procedures, orders, rules or regulations of the commissioner relating to the plan, and customers on such transporters' system shall be notified in writing by the commissioner of such change, specifying the curtailment procedures, orders, rules or regulations they must now comply with.

3. The emergency order shall only remain in force for 30 days from its effective date, unless and except the commissioner has been physically unable to hold and complete public hearings by reason of the pressure of multiple public hearings on such matters:

a. in such case, the emergency order shall only remain in effect until such time as the commissioner can physically conduct and complete a hearing for the change of the plan and/or priorities but in no case longer than 120 days from its effective date, after which time the order will automatically expire;

b. any such time period commences on the effective date of such order;

c. in any event, the emergency order shall expire whenever the change is established and promulgated after notice and public hearings as provided in Subsection D.

F. If after a state of emergency has been declared by the governor as specified in Subsection B, the commissioner finds to exist a serious immediate emergency, he has the express authority to alter the emergency gas shortage allocation plan as to individual situations in order to alleviate exceptional hardship cases.

1. For purposes of Subsection F.2.b, *interested parties* shall mean any transporter of intrastate natural gas that would be directly affected by the granting of an exception to the emergency gas shortage allocation plan, as well as all customers on such transporters' system and any person which owns its own gas supply that would be directly affected.

2. Any individual seeking to take advantage of this provision shall:

a. request the commissioner in writing for such an exception, which written application shall include:

- i. a statement of the facts and circumstances that create an exceptional hardship case;
- ii. a list of the names and addresses of all interested parties;
- iii. a statement that all interested parties have been notified in writing as required by this Section;

b. notify in writing all interested parties of the application to the commissioner for an individual exception based on exceptional hardship;

c. present to the commissioner such evidence as he deems necessary to provide his case of exceptional hardship.

3. The emergency order shall only remain in force for 30 days from its effective date, unless and except the commissioner has been physically unable to hold and complete public hearings by reason of the pressure of multiple public hearings on such matters:

a. in such case, the emergency order shall only remain in effect until such time as the commissioner can physically conduct and complete a hearing for the change of the plan and/or priorities, but in no case longer than 120 days from its effective date, after which time the order will automatically expire;

b. any such time period, commences on the effective date of such order;

c. in any event, the emergency order shall expire whenever the change is established and promulgated after notice and public hearings as provided in Subsection D.

4. Any action taken by the commissioner pursuant to a hearing called in response to any person seeking an individual exception under this Part shall be considered an "adjudication" for purposes of the Administrative Procedure Act, R.S. 49:951-968.

5. Whatever action the commissioner takes pursuant to the requested exception, all interested parties shall be notified in writing by the commissioner of such action, specifying what curtailment procedures, orders, rules or regulations they must now comply with and/or are now subject to.

G. Any person affected by any assignment of priorities, curtailment procedures, rules, regulations or orders of the commissioner relating to the emergency gas shortage allocation plan, or changes therein may request the

commissioner to call a hearing to contest such assignment of priority, curtailment procedure, rule, regulation or order.

1. For purposes of this Paragraph, *interested parties* shall mean any transporter of intrastate natural gas that would be directly affected by any change in the assignment of priorities, curtailment procedures, orders, rules or regulations of the commissioner relating to the plan, as well as all customers on such transporters' system.

2. Any person contesting the assignment of priorities, curtailment procedures, orders, rules or regulations of the commissioner relating to the plan, or changes therein, shall:

a. request the commissioner in writing for a hearing in order to contest said priority assignment, curtailment procedure, order, rule or regulation of the commissioner, which written application shall include:

- i. a concise statement of the matters being contested and the reasons therefor;
- ii. a list of the names and addresses of all interested parties;
- iii. a statement that all interested parties have been notified in writing as required by this Section;

b. notify in writing all interested parties of the requested hearing;

c. present to the commissioner such evidence as he deems necessary to prove his case.

3. The commissioner shall, as soon as practical after receiving such request, call a public hearing:

a. interested parties shall be notified in writing by the person seeking the exception;

b. in addition to the above notice, notice of the public hearing shall be published in the official journal of Louisiana at least 10 days prior to the date of the hearing.

4. Any action taken by the commissioner pursuant to a hearing called in response to any person seeking an individual exception under this Part shall be considered an "adjudication" for purposes of the Administrative Procedure Act, R.S. 49:951-968.

5. Within 30 days after the conclusion of such hearing, the commissioner shall take whatever action he deems necessary by way of order, rule or regulation:

a. any change in assignment of priorities, curtailment procedure order, rule or regulation of the commissioner pertaining to the plan as a result of such contested hearings may be promulgated without the necessity of further public hearings and the contested hearings shall serve as public hearings required in Subsection D;

b. in the event the commissioner fails or refuses to take action within 30 days after completion of such hearings, he may be compelled to do so by mandamus at the suit of any interested party;

c. all interested parties shall be notified in writing by the commissioner of any such change, specifying what curtailment procedures, orders, rules or regulations, they now must comply with and/or are now subject to.

6. Any such party contesting the assignment of priorities, curtailment procedures, rules, regulations or orders of the commissioner aggrieved by the ruling of the commissioner is entitled to such rehearing and judicial review as provided in the Administrative Procedure Act, R.S. 49:951-968.

7. All requirements and procedures established above in Paragraphs G.1-6 apply equally to any person seeking an individual exception on the basis of unintended results.

H. If the results of some aspects of the emergency gas shortage allocation plan promulgated by the commissioner are contrary to its stated intent, the person affected may request the commissioner to grant an individual exception on the basis of unintended results.

I. Any curtailment procedure provided for, whether contained in the emergency gas shortage allocation plan promulgated by the commissioner or the allocation plan of each transporter must provide for curtailment to the extent permitted by law on each transporter's system of all those placed in the lower priority category before any curtailment of the next higher priority is commenced, unless and except the commissioner finds exceptions as provided in Subsection F or H or that such exception is in the public interest.

J. No daily allocation, curtailment procedure, rule, regulation or order of the commissioner relating to the emergency gas shortage allocation plan shall apply to natural gas in amounts less than 25 million cubic feet per day, inclusive, owned or purchased by a person at or near the field where produced and transported by said person through his own pipeline or pipeline facility solely for his own consumption, except and unless:

1. after a state of emergency has been declared by the governor as specified in Subsection C, the commissioner finds to exist a serious immediate emergency impairing gas otherwise required for the first five priorities of the emergency gas shortage allocation plan which cannot be substantially otherwise provided for;

2. notwithstanding such a serious immediate emergency, no daily allocation, curtailment procedure, rule, regulation or order of the commissioner relating to or part of the emergency gas shortage allocation plan may ever result in the reduction of more than 10 percent of such gas above described in Subsection J.

K. Notwithstanding any other provision of this regulation, no daily allocation, curtailment, procedure, rule, regulation or order of the commissioner relating to or forming part of the emergency gas shortage allocation plan may result in a reduction of more than 10 percent of the maximum daily quantity of intrastate natural gas contracted to be delivered to a purchaser under any contract existing on the effective date of the Natural Resources and Energy Act of 1973.

L. Noncompliance with the emergency gas shortage allocation plan or any curtailment procedure, rule, regulation or order of the commissioner relating thereto may not be excused on the grounds of any private contractual obligations.

M. No person who complies with the emergency gas shortage allocation plan or any curtailment procedure, rule, regulation or order of the commissioner relating thereto shall be liable to any person for any damages, including without limitation, consequential or indirect damages, whether ex contractu or ex delicto, by reason of such compliance, unless the applicant seeking a declaration of an emergency is determined by the commissioner to have knowingly and willfully improperly obtained the order and implemented the emergency gas shortage allocation plan, in which event

protection from liability for damages shall not be available to such applicant.

N. Notwithstanding any other provision of this regulation, no intrastate natural gas transporter shall be required to curtail or to redeliver for the use of any third-party, plant protection gas and Natural Gas Policy Act of 1978 ("NGPA") Section 311(a)2 gas.

1. *Plant protection gas* signifies those volumes of natural gas necessary to ensure the orderly shutdown of plant manufacturing facilities without significant risk to plant personnel, property, or the environment, including protection of materials in process, and, thereafter, required to maintain basic services such as air, water, light, and heating necessary to ensure the continued protection of such personnel, property, or the environment.

2. In order to qualify for plant protection gas, any end user of natural gas in the state of Louisiana must apply to the commissioner for a determination of its plant protection gas, including a plan for safe and orderly shutdown of the plant.

O. In implementing the state's emergency gas shortage allocation plan, all gas volumes required to be curtailed or reallocated from one intrastate natural gas transporter's pipeline system to another intrastate natural gas transporter to meet priorities one through five on any intrastate natural gas transporter's system shall, to the extent practical, be taken statewide from all intrastate natural gas transporters directly and indirectly connected to and capable of delivering gas into the intrastate natural gas transporter's system requiring the reallocated volumes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501-599, 601-606.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 7:87 (March 1981), amended LR 18:64 (January 1992), repromulgated LR 49:288 (February 2023).

§1103. Governing Compilation and Publication of Information Pursuant to §§546.A.(5) and 550 of the Act (Formerly §143)

A. This regulation shall apply to the gathering, analysis, maintenance and publication of information on intrastate natural gas pipelines, transporters, distributors, and users of natural gas, pursuant to Sections 546.A.(5) and 550 of the Act.

B. All information required by this regulation shall be filed on forms provided by the Office of Conservation. Each natural gas transporter, gas distributor, power plant and industrial user shall, annually on or before April 1, file the information requested on the appropriate Office of Conservation questionnaire required for transporters, distribution companies, power plants and industrial users. Persons receiving and filing these questionnaires in the past will be provided same before February 1. Other persons required by law and this regulation to file a questionnaire should submit their name, mailing address and type of business to the Louisiana Office of Conservation, Post Office Box 94275, Baton Rouge, LA 70804-9275, in order to facilitate timely distribution of the questionnaires.

C. This regulation shall not apply to any industrial user which consumes less than 10 million British Thermal Units (BTU's) of natural gas per day and which employs less than

10 permanent employees. Energy consumption shall be based on the daily average of the month of highest consumption.

D. All data, records, writings, accounts, letters, letter books, photographs or copies thereof gathered under this regulation and in the custody and control of this office which pertain to the business of the person responding to questionnaires or other inquiries are subject to the Public Records Law, R.S. 44:1 et seq., including its provisions pertaining to confidentiality. Any information submitted to this office pursuant to this regulation which is in its nature confidential and which the person submitting wishes to remain confidential should be indicated specifically to be confidential at the time of submission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501-599, 601-606.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 8:650 (December 1982), repromulgated LR 49:293 (February 2023).

Subpart 2. Underwater Obstructions

Chapter 15. General

§1501. Definitions

(Formerly §301)

A. The words defined herein shall have the following meanings when used in these rules. All other words so used and not defined shall have their usual meanings (except insofar as specifically defined in Title 30 of Louisiana Revised Statutes of 1950) unless their context clearly requires otherwise.

Assistant Secretary—the assistant secretary of the Office of Conservation within the Department of Natural Resources or his authorized representatives.

Associated Material—equipment, machinery or other material typically used in marine oil and gas production, transportation and/or transmission activities, including without limitation sunken vessels, boats and barges, but not including any associated structure as defined herein.

Associated Structure—any artificial structure that is, or previously was, integrally attached to a pipeline or to a field transmission, flow or gathering line, including without limitation, fittings, tie-overs, cross-overs, appliances and equipment.

Coastal Waters—bays, lakes, inlets, estuaries, rivers, bayous, and other bodies of water within the boundaries of the coastal zone that have measurable seawater content under normal weather conditions over a period of years.

Conservation—the Office of Conservation within the Department of Natural Resources.

Department—the Department of Natural Resources.

Fund—the Underwater Obstruction Removal Fund.

Lessee—for the purpose of this regulation, the lessee shall be considered the actual lessee or his assignees, the legal owner, or the operator at the time of abandonment.

Pipeline—all segments of pipe other than any field transmission, flow or gathering line with the exception of site clearance. For the purpose of site clearance, a pipeline shall be considered any size or type of pipeline (including flowlines).

Platform—any structure that has significant facilities supporting exploration or production operations, including but not limited to pumping, injection, compression, transmission, quartering, or primary, secondary or tertiary oil, gas, or water treatment.

Program—the Underwater Obstruction Removal Program.

Secretary—the Secretary of the Department of Natural Resources or his authorized representative.

Single or Multi-well Caisson or Templet—any structure that has no significant facilities supporting exploration or production operations. Pipes, valves, manifolding, and vent stacks are not considered a significant facility.

State Waterbottoms—the state-owned lands lying beneath the territorial sea, arms of the sea and all waterbottoms that are navigable in fact within the Louisiana coastal zone as defined in R.S. 49:213.3(4).

Territorial Seas—the belt of the seas measured from the line of ordinary low water along that portion of the coast that is in direct contact with the open sea and the line marking the seaward limit of coastal waters, and extending 3 miles seaward as set by decree of the United States Supreme Court in 1975 as being the 3-mile limit and all state-owned waterbottoms.

Underwater Obstruction—any obstacle, whether natural or manmade, which impedes normal navigation and commercial fishing on the navigable waters of the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(D)-4(H) and 30:101.4.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 11:702 (July 1985), amended LR 18:1412 (December 1992), LR 24:340 (February 1998), repromulgated LR 49:294 (February 2023).

§1503. Applicability

(Formerly §303)

A. Except as otherwise provided herein, these rules apply to all facilities, existing or hereafter constructed.

B. No provision of these rules shall require any person to do anything that would constitute a violation by that person of any law of the United States or of any regulation promulgated by any agency of the United States government.

C. If any provision or item of these rules, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of these rules which can be given effect without the invalid provisions, items or applications, and to this end the provisions, items and applications of these rules are hereby declared severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4-D through 4-H.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 11:703 (July 1985), repromulgated LR 49:294 (February 2023).

§1505. Variances

(Formerly §305)

A. The assistant secretary shall by written order grant a variance from any requirement of these rules in any case where he is shown that:

1. compliance with the requirement would constitute a violation of federal law or regulation;
 2. compliance is technically infeasible or impractical;
- or
3. compliance would impose unreasonable or unnecessary burdens on the person seeking the variance.

B. Any person seeking a variance shall provide a complete statement of the grounds therefor, including all supporting documentation. If the information provided is sufficient to justify the claim, the assistant secretary shall

grant either an unconditional variance or a variance conditioned upon the person taking specific actions to prevent or minimize interference with fishing, shrimping or other navigation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4-D through 4-H.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 11:703 (July 1985), repromulgated LR 49:294 (February 2023).

Chapter 17. Requirements for Facilities

§1701. New Facilities

(Formerly §307)

A. No person shall commence construction of any facility (other than a field transmission, flow or gathering line located on a state lease or right-of-way) on state waterbottoms after the effective date of regulations unless the assistant secretary has issued a permit authorizing such construction pursuant to R.S. 30:4 and these rules. For purposes of this rule, construction includes any modification of an existing pipeline by the laying of new pipe, other than the replacement of defective pipe by pipe of the same diameter.

B. Any order, permit, lease, right-of-way or other authorization issued or granted by the state of Louisiana which specifically authorizes construction of a facility, including without limitation a permit issued under the Coastal Zone Management Act, shall satisfy the requirement for a permit under this rule and under R.S. 30:4; provided, however, that all requirements of these regulations, including permit conditions under §305, which are or may become applicable to the facility shall be deemed to be incorporated in such authorization.

C. If a facility required to have a permit under this rule is not deemed to have a permit under §1701 then the person responsible shall apply for a permit hereunder and submit in its application:

1. a map, diagram, plan or drawing showing the size, extent, location and water depth of the proposed facility; and

2. such additional information as the assistant secretary may reasonably require; provided, however, that with respect to information already provided in a previous application to the state or United States for a right-of-way, lease, or other permit or authorization for the proposed facility the applicant may submit a copy of such previous application.

D. Within 60 days after receiving an application for a permit hereunder, the assistant secretary shall either issue or deny the permit.

E. A permit issued hereunder shall include appropriate conditions requiring:

1. that the facility be constructed and maintained so as to prevent obstructions to the maximum extent practicable; and

2. that portions of a pipeline located in waters of a depth of less than 20 feet be buried to a minimum depth of 3 feet. This requirement shall not apply to any portion of such line that is connected to a production facility in current use and located within 500 feet of that facility. Burial shall not be required where the assistant secretary determines in accordance with §1505 that a variance be granted.

F. Within 90 days after completion of construction of a facility, a person responsible for the facility shall submit to the assistant secretary:

1. a map, diagram, plan or drawing showing the size, extent and location of the facility as built; or

2. a written statement certifying that the facility was constructed in accordance with a map, diagram, plan or drawing previously submitted to the assistant secretary, except for such deviations as are specifically described therein.

G. Any field transmission, flow or gathering line on which construction is commenced after the effective date of these regulations shall, if located in waters of a depth of less than 20 feet, be buried and maintained to a minimum depth of 3 feet. This requirement shall not apply to any portion of such line that is connected to a production facility in current use and located within 500 feet of that facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4-D through 4-H.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 11:703 (July 1985), repromulgated LR 49:295 (February 2023).

§1703. Inspection and Reporting

(Formerly §309)

A. Every person responsible for a previously buried facility shall report in writing to the assistant secretary within 30 days after knowledge thereof any instances not previously reported where the facility, or any portion thereof, has become unburied. Nothing in this Section shall be construed to impose any burial requirements.

B. The assistant secretary shall require an inspection of a pipeline, field transmission, flow or gathering line or associated structure by a person responsible if, after providing that person with notice and an opportunity to respond, he determines the public interest so requires. That person shall inspect the facility and report to the assistant secretary within 30 days thereafter the nature and location of any portion of the facility above the mudline. The assistant secretary may require a map showing the location of the facility inspected and any parts above the mudline.

C. If, after providing the person responsible with notice and an opportunity to respond, the assistant secretary determines the public interest so requires, he shall require the owner or operator of a pipeline, field transmission, flow or gathering line, or associated structure located on a right-of-way or lease upon state waterbottoms to inspect that portion of the right-of-way or lease where he reasonably believes associated material is located and causing an obstruction. If so directed, the responsible person shall conduct an inspection and report to the assistant secretary within 30 days thereafter the nature and location of any associated material above the mudline.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4-D through 4-H.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 11:704 (July 1985), repromulgated LR 49:295 (February 2023).

§1705. Abandoned Facilities

(Formerly §311)

A. All facilities (other than field transmission, flow or gathering lines on state leases or right-of-way):

1. located above the mudline and in less than 20 feet of water; and

2. constituting an obstruction, shall be removed within 90 days after abandonment or as soon thereafter as practicable by the responsible person or persons.

B. Each person responsible for a facility shall notify the assistant secretary of its abandonment in writing no later than 30 days after such facility is abandoned. Such notice shall include:

1. a description of the facility including its location, size and depth of superadjacent waters, and a statement whether the facility will be removed, buried, or remain in place; and

2. the nature and location of all portions of the facility then situated above the mudline.

C. Upon learning thereafter that any portion of a facility abandoned under §1705.B is protruding above the mudline in depths of water less than 20 feet and constituting an obstruction, the person or persons responsible shall notify the assistant secretary and remove or mark that portion of the facility within 90 days or as soon thereafter as practicable; provided, however, field transmission, flow and gathering lines on state leases or right-of-way shall not be required to be removed.

D. For purposes of this rule, a facility shall be deemed abandoned if it has not been actually used for the bona fide movement, processing or production of hydrocarbons within the preceding six months, provided that a facility shall not be deemed abandoned if:

1. the owner or operator thereof reasonably intends to use the facility for the movement, processing or production of hydrocarbons in the reasonably foreseeable future; or

2. the owner or operator has applied for but not received permission from the relevant jurisdictional authority to abandon the facility.

E. All abandoned well and platform locations on state water bottoms in the Gulf of Mexico and adjacent bays and inlets shall be cleared of all related obstructions by the owner of such facilities. All owners shall comply with the following clearance and verification requirements and procedures.

1. All abandoned well and platform locations shall be cleared of all obstructions present as a result of oil and gas activities unless otherwise approved by the commissioner of conservation. For clearance purposes, the locations shall be defined as below:

- a. *Exploratory, Dry Hole, Delineation, or Other Wells That Have Not Been Produced for Purposes Other Than Production Tests*—in open water (territorial seas and coastal waters), the area covered by a 300-foot radius circle centered on the well, depending on site specific conditions. In a canal, bayou, river, or other similarly restricted waterway a maximum linear distance 100 feet upstream and downstream from the location of the well, depending on site specific limitations.

- b. *Platforms*—in territorial seas, the area covered by a 1,320-foot radius circle centered on the platform geometric center. In coastal waters, the area covered by a 400-foot radius circle centered on the platform geometric center, depending on site specific conditions. In a canal, bayou, river, or other similarly restricted waterway, a maximum linear distance 400 feet upstream and downstream from the location of the well depending on site specific limitations.

- c. *Single or Multi-Well Caisson or Templet*—in open water (territorial seas and coastal waters), the area covered by a 400-foot radius circle centered on the well,

depending on site specific conditions. In a canal, bayou, river, or other similarly restricted waterway a maximum linear distance 100 feet upstream and downstream from the location of the well depending on site specific limitations.

2. A procedural plan for site clearance verification of platform, well or structure abandonment (§1705.E.1.b or §1705.E.1.c) shall be developed by the lessee and submitted to the commissioner of conservation for approval with the permit application for platform or structure removal. Vessels used for site clearance verification operations in territorial seas shall be equipped with a navigational positioning system capable of providing position accuracy of +30 feet. The navigational system proposed for use must be identified in the procedural plan. Vessels used for site clearance verification operations in coastal waters and shallow (5 feet or less below mean sea level) territorial seas are not required to be equipped with a navigational system provided alternate methods for insuring proper positioning during site clearance verification operations are described in the plan submitted for approval. Each such plan and application shall be accompanied by a filing fee of \$600.

- a. Sites defined in §1705.E.1.b and c located in water depths greater than or equal to 5 feet below mean tide level but less than 200 feet shall have their locations verified clear over 100 percent of their limits in open waters or the length of the location in restricted waters. Trawling is the preferred method of site clearance verification, however alternative methods may be approved by the commissioner. Sites defined in §1705.E.1.a need not be trawled provided approval is obtained from the Office of Conservation for an alternate method of site clearance verification. If an alternate method (e.g., diver survey) is proposed, operational plans must adequately be described in the procedural plan submitted for approval.

- i. Trawling contractors performing site clearance verification work shall possess a valid commercial trawling license for both the vessel and the captain. Further, the captain must have prior experience in trawling operations for two consecutive years immediately prior to performing the work.

- ii. The trawling vessel used in verification activities in open water must be equipped with a navigational system and plotter that will produce a real time track plot of the vessel position or capable of producing a hard copy post plot on board the vessel of any or all lines in order to verify that the area has been satisfactorily covered prior to departure of the trawling vessel. The track plot must have a minimum scale of 1" - 400' (1:4800).

- iii. The trawling vessel must be outfitted with trawling nets with a maximum stretched mesh size of 6 inches and constructed of twine no stronger than #18 twine (ribbon strength). These nets shall not be equipped with turtle excluder devices (TED's). Trawls shall be picked up after a maximum drag time of 30 minutes and all fish, crabs, and shrimp caught in the trawl must be released. The Eighth Coast Guard District Law Enforcement Branch and the Department of Wildlife and Fisheries Enforcement Section shall be notified of any site clearance verification trawling operations 48 hours prior to commencing such activities. When trawling in areas where pipelines, snags, or shipwrecks are known to exist, the following guidelines shall be followed.

NOTE: It is suggested that the operator or the trawling contractor contact the Fishermen's Gear Compensation Fund and U.S. Coast Guard Notice to Mariners to identify any recorded snags within the area to be trawled.

(a). There are no restrictions to be placed on the trawling procedure or pattern for abandoned pipelines. It is the responsibility of the lessee (or operator) performing the site clearance verification activities to contact the former pipeline owner (or operator) and determine whether or not the line will cause an obstruction to unrestricted trawling operations.

(b). In general, trawling should not be conducted closer than 300 feet to any existing pipeline, structure, well, snag or shipwreck, but this distance may be reduced depending on the conditions existing at a particular site.

(c). Active pipelines which are buried and for which no above grade obstructions (such as valves) exist must be trawled without any restrictions placed on the trawling procedure or pattern. It is the responsibility of the lessee (or operator) performing the site clearance verification activities to contact the pipeline owner (or operator) and determine the condition of such pipelines within the area to be trawled.

(d). For unburied active pipelines which are 8 inches in diameter or larger, and for unburied smaller diameter lines which have obstructions (e.g., valves) present, trawling shall be carried out no closer than 100 feet to either side and in the same direction as (parallel to) the line. Trawling shall not be carried out across the line.

(e). For unburied active pipelines which are smaller than 8 inches in diameter and have no obstructions present, trawling must be carried out in the direction of the line and trawling on top of the line is acceptable. Trawling shall not be carried out across the line.

iv. Trawling grid patterns (track lines) shall be spaced no more than a distance equal to one-half the width of the net mouth opening. For example, a vessel trawling with a net with a 40-foot mouth opening must be trawled on a 20 foot or smaller grid pattern.

b. Any modifications to the requirements to trawl the site must be approved by the commissioner of conservation. All man-made objects encountered on the seabed which are known (or suspected) to be present as a result of oil and gas activities shall be removed from the seabed or other remedial action taken and reported as specified below unless otherwise approved by the commissioner of conservation. Any grid line that is found to have a snag that is not recovered in the trawl must be retrawled after snag recovery operations are completed. In those instances where the trawling effort is interrupted for any reason and then continued again, overlap of areas trawled (or to be trawled) trawling shall be resumed at a location and in a direction to ensure 100 percent coverage of the site clearance area.

c. The lessee shall notify the commissioner of conservation at least 48 hours prior to conducting the clearance survey. All casing and anchor piling shall be removed to a depth of at least 10 feet below the mudline.

d. For areas with more than one facility to be abandoned, with overlapping site clearance areas, the operator/owner may submit a site clearance plan to the

commissioner of conservation for the composite area. A completed plan must be submitted upon removal of the last facility within the area.

3. Within 90 days of completion of platform or structure removal/abandonment operations, site clearance verification shall be completed as specified in the approved plan unless otherwise approved by the commissioner of conservation. Until site clearance verification procedures have been completed, the location shall be marked as a hazard to navigation in accordance with U.S. Coast Guard regulations unless otherwise approved. Verification letters from the company performing the salvage/clearance work and the trawling contractor shall be submitted with the well clearance or platform removal report and, as appropriate, shall include the following:

a. the date(s) the work was performed and vessel involved;

b. a statement from both the salvager and trawling contractor that no objects were recovered, or general categorical descriptions of the objects that were recovered. The trawler must note the general contents of the nets on each trawling pass. Examples of categories of debris recovered are:

- i. pipe;
- ii. grating;
- iii. plate;
- iv. structural shapes;
- v. tires;
- vi. batteries;
- vii. wire rope;
- viii. hoses; or
- ix. other. All material recovered must be disposed

of properly;

c. details and results of any alternate methods of site clearance verification performed, i.e., the diver search pattern and equipment used, or the type of sonar equipment used, including instrument deployment method, frequency, range, and height above the seafloor, and a record of the scans with range and scale noted accompanied by an interpretation of the seabed features shown;

d. details and results of the trawling operations, i.e., post job plot or map showing (minimum scale 1" = 400') the pattern in which the trawl was pulled, the size and description of the trawl, grid line numbers corresponding to those used in the trawler's report, location center latitude and longitude, the positioning system and calibration method(s) used and any interruptions experienced during the survey;

e. a letter signed by an authorized lessee/operator company representative stating that he/she witnessed the site clearance operations and subsequent verification surveys shall also be submitted with the well clearance report or report of platform or structure removal;

f. all reports, forms, and letters shall be submitted to the Office of Conservation no later than 90 days following completion of trawling operations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4-D through 4-H.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 11:704 (July 1985), amended LR 18:1412 (December 1992), repromulgated LR 49:295 (February 2023).

**§1707. Remedial Action
(Formerly §313)**

A. If information available to the Office of Conservation discloses an obstruction resulting from a facility exposed in violation of §1701.E or G, an abandoned facility, or associated material, the assistant secretary may, upon 10 days written notice, order any person responsible for the facility or, where the obstruction is caused by associated material, any person responsible for a facility located on the right-of-way or lease where the obstruction occurs, to show cause, taking into account all relevant issues, why said person should not be required to take appropriate remedial action, as determined by the assistant secretary.

B. For purposes of this rule, *appropriate remedial action* includes:

1. reburial of a pipeline as required by §1701.E to its original depth;
2. reburial of a field transmission, flow or gathering line as required by §1701.G to its original depth;
3. removal of an abandoned facility (other than a field transmission, flow or gathering line situated on a state lease or right-of-way) except where it is demonstrated that the facility is in water depths greater than 20 feet;
4. removal of associated material in water depths less than 20 feet; or
5. installation and maintenance of private aids to navigation at the location of the obstruction in accordance with applicable rules and regulations of the United States Coast Guard and Corps of Engineers.

C. Any person ordered to take remedial action shall, within 10 days of completing this action, submit a written report to the assistant secretary certifying that such action has been completed in accordance with the assistant secretary's order.

D. Nothing in these regulations shall be deemed to limit or extinguish any legal obligations or right of any person arising under a lease, right-of-way or permit issued by the state or under any otherwise applicable law or regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4-D through 4-H.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 11:704 (July 1985), repromulgated LR 49:298 (February 2023).

Chapter 19. Delineation of Authorities

**§1901. Memorandum of Understanding
(Formerly §315)**

A. The secretary and the assistant secretary for the Office of Conservation have been delegated certain authority for the administration of this Part by Act 666 of the 1997 Regular Session of the Louisiana Legislature. A memorandum of understanding shall be prepared and signed by both entities for the purpose of delineating and agreeing on the authority and function to be served by each of them for the administration of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(D)-4(H) and 30:101.4.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 24:340 (February 1998), repromulgated LR 49:298 (February 2023).

**§1903. Office of the Secretary
(Formerly §317)**

A. The secretary shall perform all duties and functions authorized by the provisions of Act 666 of 1997 Regular Session of the Louisiana Legislature.

B. The Office of the Secretary is authorized to expend a sum, not to exceed \$200,000 per annum, for the department's administration of this Part.

C. The secretary shall administer general oversight of expenditures or commitments to make expenditures from the fund for identification, inventory and removal of underwater obstructions as he deems necessary and appropriate.

D. The secretary shall maintain all supervisory and fiscal responsibilities for this Part which are not specifically conferred upon the assistant secretary.

E. The secretary shall perform such other specific functions as may be enumerated or envisioned by this Part.

F. The powers provided in this Part shall be in addition to and shall not limit the powers conferred on the secretary in other provisions of this Title or by any other provisions of any state or federal law or regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(D)-4(H) and 30:101.4.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 24:340 (February 1998), repromulgated LR 49:298 (February 2023).

**§1905. Office of Conservation—Assistant Secretary
(Formerly §319)**

A. The powers of the assistant secretary shall include, without limitation, the power to do the following:

1. negotiate and execute contracts, upon such terms as he may agree upon for underwater obstruction identification, inventory, and removal, and other services necessary to meet the purpose of this Part;
2. publish an annual list of underwater obstruction sites, to include an inventory of the type, size and depth of the obstruction, and any other relevant information which would aid navigation and commercial fishing in the vicinity of the obstruction;
3. prepare, evaluate and approve an annual priority list for underwater obstruction removal;
4. prepare, evaluate and approve a list of contractors acceptable to conduct obstruction removal;
5. administer and manage the Underwater Obstruction Removal Program for identification, inventory, and removal of underwater obstructions in the navigable coastal waters of the state;
6. administer and manage the Underwater Obstruction Removal Fund;
7. perform any function authorized or enumerated by this Part or which is consistent with its purpose.

B. The aforementioned powers shall be in addition to and shall not limit the powers conferred on the assistant secretary in other provisions of this Title or by any other pertinent provision of any state or federal law or regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(D)-4(H) and 30:101.4.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 24:340 (February 1998), repromulgated LR 49:298 (February 2023).

Chapter 21. Underwater Obstruction Fund

§2101. Establishment of the Fund

(Formerly §321)

A. There is hereby established a fund in the custody of the state treasurer to be known as the Underwater Obstruction Removal Fund into which the state treasurer shall, each fiscal year, deposit the revenues received from the collection of the monies enumerated in §2101.C, after those revenues have been deposited in the Bond Security and Redemption Fund. Out of the funds remaining in the Bond Security and Redemption Fund, after a sufficient amount is allocated from that fund to pay all the obligations secured by the full faith and credit of the state that become due and payable within each fiscal year, the treasurer shall pay into the Underwater Obstruction Removal Trust Fund an amount equal to the revenues generated as provided for in §2101.C. Such funds shall constitute a special custodial trust fund which shall be administered by the secretary who shall make disbursements from the fund solely in accordance with the purposes and uses authorized by this Part.

B. The funds received shall be placed in the special trust fund in the custody of the state treasurer to be used only in accordance with this Part and shall not be placed in the general fund. The funds shall only be used for the purposes set forth in this Part and for no other governmental purposes, nor shall any portion hereof ever be available to borrow from by any branch of government. It is the intent of the legislature that this fund shall remain intact and inviolate. Any interest or earnings of the fund shall be credited only to the fund.

C. The following monies shall be placed into the Underwater Obstructions Removal Fund:

1. private contributions;
2. interest earned on the funds deposited in the fund;
3. any grants, donations, and sums allocated from any source, public or private, for the purposes of this Part.

D. The monies in the fund may be disbursed and expended pursuant to the authority and direction of the assistant secretary for the following purposes and uses:

1. any underwater obstruction identification, inventory, or removal conducted by the Office of Conservation pursuant to this Part;
2. the administration of this Part by the Office of Conservation in an amount not to exceed \$200,000 in any fiscal year;
3. the payment of fees and costs associated with the administration of the fund and any contract with a private legal entity pursuant to §2101;
4. any other expenditures deemed necessary by the secretary to meet the purposes of this Part.

E. The secretary may enter into one or more agreements with a private legal entity to receive and administer the Underwater Obstruction Removal Fund, which shall be an interest bearing trust fund.

F. The funds shall be a special custodial trust fund in the custody of the state treasurer which shall be administered by the secretary (or assistant secretary).

G. The monies in the fund shall be used solely for the purposes of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(D)-4(H) and 30:101.4.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 24:340 (February 1998), repromulgated LR 49:299 (February 2023).

§2103. Use of the Fund

(Formerly §323)

A. In addition to the administrative cost provided for herein, the monies in the fund may be disbursed and expended as directed by the secretary (or assistant secretary) for the following purposes:

1. any underwater obstruction identification, inventory, assessment or removal conducted by the department pursuant to this Part;
2. any costs and fees associated with the administration of the fund and any contract with a private legal entity pursuant to R.S. 30:101.7;
3. any costs and fees associated with the recovery of underwater obstruction removal costs;
4. any other expenditures deemed necessary by the secretary to meet the purposes of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(D)-4(H) and 30:101.4.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 24:341 (February 1998), repromulgated LR 49:299 (February 2023).

Chapter 23. Assessments and Removal

§2301. Office of Conservation; Underwater Obstruction

Assessments or Removal

(Formerly §325)

A. A contract for obstruction removal shall require a cash bond, performance bond, or other equivalent surety instrument approved by the assistant secretary, and shall require a formal bid process. A project which the assistant secretary has declared, in writing, to be an emergency may employ a written and thoroughly documented informal bidding procedure in which bids are received from at least three bidders. All such contracts shall be reviewed prior to execution by the secretary and at least all informally bid contracts shall be reviewed by the Commissioner of the Division of Administration.

B. No party contracting with the department under the provisions of this Part shall be deemed to be a public employee or an employee otherwise subject to the provisions of Chapter 15 of Parts I through IV of Title 42 of the Revised Statutes of 1950.

C. The assistant secretary may enter into contracts for the purposes of underwater obstruction identification, assessments or removal to carry out the provisions of this Part, under the following circumstances:

1. when the assistant secretary has declared an emergency, in writing, he may employ a written and thoroughly documented informal bidding procedure and take informal, detailed written bids from at least three contractors without the necessity of meeting the requirements of the state public bid law. Before execution of a contract, under emergency declaration, a performance bond shall be furnished by the contractor;

2. where no emergency exists, all contracts shall be made pursuant to the state public bid law;

3. all such contracts shall be reviewed prior to execution by the secretary and all informally bid contracts shall be reviewed by the Commissioner of the Division of Administration.

D. An underwater obstruction removal assessment shall be performed by a contractor chosen from the list of contractors approved by the assistant secretary or a contractor who submits his credentials to the assistant secretary for approval and is subsequently added to the list.

E. An obstruction removal assessment shall specifically detail site restoration needs and shall provide a description of the obstruction and an estimate of the cost to remove the obstruction and restore the site, in accordance with the standards set forth in LAC 43:XIX.101 et seq.

F. No party contracting with the department under the provisions of this Part shall be deemed to be a public employee or an employee otherwise subject to the provisions of Chapter 15 of Parts I through IV of Title 42 of the Revised Statutes of 1950.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(D)-4(H) and 30:101.4.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 24:341 (February 1998), repromulgated LR 49:299 (February 2023).

§2303. Underwater Obstruction Sites (Formerly §327)

A. If the assistant secretary has been unable to identify the owner of an obstruction prior to removal of the obstruction, the secretary (or assistant secretary) may expend monies from the fund to remove the obstruction and fully restore the site.

B. The secretary shall be authorized to recover the removal and restoration costs from the owner of the underwater obstruction.

C. The state shall be exempt from the provisions of this Part.

D. The secretary, the assistant secretary, and their agents shall not be liable for any damages arising from an act or omission if the act or omission is part of a good faith effort to carry out the purpose of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(D)-4(H) and 30:101.4.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 24:341 (February 1998), repromulgated LR 49:300 (February 2023).

§2305. Liability (Formerly §329)

A. The secretary or assistant secretary shall not be liable for any damages arising from an act or omission if the act or omission is part of a good faith effort to carry out the purpose of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(D)-4(H) and 30:101.4.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 24:342 (February 1998), repromulgated LR 49:300 (February 2023).

§2307. Annual Report (Formerly §331)

A. The assistant secretary shall submit to the Senate and House of Representatives Committees on Natural Resources, before March 1, an annual report that reviews the extent to which the program has enabled the assistant secretary to better protect the navigable waters and commercial fishing of the state and enhance the income of the fund.

B. The assistant secretary's annual reports shall include:

1. the number and location of underwater obstructions which have been identified and inventoried, and a list of

those obstructions which have been successfully removed during the preceding year, to include the cost of removal of each;

2. the overall status of implementation of the provisions of this Part relating to the identification, inventory, and removal of underwater obstructions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(D)-4(H) and 30:101.4.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 24:342 (February 1998), repromulgated LR 49:300 (February 2023).

Subpart 3. Pipeline Safety

Chapter 27. General

§2701. Service

(Formerly §501)

A. Except as herein provided, any order, notice or other documents required to be served under this regulation shall be served personally or by registered or certified mail.

B. Should the assistant secretary elect to make personal service, it may be made by any officer authorized to serve process or any agent or employee of the assistant secretary in the same manner as is provided by law for the service of citation in civil actions in the district courts. Proof of service by an agent or employee shall be by the affidavit of the person making it.

C. Service upon a person's duly authorized representative, officer or agent constitutes service upon that person.

D. Service by registered or certified mail is complete upon mailing. An official U.S. Postal Service receipt from the registered or certified mailing constitutes prima facie evidence of service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 and 40:1892.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:600 (September 1986), repromulgated LR 49:300 (February 2023).

§2703. Subpoenas

(Formerly §503)

A. The assistant secretary may sign and issue subpoenas either on his own initiative or, upon request and adequate showing by any person participating in any proceeding before the assistant secretary that the information sought is relevant and will materially advance the proceeding.

B. A subpoena may require the attendance of a witness for the purpose of giving testimony, or the production of documents or other tangible evidence in the possession or under the control of the person served, or both.

C. A subpoena may be served by any agent of the Office of Conservation, by the sheriff of the parish where service is to be made or the parish where the action is pending or by any other person authorized by law to serve process in this state.

D. Service of a subpoena upon the person named therein shall be made by delivering a copy of the subpoena to such person. Delivery of a copy of subpoena may be made by handing them to the person, leaving them at his office with person, leaving them at his office with persons in charge thereof, leaving them at his dwelling place or usual place of abode with some person of suitable age and discretion then residing therein, or by any method whereby actual notice is given to him.

E. When the person to be served is not a natural person, delivery of a copy of the subpoena may be affected by handing them to a designated agent or representative for service, or to any officer, director, or agent in charge of any office of the person.

F. The original subpoena bearing a certificate of service shall be filed in the assistant secretary's records for the proceedings in connection with which the subpoena was issued.

G. No person shall be excused from attending and testifying or producing books, papers, or records, or from obeying the subpoena of the assistant secretary, or of a court of record on the grounds that the testimony or evidence required of him may tend to incriminate him or subject him to penalty or forfeiture. Pursuant to R.S. 30:8(4), no natural person shall be subject to criminal prosecution or to any penalty or forfeiture on account of anything concerning which he may be required to testify or produce evidence before the assistant secretary or a court of law; however, no person testifying shall be exempt from prosecution and punishment for perjury.

H. In the case of failure or refusal of a person to comply with a subpoena issued by the assistant secretary, or in the case of a refusal of a witness to testify or answer as to a matter regarding which he may be lawfully interrogated, any district court on the application of the assistant secretary may, in term time or in vacation, issue an attachment for the person to compel him to comply with the subpoena and to attend before the assistant secretary with the desired documents and to give his testimony upon whatever matters are lawfully required. The court may punish for contempt those disobeying its orders as in the case of disobedience of a subpoena issued by the court of refusal to testify therein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 and 40:1892.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:600 (September 1986), repromulgated LR 49:300 (February 2023).

Chapter 29. Enforcement

§2901. Inspection, Field Inspection Reports (Formerly §505)

A. Officers, employees or agents authorized by the assistant secretary, upon presenting proper credentials, are authorized to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, the records and properties of persons to the extent that such records and properties are relevant to determining compliance of such person with R.S. 30:501 et seq., R.S. 33:4531 et seq., and R.S. 40:1892 et seq., or any rules, regulations or orders issued thereunder.

B. Inspection may be conducted pursuant to a routine schedule, a complaint received from a member of the public, information obtained from a previous inspection, report of accident or incident involving facilities, or whenever deemed appropriate by the assistant secretary.

C. If, after inspection, the assistant secretary believes that further information is needed or required to determine compliance or appropriate action, the assistant secretary may request specific information of the person or operator to be answered within 10 days of receipt of said request.

D. The assistant secretary may, to the extent necessary to carry out his responsibilities, require reasonable testing of any portion of a facility in connection with a violation or suspected violation.

E. When information obtained from an inspection indicates that a violation has probably occurred, the inspector shall complete a field inspection report as to the nature of the violation citing the specific provisions which have been violated. Said field inspection report shall be filed with the assistant secretary for review and further action, if appropriate.

F. The assistant secretary or his agent, after review of the field inspection report, and depending upon the severity of the violation and the exigency of the situation, may issue to the operator a letter of noncompliance or initiate one or more enforcement proceedings prescribed by §§2905-2913 hereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 and 40:1892.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:600 (September 1986), repromulgated LR 49:301 (February 2023).

§2903. Letter of Noncompliance, Relief Therefrom (Formerly §507)

A. Upon determination that a probable violation of R.S. 30:501 et seq., R.S. 33:4521 et seq., or R.S. 40:1892 et seq., or any rule, regulation or order issued thereunder has occurred, the assistant secretary may institute enforcement procedures by serving upon the intrastate natural gas pipeline operator a letter of noncompliance notifying said operator of said probable violation and directing said operator to correct said violation within a designated period of time to be determined by the assistant secretary or be subject to enforcement action prescribed by §§2905-2913 hereof. A copy of the field inspection report or other evidence of violation shall be attached to the letter of noncompliance. The letter of noncompliance may inform the operator of the time at which reinspection of the facility will be conducted to confirm compliance and shall inform the operator of the time delays and procedure available to said operator for securing relief from said letter of noncompliance.

B. Except in cases of emergency action instituted pursuant to §2909 hereof, within seven days of receipt of a letter of noncompliance, the operator who believes himself to be in compliance with the applicable statute and the rules, regulations or orders issued thereunder or who believes the time limits imposed upon him for compliance to be burdensome, may request a conference before the assistant secretary or his designated agent. The operator's request for said conference may be verbal or presented in writing.

C. The conference before the assistant secretary or his agent shall be informal without strict adherence to rules of evidence. The operator may submit any relevant information and materials which shall become part of the record and may examine the assistant secretary's files relative to the probable violation. If circumstances are deemed appropriate by the assistant secretary and upon request of the operator, this conference may be held by telephone conference.

D. Upon conclusion of the conference for relief, the assistant secretary may issue to the operator a modified letter of noncompliance extending the time for compliance or containing such other terms and conditions as may be appropriate considering the nature of the probable violation, the circumstances and exigency of the situation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 and 40:1892.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:601 (September 1986), repromulgated LR 49:301 (February 2023).

§2905. Reinspection, Show Cause Conference (Formerly §509)

A. Upon expiration of the delay allowed in the letter of noncompliance or modified letter of noncompliance for correcting said probable violation, the operators facilities shall be reinspected and if the operator is found to be in compliance, the enforcement file for said violation will be closed.

B. If upon reinspection the operator is found to be in violation of the statute, rule or regulation for which a letter of noncompliance has been issued, the assistant secretary may:

1. reissue citation to the operator in the form of a letter of noncompliance containing such modifications or extensions of time as the case may warrant;

2. require that the operator attend a show cause conference with the assistant secretary or his agent to review the complaint and the operators effect in resolving or correcting the violation and at the conclusion of said conference the assistant secretary may reissue a modified letter of noncompliance containing such modifications or extensions of time as the case may warrant; or

3. immediately after reinspection or after the show cause conference, initiate one or more enforcement proceedings prescribed by §§2907-2913.

C. The show cause conference shall be conducted informally without strict adherence to the rules of evidence. The operator may submit any relevant information, call witnesses on his behalf, and examine the evidence and witnesses against him. No detailed record of said conference shall be prepared but said record shall contain the materials in the enforcement case file pertinent to the issues, relevant submissions of the operator and the written recommendations of the assistant secretary or his agent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 and 40:1892.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:601 (September 1986), repromulgated LR 49:302 (February 2023).

§2907. Show Cause Hearing, Notice, Rules of Procedure, Record, Order of Compliance (Formerly §511)

A. At any time that the assistant secretary determines that such action is appropriate, he may direct that an operator attend a formal show cause hearing and to show cause at said hearing why he should not be compelled to comply with applicable statutes and the rules and regulations promulgated thereunder.

B. The operator shall be given at least 10 days notice of said show cause hearing in the manner herein provided and shall be required to attend. The assistant secretary may issue such subpoenas as may be necessary for the attendance of witnesses and the production of documents.

C. The show cause hearing shall be conducted in accordance with the procedures for adjudication prescribed by the Administrative Procedure Act (R.S. 49:950 et seq.).

D. The record of the case shall include those items required by R.S. 49:955.E together with the enforcement file for the violation in question which enforcement file may

include inspection reports and other evidence of violation, letters of noncompliance, modified letters of noncompliance, materials submitted by the operator pursuant to §§2903-2905, all correspondence and orders directed to the operator by the assistant secretary, all correspondence received by the assistant secretary from the operator, and evaluations and recommendations of the assistant secretary or his staff.

E. After conclusion of the show cause hearing the assistant secretary shall issue an order of compliance directed to the operator setting forth findings and determinations on all material issues, including a determination as to whether each alleged violation has been proven, and a statement of the actions required to be taken by the operator and the time by which such actions must be accomplished. The compliance order shall become final as specified by the Administrative Procedure Act.

F. The assistant secretary may tax the operator with all costs of said hearing including but not limited to transcription and service costs and hearing fees in the amount prescribed by R.S. 30:21.

G. The operator and the assistant secretary may consent to waiver of the show cause hearing and enter into a consent order which will become final and nonappealable upon its issuance.

H. If the operator fails to comply with the final order of compliance, the assistant secretary may take whatever civil or criminal action is necessary to enforce said order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 and 40:1892.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:601 (September 1986), repromulgated LR 49:302 (February 2023).

§2909. Emergency (Formerly §513)

A. Should the assistant secretary, the director of pipelines or the chief of pipeline safety find an existing emergency due to noncompliance with law or the rules, regulations or orders issued pursuant thereto or due to gas leakage or lack of malodorization which in his judgment requires the issuance of an emergency order or an order for the immediate termination of the offending service without first complying with the procedures set forth herein and without having a hearing, he may issue the emergency order or terminate said offending service and invoke a show cause hearing pursuant to §2907 requiring the operator to show cause why the circumstances giving rise to the emergency should not be corrected. The emergency order or order for termination of the offending service shall remain in force no longer than 15 days from its effective date. In any event, the emergency order shall expire when the order made after notice and hearing with respect to the same subject matter becomes effective. An emergency is defined as the lack of malodorant in gas required to be malodorized or any situation where there is a substantial likelihood that loss of life, personal injury, health or property will result before the procedures under this regulation for notice and hearing can be fully complied with.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 and 40:1892.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:601 (September 1986), repromulgated LR 49:302 (February 2023).

**§2911. Civil Enforcement Injunction
(Formerly §515)**

A. Whenever it appears to the assistant secretary that any person or operator has engaged, is engaged, or is about to engage in any act or practice constituting a violation of R.S. 30:501 et seq., R.S. 33:4521 et seq., or R.S. 40:1892 et seq., or any rule, regulation or order issued thereunder, he may bring an action in the court having jurisdiction, to enjoin such acts or practice and to enforce compliance with the applicable statute and the rules, regulations and orders issued pursuant thereto, and upon proper showing a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. The relief sought may include a mandatory injunction commanding any person to comply with the applicable law or any rule, regulation or order issued thereunder, and to make restitution of money received in violation of any such rule, regulation or order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 and 40:1892.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:602 (September 1986), repromulgated LR 49:303 (February 2023).

**§2913. Criminal Enforcement, Penalties
(Formerly §517)**

A. The assistant secretary may transmit such evidence as may be available concerning acts or practice in violation of R.S. 30:501 et seq., R.S. 33:4521 et seq., and R.S. 40:1892 et seq., or any rule, regulation or order issued pursuant thereto or any order issued pursuant to this regulation to the district attorney having jurisdiction over same who, in his discretion, may institute necessary proceedings to collect the penalties provided by statute.

B. Any person who willfully violates any provision of R.S. 30:501 et seq., or any rule, regulation or order issued pursuant thereto or any order issued pursuant to these enforcement regulations or who willfully furnishes false information to the assistant secretary shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not more than \$10,000 or imprisoned for not more than one year, or both, for each violation.

C. Any person who fails to fully comply, within 60 days after receipt thereof, with any rules, regulation or order of the Office of Conservation adopted pursuant to the provisions of R.S. 33:4521 et seq., or R.S. 40:1892, or any order issued pursuant to this regulation shall be fined \$1,000 for each day he fails to comply therewith.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 and 40:1892.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:602 (September 1986), repromulgated LR 49:303 (February 2023).

Subpart 4. Carbon Dioxide

Chapter 33. General

**§3301. Definitions
(Formerly §701)**

A. The words used in these regulations shall have their usual meanings unless specifically defined as follows in this §3301, or defined in §709 or elsewhere in these regulations.

Carbon Dioxide—fluid consisting principally of carbon dioxide itself, which is the substance chemically composed of one carbon atom and two oxygen atoms and having the chemical symbol CO₂.

Commissioner—the assistant secretary, Office of Conservation, Department of Natural Resources, state of Louisiana, or any person to whom he has delegated his authority in the matter concerned.

Facility—any component of a pipeline or pipeline systems through which carbon dioxide moves, including pipe, valves, and other appurtenances attached to the pipe, compressor units, pumps, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies and other components but shall not include:

a. facilities which constitute the replacement of previously approved existing facilities which have or will soon become physically deteriorated or obsolete to the extent that replacement is deemed advisable;

b. piping, metering, processing, compressing, regulating and other installations necessary to establish one or more delivery or injection point(s) for carbon dioxide within the confines of a secondary or tertiary recovery project for the enhanced recovery of liquid and gaseous hydrocarbons previously approved by the commissioner.

Interested Parties—all persons having a direct interest in the subject matter for which an application is filed and as may be specified in these regulations. *Interested parties* shall include the owners of the land to be traversed by the proposed pipeline, the owners and operators of pipelines to which the applicant wishes to connect, and the owners and operators of pipelines to which applicant is presently connected.

Operator—a person who owns or operates pipeline facilities for the transmission of carbon dioxide.

Person—any individual, firm, joint venture, partnership, corporation, association, state, municipality, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17), R.S. 30:1104(A), and R.S. 30:1107.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:303 (February 2023).

Chapter 35. Requirements

**§3501. Operation, Construction, Extension, Acquisition, Interconnection or Abandonment of Carbon Dioxide Transmission Facilities
(Formerly §703)**

A. No person shall engage in the transmission of carbon dioxide or undertake the construction or extension of any facility therefor, or acquire or operate any such facility or extension thereof to serve secondary or tertiary recovery projects for the enhanced recovery of liquid or gaseous hydrocarbons unless there is in force and effect with respect to such person an order of the commissioner authorizing such acts or operations. Provided, however, as to any person engaged in the transmission of carbon dioxide or the operation of any such facility to serve an existing secondary or tertiary recovery project for enhanced recovery of liquid or gaseous hydrocarbons prior to the effective date of these regulations, over the routes and within the area for which application is made and has so operated since that time, the commissioner may issue such order without hearing and without requiring further proof that the public interest will be served upon certification by the operator that it is willing and able to comply with §709, excepting the requirements

for construction and design specifications, together with such other exceptions as the commissioner may grant to an applicant, if application for such order is made to the commissioner within 180 days after the effective date of these regulations. Pending the determination of any such application, the continuance of such operation shall be lawful. Provided further, that any person engaged in the construction of a facility for the transmission of carbon dioxide prior to the effective date of these regulations is authorized to continue such construction without an order of the commissioner for a period of 180 days after the effective date of these regulations, after which time said construction shall cease unless said person has filed an application with the commissioner for an order authorizing said construction. Pending the determination of any such application, the continuance of such construction shall be lawful.

B. No person engaged in the transmission of carbon dioxide shall abandon all or part of its facilities therefor subject to the jurisdiction of the commissioner, or any service rendered by means of such facilities, unless there is in force and effect an order of the commissioner authorizing said abandonment upon finding that:

1. the available supply of carbon dioxide is depleted to the extent that the continuance of service is unwarranted; or

2. that the public interest and energy needs permit such abandonment.

C. No person shall connect its carbon dioxide system with, move carbon dioxide into, or receive carbon dioxide from another pipeline system, including other systems owned by said person, unless there is in force and effect an order of the commissioner approving said operation.

D. No person shall exercise the rights of expropriation under the laws of this state in connection with the construction or operation of a carbon dioxide facility until the enhanced recovery project for liquid or gaseous hydrocarbons to be served thereby has been approved by the commissioner and a certificate of public convenience and necessity for such facility has been issued. Provided, however, that the requirement for the issuance of a certificate of public convenience and necessity shall be limited to those facilities for which the right of expropriation of private property under the general state expropriation laws is asserted.

E. Application for orders as provided for in §3501.A, B, or C above, or for the issuance of a certificate of public convenience and necessity as provided for in §3501.D above, shall be made in writing to the commissioner and shall be in such form and contain such information as herein after required.

F. An order shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations, services, construction, extension or acquisition covered by the application, if it is found:

1. that the applicant is able and willing to perform the services proposed and to conform to all of the applicable provisions of Title 30 of the Louisiana Revised Statutes and these rules and regulations;

2. that the applicant proposes to construct and/or operate facilities for the transmission of carbon dioxide for injection in connection with a secondary or tertiary recovery project for the enhanced recovery of liquid or gaseous

hydrocarbons which has been approved by the commissioner pursuant to the provisions of Title 30 of the Louisiana Revised Statutes and the rules and regulations promulgated thereunder; and

3. that the proposed facilities are reasonably necessary to serve such approved secondary or tertiary recovery project.

G. A certificate of public convenience and necessity shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations, services, construction, extension or acquisition covered by the application, if it is found:

1. that the applicant is able and willing to perform the services proposed and to conform to all of the applicable provisions of Title 30 of the Louisiana Revised Statutes and these rules and regulations;

2. that the proposed services, operations, construction, extension or acquisition, to the extent authorized by such certificate, is or will be required by the present or future public interest;

3. that the applicant proposes to construct and/or operate facilities for the transmission of carbon dioxide for injection in connection with a secondary or tertiary recovery project for the enhanced recovery of liquid or gaseous hydrocarbons which has been approved by the commissioner pursuant to the provisions of Title 30 of the Louisiana Revised Statutes and the rules and regulations promulgated thereunder; and

4. that the proposed facilities are reasonably necessary to serve such approved secondary or tertiary recovery project.

H. Certificate of public convenience and necessity shall be issued on the application of any qualified person upon the above findings. The commissioner may attach to any such certificate, and to the exercise of the rights granted thereunder, such reasonable terms and conditions as the public interest may require. Any facility to which a certificate of public convenience and necessity is issued by the commissioner under R.S. 30:4(C)(17) and these rules and regulations shall possess the right of expropriation with authority to expropriate private property under the general expropriation laws of the state, including R.S. 19:2(10).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17), R.S. 30:1104(A), and R.S. 30:1107.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:303 (February 2023).

§3503. Hearings, Notice, Conferences and Orders (Formerly §705)

A. Except as may be provided for hereinafter, no rule, regulation, order or certificate, or change, renewal or extension thereof, provided for in these regulations shall, in the absence of an emergency, be issued except after public hearing held not less than 10 days following the publication of notice in the manner hereinafter prescribed. Provided, however, that the commissioner may by rule exempt from the requirements of this regulation acts or operations for which the issuance of an order after hearing will not be required in the public interest.

B. If the commissioner finds an existing emergency which in his judgment requires the making, changing, renewal, or extension of a rule, regulation, or order without first having a hearing, the emergency rule, regulation, or

order shall have the same validity as if a hearing had been held after due notice. The emergency rule, regulation, or order shall remain in force no longer than 15 days from its effective date. In any event, it shall expire when the rule, regulation, or order made after notice and hearing with respect to the same subject matter becomes effective.

C. Public notice shall be given in the following manner.

1. Public notice with respect to all applications for which a public hearing is required shall be given by publication of a notice of said hearing in the official journal of the state of Louisiana not less than 10 days prior to the hearing. Public notice shall be in writing and shall include a statement of the time, place and nature of the hearing and the time within which a response is required, a statement of the legal authority and jurisdiction under which the hearing is to be held, a reference to the particular sections of the statutes, rules and regulations involved, and a concise statement of the matters asserted.

2. The commissioner shall mail a copy of the public notice to the applicant by certified mail. A copy of the public notice, with a copy of the application, shall be mailed by the applicant to all interested parties within two working days of the receipt of said public notice from the commissioner.

3. Notice to owners of land to be traversed by a pipeline, for all purposes under these regulations, shall be sufficient and shall be reasonable notice if mailed to the persons and to the addresses identified in the ad valorem tax records of the parishes as owners of the traversed lands.

D. Interested parties who wish to object to said application or participate in the hearing must file a petition or notice with the commissioner and the applicant within five days following the receipt by such interested parties of notice of the hearing. Petitions or notices filed in connection with the application shall set forth clearly and concisely the facts from which the nature of the interested party's alleged right or interest can be determined, the grounds of the proposed participation, and the position of the interested party in the proceeding so as to fully and completely advise the applicant and the commissioner as to the specific issues of fact or law to be raised concerning public interest, provided however, that the right to participate in a proceeding commenced under this regulation shall not extend to objections directed solely to the matters involving right-of-way including, but not limited to, the public purpose and necessity to be served in an expropriation thereof or the compensation therefor which is a judicial question pursuant to the Constitution of the State of Louisiana 1974, Article 1, Section 4. An interested party who fails to comply with the requirements of this rule, may, at the commissioner's discretion, be precluded from introducing witnesses or from presenting evidence at the hearing; however, any person shall be permitted to make statements confined to his position in the matter.

E. If no objection to the application is timely filed by an interested party in accordance with the provisions of this regulation, it will be unnecessary for the applicant to be present or to be represented at the hearing, and the evidence may be filed by affidavit or in such other form as is acceptable to or permitted by the commissioner who shall render an order based upon the record in the proceeding. Upon objection acceptable to the commissioner, the commissioner may continue the hearing to a later date for

the purpose of taking testimony and allowing cross-examination.

F. The commissioner may, either upon his own motion or at the request of an interested party or the applicant, call a conference of the parties to a proceeding at any time if, in his opinion, such conference would resolve or narrow the issues in controversy or assist in the conduct of the hearing.

G. The commissioner shall issue his orders and findings relative thereto or a certificate of public convenience and necessity in a form and in a manner determined by the commissioner. All orders and certificates of the commissioner shall be final, subject to reconsideration on his own motion or upon motion by the applicant or an interested party within 10 days from the date of its entry. Provided, however, an order issued pursuant to this regulation shall expire on its first anniversary date if construction of facilities authorized by said order has not commenced. The commissioner may upon written ex parte request, and for good cause shown, extend the expiration date of said order. The applicant shall give the commissioner timely written notice when the construction authorized under this regulation is first initiated and when completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17), R.S. 30:1104(A), and R.S. 30:1107.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:304 (February 2023).

§3505. Applications, Form and Content (Formerly §707)

A. Applications to the commissioner for the issuance of an order or a certificate of public convenience and necessity shall be submitted in writing, be verified under oath, and shall be in the form and contain such information as is prescribed below.

B. All applications submitted to the commissioner pursuant to this regulation – shall contain the following information:

1. a table of contents which shall list all exhibits and documents filed with the application;

2. the exact legal name of the applicant; its principal place of business; whether an individual, partnership, corporation or otherwise; the state under the laws of which applicant was organized or authorized; if a corporation, a certificate of good standing and authorization to do business from the Secretary of State of Louisiana, the location and mailing address of applicant's registered office, the name and post office address of each registered agent in Louisiana, and the names and addresses of all its directors and principal officers; if a partnership or other similar organization, the names and addresses of its partners of record, officer or other responsible parties of record; applicant's current financial statement or such other information which may be submitted by the applicant and accepted by the commissioner concerning the ability of the applicant to construct, acquire, or operate the proposed facility or extension thereof; and the name, title and mailing address of the person or persons to whom communications concerning the application are to be addressed;

3. a concise description of applicant's existing operations;

4. a concise description of applicant's proposed operations;

5. a map(s), of its pipeline system(s), which shall reflect the location and capacity of all compressor sites, all points of connection between such system(s) and pipelines, or pipeline system(s) of other persons, the date of such connections, and all major points of supply;

6. a listing of applicant's points of CO₂ disposition to secondary and tertiary oil and gas recovery projects;

7. points of proposed interconnection with other carbon dioxide transporters, for which approval is sought together with a statement of reasons for said interconnection;

8. anticipated volumes to be transported, transferred or exchanged;

9. a list of the names and addresses of all interested parties and shall show that a reasonable effort has been made to obtain this list;

10. a copy of the order of the commissioner approving the pertinent enhanced recovery project(s);

11. such other information as the commissioner may require as in his opinion is reasonably necessary to properly evaluate the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17), R.S. 30:1104(A), and R.S. 30:1107.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:305 (February 2023).

Chapter 39. Transportation of Carbon Dioxide

§3901. Scope

(Formerly §901)

A. This regulation prescribes the minimum standards for the state of Louisiana to regulate the construction, design, and operation of pipelines transmitting carbon dioxide within the jurisdiction of the state to serve secondary and/or tertiary recovery projects for increasing the ultimate recovery of oil and gas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:306 (February 2023).

§3903. Applicability

(Formerly §903)

A. This regulation (Chapters 39-49) applies to all pipelines within the jurisdiction covered by these regulations. This regulation does not apply to:

1. transportation of carbon dioxide upstream of the inlet flange or other connection to the carbon dioxide pipeline where carbon dioxide is delivered from a carbon dioxide source facility;

2. transportation of carbon dioxide downstream from the outlet flange or other connection of each carbon dioxide pipeline where carbon dioxide is delivered to the producer's secondary or tertiary recovery;

3. transportation of carbon dioxide through all facilities within the secondary or tertiary recovery project;

4. transportation of carbon dioxide by vessel, barge, aircraft, tank truck, tank car or other vehicle or related terminals used to transfer carbon dioxide.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:306 (February 2023).

§3905. Definitions

(Formerly §905)

A. As used in these regulations:

Component—any part of a pipeline which may be subjected to pump pressure including, but not limited to, pipe, valves, elbows, tees, flanges, and closures.

Line Section—a continuous run of pipe between adjacent pressure pump stations, between a pressure pump station and terminal, between a pressure pump station and a block valve, or between adjacent block valves.

Nominal Wall Thickness—the wall thickness listed in the pipe specifications.

Offshore—beyond the line of ordinary low water along that portion of the coast of the United States that is in the direct contact with the open seas and beyond the line marking the seaward limit of inland waters.

Pipe or Line Pipe—a tube, usually cylindrical, through which carbon dioxide flows from one point to another.

Pipeline or Pipeline System—the total integrated facilities through which the carbon dioxide is transmitted to the recovery project area(s).

Pipeline Facility—pipe and appurtenances, rights of way, and any equipment, facility or building used in the transportation of carbon dioxide.

Specified Minimum Yield Strength (SMYS)—the minimum yield strength, expressed in pounds per square inch, prescribed by the specification under which the material is purchased from the manufacturer.

Stress Level—the level of tangential or hoop stress, usually expressed as a percentage of specified minimum yield strength.

Surge Pressure—pressure produced by a change in velocity of the moving stream that results from shutting down a pump station or pumping unit, closing of a valve, or any other blockage of the moving stream.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:306 (February 2023).

§3907. Matter Incorporated by Reference

(Formerly §907)

A. There are incorporated by reference in this regulation all materials referred to herein. Those materials are hereby made a part of this regulation. Applicable editions of references approved in ANSI B31.4 listed in Subsection B of this Section shall apply. Earlier editions may be used for components manufactured, designed, or installed in accordance with those earlier editions at the time they were listed. Later editions will replace those editions listed below as these later editions become effective.

B. All incorporated materials are available for inspection in the Materials Transportation Bureau, Washington, D.C., and at the Office of the Federal Register, 1100 L Street, N.W., Washington, D.C. In addition, materials incorporated by reference are available as follows.

1. American Petroleum Institute (API), 2101 L Street, N.W., Washington, D.C. 20037, or 211 North Ervay, Suite 1700, Dallas, Texas 75201.

2. The American Society of Mechanical Engineers (ASME), United Engineering Center, 345 East 47th Street, New York, N.Y. 10017.

3. Manufacturers Standardization Society of the Valve and Fittings Industry (MSS), 5203 Leesburg Pike, Suite 502, Falls Church, VA 22041.

4. American National Standards Institute (ANSI), 1430 Broadway, New York, N.Y. 10018. 5. American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103.

C. The full title for the publications incorporated by reference in this regulation and their applicable editions are as follows.

1. American Petroleum Institute
 - a. API Specification 6D *API Specifications for Pipeline Valves*, which may be obtained from the Dallas office (1977).
 - b. API Specification 1104 Standard for Welding Pipe Lines and Related Facilities (1980).
 - c. API Specification 5L *API Specification for Line Pipe* (1980).
2. American Society of Mechanical Engineers
 - a. ASME Boiler and Pressure Vessel Code, Section VIII, *Pressure Vessels*, Division 1 (1977).
 - b. ASME Boiler and Pressure Vessel Code, Section IX, *Welding Qualifications*.
3. Manufacturers Standardization Society of the Valve and Fitting Industry: MSS SP-75, *Specification for High-Test Wrought Weldings Fittings* (1976).
4. American National Standards Institute
 - a. ANSI B16.9 Factory Made Wrought Steel Butt-Welded Fittings (1978).
 - b. ANSI B31.4 Liquid Petroleum Transportation Piping Systems (1979).
5. American Society for Testing and Materials
 - a. ASTM Specification A53 Standard Specification for Welded and Seamless Steel Pipe (1979).
 - b. ASTM Specification A106 Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service (1979b).
 - c. ASTM Specification A134 Standard Specification for Electric-Fusion (Arc)-Welded Steel Plate Pipe, Size 16-inch and Over (1974).
 - d. ASTM Specifications A135 Standard Specification for Electric-Resistance Welded Steel Pipe (1979).
 - e. ASTM Specification A139 Standard Specification for Electric-Fusion (Arc)-Welded Steel Pipe, Size 4-inch and Over (1974).
 - f. ASTM Specification A672 Electric-Fusion-Welded Steel Pipe for High Pressure Service at Moderate Temperatures (1979).
 - g. ASTM Specification A691 Carbon and Alloy Steel Pipe Electric-Fusion-Welded for High Pressure Service at High Temperatures (1979).
 - h. ASTM Specification A211 Standard Specification for Spiral-Welded Steel or Iron Pipe (1975).
 - i. ASTM Specification A333 Standard Specification for Seamless and Welded Steel Pipe for Low-Temperature Service (1979).
 - j. ASTM Specification A381 Standard Specification for Metal Arc-Welded Steel Pipe for High Pressure Transmission Systems (1979).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:306 (February 2023).

§3909. Compatibility Necessary for Transportation of Carbon Dioxide (Formerly §909)

A. No person may transport by pipeline in Louisiana any carbon dioxide unless it and all associated substances are chemically compatible with the materials of the pipeline and all the pipeline components it may come in contact with while in the pipeline.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:307 (February 2023).

§3911. Conversion to Service Subject to This Regulation (Formerly §911)

A. A steel pipeline previously used in service not subject to these regulations qualifies for use hereunder if the operator prepares and follows a written procedure to accomplish the following.

1. The design, construction, operation and maintenance history of the pipeline must be reviewed and, when sufficient historical records are not available, appropriate tests must be performed to determine if the pipeline is in a satisfactory condition for safe operation.

2. The pipeline right-of-way, all above-ground segments of the pipeline and appropriately selected underground segments must be visually inspected for physical defects and operating conditions which reasonably could be expected to impair the strength or tightness of the pipeline.

3. All known unsafe defects and conditions must be corrected in accordance with this regulation.

4. The pipeline must be tested in accordance with §§4701-4711 of this regulation to substantiate the maximum allowable operating pressure permitted by §4911.

B. A pipeline which qualifies for use under this Section need not comply with the corrosion control requirements of this regulation until 12 months after it is placed in service, notwithstanding any earlier deadlines for compliance. In addition to the requirements of §§4901-4939 of this regulation, the corrosion control requirements of §§4501-4559 apply to each pipeline which substantially meets those requirements before it is placed in service or which is a segment that is replaced, relocated or substantially altered.

C. Each operator must keep for the life of the pipeline a record of the investigations, tests, repairs, replacements, and alterations made under the requirements of Subsection A of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:307 (February 2023).

§3913. Transportation of Carbon Dioxide in Pipelines Constructed with Other Than Steel Pipe (Formerly §913)

A. No person may transport any carbon dioxide through pipe or appurtenances constructed of material other than steel unless the person has notified the commissioner of conservation in writing at least 90 days before the transportation is to begin. The notice must state the pressures, temperatures, and volume rates of the said carbon dioxide to be transported and the chemical names, common names, properties, characteristics and the percentages of any substances that will be associated therewith. Materials used or to be used in construction of the pipeline must be specified in detail also. If the commissioner determines that the transportation of the carbon dioxide with or without other substances associated therewith, in the manner proposed, would be unduly hazardous or potentially dangerous, he will, within 90 days after receipt of the notice, order in writing the person who gave the notice not to transport that carbon dioxide in the proposed manner until further notice to the contrary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:308 (February 2023).

§3915. Responsibility of Operator for Compliance with This Regulation (Formerly §915)

A. An operator may make arrangements with another person for the performance of any action required by these regulations. However, the operator is not thereby relieved from the responsibility for compliance with any regulatory requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:308 (February 2023).

Chapter 41 Incident Reporting for Carbon Dioxide Pipelines

§4101. Scope (Formerly §1101)

A. This Chapter prescribes rules governing the reporting of any failure in a pipeline system subject to these regulations in which there is an escape of carbon dioxide transported, resulting in any one or more of the following:

1. any potential dangers to human beings and/or animals from the escaped material;
2. death of any person;
3. bodily harm to any person resulting in one or more of the following:
 - a. loss of consciousness;
 - b. necessity to carry a person from the scene;
 - c. necessity for medical treatment;
 - d. disability which prevents the discharge of normal duties or the pursuit of normal duties beyond the day of the accident;
4. estimated property damage to the property of the operator or others, or both, exceeding \$50,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:308 (February 2023).

§4103. Telephonic Notice of Certain Incidents (Formerly §1103)

A. At the earliest practicable moment following discovery of a release of the carbon dioxide transported resulting in an event described in -§4101, the operator of the system shall give notice, in accordance with Subsection B of this Section, of any failure that:

1. resulted in a leak of carbon dioxide that was potentially dangerous to humans and/or animals;
2. caused a death or a personal injury requiring hospitalization;
3. caused estimated damage to the property of the operator or others, or both, exceeding \$50,000;
4. resulted in pollution of any stream, river, lake, reservoir, or other similar body of water that violated applicable water quality standards; or
5. in the judgment of the operator was significant even though it did not meet the criteria of any other Paragraph of this Section.

B. Reports made under Subsection A of this Section are made by telephone to the Chief of Pipeline Safety, State Capital, Baton Rouge, Louisiana, and must include the following information:

1. name and address of the operator;
2. name and telephone number of the reporter;
3. the location of the failure;
4. the time of the failure;
5. the fatalities and personal injuries, if any;
6. all other significant facts known by the operator that are relevant to the cause of the failure or extent of the damages.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:308 (February 2023).

§4105. Incident Reporting (Formerly §1105)

A. Each carrier that experiences an accident that is required to be reported under this Chapter shall, as soon as practicable but not later than 30 days after discovery of the accident, prepare and file an accident report on the form and in accordance with procedures established therefore by the commissioner and to the party he specifies. The operator shall file three copies of each report and shall retain one copy at its principal place of business.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:308 (February 2023).

§4107. Changes in or Additions to Incident Reports (Formerly §1107)

A. Whenever an operator receives any changes in the information reported or additions to the original report called for in §4105, it shall immediately file a supplemental report in accordance with the filing of the pertinent original report of §4105 above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:308 (February 2023).

§4109. Operator Assistance in Investigation (Formerly §1109)

A. If the commissioner investigates an accident, the operator involved shall make available to the representative of the commissioner all records and information that in any way pertains to the accident, and shall afford all reasonable assistance in the investigation of the accident.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:309 (February 2023).

Chapter 43. Design Requirements for Carbon Dioxide Pipelines

§4301. Scope (Formerly §1301)

A. This Chapter prescribes minimum design requirements for new carbon dioxide pipeline systems constructed with steel pipe and for relocating, replacing or otherwise changing existing systems constructed with steel pipe. However, it does not apply to the movement of line pipe covered by §4929.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:309 (February 2023).

§4303. Qualifying Metallic Components Other Than Pipe (Formerly §1303)

A. Notwithstanding any requirements of the Chapter which incorporates by reference an edition of a document listed in §3907, a metallic component other than pipe manufactured in accordance with any other edition of that document is qualified for use if:

1. it can be shown through visual inspection of the cleaned component that no defect exists which might impair the strength or tightness of the component; and
2. the edition of the document under which the component was manufactured has equal or more stringent requirements for the following as an edition of that document currently or previously listed in §3907:
 - a. pressure testing;
 - b. materials; and
 - c. pressure and temperature ratings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:309 (February 2023).

§4305. Design Temperature (Formerly §1305)

A. Material for components of the system must be chosen for the temperature of the pipeline and environment in which the components will be used so that the pipeline will maintain its structural integrity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:309 (February 2023).

§4307. Variations in Pressure (Formerly §1307)

A. If, within a pipeline system, two or more components are to be connected at a place where one will operate at a higher pressure than another, the system must be designed so that any component operating at the lower pressure will not be overstressed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:309 (February 2023).

§4309. Internal Design Pressure (Formerly §1309)

A. Internal design pressure for the pipe in a pipeline is determined in accordance with the following formula.

$$P = (2 St/D) \times E \times F$$

P = internal design pressure in pounds per square inch gauge

S = yield strength in pounds per square inch determined in accordance with Subsection B of this Section

t = nominal wall thickness of the pipe in inches

D = nominal outside diameter of the pipe in inches

E = seam joint factor determined in accordance with Subsection E of this Section

F = a design factor of 0.72, except that a design factor of 0.60 is used for pipe, including risers, on a platform located offshore or on a platform in inland navigable waters, and 0.54 is used for pipe that has been subjected to cold working to meet the specified minimum yield strength and is subsequently heated, other than by welding or stress relieving as a part of welding to a temperature higher than 900° F (482° C) for any period of time or over 600° F (318° C) for more than one hour.

B. The yield strength to be used in determining the internal design pressure under Subsection A of this Section is the specified minimum yield strength. If the specified minimum yield strength is not known, the yield strength is determined by performing all of the tensile tests of API Standard 5L on randomly selected test specimens with the following number of tests.

Pipe Size	Number of Tests
Less than 6 inches in outside diameter	One test for each 200 joints
6 inches through 12-3/4 inches in outside diameter	One test for each 100 joints
Larger than 12-3/4 inches in outside diameter	One test for each 50 joints

If the average yield-tensile ratio exceeds 0.85, the yield strength of the pipe is taken as 24,000 psi. If the average yield-tensile ratio is 0.85 or less, the yield strength of the pipe is taken as the lower of the following:

1. 80 percent of the average yield strength determined by the tensile tests;
2. the lowest yield strength determined by the tensile tests.

C. If the nominal wall thickness to be used in determining internal design pressure under Subsection A of this Section is not known, it is determined by measuring the thickness of each piece of pipe at quarter points on one end. However, if the pipe is of uniform grade, size, and thickness, only 10 individual lengths or 5 percent of all lengths, whichever is greater, need be measured. The thickness of the lengths that are not measured must be verified by applying a gage set to the minimum thickness found by the

measurement. The nominal wall thickness to be used is the next wall thickness found in commercial specifications that is below the average of all the measurements taken. However, the nominal wall thickness may not be more than 1.14 times the smallest measurement taken on pipe that is less than 20 inches in outside diameter, nor more than 1.11 times the smallest measurement taken on pipe that is 20 inches or more in outside diameter.

D. The minimum wall thickness of the pipe may not be less than 87.5 percent of the value used for nominal wall thickness in determining the internal design pressure under Subsection A of this Section. In addition, the anticipated external loads and external pressures that are concurrent with internal pressure must be considered in accordance with §§4311 and 4313 and, after determining the internal design pressure, the nominal wall thickness must be increased as necessary to compensate for these concurrent loads and pressures.

E. The seam joint factor used in Subsection A of this Section is determined in accordance with the following table.

Specifications	Pipe Class	Seam Joint Factor
ASTM A53	Seamless	1.00
	Electric resistance welded	1.00
	Furnace lap welded	0.80
	Furnace butt welded	0.60
ASTM A106	Seamless	1.00
ASTM A134	Electric fusion arc welded	0.80
ASTM A135	Electric resistance welded	1.00
ASTM A139	Electric fusion welded	0.80
ASTM A211	Spiral welded pipe	0.80
ASTM A333	Seamless	1.00
	Welded	1.00
ASTM A381	Double submerged arc welded	1.00
ASTM A671	Electric-fusion-welded	1.00
ASTM A672	Electric-fusion-welded	1.00
ASTM A691	Electric-fusion-welded	1.00
API 5L	Seamless	1.00
	Electric resistance welded	1.00
	Electric flash welded	1.00
	Submerged arc welded	1.00
	Furnace lap welded	0.80
	Furnace butt welded	0.60

1. The seam joint factor for pipe which is not covered by this Paragraph must be approved by the commissioner.

F. Piping systems designed for operation at high stress levels shall be analyzed for potential propagating fractures. Methods of limiting the extent of such fractures shall be applied where warranted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:309 (February 2023).

**§4311. External Pressure
(Formerly §1311)**

A. Any external pressure that will be exerted on the pipe must be provided for in designing a pipeline system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:310 (February 2023).

**§4313. External Loads
(Formerly §1313)**

A. Anticipated external loads: e.g., earthquakes, vibration, thermal expansion, and contraction must be provided for in designing a pipeline system. In providing for expansion and flexibility, Section 419 of ANSI B31.4 must be followed.

B. The pipe and other components must be supported in such a way that the support does not cause excess localized stresses. In designing attachments to pipe, the added stress to the wall of the pipe must be computed and compensated for.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:310 (February 2023).

**§4315. New Pipe
(Formerly §1315)**

A. Any new pipe installed in a pipeline system must comply with the following.

1. The pipe must be made of steel of the carbon, low alloy-high strength, or alloy type that is able to withstand the internal pressures and external loads and pressures anticipated for the pipeline system.

2. The pipe must be made in accordance with a written pipe specification that sets forth the chemical requirements for the pipe steel and mechanical tests for the pipe to provide pipe suitable for the use intended.

3. Each length of pipe with an outside diameter of 4 inches or more must be marked on the pipe or pipe coating with the specification to which it was made, the specified minimum yield strength or grade, and the pipe size. The marking must be applied in a manner that does not damage the pipe or coating and must remain visible until the pipe is installed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:310 (February 2023).

**§4317. Used Pipe
(Formerly §1317)**

A. Any used pipe installed in a pipeline system must comply with §4315.A.1 and 2 and the following:

1. the pipe must be of a known specification and the seam joint factor must be determined in accordance with §4309.E. If the specified minimum yield strength or the wall thickness is not known, it is determined in accordance with §4309.B or C as appropriate;

2. there may not be any:

a. buckles;

b. cracks, grooves, gouges, dents, or other surface defects that exceed the maximum depth of such a defect permitted by the specification to which the pipe was manufactured; or

c. corroded areas where the remaining wall thickness is less than the minimum thickness required by the tolerances in the specification to which the pipe was manufactured.

B. However, pipe that does not meet the requirements of Subparagraph A.2.c of this Section may be used if the operating pressure is reduced to be commensurate with the remaining wall thickness.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:310 (February 2023).

§4319. Valves
(Formerly §1319)

A. Each valve installed in a pipeline system must comply with the following.

1. The valve must be of a sound engineering design.
2. Materials subject to the internal pressure of the pipeline system, including welded and flanged ends, must be compatible with the pipe or fittings to which the valve is attached.
3. Each part of the valve that will be in contact with the carbon dioxide stream must be made of materials that are compatible with such stream that it is anticipated will flow through the pipeline system.
4. Each valve must be both hydrostatically shell tested and hydrostatically seat tested without leakage to at least the requirements set forth in Section 5 of API Standard 6D.
5. Each valve other than a check valve must be equipped with a means for clearly indicating the position of the valve (open, closed, etc.).
6. Each valve must be marked on the body or the nameplate, with at least the following:
 - a. manufacturer's name or trademark;
 - b. class designation or the maximum working pressure to which the valve may be subjected;
 - c. body material designation (the end connection material, if more than one type is used);
 - d. nominal valve size.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:311 (February 2023).

§4321. Fittings
(Formerly §1321)

A. Butt-welding type fittings must meet the marking, end preparation, and the burst strength requirements of ANSI B16.9 or MSS Standard Practice SP-75.

B. There may not be any buckles, dents, cracks, gouges, or other defects in the fitting that might reduce the strength of the fitting.

C. The fitting must be suitable for the intended service and at least as strong as the pipe and other fittings in the pipeline system to which it is attached.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:311 (February 2023).

§4323. Changes in Direction: Provision for Internal Passage
(Formerly §1323)

A. Each component of a main line system, other than manifolds, that changes direction within the pipeline system must have a radius of turn that readily allows the passage of pipeline scrapers, spheres, and internal inspection equipment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:311 (February 2023).

§4325. Fabricated Branch Connections
(Formerly §1325)

A. Each pipeline system must be designed so that the addition of any fabricated branch connections will not reduce the strength of the pipeline system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:311 (February 2023).

§4327. Closures
(Formerly §1327)

A. Each closure to be installed in a pipeline system must comply with the ASME Boiler and Pressure Vessel Code, Section VIII, Pressure Vessels, Division I, and must have pressure and temperature ratings at least equal to those of the pipe to which the closure is attached.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:311 (February 2023).

§4329. Flange Connection
(Formerly §1329)

A. Each component of a flange connection must be compatible with each other component and the connection as a unit must be suitable for the service in which it is to be used.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:311 (February 2023).

§4331. Station Piping
(Formerly §1331)

A. Any pipe to be installed in a station that is subject to system pressure must meet the applicable requirements of §§4301-4341.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:311 (February 2023).

§4333. Fabricated Assemblies
(Formerly §1333)

A. Each fabricated assembly to be installed in a pipeline system must meet the applicable requirements of §§4301-4341.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:311 (February 2023).

§4335. Vents
(Formerly §1335)

A. Carbon dioxide may not be relieved into the atmosphere of a building or other confined space where hazardous levels of carbon dioxide might accumulate above the human exposure level set by the United States Department of Labor, Occupational Safety and Health Administration as depicted in the following table, unless the appropriate respiratory protection is provided.

Condition	Minimum Respiratory Protection Required above 5000 vppm
Gas concentration 50,000 vppm or less	Any supplied air respirator or self-contained respirator.
Greater than 50,000 vppm or entry and escape from unknown concentrations	Self-contained breathing apparatus with a full face-piece operated in pressure demand or other positive pressure mode. A combination respirator which includes a Type C supplied-air respirator with a full facepiece operated in pressure-demand or positive pressure or continuous flow mode and an auxiliary self-contained breathing apparatus operated in pressure-demand or other positive pressure mode.
Fire Fighting	Self-contained breathing apparatus with a full face-piece operated in pressure-demand or other positive pressure mode.
Escape	Any escape self-contained breathing apparatus

B. Venting of carbon dioxide fluid under operational control which could produce a hazardous gas atmosphere must be directed to a stack or exhaust pipe elevated to assure dispersion designed to avoid ground level or working level accumulations hazardous to personnel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:311 (February 2023).

**§4337. Sensing Devices
(Formerly §1337)**

A. Each operator shall determine the appropriate location for and install sensing devices necessary to monitor the operation of components to detect malfunction which could cause a hazardous condition if permitted to continue; and

B. Buildings in which potentially hazardous quantities of carbon dioxide may exist must be continuously monitored by carbon dioxide sensing devices set to activate audible and visual alarms in the building and at the control center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:312 (February 2023).

**§4339. Fail-Safe Control
(Formerly §1339)**

A. Control systems for components must have a fail-safe design where practical from good engineering practice. A safe condition must be maintained until personnel take appropriate action either to reactivate the component served or to prevent a hazard from occurring.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:312 (February 2023).

**§4341. Sources of Power
(Formerly §1341)**

A. Electrical control systems, means of communication, emergency lighting and firefighting systems must have at least two sources of power which function so that failure of one source does not affect the capability of the other source.

B. Where auxiliary generators are used as a second source of electrical power, they must be located apart or

protected from components so that they are not unusable during a controllable emergency, and the fuel supply must be protected from hazards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:312 (February 2023).

Chapter 45. Construction Requirements for Carbon Dioxide Pipelines

**§4501. Scope
(Formerly §1501)**

A. This Chapter prescribes minimum requirements for constructing new pipeline systems with steel pipe, and for relocating, replacing, or otherwise changing existing pipeline systems that are constructed with steel pipe. However, this Part does not apply to the movement of pipe covered by §4929.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:312 (February 2023).

**§4503. Compliance with Specifications or Standards
(Formerly §1503)**

A. Each pipeline system must be constructed in accordance with comprehensive written specifications or standards that are consistent with the requirements of this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:312 (February 2023).

**§4505. Inspection: General
(Formerly §1505)**

A. Inspection must be provided by operator to ensure the installation of pipe or pipeline systems in accordance with the requirements of this Chapter. No person may be used to perform inspections unless that person has been trained and is qualified in the aspects of construction he is to inspect.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:312 (February 2023).

**§4507. Material Inspection
(Formerly §1507)**

A. No pipe or other component may be installed in a pipeline system unless it has been visually inspected at the site of installation to ensure that it is not damaged in a manner that could impair its strength or reduce its serviceability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:312 (February 2023).

**§4509. Welding of Supports and Braces
(Formerly §1509)**

A. Supports or braces may not be welded directly to pipe that will be operated at a pressure of more than 100 p.s.i.g.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:312 (February 2023).

§4511. Pipeline Location
(Formerly §1511)

A. Pipeline right-of-way must be selected to avoid, as far as practicable, areas containing private dwellings, industrial buildings, and places of public assembly.

B. No pipeline may be located within 50 feet of any private dwelling, or any industrial building or place of public assembly in which person(s) work, congregate, or assemble, unless it is provided with at least 12 inches of cover in addition to that prescribed in §4543.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:313 (February 2023).

§4513. Bending of Pipe
(Formerly §1513)

A. Pipe must not have a wrinkle bend.

B. Each field bend must comply with the following.

1. A bend must not impair the serviceability of the pipe.

2. Each bend must have a smooth contour and be free from buckling, cracks, or any other mechanical damage.

3. On pipe containing a longitudinal weld, the longitudinal weld must be as near as practicable to the neutral axis of the bend unless:

a. the bend is made with an internal bending mandrel; or

b. the pipe is 12 inches or less in outside diameter or has a diameter to wall thickness ratio less than 70.

C. Each circumferential weld which is located where the stress during bending causes a permanent deformation in the pipe must be nondestructively tested either before or after the bending process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:313 (February 2023).

§4515. Welding: General
(Formerly §1515)

A. Welding must be performed in compliance with this Section and §§4517-4529.

B. Welding must be performed in accordance with established written welding procedures that have been tested to assure that they will produce sound, ductile welds that comply with requirements of this Chapter. Detailed records of these tests must be kept by the operator involved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:313 (February 2023).

§4517. Welding: Miter Joints
(Formerly §1517)

A. A miter joint is not permitted (not including deflections up to 3 degrees that are caused by misalignment).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:313 (February 2023).

§4519. Welders: Testing
(Formerly §1519)

A. Each welder must be qualified in accordance with Section 3 of API Standard 1104 or Section IX of the ASME Boiler and Pressure Vessel Code except that a welder qualified under an earlier edition than listed in §3907 may weld but may not requalify under that earlier edition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:313 (February 2023).

§4521. Welding: Weather
(Formerly §1521)

A. Welding must be protected from weather conditions that would impair the quality of the completed weld.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:313 (February 2023).

§4523. Welding: Arc Burns
(Formerly §1523)

A. Each arc burn must be repaired.

B. An arc burn may be repaired by completely removing the notch by grinding, if the grinding does not reduce the remaining wall thickness to less than the minimum thickness required by the tolerances in the specification to which the pipe is manufactured. If a notch is not repairable by grinding, a cylinder of the pipe containing the entire notch must be removed.

C. A ground may not be welded to the pipe or fitting that is being welded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:313 (February 2023).

§4525. Welds and Welding Inspections: Standards of Acceptability
(Formerly §1525)

A. Each weld and welding must be inspected to insure compliance with the requirements of this Chapter. Visual inspection must be supplemented by nondestructive testing.

B. The acceptability of a weld is determined according to the standards in Section 6 of API Standard 1104.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:313 (February 2023).

§4527. Welds: Repair or Removal of Defects
(Formerly §1527)

A. Each weld that is unacceptable under §4525 must be removed or repaired. Except for welds on an offshore pipeline being installed from a pipelay vessel, a weld must be removed if it has a crack that is more than 8 percent of the weld length.

B. Each weld that is repaired must have the defect removed down to sound metal and the segment to be repaired must be preheated if conditions exist which would adversely affect the quality of the weld repair. After repair, the segment of the weld that was repaired must be inspected to ensure its acceptability.

C. Repair of a crack, or of any defect in a previously repaired area must be in accordance with written weld repair procedures that have been qualified under §4515. Repair procedures must provide that the minimum mechanical properties specified for the welding procedure used to make the original weld are met upon completion of the final weld repair.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:313 (February 2023).

§4529. Welds: Nondestructive Testing and Retention of Testing Records (Formerly §1529)

A. A weld may be nondestructively tested by any process that will clearly indicate any defects that may affect the integrity of the weld.

B. Any nondestructive testing of welds must be performed:

1. in accordance with a written set of procedures for nondestructive testing; and

2. with personnel that have been trained in the established procedures and in the use of the equipment employed in the testing.

C. Procedures for the proper interpretation of each weld inspection must be established to ensure the acceptability of the weld under §4525.

D. During construction, at least 10 percent of the girth welds made by each welder during each welding day must be nondestructively tested over the entire circumference of the weld.

E. In the following locations, 100 percent of the girth welds must be nondestructively tested:

1. at any onshore location where a loss of transported fluid could reasonably be expected to pollute any stream, river, lake, reservoir, or other body of water, and any offshore area unless impracticable, in which case only 90 percent of each day's welds need be tested;

2. within railroad or public roads rights-of-way;

3. at overhead road crossings and within tunnels;

4. at pipeline tie-ins;

5. within the limits of any incorporated subdivision of the state;

6. within populated areas, including but not limited to, residential subdivisions, shopping centers, schools, designated commercial areas, industrial facilities, public institutions, and places of public assembly;

7. when installing used pipe, 100 percent of the old girth welds must be nondestructively tested.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:314 (February 2023).

§4531. External Corrosion Protection (Formerly §1531)

A. Each component in the pipeline system must be provided with protection against external corrosion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:314 (February 2023).

§4533. External Coating (Formerly §1533)

A. No pipeline system component may be buried or submerged unless that component has an external protective coating that:

1. is designed to mitigate corrosion of the buried or submerged component;

2. has sufficient adhesion to the metal surface to prevent underfilm migration of moisture;

3. is sufficiently ductile to resist cracking;

4. has enough strength to resist damage due to handling and soil stress; and

5. supports any supplemental cathodic protection. In addition, if an insulating-type coating is used it must have low moisture absorption and provide high electrical resistance.

B. All pipe coating must be inspected just prior to lowering the pipe into the ditch or submerging the pipe, and any damage discovered must be repaired.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:314 (February 2023).

§4535. Cathodic Protection System (Formerly §1535)

A. A cathodic protection system must be installed for all buried or submerged facilities to mitigate corrosion that might result in structural failure. A test procedure must be developed to determine whether adequate cathodic protection has been achieved.

B. A cathodic protection system must be installed not later than one year after completing the construction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:314 (February 2023).

§4537. Test Leads (Formerly §1537)

A. Except for offshore pipelines, electrical test leads used for corrosion control or electrolysis testing must be installed at intervals frequent enough to obtain electrical measurements indicating the adequacy of the cathodic protection.

B. Test leads must be installed as follows:

1. enough looping or slack must be provided to prevent test leads from being unduly stressed or broken during back-filling;

2. each lead must be attached to the pipe so as to prevent stress concentration on the pipe;

3. each lead installed in a conduit must be suitably insulated from the conduit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:314 (February 2023).

**§4539. Installation of Pipe in a Ditch
(Formerly §1539)**

A. All pipe installed in a ditch must be installed in a manner that minimizes the introduction of secondary stresses and the possibility of damage to the pipe.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:315 (February 2023).

**§4541. Underwater Obstructions
(Formerly §1541)**

A. All carbon dioxide pipelines within the jurisdiction of these regulations are subject to the Louisiana Underwater Obstructions Act, R.S. 30:4D-30:4H, as amended, and the Louisiana Underwater Obstructions Regulations, §§1501-1707.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:315 (February 2023).

**§4543. Cover over Buried Pipeline
(Formerly §1543)**

A. Unless specifically exempted in this Chapter, all pipe must be buried so that it is below the level of cultivation. Except as provided in Subsection B of this Section, the pipe must be installed so that the cover between the top of the pipe and the ground level, road bed, river bottom, or sea bottom, as applicable, complies with the following table.

Location	Cover (Inches)	
	For Normal Excavation	For Rock Excavation ¹
Industrial, commercial, and residential areas	36	30
Crossings of inland bodies of water with a width of at least 100 feet from high water mark to high water mark	48	18
Drainage ditches at public roads and railroads	36	36
Deepwater port safety zone	48	24
Other offshore areas under water less than 20 feet deep as measured from the mean low tide	30	18
Any other area	30	18

¹Rock excavation is any excavation that requires blasting or removal by equivalent means.

B. Less cover than the minimum required by Subsection A of this Section and §4511 may be used if:

1. it is impractical to comply with the minimum cover requirements; and
2. additional protection is provided that is equivalent to the minimum required cover.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:315 (February 2023).

**§4545. Clearance between Pipe and Underground Structures
(Formerly §1545)**

A. Any pipe installed underground must have at least 12 inches of clearance between the outside of the pipe and the extremity of any other underground structure, except that for drainage tile the minimum clearance may be less than 12 inches but not less than 2 inches. However, where 12 inches of clearance is impracticable, the clearance may be reduced if adequate provisions are made for corrosion control.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:315 (February 2023).

**§4547. Backfilling
(Formerly §1547)**

A. Backfilling must be performed in a manner that protects any pipe coating and provides firm support for the pipe.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:315 (February 2023).

**§4549. Above Ground Components
(Formerly 1549)**

A. Any component may be installed above ground in the following situations, if the other applicable requirements of this part are complied with:

1. overhead crossings of highways, railroads, or a body of water;
2. spans over ditches and gullies;
3. scraper traps or block valves;
4. areas under the direct control of the operator;
5. in an area inaccessible to the public.

B. Each component covered by this Section must be protected from the forces exerted by the anticipated loads.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:315 (February 2023).

**§4551. Crossings of Railroads and Highways
(Formerly §1551)**

A. The pipe at each railroad or highway crossing must be installed so as to adequately withstand the dynamic forces exerted by anticipated traffic loads.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:315 (February 2023).

**§4553. Valves: General
(Formerly §1553)**

A. Each valve must be installed in a location that is accessible to authorized employees and that is protected from damage or tampering.

B. Each submerged valve located offshore or in inland navigable waters must be marked, or located by conventional survey techniques, to facilitate quick location when operation of the valve is required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:315 (February 2023).

**§4555. Valves: Location
(Formerly §1555)**

A. A valve must be installed at each of the following locations:

1. on the suction end and the discharge end of a compressor station in a manner that permits isolation of the station equipment in the event of an emergency;

2. on each mainline at locations along the pipeline system that will minimize damage from accidental carbon dioxide discharge, as appropriate for the terrain in open country, for offshore areas, or for populated areas;

3. on each lateral takeoff from a trunk line in a manner that permits shutting off the lateral without interrupting the flow in the trunk line;

4. on each side of a reservoir holding water for human consumption.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:316 (February 2023).

**§4557. Compression/Pumping Equipment
(Formerly §1557)**

A. Adequate ventilation must be provided in compressor pump station buildings to prevent the accumulation of carbon dioxide vapors and/or vapors that could be dangerous. Warning devices must be installed to warn of the presence of such vapors in the compression/pumping station building.

B. The following must be provided in each compressor/pump station:

1. safety devices that prevent over-pressuring of compression/pumping equipment, including the auxiliary compression/pumping equipment within the compression/pumping station;

2. a device for the emergency shutdown of each compression/pumping station;

3. if power is necessary to actuate the safety devices, an auxiliary power supply.

C. Each safety device must be tested under conditions approximating actual operations and found to function properly before the compression/pumping station may be used.

D. Except for offshore pipelines, compression/pumping equipment may not be installed:

1. on any property that will not be under the control of the operator; or

2. less than 50 feet from the boundary of the station.

E. Adequate fire protection must be installed at each compressor/pump station. If the fire protection system installed requires the use of pumps, motive power must be

provided for those pumps that are separate from the power that operates the station.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:316 (February 2023).

**§4559. Construction Records
(Formerly §1559)**

A. A complete record that shows the following must be maintained by the operator involved for the life of each pipeline facility:

1. the total number of girth welds and the number nondestructively tested, including the number rejected and the disposition of each rejected weld;

2. the amount, location and cover of each size of pipe installed;

3. the location of each crossing of another pipeline;

4. the location of each buried utility crossing;

5. the location of each overhead crossing;

6. the location of each valve, weighted pipe, corrosion test station, or other item connected to the pipe.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:316 (February 2023).

**Chapter 47. Hydrostatic Testing of Carbon Dioxide
Pipelines**

§4701. Scope

(Formerly §1701)

A. This Chapter prescribes minimum requirements for hydrostatic testing of newly constructed steel carbon dioxide pipeline systems and existing steel pipeline systems that are relocated, replaced, or otherwise changed. However, this Chapter does not apply to movement of pipe covered by §4929.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:316 (February 2023).

§4703. General Requirements

(Formerly §1703)

A. Each new pipeline system, each pipeline system in which pipe has been relocated or replaced, or that part of a pipeline system that has been relocated or replaced, must be hydrostatically tested in accordance with this Chapter without leakage.

B. The test pressure for each hydrostatic test conducted under this Section must be maintained throughout the system, or the part being tested, for at least four continuous hours at a pressure equal to 125 percent, or more, of the maximum operating pressure and, in the case of a pipeline that is not visually inspected for leakage during test, for at least an additional four continuous hours at a pressure equal to 110 percent, or more, of the maximum operating pressure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:316 (February 2023).

**§4705. Testing of Components
(Formerly §1705)**

A. Each hydrostatic test under §4703 must test all pipe and attached fittings, including components, unless otherwise permitted by Subsection B of this Section.

B. A component that is the only item being replaced or added to the pipeline system need not be hydrostatically tested under Subsection A of this Section if the manufacturer certifies that either:

1. the component was hydrostatically tested at the factory; or
2. the component was manufactured under a quality control system that ensures each component is at least equal in strength to a prototype that was hydrostatically tested at the factory.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:317 (February 2023).

§4707. Test Medium

(Formerly §1707)

A. Water must be used as the test medium unless another medium is approved by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:317 (February 2023).

§4709. Testing of Tie-Ins

(Formerly §1709)

A. Pipe associated with tie-ins must be hydrostatically tested, either with the section to be tied in or separately.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:317 (February 2023).

§4711. Records

(Formerly §1711)

A. A record must be made of each hydrostatic test and that record must be retained as long as the facility tested is in use.

B. The record required by Subsection A of this Section must include the recording gauge charts, test instrument calibration data, and the reasons for any failure during a test. Where elevation differences in the section under test exceed 100 feet, a profile of the pipeline that shows the elevation and tests sites over the entire length of the test section must be included. Each recording gauge chart must also contain:

1. the operator's name, the name of the person responsible for making the test, and the name of the test company used, if any;
2. the date and time of the test;
3. the minimum test pressure;
4. the test medium;
5. a description of the facility tested; and
6. an explanation of any pressure discontinuities that appear on any chart.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:317 (February 2023).

Chapter 49. Operating and Maintaining Carbon Dioxide Pipelines

§4901. Scope

(Formerly §1901)

A. This Chapter prescribed minimum requirements for operating and maintaining carbon dioxide pipeline systems constructed with steel pipe.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:317 (February 2023).

§4903. General Requirements

(Formerly §1903)

A. No operator may operate or maintain its pipeline systems at a lower level than that required by this Chapter and the procedures it is required to establish under §4905 of this Chapter.

B. Whenever an operator discovers any condition that could adversely affect the safe operation of its pipeline system, it shall correct it within a reasonable time. However, if the condition is of such a nature that it presents an immediate hazard to persons or property, the operator may not operate the affected part of the system until it has corrected the condition.

C. Except as provided in §3911, no operator may operate any part of a carbon dioxide pipeline system unless it was designed and constructed as required by this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:317 (February 2023).

§4905. Procedural Manual for Operations,

Maintenance, and Emergencies

(Formerly §1905)

A. General. Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

B. Amendments. If the commissioner finds that an operator's procedures are inadequate to assure proper operation of the system and to minimize hazards in emergencies, the commissioner may, after issuing a notice of amendment and providing an opportunity for an informal hearing, require the operator to amend the procedures. In determining the adequacy of the procedures, the commissioner considers pipeline safety data, the feasibility of the procedures, and whether the procedures are appropriate for the pipeline system involved. Each notice of amendment shall allow the operator at least 15 days after receipt of such notice to submit written comments or request an informal hearing. After considering all material presented, the commissioner shall notify the operator of the required amendment or withdraw the notice proposing the amendment.

C. Maintenance and Normal Operations. The manual required by Subsection A of this Section must include procedures for the following to provide safety during maintenance and normal operations:

1. making construction records, maps, and operating history available as necessary for safe operation and maintenance;

2. gathering of data needed for reporting accidents under §§4101-4109 of this regulation in a timely and effective manner;

3. operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of this Part;

4. determining which pipeline facilities are located in areas that would require an immediate response by the operator to prevent hazards to the public if the facilities failed or malfunctioned;

5. analyzing pipeline accidents to determine their causes;

6. minimizing the potential for hazards identified under Paragraph C.4 of this Section and the possibility of recurrence of accidents analyzed under Paragraph C.5 of this Section;

7. starting up and shutting down any part of the pipeline system in a manner designed to assure operation within the limits prescribed by §4911, considering the specific fluid in transportation, variations in altitude along the pipeline, and pressure monitoring and control devices;

8. in the case of a pipeline that is not equipped to fail safe, monitoring from an attended location pipeline pressure during startup until steady state pressure and flow conditions are reached and during shut-in to assure operation within limits prescribed by §4911;

9. in the case of facilities not equipped to fail safe that are identified under §4905.C.4 or that control receipt and delivery of the carbon dioxide, detecting abnormal operating conditions by monitoring pressure, temperature, flow or other appropriate operational data and transmitting these data to an attended location;

10. abandoning pipeline facilities, including safe disconnection from an operating pipeline system, and sealing abandoned facilities left in place to minimize safety and environmental hazards;

11. establishing and maintaining liaison with fire, police, and other appropriate public officials to learn the responsibility and resources of each government organization that may respond to a pipeline emergency and acquaint the officials with the operator's ability in responding to a pipeline emergency and means of communication;

12. periodically reviewing the work done by operator personnel to determine the effectiveness of the procedures used in normal operation and maintenance and taking corrective action where deficiencies are found.

D. Abnormal Operation. The manual required by Subsection A of this Section must include procedures for the following to provide safety when operating design limits have been exceeded:

1. responding to, investigating, and correcting the cause of:

a. unintended closure of valves or shutdowns;

b. increase or decrease in pressure or flow rate outside normal operating limits;

c. loss of communications;

d. operation of any safety device;

e. any other malfunction of a component, deviation from normal operation, or personnel error which could cause a hazard to persons or property;

2. checking variations from normal operation after abnormal operation has ended at sufficient critical locations in the system to determine continued integrity and safe operation;

3. correcting variations from normal operation of pressure and flow equipment and controls;

4. notifying responsible operator personnel when notice of an abnormal operation is received;

5. periodically reviewing the response of operator personnel to determine the effectiveness of the procedure controlling abnormal operation and taking corrective action where deficiencies are found.

E. Emergencies. The manual required by Subsection A of this Section must include procedures for the following to provide safety when an emergency condition occurs:

1. receiving, identifying, and classifying notices of events which need immediate response by the operator or notice to fire, police, or other appropriate public officials and communicating this information to appropriate operator personnel for corrective action;

2. prompt and effective response to a notice of each type emergency, including fire, occurring near or directly involving a pipeline facility, accidental release of carbon dioxide from a pipeline facility, operational failure causing a hazardous condition, and natural disaster affecting pipeline facilities;

3. having personnel, equipment, instruments, tools, and material available as needed at the scene of an emergency;

4. taking necessary action, such as emergency shutdown or pressure reduction, to minimize the volume of carbon dioxide that is released from any section of a pipeline system in the event of a failure;

5. control of released carbon dioxide at an accident scene to minimize the hazard;

6. minimization of public exposure to injury and possible damages by assisting with evacuation of residents and assisting with halting traffic on roads and railroads in the affected area, or taking other appropriate action;

7. notifying fire, police, and other appropriate public officials of pipeline emergencies and coordinating with them preplanned and actual responses during an emergency, including additional precautions necessary for an emergency involving a pipeline system transporting carbon dioxide;

8. in the case of failure of a pipeline system transporting carbon dioxide, use of appropriate instruments to assess the extent and coverage of the escaped vapors and to determine the availability of adequate oxygen in the area;

9. providing for a post-accident review of employee activities to determine whether the procedures were effective in each emergency and taking corrective action where deficiencies are found.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:317 (February 2023).

§4907. Training
(Formerly §1907)

A. Each operator shall establish and conduct a continuing training program to instruct operating and maintenance personnel to:

1. carry out the operating and maintenance, and emergency procedures established under §4905 that relate to their assignments;
2. know the characteristics and hazards of the carbon dioxide transported;
3. recognize conditions that are likely to cause emergencies, predict the consequences of facility malfunctions or failures and carbon dioxide leaks, and to take appropriate corrective action;
4. take steps necessary to control any accidental release of carbon dioxide and to minimize the potential human danger or environmental damage;
5. learn the proper use of firefighting procedures and equipment, and breathing apparatus by utilizing, where feasible, a simulated pipeline emergency condition; and
6. in the case of maintenance personnel, to safely repair facilities using appropriate special precautions, such as isolation and purging.

B. At intervals not exceeding 15 months, but at least once each calendar year, each operator shall:

1. review with personnel their performance in meeting the objectives of the training program set forth in Subsection A of this Section; and
2. make appropriate changes to the training program as necessary to insure that it is effective.

C. Each operator shall require and verify that its supervisors maintain a thorough knowledge of that portion of the procedures established under §4905 for which they are responsible to insure compliance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:319 (February 2023).

§4909. Maps and Records
(Formerly §1909)

A. Each operator shall maintain current maps and records of its carbon dioxide pipeline systems that include at least the following information:

1. location and identification of all major facilities;
 - a. pump and compressor station;
 - b. scraper and sphere facilities;
 - c. pipeline valves;
 - d. cathodically protected facilities;
 - e. facilities to which §4905.C.9 applies;
 - f. rights-of-way; and
 - g. safety devices to which §4933 applies;
2. all crossings of public roads, railroads, rivers, buried utilities, and foreign pipelines;
3. the maximum operating pressure of each pipeline;
4. the diameter, grade, type, and nominal wall thickness of all pipe.

B. Each operator shall maintain daily operating records that indicate the discharge pressures at each pump station and any unusual operations of a facility. The operator shall retain these records for at least three years.

C. Each operator shall maintain for the useful life of that part of the pipeline system to which they relate, records that include the following:

1. the date, location, and description of each repair made to its pipeline systems;
2. a record of each inspection and each test required by §§4901-4943.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:319 (February 2023).

§4911. Maximum Operating Pressures
(Formerly §1911)

A. Except for surge pressures and other variations from normal operations, no operator may operate a pipeline at a pressure that exceeds any of the following:

1. the internal design pressure of the pipe determined in accordance with §4309;
2. the design pressure of any other component of the pipeline;
3. 80 percent of the test pressure for any part of the pipeline which has been hydrostatically tested under §§4701-4711 of this regulation;
4. 80 percent of the factory test pressure or of the prototype test pressure for any individually installed component which is excepted from testing under §4705.

B. No operator may permit the pressure in a pipeline during surges or other variations from normal operations to exceed 110 percent of the operating pressure limit established under Subsection A of this Section. Each operator must provide adequate controls and protective equipment to control the pressure within this limit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:319 (February 2023).

§4713. Communications
(Formerly §1913)

A. Each operator must have a communication system to provide for the transmission of information needed for the safe operation of its pipeline system.

B. The communication system required by Subsection A of this Section must, as a minimum, include means for:

1. monitoring operational data as required by §4905.C.9;
2. receiving notices from operator personnel, the public, and public authorities of abnormal or emergency conditions and sending this information to appropriate personnel or government agencies for corrective action;
3. conducting two-way vocal communication between a control center and the scene of abnormal operations and emergencies; and
4. providing communication with fire, police, and other appropriate public officials during emergency conditions, including a natural disaster.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:319 (February 2023).

**§4915. Line Markers
(Formerly §1915)**

A. Except as provided in Subsection B of this Section, each operator shall place and maintain line markers over each buried pipeline in accordance with the following:

1. markers must be located at each public road crossing, at each railroad crossing and in sufficient number along the remainder of each buried line so that its location is accurately known;

2. the marker must state at least the following: "Warning" followed by the words "Carbon Dioxide Pipeline" (in lettering at least 1-inch high with an appropriate stroke of 1/4 inch on a background of sharply contrasting color), the name of the operator, and a telephone number (including area code) where the operator can be reached at all times.

B. Line markers are not required for buried pipelines located in heavily developed urban areas, such as downtown business centers where:

1. the placement of markers is impracticable and would not serve the purpose for which markers are intended; and

2. the local government maintains current substructure records.

C. Each operator shall provide line marking at locations where the line is above ground in areas accessible to the public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:320 (February 2023).

**§4917. Inspection of Rights-of-Way and Crossings
under Navigable Waters
(Formerly §1917)**

A. Each operator shall, at intervals not exceeding three weeks, but at least 26 times each calendar year, inspect the surface conditions on or adjacent to each pipeline right-of-way.

B. Except for offshore pipelines, each operator shall, at intervals not exceeding five years, inspect each crossing under a navigable waterway to determine the conditions of the crossing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:320 (February 2023).

**§4919. Cathodic Protection
(Formerly §1919)**

A. No operator may operate a pipeline that has an external surface coating material, unless that pipeline is cathodically protected. This Section does not apply to buried pumping station piping.

B. Each operator shall electrically inspect each bare pipeline, to determine any areas in which active corrosion is taking place. The operator may not increase its established operating pressure on a section of bare pipeline until the

section has been so electrically inspected. In any areas where active corrosion is found, the operator shall provide cathodic protection. Subsections 4921.F and G apply to all corroded pipe that is found.

C. Each operator shall electrically inspect all buried pumping station piping, as to the need for cathodic protection, and cathodic protection shall be provided where necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:320 (February 2023).

**§4921. External Corrosion Control
(Formerly §1921)**

A. Each operator shall, at intervals not exceeding 15 months, but at least once each calendar year, conduct tests on each underground facility in its pipeline systems that is under cathodic protection to determine whether the protection is adequate.

B. Each operator shall maintain the test leads required for cathodic protection in such a condition that electrical measurements can be obtained to ensure adequate protection.

C. Each operator shall, at intervals not exceeding two and one-half months, but at least six times each calendar year, inspect each of its cathodic protection rectifiers.

D. Each operator shall, at intervals not exceeding five years, electrically inspect the bare pipe in its pipeline system that is not cathodically protected and must study leak records for that pipe to determine if additional protection is needed.

E. Whenever any buried pipe is exposed for any reason, the operator shall examine the pipe for evidence of external corrosion. If the operator finds that there is active corrosion, that the surface of the pipe is generally pitted, or that corrosion has caused a leak, it shall investigate further to determine the extent of the corrosion.

F. Any pipe that is found to be generally corroded so that the remaining wall thickness is less than the minimum thickness required by the pipe specification tolerances must either be replaced with coated pipe that meets the requirements of this regulation or, if the area is small, must be repaired. However, the operator need not replace generally corroded pipe if the operating pressure is reduced to be commensurate with the limits on operating pressure specified in this part, based on the actual remaining wall thickness.

G. If localized corrosion pitting is found to exist to a degree where leakage might result, the pipe must be replaced or repaired, or the operating pressure must be reduced commensurate with the strength of the pipe based on the actual remaining wall thickness in the pits.

H. Each operator shall clean, coat with material suitable for the prevention of atmospheric corrosion and maintain this protection for each component in its pipeline system that is exposed to the atmosphere.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:320 (February 2023).

**§4923. Internal Corrosion Control
(Formerly §1923)**

A. No operator may transport any carbon dioxide that, with substances mixed in it, would corrode the pipe or other components of its pipeline system, unless it has investigated the corrosive effect of the mixture on the system and has taken adequate steps to mitigate corrosion.

B. If corrosion inhibitors are used to mitigate internal corrosion the operator shall use inhibitors in sufficient quantity to protect the entire part of the system that the inhibitors are designed to protect and shall also use coupons or other monitoring equipment to determine their effectiveness.

C. The operator shall, at intervals not exceeding seven and one-half months, but at least twice each calendar year, examine coupons or other types of monitoring equipment to determine the effectiveness of the inhibitors or the extent of any corrosion.

D. Whenever any pipe is removed from the pipeline for any reason, the operator must inspect the internal surface for evidence of corrosion. If the pipe is generally corroded such that the remaining wall thickness is less than the minimum thickness required by the pipe specification tolerances, the operator shall investigate adjacent pipe to determine the extent of the corrosion. The corroded pipe must be replaced with pipe that meets the requirements of this regulation or, based on the actual remaining wall thickness, the operating pressure must be reduced to be commensurate with the limits on operating pressure specified in this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:321 (February 2023).

**§4925. Valve Maintenance
(Formerly §1925)**

A. Each operator shall maintain each valve that is necessary for the safe operation of its pipeline systems in good working order at all times.

B. Each operator shall, at intervals not exceeding seven and one-half months, but at least twice each calendar year, inspect each mainline valve to determine that it is functioning properly.

C. Each operator shall provide protection for each valve from unauthorized operation and from vandalism.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:321 (February 2023).

**§4927. Pipeline Repairs
(Formerly §1927)**

A. Each operator shall, in repairing its pipeline systems, insure that the repairs are made in a safe manner and are made so as to prevent damage to persons or property.

B. No operator may use any pipe, valve, or fitting, for replacement in repairing pipeline facilities, unless it is designed and constructed as required by this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:321 (February 2023).

**§4929. Pipe Movement
(Formerly §1929)**

A. No operator may move any line pipe unless the pressure in the line section involved is reduced to not more than he considers a safe pressure for such purpose, but in any event to not more than 50 percent of the maximum of operating pressure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:321 (February 2023).

**§4931. Scraper and Sphere Facilities
(Formerly §1931)**

A. No operator may use a launcher or receiver that is not equipped with a relief device capable of safely relieving pressure in the barrel before insertion or removal of scrapers or spheres. The operator must use a suitable device to indicate that pressure has been relieved in the barrel or must provide a means to prevent insertion or removal of scrapers or spheres if pressure has not been relieved in the barrel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:321 (February 2023).

**§4933. Overpressure Safety Devices
(Formerly §1933)**

A. Each operator shall, at intervals not exceeding 15 months, but at least once each calendar year, inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:321 (February 2023).

**§4935. Firefighting Equipment
(Formerly §1935)**

A. Each operator shall maintain adequate firefighting equipment at each compressor station. The equipment must be:

1. in proper operating condition at all times;
2. plainly marked so that its identity as firefighting equipment is clear; and
3. located so that it is easily accessible during a fire.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:321 (February 2023).

§4937. Signs

(Formerly §1937)

A. Each operator shall maintain signs visible to the public around each compressor station area. Each sign must contain the name of the operator and an emergency telephone number to contact.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:322 (February 2023).

§4939. Security of Facilities

(Formerly §1939)

A. Each operator shall provide protection for each pumping station area and other exposed facility (such as scraper traps) from vandalism and unauthorized entry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:322 (February 2023).

§4941. Smoking or Open Flames

(Formerly §1941)

A. Each operator shall prohibit smoking and open flames in each pump station area and where there is a possibility of the leakage of a flammable hazardous liquid or of the presence of flammable vapors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:322 (February 2023).

§4943. Public Education

(Formerly §1943)

A. Each operator shall establish a continuing educational program to enable the public, appropriate government organizations, and persons engaged in excavation related activities to recognize a carbon dioxide pipeline emergency and to report it to the operator or the fire, police, or other appropriate public officials. The program must be conducted in English and in other languages commonly understood by a significant number and concentration of non-English speaking population in the operator's operating areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:322 (February 2023).

§4945. Reports

(Formerly §1945)

A. The commissioner may from time to time require the owner or operator of a carbon dioxide pipeline or facility falling under his jurisdiction to file such reports as are reasonably necessary in the proper administration and enforcement of these regulations. All reports required to be submitted by the commissioner shall be on forms approved by him and filed in accordance with schedules set by him. The commissioner may at his discretion grant extensions of time to file said reports upon good cause shown.

B. In addition to the reports required by Chapters 9-19, each operator of a carbon dioxide pipeline or facility shall annually file by April 1 of each year an updated map of its facilities depicting the location and size of all compressors and pumps, all points of connection between such facilities

and pipelines of other persons, all major points of supply, and the nominal size of all lines. If none of the above data has changed during the preceding year, the operator shall so notify the commissioner in writing by April 1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17) and R.S. 30:1104(A).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), repromulgated LR 49:322 (February 2023).

Subpart 5. Compressed Natural Gas

Chapter 51. General

§5101. Scope

(Formerly §2501)

A. This Chapter applies to the design and installation of compressed natural gas (CNG) engine fuel systems on vehicles of all types and CNG systems used for compression, storage, sale, transportation, delivery, or distribution of CNG for use in motor vehicles.

B. This Chapter also applies to all CNG mobile fuel systems used for filling vehicles.

C. This Chapter does not extend to the design and installation of any CNG system on ships, barges, sailboats, or other types of watercraft. Such installation is subject to the American Boat and Yacht Council (ABYCO) and any other applicable standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751 and 752.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 18:60 (January 1992), repromulgated LR 49:322 (February 2023).

§5103. Retroactivity

(Formerly §2503)

A. Unless otherwise stated, the regulations for compressed natural gas are not retroactive. Any installation of a CNG system must meet the requirements of the rules and regulations outlined herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751 and 752.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 18:60 (January 1992), repromulgated LR 49:322 (February 2023).

§5105. Definitions

(Formerly §2505)

A. The following words and terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Approved—acceptable to the Commissioner of Conservation.

Cascade Storage System—storage of CNG in multiple cylinders.

CNG Cylinder—a cylinder or other container designed for use or used as part of a CNG system.

CNG Facility—a nonvehicular CNG system.

CNG System—a system of safety devices, cylinders, piping, fittings, valves, compressors, regulators, gauges, relief devices, vents, installation fixtures, and other CNG equipment intended for use or used in any building or public place by the general public or in conjunction with a motor vehicle fueled by CNG and any system of equipment designed to be used or used in the compression, sale, storage, transportation for delivery, or distribution of CNG in portable CNG cylinders, but does not include a natural gas pipeline located upstream of the inlet of the compressor.

Commissioner—the Commissioner of Conservation of the state of Louisiana.

Compressed Natural Gas (CNG)—natural gas which is a mixture of hydrocarbon gases and vapors, consisting principally of methane (CH₄) in gaseous form that is compressed and used, stored, sold, transported, or distributed for use by or through a CNG system.

CNG Cargo Tank—a container in accordance with American Society of Mechanical Engineers (ASME) or Department of Transportation (DOT) specifications and used to transport CNG for delivery.

Cylinder Service Valve—a hand-wheel-operated valve connected directly to a CNG cylinder.

Dispensing Station—a CNG installation that dispenses CNG from any source by any means into fuel supply cylinders installed on vehicles or into portable cylinders.

Filled by Pressure—a method of transferring CNG into cylinders by using pressure differential.

Fuel Supply Cylinder—a cylinder mounted in a vehicle for storage of CNG as fuel supply to an internal combustion engine.

Manifold—the assembly of piping and fittings used for interconnecting cylinders.

Mobile Fuel System—any CNG system installed on a vehicle designed to furnish CNG to any apparatus that uses or consumes CNG.

Motor Vehicle—a self-propelled vehicle licensed for highway use or used on a public highway.

Outlet—a site operated by a certified CNG facility at which the business conducted materially duplicates the operations for which the facility is initially granted a certificate. Elements to be considered in determining the existence of an outlet include, but are not limited to, the following:

1. storage of CNG on the site;
 2. sale or distribution of CNG from the site;
 3. supervision of employees at the site;
 4. proximity of the site to other outlets;
 5. communication between the site and other outlets;
- and
6. nature of activities.

Person—an individual, sole proprietor, partnership, joint venture, corporation, or other entity.

Point of Transfer—the point where the fueling connection is made.

Pressure Relief Valve—a device designed to prevent overpressure of a normally charged cylinder.

Settled Pressure—the pressure in a container at 70°F, which cannot exceed the marked service or design pressure of the cylinder.

Transport—any vehicle or combination of vehicles and CNG cylinders designed or adapted for use or used principally as a means of moving or delivering CNG from one place to another. This shall include, but not be limited to, any truck, trailer, semitrailer, cargo tank, or other vehicle used in the distribution of CNG.

Ultimate Consumer—the individual controlling CNG immediately prior to its ignition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751 and 752.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 18:60 (January 1992), repromulgated LR 49:322 (February 2023).

§5107. Applicability (Formerly §2507)

A. The provisions of this Chapter apply to pressurized components of a compressed natural gas (CNG) system, and are applicable to both engine fuel systems and compression, storage, and dispensing systems.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751 and 752.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 18:61 (January 1992), repromulgated LR 49:323 (February 2023).

§5109. Severability (Formerly §2511)

A. If any item, clause, or provision of these rules is for any reason declared invalid, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751 and 752.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 18:61 (January 1992), repromulgated LR 49:323 (February 2023).

Chapter 53. Applications

§5301. Application for Construction or Certification of Existing Facilities (Formerly §2513)

A. An application must be submitted to the commissioner for construction for each CNG facility and all applications must be accompanied by a filing fee in accordance with LAC 43:XIX. The application must have the following information:

1. the exact legal name of the applicant; its principal place of business; the state under the laws of which applicant was organized or authorized; if a corporation, a certificate of good standing and authorization to do business from the secretary of state of Louisiana, the location and mailing address of applicant's registered office, the name and post office address of each registered agent in Louisiana, and the name and address of all its directors and principal offices;
2. the nature of service to be rendered by applicant, sale to public, applicant's fleet, private fleet, and/or public transportation;
3. if any, location of applicant's existing CNG facilities;
4. a table of contents which shall list all exhibits and documents filed with the application;
5. a schematic of applicant's proposed facilities, which shall reflect the location and capacity of all compressor sites, point of connection with piping between compressor(s) and dispensing units;
6. a listing of applicant's gas supply for compression at the point the gas enters service facility for ultimate compression;
7. a CNG Form 100;
8. subsequent filings may be required by the commissioner to complete an evaluation.

B. The commissioner shall determine whether the design, manufacture, construction, or use of the depicted items, system, operation, procedure, or installation meets the minimum standards set forth by the American Society of Mechanical Engineers, Underwriters Lab and/or American Gas Association. At the discretion of the commissioner an administrative order shall be issued authorizing the

construction of a CNG facility. If the commissioner requires a public hearing on the matter, the applicant shall be notified within 15 working days from receipt of application and a hearing date shall be set. When an application is submitted to the commissioner, automatic approval is hereby granted and construction can begin 30 days after receipt of the application by the commissioner in lieu of a written order. However, any correspondence from the commissioner during the 30-day period may set aside the 30-day automatic approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751 and 752.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 18:61 (January 1992), repromulgated LR 49:323 (February 2023).

§5303. Acquisition of an Existing CNG Facility (Formerly §2515)

A. Notice must be given to the commissioner by anyone wishing to acquire an as-built CNG facility. The notice shall include information outlined in §5301.A.1 and 3.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751 and 752.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 18:62 (January 1992), repromulgated LR 49:324 (February 2023).

§5305. Changes in Service (Formerly §2517)

A. If any owner of a CNG facility wishes to change the nature of service as listed in §5301.A.2 by adding additional services or deleting services, the operator of the facility shall notify the commissioner in writing and submit a Form CNG 101 "Change of Service". No change in service may occur without written approval from the commissioner; however, the applicant may make the changes applied for if the commissioner has not responded within 21 days after receipt of the change request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751 and 752.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 18:62 (January 1992), repromulgated LR 49:324 (February 2023).

Chapter 55. Design

§5501. Approval of CNG Systems Equipment and Components for Vehicles (Formerly §2519)

A. All CNG equipment installed on a vehicle must meet the minimum standards set forth in Section 52 of the National Fire Protection Association (Vehicle Fuel System Standards).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751 and 752.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 18:62 (January 1992), repromulgated LR 49:324 (February 2023).

§5503. Design and Construction of Cylinders and Pressure Vessels (Formerly §2521)

A. Cylinders and pressure vessels shall be fabricated of steel, aluminum, or composite materials.

B. Cylinders shall be manufactured, inspected, marked, tested, and retested in accordance with U.S. Department of Transportation (DOT) regulations and exemptions for compressed natural gas (CNG) service. Fuel supply cylinders shall have a rated service pressure of not less than

2,400 psig at 70°F. Cascade storage cylinders shall have a rated service pressure of not less than 3,600 psig at 70°F. Note: Currently, there are no cylinder specifications in DOT regulations for CNG. Current documents covering these cylinders are DOT exemptions. These are single purpose documents issued to a single company for a specific CNG application.

C. Pressure vessels and containers other than cylinders shall be manufactured, inspected, marked, and tested in accordance with the "Rules for the Construction of Unfired Pressure Vessels," "American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section VIII (Division 1)."

D. In addition to other marking requirements, cylinders shall be labeled with the words, "FOR CNG ONLY" in letters at least 1 inch high in a contrasting color and in a location which will be visible after installation. Decals or stencils are acceptable.

E. Field welding or brazing for the repair or alteration of a cylinder or ASME pressure vessel is prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751 and 752.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 18:62 (January 1992), repromulgated LR 49:324 (February 2023).

§5505. Pressure Relief Devices (Formerly §2523)

A. Each fuel supply cylinder in vehicles shall be fitted with a pressure relief device in accordance with the following:

1. pressure relief devices for cylinders shall be in accordance with Compressed Gas Association (CGA) Pamphlet-1.1 and be of the "Combination Rupture Disk Fusible Plug CG-5" type in which the fusible plug has a nominal yield temperature of 212°F;

2. only one combination rupture disk-fusible plug shall be installed in any pressure relief device opening;

3. the pressure relief device shall communicate with the fuel and be vented to the atmosphere by a method that will withstand the maximum pressure which will result;

4. the discharge flow rate of the pressure relief device shall not be reduced below that required for the capacity of the container upon which the device is installed;

5. the pressure relief device on cylinders shall be permanently marked with the manufacturer's name, initials, or trademark, the temperature rating (212°F) of the fuse plug, and the maximum pressure rating of the rupture disk.

B. The minimum rate of discharge of pressure relief devices shall be in accordance with Compressed Gas Association (CGA) Pamphlet S-1.1 (cylinders); S-1.2 (cargo and portable tanks); S-1.3 (storage cylinders); or the ASME Code, whichever is applicable.

C. Pressure relief valves for CNG service shall not be fitted with lifting devices. The adjustment, if external, shall be provided with means for sealing the adjustment to prevent tampering by unauthorized persons. If at any time such seal is broken, the valve shall be removed from service until it has been reset and sealed. Any adjustments necessary shall be made by the manufacturer or his authorized representative(s).

D. Each pressure relief valve shall be plainly marked by the manufacturer of the valve, as follows:

1. with the pressure in pounds per square inch (psi) at which the valve is set to start-to-discharge;
2. with the discharge capacity in cubic feet per minute (cfm); or
3. any other marking(s) as required by the Department of Transportation (DOT) or the ASME Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751 and 752.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 18:62 (January 1992), repromulgated LR 49:324 (February 2023).

**§5507. Pressure Gauges
(Formerly §2525)**

A. Pressure gauges shall be designed for the normal pressure and temperature conditions to which the devices may be subjected with a burst pressure safety factor of at least four.

B. Dials shall be graduated to read 1.2 times the operating pressure of the system to which the gauge is attached.

C. A gauge shall have an opening not to exceed 0.055 inches (Number 54 drill size) at the inlet connection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751 and 752.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 18:63 (January 1992), repromulgated LR 49:325 (February 2023).

**§5509. Pressure Regulators
(Formerly §2527)**

A. A pressure regulator inlet and each chamber shall be designed for its maximum working pressure with a pressure safety factor of at least four.

B. Low pressure chambers shall provide for excessive pressure relief or be able to withstand the operating pressure of the upstream pressure chamber.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751 and 752.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 18:63 (January 1992), repromulgated LR 49:325 (February 2023).

**§5511. Piping
(Formerly §2529)**

A. Pipe, tubing, fittings, gaskets, and packing material shall be compatible with the fuel under the service conditions.

B. All tubing shall be a minimum of Type 304 stainless steel. All tubing connections shall be made of manufactured multifarrel compression fittings.

C. Piping, tubing, fittings, and other piping components between a cylinder or pressure vessel and the first shutoff valve shall be capable of withstanding a hydrostatic test of at least four times the rated working pressure without structural failure.

D. Compressed natural gas piping shall be fabricated and tested in accordance with "American National Standard Code for Chemical Plant and Petroleum Refinery Piping," "American National Standards Institute (ANSI) B31.3." Such piping shall be "American Standard Testing Material (ASTM)" steel, Schedule 80, or better. All pipe fittings shall be forged steel stamped 6,000 psi or greater.

E. The following components or materials shall not be used:

1. fittings, street ells, and other piping components of cast iron or semi-steel other than those complying with

"American Society for Testing and Materials (ASTM) Specifications A-536 (Grade 60-40-18), A-395, and A-47 (Grade 35018)";

2. plastic pipe, tubing, and fittings for high pressure service;

3. galvanized pipe and fittings;

4. aluminum pipe, tubing, and fittings;

5. pipe nipples for the initial connection to a cylinder or pressure vessel;

6. copper alloy with copper content exceeding 70 percent.

F. Piping components such as strainers, snubbers, and expansion joints shall be permanently marked by the manufacturer to indicate the service ratings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751 and 752.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 18:63 (January 1992), repromulgated LR 49:325 (February 2023).

§5513. Valves

(Formerly §2531)

A. Valves, valve packing, and gaskets shall be suitable for the fuel over the full range of pressures and temperatures to which they may be subjected under normal operating conditions.

B. Shutoff valves shall have a design working pressure not less than the rated working pressure of the entire system with a safety factor of four.

C. Valves of cast iron or semi-steel other than those complying with "ASTM Specifications A-536 (Grade 60-40-18), A-395, and A-47 (Grade 35018)" shall not be used as primary shutoff valves.

D. Valves of a design that will allow the stem to be removed without removal of the complete bonnet or disassembly of the valve body, and valves with valve stem packing glands which cannot be replaced under pressure shall not be used. Exception: where there is a shutoff valve of acceptable type between them and the container or pressure vessel (this does not apply to service valves).

E. The manufacturer shall stamp or otherwise permanently mark the valve body to indicate the service ratings. Exception: fuel supply container valves need not be marked as such.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751 and 752.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 18:63 (January 1992), repromulgated LR 49:325 (February 2023).

§5515. Hose and Hose Connections

(Formerly §2533)

A. Hose and metallic hose shall be of or lined with materials that are resistant to corrosion and the actions of compressed natural gas (CNG).

B. Hose, metallic hose, flexible metal hose, tubing, and their connections shall be suitable for the most severe pressure and temperature conditions expected under normal operating conditions with a burst pressure of at least four times the maximum working pressure.

C. Hose assemblies shall be tested by the manufacturer or its designated representative prior to use at pressures equal to not less than twice the service pressure.

D. Hose shall be continuously and distinctly marked, indicating the manufacturer's name or trademark, CNG

service, and working pressure. Metallic hose shall have a manufacturer's permanently attached tag marked with the manufacturer's name or trademark, CNG service, and working pressure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751 and 752.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 18:63 (January 1992), repromulgated LR 49:325 (February 2023).

§5517. Compression Equipment (Formerly §2535)

A. Compression equipment shall be designed for use with compressed natural gas (CNG) and for the pressures and temperatures to which it may be subjected under normal operating conditions. It shall have pressure relief devices which shall limit each stage pressure to the maximum allowable working pressure for the cylinder and piping associated with that stage of compression.

B. When CNG compression equipment is operated unattended, it shall be equipped with a high discharge and low suction pressure automatic shutdown control.

C. Control devices shall be designed for the pressure, temperature, and service expected under normal operating conditions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751 and 752.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 18:64 (January 1992), repromulgated LR 49:326 (February 2023).

§5519. Vehicle Fueling Connection (Formerly §2537)

A. A vehicle fueling connection shall provide for the reliable and secure connection of the fuel system cylinders to a source of compressed natural gas (CNG).

B. The fueling connection shall be suitable for the pressure expected under normal conditions and corrosive conditions which might be encountered.

C. The fueling connection shall prevent escape of gas when the connector is not properly engaged or becomes separated.

D. The refueling receptacle on an engine fuel system shall be firmly supported, and shall:

1. receive the fueling connector and accommodate the working pressure of the vehicle fuel system;
2. incorporate a means to prevent the entry of dust, water, and other foreign material. If the means used is capable of sealing system pressure, it shall be capable of being depressurized before removal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751 and 752.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 18:64 (January 1992), repromulgated LR 49:326 (February 2023).

Chapter 57. Operations and Maintenance

§5701. Odorization (Formerly §2509)

A. Compressed natural gas shall have a distinctive odor potent enough for its presence to be detected down to a concentration in air of not over one-fifth of the lower limit of flammability.

B. Compressed natural gas shall be odorized according to the provisions of LAC 43:XIII.2725 (Odorization of Gas).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751 and 752.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 18:61 (January 1992), repromulgated LR 49:326 (February 2023).

§5703. External Corrosion Control (Formerly §2539)

A. All buried pipe and/or tubing must be protected against external corrosion as outlined in LAC 43:XIII.2107.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751 and 752.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 18:64 (January 1992), repromulgated LR 49:326 (February 2023).

§5705. Leak Survey (Formerly §2541)

A. Each operator of a CNG facility having underground piping shall conduct a leak survey each calendar year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751 and 752.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 18:64 (January 1992), repromulgated LR 49:326 (February 2023).

§5707. Report of CNG Incident/Accident (Formerly §2543)

A. In case of an incident involving a single release of compressed natural gas (CNG) during or following CNG transfer or during container transportation, or an accident at any location where CNG is the cause or is suspected to be the cause, the person(s) owning, operating, or servicing the equipment or the installation shall notify the commissioner. This notification shall be by telephone as soon as possible after knowledge of the incident or accident. Any loss of CNG which is less than 1.0 percent need not be reported. However any loss occurring as a result of a pullaway must be reported. The telephone number to be used to report accidents is (225) 342-5505.

B. Information which must be reported to the commissioner shall include:

1. date and time of the incident or accident;
2. type of structure or equipment involved;
3. resident's or operator's name;
4. physical location;
5. number of injuries and/or fatalities;
6. whether fire, explosion, or gas leak has occurred;
7. whether gas is leaking; and
8. whether immediate assistance from the commissioner is requested.

C. Any person reporting must leave his/her name, and telephone number where he/she can be reached for further information.

D. Any CNG powered motor vehicle used for school transportation or mass transit including any state-owned vehicle which is involved in an accident resulting in a substantial release of CNG or damage to the CNG conversion equipment must be reported to the commissioner in accordance with this Section regardless of accident location.

E. Following the initial telephone report, a CNG Form 200, Report of CNG Incident/Accident, must be submitted to the commissioner. The report must be postmarked within 14 calendar days of the date of initial notification to the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751 and 752.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 18:64 (January 1992), repromulgated LR 49:326 (February 2023).

Subpart 6. Damage Prevention

Chapter 59. General

§5901. Scope

(Formerly §2701)

A. This Chapter applies to the prevention of damage of underground pipelines.

B. It is the public policy of this state to promote the protection of property, workmen, and citizens in the immediate vicinity of an underground pipeline from damage, death, or injury and to promote the health and well-being of the community by preventing the interruption of essential services which may result from the destruction of, or damage to, underground pipelines.

AUTHORITY NOTE: Promulgated in accordance with 40:1749.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 46:954 (July 2020), repromulgated LR 49:327 (February 2023).

§5903. Definitions

(Formerly §2703)

A. The following words and terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Agricultural Excavator—a person who owns or operates a farm and is directly involved in the cultivation of land or crops or who raises livestock.

Commissioner—the commissioner of conservation.

Damage—any defacing, scraping, gouging, breaking, cutting, or displacement of, impact upon or removal of an underground pipeline or its means of primary support.

Demolisher—any person engaged in the act of demolishing as defined in this Section.

Demolition—the total or partial wrecking, razing, rendering, moving, or removing of any building or structure, movable or immovable.

Emergency—any crisis situation which poses an imminent threat or danger to life, health, or property requires immediate action, and immediate action is taken.

Excavation or *Excavate*—any operation causing movement or removal of earth, rock, or other materials in or on the ground or submerged in a marine environment that could reasonably result in damage to underground or submerged pipelines by the use of powered or mechanical or manual means, including but not limited to pile driving, digging, blasting, augering, boring, back filling, dredging, compaction, plowing-in, trenching, ditching, tunneling, land-leveling, grading, and mechanical probing. *Excavation* or *excavate* shall not include manual probing or any force majeure, act of God, or act of nature.

Excavator—any person who engages in excavation operations.

Inclement Weather—weather that prohibits or impedes a worker's use of his locating equipment or causes undue risk to himself or his equipment such as lightning, heavy rain, tornadoes, hurricanes, floods, sleet, snow, or flooding conditions.

Mark by Time—the date and time provided by the regional notification center by which the pipeline operator is required to mark the location or provide information to enable an excavator or demolisher, using reasonable and prudent means, to determine the specific location of the pipeline as provided for in §2707. The mark by time may be extended if mutually agreed upon and documented between the excavator and operator.

Operator—any person who owns or operates a pipeline as defined by this Chapter.

Person—an individual, firm, partnership, association, limited liability company, corporation, joint venture, municipality, governmental agency, political subdivision, or agent of the state or any legal representative thereof.

Pipeline—all intrastate and interstate pipeline facilities defined by 49 CFR 192.3 and 49 CFR 195.2.

Regional Notification Center—any one of the following:

a. an entity designated as nonprofit by the Internal Revenue Service under Section 501(c) of the Internal Revenue Code and which is organized to protect its members from damage and is certified by the Department of Public Safety and Corrections in accordance with R.S. 40:1749.18;

b. an organization of operators, consisting of two or more separate operators who jointly have underground utilities or facilities in three or more parishes in Louisiana, which is organized to protect its own installation from damage and has been certified by the Department of Public Safety and Corrections in accordance with R.S. 40:1749.18;

c. an operator who has underground utilities or facilities in a majority of parishes in Louisiana and is organized to protect its own installation from damage, and has been certified by the Department of Public Safety and Corrections in accordance with this Part.

Underground Pipeline—any pipeline as defined by this Chapter which is buried, placed below ground or submerged

Wildfire—an uncontrolled combustion of natural vegetation.

AUTHORITY NOTE: Promulgated in accordance with 40:1749.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 46:955 (July 2020), repromulgated LR 49:327 (February 2023).

Chapter 61. Notifications

§6101. Excavation and Demolition; Prohibitions

(Formerly §2705)

A. Except as provided in this Section, no person shall excavate or demolish in any street, highway, public place, or servitude of any operator, or near the location of an underground pipeline, or on the premises of a customer served by an underground pipeline without having first ascertained, in the manner prescribed in Subsection B of this Section, the specific location as provided in §6301 of all underground pipelines in the area which would be affected by the proposed excavation or demolition.

B. Except as provided in §6303, prior to any excavation or demolition, each excavator or demolisher shall serve telephonic or electronic notice of the intent to excavate or demolish to the regional notification center or centers

servicing the area in which the proposed excavation or demolition is to take place and shall include the specific location where the excavation or demolition is to be performed. Such notice shall be given to the notification center at least 48 hours, but not more than 120 hours, excluding weekends and holidays, in advance of the commencement of any excavation or demolition activity. Holidays shall consist of the following: New Year's Day; Good Friday; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Christmas Eve; and Christmas Day or the days on which those holidays are observed by the state. The marking of an operator's pipeline shall be provided for excavation or demolition purposes only.

1. This notice shall contain the name, address, and telephone number of the person filing the notice of intent, and, if different, the person responsible for the excavation or demolition, the starting date, anticipated duration, and description of the specific type of excavation or demolition operation to be conducted, the specific location of the proposed excavation or demolition and a statement as to whether directional boring or explosives are to be used. If the excavation or demolition is part of a larger project, the notice shall be confined to the actual area of proposed excavation or demolition that will occur during the 20-day time period under §6301.

2. The excavator or demolisher shall wait at least 48 hours, beginning at 7 a.m. on the next working day, following notification, unless mutually agreed upon and documented by the excavator and operator to extend such time, before commencing any excavation or demolition activity, except in the case of an emergency as defined in the provisions of this Chapter or if informed by the regional notification center that no operators are to be notified.

3. Concerning pipelines located on or in water, when an extension of time to mark a pipeline cannot be agreed upon and the operator has determined said pipeline(s) cannot be adequately marked by the mark by time listed on the Regional Notification Center ticket, the operator may appeal to the commissioner for an extension to the mark by time. Said request shall be made via e-mail to PipelineInspectors@la.gov and the contact e-mail listed on the regional notification center ticket shall be copied on the request. The request shall contain the ticket no., location of the pipe and a summary explaining why the line cannot be located by the mark by time. The request shall be made on a form as provided by the commissioner.

C. This Chapter shall not apply to activities by operators or landowners excavating their own underground pipelines on their own property or operators' exclusive right-of-way provided there is no encroachment on the rights-of-way of any operator and the operator controls access to the location.

D. Excavators may use white paint as marking under American Public Works Association guidelines.

AUTHORITY NOTE: Promulgated in accordance with 40:1749.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 46:955 (July 2020), repromulgated LR 49:327 (February 2023).

§6103. Emergency Excavation; Notice Required; Penalty (Formerly §2709)

A. The notice required pursuant to §4901 shall not apply to any person conducting an emergency excavation. Oral or

electronic notice of the emergency excavation shall be given as soon as practicable to the regional notification center or each operator having underground pipelines located in the area and, if necessary, emergency assistance shall be requested from each operator in locating and providing immediate protection to its underground pipelines.

B. The excavator shall certify in the notice required in Subsection A of this Section that the situation poses an imminent threat or danger to life, health, or property or is the result of an unplanned pipeline outage and requires immediate action and that the excavator, or owner or operator has a crew on site.

C. There is a rebuttable presumption that the excavator failed to give notice as required pursuant to this Section if the excavator failed to give any notice to the regional notification center within the following time periods:

1. within two hours from the discovery of the need for an emergency excavation;

2. in the case of a gubernatorially declared state of emergency due to a weather or homeland security-related event, within 12 hours of the beginning of the emergency excavation within the parishes to which the emergency declaration applies;

3. in the case of a wildfire, within 24 hours after control of the emergency.

D. The owner or operator of the pipeline facilities shall respond to an emergency notice as soon as practicable under the circumstances.

E. Emergency excavation notices are valid for as long as the emergency situation exists. The type of work and location shall remain consistent with the work described in the excavation notice. If the type of work and location become inconsistent with the emergency excavation notice, then a new excavation notice is required.

AUTHORITY NOTE: Promulgated in accordance with 40:1749.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 46:956 (July 2020), repromulgated LR 49:328 (February 2023).

**Chapter 63. Markings
§6301. Requirements (Formerly §2707)**

A. Each operator of an underground pipeline, after having received the notification request from the regional notification center of an intent to excavate, shall supply, prior to the proposed excavation, the following information to the person responsible for the excavation:

1. The specific location and type of all of its underground pipelines which may be damaged as a result of the excavation or demolition. If the surface over the buried or submerged pipeline is to be removed, supplemental offset markings may be used. Offset markings shall be on a uniform alignment and shall clearly indicate that the actual facility is a specific distance away.

2. Unless otherwise required by federal or state statutes, the specific location and type of underground pipeline may, at the operator's option, be marked to locate the pipelines. If the pipelines are visibly marked by the operator, they shall be marked by the operator by color coded paint, flags, or stakes or similar means using the American Public Works Association color code.

a. When the operator has marked the location of underground pipelines, the marking shall be deemed good as

long as visible but not longer than 20 calendar days, including weekends and holidays, from the mark by time. An additional notice to the regional notification center shall be given by the excavator or demolisher in accordance with the provisions of this Chapter when the marks are no longer visible or if the excavation or demolition cannot be completed within 20 calendar days from the mark by time, whichever occurs first.

b.i. Concerning locations of excavation in or on water, an excavator may request an extension to the expiration date of a regional notification center ticket under the following circumstances:

(a). no utilities other than pipelines are listed on the regional notification center ticket; and

(b). the pipeline markings are still visible.

ii. Requests for an extension shall be made via e-mail to PipelineInspectors@la.gov on a form as provided by the commissioner. The operator(s) listed on the regional notification center ticket shall be copied on the extension request.

c. The excavator shall use all reasonable and prudent means, within common industry practice, to protect and preserve all marks of the underground pipeline.

3. If the pipeline(s) cannot be physically located, the operator shall provide information to enable an excavator using reasonable and prudent means to determine the approximate location of the pipeline. The information provided by the operator shall include a contact person and a specific telephone number for the excavators to call. After the operator has received the notification request, the information on location, size, and type of underground pipeline must be provided by the operator to the excavator prior to excavation.

4. In the event of inclement weather as defined in this Chapter, the mark by time shall be extended by a duration equal to the duration of the inclement weather. The owner or operator shall notify the excavator or demolisher before the expiration of the mark by time of the need for such extension.

5. Should an operator determine that their pipeline(s) is not in conflict with the location of the request or should the pipeline(s) not be fully marked for locating purposes, a notification shall be sent to the excavator prior to the mark by time. A response to the Regional Notification Center that generated the locate request shall suffice for compliance with this section.

B. For the purpose of this Section, the specific location of the underground pipeline(s) is defined as an area not wider than the width of the underground pipeline as marked plus eighteen inches on either side.

AUTHORITY NOTE: Promulgated in accordance with 40:1749.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 46:956 (July 2020), repromulgated LR 49:328 (February 2023).

Chapter 65. Excavation

§6501. Precautions to Avoid Damage (Formerly §2711)

A. In addition to the notification requirements in §6101 and §6301 and the emergency notification requirements in §6103, each person responsible for an excavation or demolition operation shall do the following.

1. Plan the excavation or demolition to avoid damage to or minimize interference with underground pipelines in and near the construction area.

2. Maintain a safe clearance between the underground pipelines and the cutting edge or point of any power or mechanized equipment, taking into account the known limit of control of the cutting edge or point to avoid damage to pipelines.

3. Provide support for underground pipelines in and near the construction area, during excavation and back filling operations, as may be reasonably necessary to protect any pipelines.

4. Dig test pits to determine the actual location of pipelines if said lines are to be exposed.

AUTHORITY NOTE: Promulgated in accordance with 40:1749.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 46:957 (July 2020), repromulgated LR 49:329 (February 2023).

§6503. Excavation or Demolition; Repair of Damage (Formerly §2713)

A. Each person responsible for any excavation or demolition operations which result in any damage to an underground pipeline shall, immediately upon discovery of that damage, notify the owner or operator of the pipeline of the location and nature of the damage and shall allow the owner or operator reasonable time to accomplish necessary repairs before continuing the excavation, demolition, or back filling in the immediate area of damage.

B. Each person responsible for an excavation or demolition operation which results in damage to an underground pipeline permitting the escape of any flammable, toxic, or corrosive fluids/gases shall, immediately upon discovery of that damage.

1. Notify the owner or operator of the pipeline as provided in Subsection A, and all other appropriate emergency response personnel, including 911 and the local law enforcement and fire departments and allow the owner or operator reasonable time to accomplish necessary repairs before continuing the excavation, demolition, or back filling in the immediate area of damage.

2. Take any other action as may be reasonably necessary to protect persons and property and to minimize hazards until arrival of the owner or operator's personnel and police or fire department.

3. Comply with any other notification process required by law or regulation.

C. For the purposes of this Chapter, failure to comply with the provisions of Subsection B shall constitute a single violation, except as provided below by Subsection D.

D. After discovery of the damage, each day that an excavator or demolisher fails to comply with the provisions of Subsection B shall be considered a separate violation.

AUTHORITY NOTE: Promulgated in accordance with 40:1749.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 46:957 (July 2020), repromulgated LR 49:329 (February 2023).

Richard P. Ieyoub
Commissioner

2302#018

RULE

Department of Public Safety and Corrections Office of Motor Vehicles

Public Tag Agents (LAC 55:III.Chapter 16)

The Department of Public Safety and Corrections, Office of Motor Vehicles, in accordance with R.S. 47:532.1 and with the Administrative Procedure Act, R.S. 49:950 et seq., has repromulgated LAC 55:III.B.1551-1577, Public Tag Agents, as LAC 55:III.1601-1627, Public Tag Agents. This repromulgation to a new chapter is necessary to make room for the addition of new sections to the Chapter on Public Tag Agents. This Rule was previously adopted. This Rule is hereby adopted on the day of promulgation.

Title 55

PUBLIC SAFETY

Part III. Motor Vehicles

Chapter 16. Public Tag Agents

§1601. Definitions

(Formerly §1551)

A. As used in this Chapter, the following terms have the meanings described below.

Commissioner—Deputy Secretary of the Department of Public Safety and Corrections, Public Safety Services.

Department—Department of Public Safety and Corrections, Office of Motor Vehicles.

Driver Privacy Protection Act—the federal Driver Privacy Protection Act of 1994 (DPPA) (Title XXX of P.L. 103-322), 18 U.S.C. §2721 et seq., as implemented by the department in the *Louisiana Administrative Code*, Title 55, Part III, Chapter 5, Subchapter B.

Personal Information—information which includes the full name, complete physical address, and date of birth, driver's license number, and Social Security number.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:532.1.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 25:2415 (December 1999), repromulgated LR 49:330 (February 2023).

§1603. Authority; Businesses and Governmental Entities

(Formerly §1553)

A. R.S. 47:532.1 authorizes the commissioner to establish a system of public tag agents authorized to collect the registration license taxes, as well as applicable sales and use taxes, and issue registration certificates and license plates to motor vehicles. An agent may be either a municipal or parish governing authority, a new motor vehicle dealer or his agent, or an auto title company. Public tag agents shall also be authorized to receive and process applications filed for certificates of title, duplicate certificates of titles, corrected certificates of title, recordation of liens, mortgages, or security interests against motor vehicles, conversions of plates, transfers of plates, replacements of lost or stolen plates and/or stickers, renewals of registration, duplicate registrations, and additional applications or transactions authorized by the commissioner.

B. The commissioner and a public tag agent, other than municipal and parish governing authority, shall enter into a contract which shall state the required procedures for the

implementation of authorized activities. See §1569 for a copy of the contract.

C. With the exception of the requirements for a surety bond, all rules and regulations as well as all contractual provisions shall apply to municipal and parish governing authorities acting as public tag agents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:532.1.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 25:2415 (December 1999), repromulgated LR 49:330 (February 2023).

§1605. Convenience Fee

(Formerly §1555)

A. Public tag agents may collect a convenience in addition to any other fee or tax collected when processing a transaction for the department. The convenience fee shall not exceed \$10, and shall be retained by the public tag agent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:532.1.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 25:2415 (December 1999), amended LR 27:1927 (November 2001), repromulgated LR 49:330 (February 2023).

§1607. Administrative Actions

(Formerly §1557)

A.1. The assistant secretary or his designee may suspend, revoke, cancel, or terminate the public tag agent's contract upon a violation by the agent or any agent's officers, directors, employees, owners, or other representatives of any responsibility or requirement established pursuant to the contractual agreement. LAC 55:III.Chapter 15.Subchapter B, or R.S. 47:532.1. In lieu of any of the previously listed actions, the deputy secretary may take other administrative action for such a violation including but not limited to the imposition of a fine or other sanction.

2. Additionally, the assistant secretary or his designee may suspend, revoke, cancel, or terminate the status of any person who is an employee, officer, director, or other representative of the public tag agent upon a violation of any responsibility or requirement established pursuant to the contractual agreement. LAC 55:III.Chapter 15. Subchapter B, or R.S. 47:532.1. It shall be the responsibility of the public tag agent to insure that all employees, officers, directors, or other representatives of the public tag agent are familiar with these responsibilities and requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:532.1.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 25:2415 (December 1999), amended LR 27:1927 (November 2001), repromulgated LR 49:330 (February 2023).

§1609. Applications

(Formerly §1559)

A. Those persons interested in becoming a public tag agent may inquire at the following address:

Attention: Planning and Coordination
Office of Motor Vehicles
Post Office Box 64886
Baton Rouge, LA 70896

B. No person shall act as a public tag agent until after submitting an application to the department on the approved form, and after the application has been approved by the department.

C. No person shall act as an employee, officer, director, or other representative of a public tag agent until after the person submits an application to the department on the approved form, and after the application has been approved by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:532.1.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 25:2416 (December 1999), repromulgated LR 49:330 (February 2023).

§1611. Eligibility, Suspension, Revocation, or Cancellation of Public Tag Agent's Authority (Formerly §1561)

A. The following actions by a public tag agent, or by any of the public tag agent's employees, officer's, directors, managers, representatives, or owners, may subject the public tag agent to suspension, revocation, or cancellation of the public tag agent's authority by the department. In the alternative, the department may impose restriction on the public tag agent's authority as a result of any of the following actions by the public tag agent or applicant, or by any of the public tag agent's employees, officer's, directors, managers, representatives, or owners. The department may also deny an application and refuse to grant the applicant authority to act as a public tag agent as a result of any of the following actions by the applicant, or by any of the applicant's employees, officer's, directors, managers, representatives, or owners:

1. failure to remit taxes and fees collected from applicants for title transfers;
2. repeated late filings;
3. operating as an auto title company or public tag agent without a license or authorization for each location, with an expired license or authorization, or without a valid surety bond on file with the Office of Motor Vehicles;
 - 4.a. the issuance of more than one temporary registration (T-marker) to a title applicant; or
 - b. the issuance of a T-marker without first collecting all taxes and fees and requiring the title applicant to show proof of compliance with the compulsory insurance law;
5. operating from an unlicensed or unauthorized location;
6. changing the ownership of the public tag agent and not reporting in writing to the Office of Motor Vehicles within 30 days from the date of such change;
7. changing the officers or directors of the public tag agent and not reporting in writing to the Office of Motor Vehicles within 30 days from the date of such change;
8. being a principal or accessory to the alteration of documents relevant to a registration or titling transaction that results in material injury to the public records or a short fall in the collection of taxes owed;
9. the forwarding to the Office of Motor Vehicles by a public tag agent of a document relevant to a registration or titling transaction that results in a material injury to the public records, or a short fall in the collection of taxes owed when the public tag agent had knowledge of facts causing such injury or shortfall, and failed to disclose the same to the Office of Motor Vehicles;

10. conviction of, or an entry plea of guilty or nolo contendere to, any felony or conviction of, or an entry plea of guilty or nolo contendere to, any criminal charge, an element of which is fraud;

11. fraud, deceit, or perjury in obtaining any license issued under this Chapter;

12. failure to maintain at all times during the existence of the authorization, all qualifications required for issuance or renewal of the authorization;

13. any material misstatement of fact or omission of fact in any application for the issuance or renewal of an authorization for a public tag agent;

14. the repeated submission of checks which have been dishonored by the bank on which the check was drawn.

B. The department may revoke, suspend, or cancel any approval, license or permit of any employee, officer, director, manager, representative, or owner of a public tag agent who violates any provision of Subsection A of §1561. Any person subject to an order as provided in this Paragraph shall not work for, or be associated with, the public tag agent in any manner unless approved by the department in writing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:532.1.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 25:2416 (December 1999), repromulgated LR 49:331 (February 2023).

§1613. Name, Trade Name, Advertisements, and Other Signage of Public Tag Agents (Formerly §1563)

A. No public tag agent shall display any sign, logo, business name, or trade name, or cause to be advertised any sign, logo, business name, or trade name which includes the words "office of motor vehicles," "motor vehicle office," or "motor vehicles office," or any similar phrases, unless the sign, logo, business name, trade name, or advertisement clearly and prominently includes a statement indicating the business's status as a public tag agent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:532.1.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 25:2416 (December 1999), repromulgated LR 49:331 (February 2023).

§1615. Driver Privacy Protection Act (Formerly §1565)

A. Every applicant for a driver's license, certificate of title, or for a new or renewed vehicle registration at a public tag agent's place of business shall be given the opportunity to prohibit the disclosure of personal information as defined in LAC 55, Part III, Chapter 5, §553, Subchapter B, by completing the department's approved form, and submitting the form to the public tag agent. The public tag agent shall forward the properly completed form to the department. The public tag agent shall advise the person submitting the form that any form which is incomplete or which is illegible shall not be processed and shall not be returned.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:532.1.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR

25:2416 (December 1999), repromulgated LR 49:331 (February 2023).

**§1617. Bond Requirement
(Formerly §1567)**

A. All public tag agents other than municipal and parish governing authorities shall furnish security for the faithful performance of their duties as follows.

1. Each public tag agent other than a municipal governing authority shall execute a good and sufficient surety bond with a surety company qualified to do business in Louisiana as surety, in a sum of not less than \$10,000 nor more than \$100,000, if surety bond is available for purchase, which bond shall name the Department of Public Safety and Corrections, Office of Motor Vehicles as obligee and shall be subject to the condition that, if such public tag agent shall, throughout the entire term of the bond, timely file with the office of motor vehicles all applications delivered to such public tag agent for filing, and all fees and taxes collected by such public tag agent, the obligation shall be void. If the company does not do so, the obligation of the surety shall remain in full force and effect. A public tag agent having multiple locations need furnish only a single \$10,000 surety bond in addition to any other bonds required by law.

2. The surety bond furnished pursuant to §1567 shall be delivered to and filed with the Department of Public Safety and Corrections, Office of Motor Vehicles.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:532.1.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 25:2417 (December 1999), repromulgated LR 49:332 (February 2023).

**§1619. Contracts
(Formerly §1569)**

A. The commissioner and public tag agents other than municipal and parish governing authorities may enter into contracts which shall state the required procedures for the implementation of LAC 55, Part III, Chapter 15, Subchapter B. Such contracts may terminate upon violation of R.S. 47:532.1, LAC 55, Part III, Chapter 15, Subchapter B, or the provisions of the contract between the department and the public tag agent foregoing provisions.

B. The contract between the department and the public tag agent shall be on the form approved by the assistant secretary. The department may require that a public tag agent sign separate contracts to perform the following functions:

1. processing title work and issuing of registration certificates and permanent license plates;
2. conducting testing for, and in the issuance of, class "D" and "E" driver's licenses;
3. processing the filing of electronic liens;
4. processing the reinstatement of driver's licenses and providing status information.

C. The contract between the department and the public tag agent shall have a term of one year. The department may provide for automatic renewals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:532.1.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 25:2417 (December 1999), amended LR 27:1927 (November 2001), repromulgated LR 49:332 (February 2023).

**§1621. Declaratory Orders and Rulings
(Formerly §1571)**

A. Any person desiring a ruling on the applicability of any statute, or the applicability or validity of any rule in LAC 55, Part III, Chapter 15, Subchapter B, regarding public tag agents, shall submit a written petition to the deputy secretary. The written petition shall cite all constitutional provisions, statutes, ordinances, cases, and rules which are relevant to the issue presented or which the person wishes the deputy secretary to consider prior to rendering an order or ruling in connection with the petition. The petition shall be typed, printed or written legibly, and signed by the person seeking the ruling or order. The petition shall also contain the person's full printed name, the complete physical and mailing address of the person, and a daytime telephone number.

B. If the petition includes reference to a specific transaction handled by the department or a public tag agent, or if the petition relates to the issuance, revocation, cancellation, or denial of any license, permit or authorization, then the person submitting the petition shall also submit proof that he has notified all of the persons involved in the transaction or issuance, revocation, cancellation, or denial of the license, permit or authorization by certified mail, return receipt requested. If the person is unable to notify the involved person or persons after otherwise complying with the notice requirement, he shall so state in his petition.

C. The deputy secretary may request the submission of legal memoranda to be considered in rendering any order or ruling. The deputy secretary or his designee shall base the order or ruling on the documents submitted including the petition and legal memoranda. If the deputy secretary or his designee determines that the submission of evidence is necessary for a ruling, the matter may be referred to a hearing officer prior to the rendering of the order or ruling for the taking of such evidence.

D. Notice of the order or ruling shall be sent to the person submitting the petition as well as the security provider receiving notice of the petition at the mailing addresses provided in connection with the petition.

E. The deputy secretary may decline to render an order or ruling if the person submitting the petition has failed to comply with any requirement in this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:532.1 and R.S. 49:962.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 25:2418 (December 1999), repromulgated LR 49:332 (February 2023).

**§1623. Confidentiality
(Formerly §1573)**

A. The public tag agent, its employees, representatives, and agents shall maintain the confidentiality of all records and information received or processed in connection with any function performed pursuant to a contract with the department.

B. The public tag agent shall forward all request for information commonly referred to as public records request to the department for a response.

C. The public tag agent shall be responsible for the disclosure of any information in connection with the

processing of any transaction on behalf of the department. The public tag agent shall comply with all applicable federal and state laws regarding the disclosure of information, including but not limited to 18 U.S.C. §2721 et seq., and 42 U.S.C. §405(c)(2)(C).

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:532.1.

HISTORICAL NOTE; Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 27:1927 (November 2001), repromulgated LR 49:332 (February 2023).

§1625. Driver's License Issuance (Formerly §1575)

A. A public tag agent may contract with the department to administer the necessary tests and issue or renew identification cards, handicap hang tag identification cards, and driver's licenses. The written knowledge test and the driving or skills test shall be administered in accordance with the provisions of LAC 55:III.Chapter 1.Subchapter C.

B. The public tag agent's third party examiner shall utilize only department approved visual screening equipment. In lieu thereof, each examiner may opt to utilize the standard Snellen wall-chart for visual acuity. The visual acuity testing shall be administered in a manner approved by the department.

C. A public tag agent shall develop controls to secure the materials and equipment necessary to issue driver's licenses. Such controls shall be submitted in writing to the department. A public tag agent shall not issue any driver's licenses until the controls required by this Section have been approved by the department in writing. Once approved, the controls shall be implemented as written. Any changes to the control approved by the department shall be approved in writing prior to implementation.

D. The department shall designate the types of driver's license and identification card transactions a public tag agent may perform, such as renewals and duplicates. Such designation shall be at the sole discretion of the department. Identification cards include the photographic identification issued with a handicap hangtag.

E. Qualifications for Issuance of Driver's Licenses and Identification Cards. In addition to the qualification requirements contained in statute and this Chapter, a public tag agent shall meet these additional requirements in order to be approved to perform driver's license and identification card transaction designated by the department.

1. Insurance. The insurance policy shall provide coverage and a defense for the state of Louisiana and the Department of Public Safety and Corrections, as well as the employees of the state and the department.

a. A policy for professional liability/errors and omissions with minimum coverage of \$1,000,000.

b. A policy for general liability with minimum coverage of \$1,000,000.

2. A security system installed by a company licensed and approved by the Office of State Fire Marshal. This system shall be monitored 24 hours a day by a monitoring company.

3. A video surveillance system which at a minimum monitors all entrances, the driver's license camera station, and the secure supply room. Such system shall be installed by a company licensed and approved by the Office of State

Fire Marshal. The video images shall be retained by the system for a minimum of 30 days with the ability to save the video indefinitely if so requested by the department.

F. Camera Station

1. The public tag agent shall purchase the camera station from the current vendor providing the credential issuance solution for the department. The public tag agent shall receive prior approval from the department before purchasing the camera station.

2. A public tag agent may only dispose of a camera station in a manner approved by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:532.1.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 27:1927 (November 2001), amended LR 40:370 (February 2014), repromulgated LR 49:333 (February 2023).

§1627. Other Transactions (Formerly §1577)

A. The department may contract with public tag agents to perform other transactions authorized in R.S. 47:532.1. In such case, the public tag agent shall use the equipment and procedures required by the department to process these transactions. The public tag agent shall use an approved written control plan to secure any materials or equipment as directed by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:532.1.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 27:1928 (November 2001), repromulgated LR 49:333 (February 2023).

Karen H. St. Germain
Commissioner

2302#032

RULE

Department of Revenue Policy Services Division

Articles and Products Made of Tobacco
and Tobacco Substitutes
(LAC 61.I.5105)

Under the authority of R.S. 47:841(D) and 1511, and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, adopts LAC 61.I.5105 relative to products made with nicotine extract or synthetic nicotine and tobacco substitutes.

The purpose of this regulation is to provide guidance regarding the taxability of products made with nicotine extract or synthetic nicotine and tobacco substitutes. The regulation provides guidance by clarifying the phrases, "articles and products made of tobacco" and "tobacco substitute" used in the definition of smokeless tobacco provided in Louisiana Revised Statute 47:842(15). The regulation reflects current policy of the Department of Revenue. This Rule is hereby adopted on the day of promulgation.

Title 61
REVENUE AND TAXATION
Part I. Taxes Collected and Administered by the
Secretary of Revenue

Chapter 51. Tobacco Tax
§5105. Articles and Products Made of Tobacco and
Tobacco Substitutes

A. The definition of *smokeless tobacco* provided in R.S. 47:842(15) includes articles and products made of tobacco and tobacco substitutes.

B. Any product made with nicotine which is extracted from tobacco is considered an article or product made of tobacco. It is not necessary that tobacco leaves be present in the article or product. These products are smokeless tobacco for purposes of Louisiana tobacco tax.

C. As used in R.S. 47:842(15), for purposes of the tax due on smokeless tobacco, tobacco substitute includes any non-combustible product intended to be used or consumed as an alternative to tobacco. Examples of tobacco substitutes include, but are not limited to products made with nicotine extracted from tobacco or any other source, products made with synthetic nicotine, and products which simulate traditional smokeless tobacco regardless of the presence of nicotine. These products are smokeless tobacco for purposes of Louisiana tobacco tax.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:841(D) and 1511.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Revenue, Policy Services Division, LR 49:334 (February 2023).

Kevin J. Richard, CPA
Secretary of Revenue

2302#038

RULE

Department of Revenue
Policy Services Division

Mobile Workforce Exemption
(LAC 61:I.1923)

Under the authority of R.S. 47:112.2, R.S. 47:242(1)(g)(ii) and (2)(b), R.S. 47:248, and R.S. 47:1511, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et. seq., the Department of Revenue, Policy Services Division, adopts LAC 61:I.1923 relative to the Mobile Workforce Exemption.

Revised Statute 47:112.2 authorizes an individual income tax exemption for certain nonresident employees who perform their employment duties in Louisiana for 25 days or less. In turn, the statute relieves employers of such nonresident employees of the requirement to withhold Louisiana individual income tax on the nonresident employee's wages. If the nonresident employee performs employment related duties in Louisiana for a period in excess of 25 days in a calendar year, the employer is required to withhold and remit tax to Louisiana for the entire year, including the first 25 days. Wages paid to a nonresident individuals that are exempt pursuant to the mobile workforce provisions of Revised Statute 47:248 will not be considered an item of gross income. The purpose of this regulation is to

implement Act 383 of the 2021 Regular Session of the Louisiana Legislature relative to the Mobile Workforce Exemption. This Rule is hereby adopted on the day of promulgation.

Title 61
REVENUE AND TAXATION
Part I. Taxes Collected and Administered by the
Secretary of Revenue
Chapter 19. Miscellaneous Tax Exemptions, Credits
and Deductions

§1923. Mobile Workforce Exemption

A. General Description

1. The Mobile Workforce Exemption allows certain nonresident mobile workers to exclude wages from Louisiana tax table income. The exemption further relieves employers of such nonresident employees of the requirement to withhold Louisiana individual income tax on the nonresident employee's wages.

2. To be eligible for the exemption, all of the following requirements must be met:

a. The compensation is paid for employment duties performed by the nonresident individual in this state for 25 or fewer days in the calendar year.

b. The nonresident individual performed employment duties in more than one state during the calendar year.

c. The wages are not paid for employment duties performed by the nonresident individual in the individual's capacity as a professional athlete, staff member of a professional athletic team, professional entertainer, public figure, or qualified production employee.

d. The nonresident individual's income is exempt from taxation by this state under the United States Constitution or federal statute or the nonresident individual's state of residence either provides a substantially similar exemption or does not impose an individual income tax.

e. The nonresident individual did not have any other income derived from sources within the state during the taxable year.

B. Definitions. For purposes of this Section, the following terms shall have the meaning ascribed therein.

Day—an employee is considered present and performing employment duties within Louisiana for a day if the employee performs more of his or her duties within Louisiana than any other taxing jurisdiction for that day. Where an employee is present and performing more employment duties in Louisiana than another taxing jurisdiction on the same day, the employee will be considered to have performed the preponderance of his or her duties for that day in Louisiana. The portion of a day that an employee spends in Louisiana while in transit is not considered in determining whether he or she performed employment duties.

Department—the Louisiana Department of Revenue.

Employee—as defined in R.S. 47:111(A), with the exception of a professional athlete, staff member of a professional athletic team, professional entertainer, public figure, or qualified production employee.

Employer—as defined in R.S. 47:111(B).

Time and attendance system—a system through which an employee is required, on a contemporaneous basis, to record the employee's work location for every day worked

outside the state where the employee's employment duties are primarily performed and that is designed to allow the employer to allocate the employee's compensation for income tax purposes among all states in which the employee performs employment duties for the employer.

C. Filing Requirements.

1. Employees

a. Nonresident employees seeking to claim the exemption for income earned while performing employment duties within the state for less than 25 days are not required to file a Louisiana individual income tax return. If the nonresident employee has other income from Louisiana sources, the nonresident employee does not qualify for this exemption and thus all Louisiana income must be reported on the Nonresident and Part-Year Resident (NPR) Worksheet of the Louisiana Form IT-540B, *Louisiana Nonresident and Part-Year Resident Income Tax Return*.

b. Nonresident employees must file Form L-4E, *Exemption from Withholding Louisiana Income Tax* with their employer in order for their employer to refrain from withholding Louisiana income tax from their wages. Taxpayers must file a new L-4E annually in order to continue claiming the exemption and must revoke this exemption certificate by completing a Form L-4, *Employee Withholding Exemption Certificate*:

- i. within 10 days from the twenty-sixth day of performing employment duties within the state;
- ii. within 10 days from the day you anticipate you will incur Louisiana income tax liability for the current year; or
- iii. by the first day of the last month of your current taxable year if you anticipate you will incur Louisiana income tax liability for the following year.

2. Employers. If a nonresident employee performs employment duties in excess of 25 days within the state, the employer must begin withholding income tax and report such tax on Form L-1, *Employer's Quarterly Return of Louisiana Withholding Tax* beginning in the period in which the twenty-sixth day fell within.

D. Penalty for Failure to Deduct or Withhold Income Tax

1. The Department shall not require the payment of penalties or interest for failing to deduct and withhold income tax for a nonresident employee who does not qualify for the exemption, if the employer meets any of the following conditions:

a. The employer at its sole discretion maintained a time and attendance system specifically designed to allocate employee wages for income tax purposes among all taxing jurisdictions in which the employee performs employment duties for the employer, and the employer relied on data from that system.

b. The employer did not maintain a time and attendance system, and the employer relied on either:

- i. its own records, maintained in the regular course of business, of the employee's location;
- ii. the employee's reasonable determination of the time the employee expected to spend performing employment duties in this state provided the employer did not have actual knowledge of fraud on the part of the employee in making the determination and provided that the employer and the employee did not collude to evade taxation in making the determination.

2. The department shall require the payment of penalties or interest for failing to deduct and withhold income tax if the employer fails to meet either of the conditions of this Subsection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:112.2, R.S. 47:242(1)(ii), R.S. 47:248, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 49:334 (February 2023).

Kevin J. Richard, CPA
Secretary

2302#006

RULE

**Department of Transportation and Development
Professional Engineering and Land Surveying Board**

Incidental Practice and Work Experience
(LAC 46:LXI.105, 1505, 1527 and 2101)

Under the authority of the Louisiana professional engineering and land surveying licensure law, R.S. 37:681 et seq., and in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., the Professional Engineering and Land Surveying Board has amended its rules contained in LAC 46:LXI.105, 1505, 1527 and 2101.

This is a revision of existing rules under which LAPELS operates. The revision (a) incorporates the new provision in the LAPELS licensure law on the incidental practice of engineering by architects, (b) clarifies the supervision requirements for work experience and (c) removes some duplicative language in the rule on the reactivation of expired licenses. The anticipated effective date of these Rule amendments is the date of promulgation. This Rule is hereby adopted on the day of promulgation.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LXI. Professional Engineers and Land Surveyors

Chapter 1. General Provisions

§105. Definitions

A. The words and phrases defined in R.S. 37:682 shall apply to these rules. In addition, the following words and phrases shall have the following meanings, unless the content of the rules clearly states otherwise.

Practice of Engineering—

a. practice of engineering is defined in R.S. 37:682. The board recognizes that an architect as defined in R.S. 37:141(B)(1) has a right to engage in certain activities that fall within the definition of the practice of engineering, but only to the extent such activities are necessarily incidental to the architect's practice of architecture as defined in R.S. 37:141(B)(3). Such incidental engineering work is limited to minor mechanical, electrical, or civil-structural engineering work necessarily incidental to the architect's practice of architecture. The incidental engineering work shall be of a secondary nature and shall be substantially less in scope and magnitude when compared to the architectural portion of the work. Incidental engineering work includes additions, renovations, or alterations that do not require significant adjustments to the engineering calculations for the changes

to the engineering systems or components. The incidental engineering work shall be safely and competently performed by the architect without jeopardizing the life, health, property, or welfare of the public. The incidental engineering work shall also satisfy all of the following conditions for new construction or additions:

i. For new construction, the total proposed occupant load for the new construction shall not exceed 299 individuals for assembly occupancy and 49 individuals for all other occupancies. The occupant load shall be defined and determined by the method set forth in the currently enforced building code;

ii. For additions, the total proposed occupant load for the addition shall not exceed 299 individuals for assembly occupancy and 49 individuals for all other occupancies. The occupant load shall be defined and determined by the method set forth in the currently enforced building code.

b. ...

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Surveyors, LR 4:298 (August 1978), amended LR 5:110 (May 1979), LR 7:643 (December 1981), LR 14:449 (July 1988), LR 16:772 (September 1990), LR 17:804 (August 1991), LR 20:901 (August 1994), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1020 (July 2001), LR 30:1704 (August 2004), LR 32:1618 (September 2006), LR 35:1908 (September 2009), LR 38:835 (March 2012), repromulgated LR 38:1030 (April 2012), amended LR 44:612 (March 2018), LR 45:75 (January 2019), LR 47:490 (April 2021), LR 49:335 (February 2023).

Chapter 15. Experience

§1505. Work Experience

A. ...

B. Engineering Work Experience

1. For any required engineering work experience obtained in a state, territory, or possession of the United States, or the District of Columbia, it should be obtained under the supervision of a professional engineer holding a valid license to engage in the practice of engineering issued to him/her by proper authority of a state, territory, or possession of the United States, or the District of Columbia, or, if not, an explanation shall be made showing why such experience should be considered acceptable.

2. At least two years of any required engineering work experience obtained outside of a state, territory, or possession of the United States, or the District of Columbia, shall be obtained under the supervision of a professional engineer holding a valid license to engage in the practice of engineering issued to him/her by proper authority of a state, territory, or possession of the United States, or the District of Columbia. The remainder of such experience should also be obtained under the supervision of a professional engineer holding a valid license to engage in the practice of engineering issued to him/her by proper authority of a state, territory, or possession of the United States, or the District of Columbia, or, if not, an explanation shall be made showing why the remainder of such experience should be considered acceptable.

C. Land Surveying Work Experience

1. For any required land surveying work experience obtained in a state, territory, or possession of the United States, or the District of Columbia, it should be obtained under the supervision of a professional land surveyor holding a valid license to engage in the practice of land surveying issued to him/her by proper authority of a state, territory, or possession of the United States, or the District of Columbia, or, if not, an explanation shall be made showing why such experience should be considered acceptable.

2. At least two years of any required land surveying work experience obtained outside of a state, territory, or possession of the United States, or the District of Columbia, shall be obtained under the supervision of a professional land surveyor holding a valid license to engage in the practice of land surveying issued to him/her by proper authority of a state, territory, or possession of the United States, or the District of Columbia. The remainder of such experience should also be obtained under the supervision of a professional land surveyor holding a valid license to engage in the practice of land surveying issued to him/her by proper authority of a state, territory, or possession of the United States, or the District of Columbia, or, if not, an explanation shall be made showing why the remainder of such experience should be considered acceptable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 5:112 (May 1979), amended LR 7:647 (December 1981), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1031 (July 2001), LR 30:1716 (August 2004), LR 32:1620 (September 2006), LR 44:619 (March 2018), LR 49:336 (February 2023).

§1527. Supervision by Licensed Professional

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Professional Engineering and Surveying Board, LR 27:1032 (July 2001), amended LR 30:1717 (August 2004), repealed LR 49:336 (February 2023).

Chapter 21. Certificates of Licensure and Certification of Individuals or Firms

§2101. Expiration and Renewals

A. Licenses and certificates of individuals and firms shall expire on the date specified on the applicable biennial renewal form and/or as shown on the board's records and shall become invalid after that date unless renewed within 120 days.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 7:648 (December 1981), amended LR 6:417 (June 1983), LR 11:363 (April 1985), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1035 (July 2001), LR 30:1718 (August 2004), LR 44:622 (March 2018), LR 48:2364 (September 2022), LR 49:336 (February 2023).

Donna D. Sentell
Executive Director

2302#007

RULE

Department of Treasury State Bond Commission

Virtual Meetings (LAC 71:III.Chapter 25)

The State Bond Commission has adopted LAC 71:III.2501-2507 as authorized by La. R.S. 42:29(E) regarding virtual meetings. In 2020, the Legislature authorized the State Bond Commission to hold virtual meetings on an experimental basis. In 2022, the Legislature removed the sunset provision; thus, allowing the State Bond Commission to continue to hold up to four meetings per year virtually. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Rule provides the manner in which the public will be notified that the State Bond Commission will be holding a virtual meeting. The Rule also provides for the various ways in which the public may submit comments either prior to the virtual meeting or during the virtual meeting. Lastly, the Rule outlines the procedures that will be followed by the State Bond Commission during a virtual meeting. This Rule is hereby adopted on the day of promulgation.

Title 71

TREASURY—PUBLIC FUNDS

Part III. Bond Commission—Debt Management

Chapter 25. Virtual Meetings

§2501. Definitions

Anchor Location—shall be Conference Room 173 on the First Floor of the Capitol Annex Building or any other physical location from which the meeting originates as provided in R.S. 42:29(F).

Chairman—shall mean the chairman of the State Bond Commission, or his designee.

Quorum—shall mean a majority of members of the State Bond Commission, including those present at either the anchor location or participating in the meeting via electronic means.

Recording Secretary—shall mean the member of the State Bond Commission staff responsible for recording the meeting.

Virtual Meeting—shall have the same meaning as “Meeting via electronic means” as provided in R.S. 42:17.1(D)(1).

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:29.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, State Bond Commission, LR 49:337 (February 2023).

§2503. Notifying the Public of a Virtual Meeting

A. The State Bond Commission shall post the agenda for the virtual meeting in accordance with the Louisiana Open Meetings Law, R.S. 42:11. The agenda for the virtual meeting shall specifically identify the meeting as a virtual meeting, or a meeting that will be conducted via electronic means, and shall include the following:

1. the anchor location for the virtual meeting;
2. an electronic link to access the virtual meeting;

3. instructions for joining the virtual meeting;
4. email address for the public to submit electronic comments prior to the virtual meeting;
5. the final date and time by which members of the public may submit electronic comments prior to the virtual meeting.

B. The electronic link, instructions for joining the virtual meeting, and email address to submit comments, as provided in LAC 71:III.2503.A.2, 3 and 4, shall be placed on the State Bond Commission website once the agenda is posted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:29.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, State Bond Commission, LR 49:337 (February 2023).

§2505. Public Comment Prior to and during a Virtual Meeting

A. Members of the public wishing to participate in a virtual meeting may do so in any of the following manners:

1. a computer using computer video and audio;
2. a computer using computer video and phone audio;
3. a smartphone using video and audio;
4. a phone using audio only;
5. a smart device (iPad, tablet, etc.) using the device’s video and audio;
6. a smart device (iPad, tablet, etc.) using the device’s video and phone audio;
7. attend in person at anchor room.

B. Members from the public wishing to provide public comment on any agenda item prior to the virtual meeting may do so by emailing those comments to the email designated on the agenda and the State Bond Commission website. Such public comment(s) shall include the following information:

1. the individual’s name;
2. entity/company represented (if applicable);
3. title/position (if applicable);
4. agenda item for which he/she is providing comment.

C. Members of the public wishing to provide public comment during the virtual meeting may do so in any one of the following manners:

1. by using an audio and/or video device at such time when the chairman calls for public comment on that agenda item;
2. by using the “chat” feature, or similar method of providing written comment, during the virtual meeting;
3. if attending the virtual meeting at the anchor location, by filling out a public comment card and providing it to the recording secretary. The recording secretary will then forward the public comment card to the chairman to read into the record when discussing that agenda item.

D. Subject to LAC 71:III.2507.C.3, all public comments, both those submitted prior to the virtual meeting or during the virtual meeting, will be acknowledged and read into the record at the appropriate time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:29.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, State Bond Commission, LR 49:337 (February 2023).

§2507. Procedure during a Virtual Meeting

A. Upon commencement of the meeting, all members of the public shall be muted. Once the meeting is called to order, the chairman shall state that this is a virtual meeting of the State Bond Commission, and shall provide the manner in which the public may submit or make comments during the meeting, including the code for members of the public to unmute themselves.

B. Prior to the introduction of the first agenda item, the recording secretary shall take roll to establish a quorum. Members of the State Bond Commission may either be present at the anchor location or participate via electronic means.

1. In order to participate in a virtual meeting via electronic means, a member of the State Bond Commission must participate via audio and video. As such, any member of the State Bond Commission participating via electronic means must be visually present throughout the meeting.

2. In the event a State Bond Commission member's audio or video capabilities are compromised, he/she may no longer be counted for purposes of a quorum, and thus, may not vote on any agenda item for which the audio or video was compromised.

3. A member of the State Bond Commission who is physically present at the anchor location and visible through the anchor location's camera shall satisfy the requirements of LAC 71:III.2507.B.1 for purposes of a quorum and participation.

C. Prior to action on an agenda item, the chairman shall read into the record the following:

1. any public comment received prior to the meeting (if any);

2. any public comment received during the meeting via public comment card, "chat" function, etc. (if any);

3. notwithstanding LAC 71:III.2507.C.1. and 2., profanity and inappropriate language is prohibited and shall not be read into the record.

D. Prior to action on an agenda item, the chairman shall also ask if anyone from the public is present, either via electronic means or at the anchor location, and wishes to speak on those agenda item(s). If anyone from the public wishes to speak, the chairman shall allow him/her reasonable time to do so.

E. In accordance with R.S. 42:29(A)(5), all votes taken at a virtual meeting shall be by roll call vote.

F. To the extent possible, the State Bond Commission shall follow any and all procedures that it follows for its non-virtual meetings, including those procedures in LAC 71:III.103.

G. After the conclusion of a virtual meeting, a recording of the meeting shall be made available to the public via the State Bond Commission's website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:29.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, State Bond Commission, LR 49:338 (February 2023).

Lela Folse
Director

2302#040

RULE

Department of Economic Development Office of Business Development

Quality Jobs Program (LAC 13:I.Chapter 11)

Editor's Note: This Rule was initially promulgated in the January 2023 edition of the *Louisiana Register* on pages 25-31. It is being repromulgated to show the inclusion of amendments done pursuant to R.S. 49:966(H)(2) which can be viewed in the April 2022 edition of the *Louisiana Register* on pages 1251-1256.

The Department of Economic Development, Office of Business Development, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 36:104, has amended the Rules for the Quality Jobs Program (R.S. 51:2451, et seq.). Such Rules are contingent upon approval of the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs, pursuant to the provisions of R.S. 51:2459. This Rule is hereby adopted on the day of promulgation.

Title 13

ECONOMIC DEVELOPMENT

Part I. Financial Incentive Programs

Chapter 11. Quality Jobs Program

§1101. General

A. - B.1. ...

2. The employer may be entitled to sales and use tax rebates or the project facility expense rebate—authorized in R.S. 51: 2456 (B) (1), in addition to the requirements of this Chapter.

C. Effective date of Act 387 of the 2007 Regular Session

1. The provisions of Act 387 shall apply to all advance notification filed prior to July 1, 2017, except as provided below.

2. - 4. ...

D. Effective date of Act 386 of the 2017 Regular Session

1. The provisions of Act 386 shall apply to advance notifications filed on or after July 1, 2017, except as provided below.

a. a COVID-19-impacted retail business, hotel or restaurant, that has no more than 50 employees nationwide including affiliates on the date of the filing of the advance notification and which is assigned a NAICS Code of 44, 45, 721, or 722, and which files or enters into an advance notification on or after July 1, 2020, and on or before December 31, 2021, shall be eligible for benefits. However, no such COVID-19-impacted business employer shall be eligible to earn benefits pursuant to the provisions of this Chapter after June 30, 2023.

2. The provisions of Act 387 shall apply to advance notifications for companies meeting the provisions of section 4 of Act 386, as approved by the department.

E. Effective date of the 2023 Quality Jobs Program rule changes.

1. The provisions of the 2023 Quality Jobs Program rule changes shall apply to advance notifications filed after the date of promulgation, detailed in the *Louisiana Register*

published on January 20, 2023, or unless otherwise stipulated by the Louisiana Legislature, in §1101.C and D.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:961 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2305 (November 2003), amended by the Office of Business Development, LR 37:2587 (September 2011), amended by the Department of Economic Development, Office of Business Development, LR 49:25 (January 2023), repromulgated LR 49:338 (February 2023).

§1103. Definitions

Act 386—Act 386 of the 2017 Regular Session of the Louisiana Legislature

Approved Rehire Employees—a former employee who was previously on the payroll of the Company, parent entity, subsidiary, or affiliate in Louisiana, but has been off such payroll for a period of at least 12 months, may be considered a New Direct Job if rehired into a position that is not part of the Baseline Jobs. When determining New Direct Job qualifications, the department shall consider all relevant factors including but not limited to; ES4's, W2's and Company re-hiring practices, and the intent of the program to permanently locate new or expand existing operations in Louisiana.

Basic Health Benefits Plan or the Health Insurance Coverage—that which is required to be offered shall include individual coverage for basic hospital care, coverage for physician care, and coverage for health care which shall be the same as that provided to executive, administrative, or professional employees. Coverage must become effective no later than the first day of the month 90 days after hire date. For companies subject to provisions of Act 386, the coverage shall be in compliance with federally mandated health care requirements but if no such federally mandated requirements exist, the coverage for the employer portion of employee only coverage shall have a value of at least one dollar and 25 cents per hour.

Benefit Rate—one of the following percentages:

1. contracts subject to the provisions of Act 386:
 - a. the benefit rate shall be 4 percent for new direct jobs which pay at least \$18 per hour in wages;
 - b. the benefit rate shall be 6 percent for new direct jobs which pay at least \$21.66 per hour in wages.
2. contracts subject to the provisions of Act 387:
 - a. the benefit rate shall be 5 percent for new direct jobs which pay at least \$14.50 per hour in wages and health care benefits;
 - b. the benefit rate shall be 6 percent for new direct jobs which pay at least \$19.10 per hour in wages and health care benefits;
 - c. health care benefits paid shall be the value of the health care benefits plan elected by an employee, as determined by the department.
3. contracts not subject to the provisions of Act 386 or Act 387:
 - a. the benefit rate shall be 5 percent for new direct jobs which pay at least 1 3/4 times the federal minimum hourly wage rate;

b. the benefit rate shall be 6 percent for new direct jobs which pay at least 2 1/4 times the federal minimum hourly wage rate and meet one of the following criteria:

- i. the new direct jobs are located in a distressed region, or at least 50 percent of the new direct jobs shall be filled by persons who reside in a distressed region;
- ii. the new direct jobs are with an employer categorized in a traditional or seed cluster targeted by the department.

Corporate Headquarters of a Multi-State Business—a multi-state business whose primary function is identified by NAICS 55114.

COVID-19-Impacted Retail Business—a for-profit corporation, a limited liability company, a partnership, or a sole proprietorship that had a physical and active operation in Louisiana on March 13, 2020, and ceased operations due to either one of the governor's public health emergency proclamations or a mayor's proclamation or executive order related to the public health emergency, or a decrease in customer activity or the inability to retain sufficient staff due to the COVID-19 public health emergency, as approved by the Department.

Distressed Region—for companies subject to the provisions of Act 387, as designated by the department:

1. a parish with a per capita income in the lowest 25 percent of the parishes; or
2. a census tract and block group that is below the state median per capita income, based on the most recent federal decennial census.

Domicile—the place of a person's principal establishment or habitual residence. A change of domicile may be shown by positive and satisfactory proof of establishment of domicile as a matter of fact with the intention of remaining in the new place and of abandoning the former domicile. Such proof may include a sworn declaration of intent recorded in the parish to which a person intends to move, voter registration, or similar evidence of such intent. Workers in the United States who are working on an H-1B Visa are not deemed to be domiciled in Louisiana.

Employment Baseline—the median statewide number of employees of an employer, including affiliates, working the average hours per week required in §1105, excluding employees engaged in lines of business that the department determines are unrelated to the activities for which quality job program benefits are sought, during the payroll periods including the twelfth day of the month, in the last six months completed prior to the contract effective date (the median is calculated by discarding the months with the highest and lowest number of employees, and averaging the number in the remaining four months). The employment baseline must be maintained in any year for which the employer requests payroll rebates. The employment baseline may be reduced by the number of employees retained and continued in employment for at least one year by an unrelated third party business acquiring a site or line of business.

LED—the Louisiana Department of Economic Development

Multi-State Business—a business entity operating in more than one state, with a physical presence in more than one state, as approved by the department.

* * *

New Direct Job—employment at a Louisiana site:

1. of an employee:
 - a. whose domicile is in the state of Louisiana;
 - b. working the average hours per week required by §1105; and
 - c. who prior to the contract effective date was not on the payroll in Louisiana of:
 - i. the employer;
 - ii. the employer's parent entity, subsidiary, or affiliate; or
 - iii. any business whose physical plant and employees were or are substantially the same as those of the employer, unless either:
 - (a). there has been an arm's length transfer of ownership between unrelated companies (not affiliates), and either the location has been out of operations for at least three months; or
 - (b). the secretary determines that the jobs would have likely been lost to the state absent the transfer (under such circumstances jobs at the re-opened plant are deemed not to have previously existed for purposes of Subparagraph 2.b. below); or
 - (c). the employee is an Approved Rehire Employee.

2. in a job (a position of employment) that:
 - a. is with an employer that has qualified for the incentive rebate;
 - b. did not exist in this state prior to the advance notification being filed by the employer with the department pursuant to the provisions of R.S. 51:2455; and
 - c. is not part of the employment baseline;
 - d. is based at the project site, as determined by the department considering the employee's physical work site, the site to which the employee reports or which administers the employment, the site from which the employee receives work, and the nature of the business;

3. the following jobs are not new direct jobs:
 - a. jobs created as a result of the employer securing a contract to supply goods and services in the state of Louisiana, if another business was under an obligation to supply the same goods and services from a facility located in Louisiana and such obligation was terminated within three months prior to creation of the job by the employer;
 - b. jobs transferred, or jobs associated with work or sales transferred, from other Louisiana sites as a result of the employer (including affiliates) acquiring a business operation, or substantially all of its assets, and continuing the business operation.

Physical Presence—the department shall consider all relevant evidence in evaluating multi-state presence, including, but not limited to; the location of offices, facilities, tangible property and employees. Ancillary services provided through use of technology, without more, shall be insufficient to establish a physical presence.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry,

Financial Incentives Division, LR 22:961 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2306 (November 2003), amended by the Office of Business Development, LR 37:2588 (September 2011), amended by the Department of Economic Development, Office of Business Development, LR 49:25 (January 2023), repromulgated LR 49:339 (February 2023).

§1105. Qualified Employers

A. For companies subject to the provisions of Act 387, to qualify for a Quality Jobs Program contract, an employer must meet the following requirements.

1. - 5.d....

B. For companies subject to the provisions of Act 386, to qualify for a Quality Jobs Program contract, an employer must meet the following requirements.

1. Eligible Businesses. The nature of the employer's business must fall within one of the following categories;

a. the employer is in one of the following industries:

- i. biotechnology, biomedical, and medical industries serving rural hospitals;
- ii. micromanufacturing;
- iii. software, Internet or telecommunications technologies;
- iv. clean energy technology;
- v. food technologies; or
- vi. advanced materials;

b. the employer is a manufacturer whose primary function is identified by NAICS Codes 113310, 211, 213111, 541360, 311-339, 511-512, or 54171;

c. the employer is an oil and gas field services business identified by the NAICS Code 213112, that has Louisiana as the national or regional headquarters of a multi-state business whose service territory includes at least Louisiana and the Gulf of Mexico;

d. the employer is a business that has, or within one year will have, at least 50 percent of its total annual sales to:

- i. out-of-state customers or buyers;
- ii. in-state customers or buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use; or

iii. the federal government;

iv. an independent Louisiana certified public accountant shall annually verify that the contract site meets the out-of-state sales requirement, in accordance with guidelines provided by the department;

e. the employer is a business that is located in a parish which is within the lowest 25 percent of parishes based on per capita income. An employer that qualifies for a contract under this Item at the time of the initial quality jobs contract executed pursuant to this Chapter shall remain qualified for a contract through and during the renewal period regardless of any change in the per capita income of the parish,

f. the employer is the corporate headquarters of a multi-state business;

g. the employer is a business that spends fifty percent or more of its time performing services for its out-of-state parent company. These services include, but are not limited to, legal, marketing, finance, information technology, order management, distribution center operations or overall operations support.

h. the employer is in the business of maintenance, repair, and overhaul operations for commercial transport aircraft.

2. Ineligible Businesses. The following employers or persons shall not be eligible for benefits provided under this Chapter:

a. retail employers identified by NAICS Code Sections 44 and 45, except that;

i. COVID-19-impacted retail employers identified by the NAICS Codes of 44 and 45 that have no more than 50 employees nationwide including affiliates on the date of the filing of the advance notification shall be eligible to participate in this rebate program if such employers file or enter into an advance notification on or after July 1, 2020, and on or before December 31, 2021. However, no such COVID-19-impacted retail business employer shall be eligible to earn benefits pursuant to the provisions of this Chapter after June 30, 2023;

b. business associations and professional organizations identified by NAICS Code 8139;

c. state and local government enterprises;

d. real estate agents, operators, and lessors;

e. automotive rental and leasing;

f. local solid waste disposal, local sewage systems, and local water systems businesses;

g. nonprofit organizations, unless the department determines that the new direct jobs created by the organization would have a significant impact on Louisiana;

h. employers engaged in the gaming industry identified by NAICS Code sections 713210 and 721120; and

i. professional services firms assigned a NAICS code beginning with 54, unless the business can demonstrate that more than fifty percent of its services are provided to out-of-state customers or for the corporate headquarters of a multi-state business or if the employer can demonstrate that the company has or will have one year sales of at least 50 percent of its total sales out-of-state customers or buyers, to in-state customers or buyers or buyers if the products or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, or to the federal government;

j. construction companies, unless the company is the corporate headquarters of a multi-state business or can demonstrate that the company has, or will have within one year, sales of at least fifty percent of its total sales to either out-of-state customers or the federal government;

k. all businesses assigned a NAICS code beginning with 5613;

l. medical professionals assigned a NAICS code beginning with 62, except for those engaged in biomedical industries, biotechnology industries or those who provide services to rural hospitals or those who provide services or will within one year provide services to a patient base made up of at least fifty percent out-of-state patients;

m. Out-of-state sales or out-of-state patient requirements can be demonstrated by submission of documents including, but not limited to, a report issued by an independent Louisiana certified public accountant, in accordance with guidelines provided by the department.

3. Minimum New Direct Jobs and Annual Gross Payroll

a. New Direct Jobs. The employer must create a minimum of:

i. five new direct jobs for companies who employ 50 or fewer baseline employees, or

ii. 15 new direct jobs for companies who employ more than 50 baseline employees.

b. Annual Gross Payroll. The employer must have an annual gross payroll of:

i. equal to or greater than \$225,000, for companies who employ 50 or fewer employees prior to the beginning of the contract; or

ii. jobs equal to or greater than \$675,000, for companies who employ more than 50 employees prior to the beginning of the contract.

c. The employer shall have the required annual payroll for new direct jobs and the minimum number of new direct jobs for the employer's fiscal year for which the employer is applying for its third annual rebate, or the contract is cancelled and any rebates received must be repaid.

4. Full-Time Employee Work Hours

a. The employer must employ full-time employees working 30 or more hours per week in new direct jobs.

5. Health Benefits. The employer must offer, or will offer within 90 days of the contract effective date, a basic health benefits plan or health insurance coverage to the individuals it employs in new direct jobs, in compliance with federally mandated healthcare requirements or, if no federally mandated healthcare requirements exist, is determined to have a value of at least \$1.25 per hour. The employer must offer health insurance coverage for the dependents of full-time employees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:963 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2307 (November 2003), amended by the Office of Business Development, LR 37:2590 (September 2011), LR 42:865 (June 2016), amended by the Department of Economic Development, Office of Business Development, LR 49:26 (January 2023), repromulgated LR 49:340 (February 2023).

§1107. Application Fees, Timely Filing

A. ...

B. An application for the Quality Jobs Program must be filed with the Office of Business Development, Business Incentives Services, through the department's online Fastlane portal no later than 24 months after the department has received the advance notification and fee, except that upon request, a business shall receive a thirty-day extension of time in which to file its application, provided that the request for extension is received by the Department no later than the filing deadline. Failure to file an application within the prescribed timeframe will result in the expiration of the advance notification.

1. The application shall include a detailed project description clearly stating the nature and scope of the proposed project. For example, whether the project is the construction of a new facility, renovation of an existing facility, or an increase in workforce. Where possible, identify specific project goals, milestones and costs that may be verified by both the department and LDR for subsequent contract compliance review.

2. Applications submitted by COVID-19 impacted retail businesses shall include support documentation evidencing a physical and active operation in Louisiana on March 13, 2020, and that it ceased operations due to either one of the governor's public health emergency proclamations or a mayor's proclamation or executive order related to the public health emergency, or a decrease in customer activity or the inability to retain sufficient staff due to the COVID-19 public health emergency.

C. - C.3. ...

D. An application to renew a contract shall be submitted with an application fee and filed within six months prior to the initial contract expiring. The board may approve a request for renewal of an expired contract filed less than five years after expiration of the initial contract, and may impose a penalty for the late filing of the renewal request, including a reduction of the five year renewal period.

1. The application for renewal shall include a detailed project description stating the nature and scope of the project.

E. ...

F. Applications may be deferred to a later board meeting date at the request of the applicant, but shall not exceed presentation at a board meeting occurring more than 12 months after the filing of the application, except as otherwise approved by LED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:963 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2308 (November 2003), amended by the Office of Business Development, LR 37:2591 (September 2011), LR 41:1085 (June 2015), LR 42:865 (June 2016), amended by the Department of Economic Development, Office of Business Development, LR 49:27 (January 2023), repromulgated LR 49:341 (February 2023).

§1109. Application Review and Determination

A. - A.1. ...

2. The application packet must be completed through the department's online Fastlane portal by the due date. If the application is incomplete, the department may request additional information prior to further action. The application fee must accompany the application packet pursuant to §1107.C.

3. ...

4. LED reserves the right to request missing information, which shall be provided to LED within 60 days. Applications with missing or inadequate information after this time frame shall be considered late filings.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:964 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2308 (November 2003), amended by the Office of Business Development, LR 37:2591 (September 2011), amended by the Department of Economic Development, Office of Business Development, LR 49:27 (January 2023), repromulgated LR 49:342 (February 2023).

§1111. Consultation with the LWC and the LDR

A. ...

B. The department must receive a letter-of-no-objection or a letter-of-approval from the LWC and the LDR, prior to submitting the application to the board for action. If LWC or LDR issues an objection to an application other than an objection because an applicant is in active negotiations with, under audit by or in litigation with the department issuing the objection, the applicant has six months to clear the objection or the application shall be cancelled. The six-month period shall begin on the date LED sends written notification to the company of the objection received from LWC or LDR. Applicants may demonstrate active negotiation to LED by providing written documentation periodically, but at least every six months, of ongoing, bilateral communications between the applicant or its representative and LWC or LDR as applicable, even if such communication begins after the objection was issued, or other written verification as approved by LED-

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:964 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2309 (November 2003), amended by the Office of Business Development, LR 37:2592 (September 2011), LR 42:866 (June 2016), LR 49:29 (January 2023), repromulgated LR 49:342 (February 2023).

§1117. The Contract

A. The board, after no objection from the executive director of the LWC and secretary of the LDR, and with the approval of the governor, may enter into a contract with an employer for a period up to five years. The business must execute its portion of the contract and return it to Business Incentive Services within 90 days. If the contract is not returned within 90 days, the board's approval shall be deemed rescinded.

1. ...

2. Upon written approval of the department, an employer may have one additional contract in effect for a project site for a subsequent expansion project that is distinct from the project associated with the original contract, and that increases the number of new direct jobs at the site by at least 25 percent. If new direct jobs are not increased by at least 25 percent by the end of the third fiscal year of the additional contract, the contract shall be terminated and all benefits for the site shall be determined under the original contract.

3. - 5. ...

6. A contract shall be limited to one employer receiving payroll rebates, however the employer's named related entity or affiliate may generate a sale and use tax rebate or project facility expense rebate for their expenditures directly relating to the project site, but payable to the contract holder, if the following conditions are met:

a. the employer meets all program requirements;

b. the entity is disclosed by the employer in its application; or

c. the entity is listed in the contract attachment Schedule One, which may be amended with the approval of the department and the board.

7. A fee of \$250 shall be filed with a request for any contract amendment, including but not limited to, a change of ownership, change in name, or change in location.

B. - E.1. ...

2. After the employer's fiscal year for which the employer applied for his third annual rebate, if at any other time during the 10-year contract period the employer applies for a rebate following the end of the employer's fiscal year, and the verified gross payroll for the fiscal year does not demonstrate the required minimum new direct jobs and the required gross payroll, the rebates shall be suspended and shall not be resumed until such time as the payroll and job requirements are met. No rebate (payroll rebate, sales and use tax rebate or project facility expense rebate) shall accrue or be paid to the employer during a period of suspension.

F. - F.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:965 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2309 (November 2003), amended by the Office of Business Development, LR 37:2592 (September 2011), LR 42:866 (June 2016), LR 49:29 (January 2023), repromulgated LR 49:342 (February 2023).

§1118. Project Completion

A. All companies, whether seeking a payroll rebate, sales and use tax rebate or project facility expense rebate, shall file a minimum of one project completion report and one affidavit of final cost as follows.

1. An applicant may file a preliminary project completion report no earlier than with its third fiscal year filing, but no later than with the filing of a final project completion report.

2. An applicant shall file a final project completion report within six months after the project ending date or the governor's signature on the contract, whichever is later.

3. No more than two project completion reports (one preliminary and one final report) may be filed per five year contract period.

4. Project completion reports shall be submitted through the department's online Fastlane portal.

5. A fee of \$250 shall accompany all project completion report filings, or any project completion report amendment filings.

B. The project completion report shall confirm the beginning of the project, the project ending date, and the incentive benefits elected. Local sales and use tax rebate is not available if the project facility expense rebate is elected.

C. The affidavit of final cost shall list all eligible purchases and qualified expenditures for the project, with a description of the buildings, equipment, or other assets, and the cost of each item.

D. After completion of the project and the governor's signature of the contract, the department shall sign the project completion report and forward copies to the business, the Department of Revenue, and any political subdivision rebating local sales and use tax.

E. The basis for rebate claims (sales and use tax rebate or project facility expense rebate) shall not exceed the costs listed on the affidavit of final cost.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 49:29 (January 2023), repromulgated LR 49:343 (February 2023).

§1119. Payroll Incentive Rebates

A. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:965 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2310 (November 2003), amended by the Office of Business Development, LR 37:2593 (September 2011), repromulgated LR 49:30 (January 2023), repromulgated LR 49:343 (February 2023).

§1120. Sales and Use Tax Rebate or Project Facility Expense Rebate

A. Project Facility Expense Rebate

1. The project facility expense rebate is earned in the year in which the project is placed in service, and is based upon all qualified capitalized expenditures related to the project as of the date it is placed in service.

a. Qualified expenditures include intangible costs such as architectural and/or engineering fees prior to the contract effective date.

b. The project facility expense rebate may not be elected if more than 50 percent of the qualified expenditures relating to the project are incurred before the filing of the advance notification.

2. The project facility expense rebate claim must be filed with the Department of Revenue, Taxpayer Compliance—SSEW Division, with the required documentation.

3. The project facility expense rebate may be taken on qualified expenditures that are related to the project and are placed in service during the project period. The project facility expense rebate applies to the assets that are related to the qualified expenditures, provided that the business reasonably intends for such assets to remain at the project site for their expected useful life. The assets may be recorded on the financial statements of a company that is an affiliate of the business.

4. The claim for the project facility expense rebate must be filed with the Department of Revenue no later than six months after the Department of Economic Development signs a project completion report and it is received by the Department of Revenue, the political subdivision, and the business. The project completion report shall not be signed until the project is complete and the contract has been approved by the board and the governor. Upon request, the business shall receive a 30-day extension of time in which to file its claim, provided such request for extension is received by the Department of Revenue prior to the expiration of such filing period. The Department of Revenue is also authorized to grant the business an additional extension of time, not to

exceed 60 days, in which to file its claim provided that the business shows reasonable cause for granting such extension.

B. Sales and Use Tax Rebates

1. The Quality Jobs Program contract will not authorize the business to make tax exempt purchases from vendors. The Department of Revenue will advise the business on the proper procedures to obtain the state sales and use tax rebate. The request for rebate of sales and use taxes must be made by filing a claim with the Department of Revenue, Taxpayer Compliance—SSEW Division, and must include the following:

a. list of eligible purchases, including a brief description of each item, the vendor's name, date of the delivery, sales price and the amount of state sales and use tax paid. The listed items must have been purchased by the business, or by a builder, a contractor, or other party that contracted with the owner to provide materials, equipment, machinery, or software that is used by the business at the project site or by the contract holders named affiliates listed in the Quality Jobs Program contract. Invoices as required under R.S. 51:2457 shall also be required;

b. certification that the listed materials are reasonably expected to qualify for a rebate under the Quality Jobs Program; and

c. certification that state sales and use taxes have been paid on the listed items.

2. The request may be filed on the official Department of Revenue "claim for rebate" form or on other LDR approved forms prepared by the business. After the Department of Revenue has validated the information on the claim for rebate, a rebate check will be issued for the amount of substantiated state sales and use taxes paid.

3. The request for rebate must be filed with the Louisiana Department of Revenue, and the political subdivision rebating local sales and use tax, no later than six months after the Department of Economic Development signs a project completion report and sends it to the Department of Revenue, the political subdivision, and the business, or no later than 30 days after the end of the calendar year and must be accompanied by the signed project completion report. Upon request, the business shall receive a 30-day extension of time in which to file its claim, provided such request for extension is received by the Department of Revenue prior to the expiration of such filing period. The Department of Revenue is also authorized to grant the business an additional extension of time, not to exceed 60 days, in which to file its claim, provided that the business shows reasonable cause for granting such extension.

4. The business should contact the political subdivision issuing the endorsement resolution to determine the procedure for local sales and use tax rebate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 49:29 (January 2023), repromulgated LR 49:343 (February 2023).

§1121. Rebate Payments

A. In addition to the payroll rebates, an employer shall be entitled to sales and use tax rebates or the project facility expense rebate—as authorized in R.S. 51:2456, if the employer meets the hiring requirements of R.S. 51:2455 Program and meets the other limitations, procedures, and requirements of R.S. 51:2456 and 2457 and the rules promulgated there under, Louisiana Administrative Code, Title 13, Part I, Chapter 11.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2310 (November 2003), amended by the Office of Business Development, LR 37:2593 (September 2011), LR 49:30 (January 2023), repromulgated LR 49:344 (February 2023).

§1123. Rebate Claim Filing

A. Payroll Rebate

1. An annual certification and a fee of \$250 shall be filed annually, commencing within six months after completion of the applicant's fiscal year or execution of the contract, whichever is later. The department may grant an extension of up to an additional sixty days provided the extension is requested prior to the filing deadline.. Failure to file an annual certification within the prescribed timeframe may result in the annual rebate being denied or restricted. An annual certification is required in each year the contract is active, irrespective of whether annual rebates are being claimed.

2. - 4. ...

5. If the actual verified annual gross payroll for the employer's third fiscal year does not show a minimum of 15 or five new direct jobs and does not equal or exceed a total annual payroll for new direct jobs of either \$675,000 or \$225,000, whichever is applicable, the employer will be determined to be ineligible under this Chapter. The LDR will be notified and the tax liability for the current tax period in which the failure to meet the requirements occurs shall be increased by the amount of rebates previously allowed.

6. ...

B. Sales and Use Tax Rebate or Project Facility Expense Rebate

1. An annual employee certification report with a \$250 annual employee certification report fee must be filed on all active contracts for the employer to qualify for the sales and use tax rebate or project facility expense rebate under this Chapter.

2. Sales and Use Tax Rebate or Project Facility Expense Rebate—Advance Notification. An employer who receives a Quality Jobs Program contract and who meets the requirements for sales and use tax rebates as authorized in R.S. 51:2456 and §1121 of these rules, will satisfy the advance notification requirement for sales and use tax rebates or project facility expense rebate for the Quality Jobs Act contract by submission of the Quality Jobs Program advance notification referred to in §1107 of these rules. The

sales and use tax rebate or project facility expense rebate period shall begin on the contract effective date, unless otherwise provided in the contract, and shall be no longer than 5 years, and shall not extend beyond the term of the Quality Jobs Program contract. In order to receive rebates of local sales and use taxes, the employer must satisfy the provisions of §1121.B of these rules.

3. No more than two project facility expense rebate claims may be filed during each five year contract period.

4. Sales and use tax rebates claims may be filed on a monthly, quarterly or annual basis during each five year contract period, at the discretion of the company receiving the benefit, as long as all requirements for issuance have been met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2311 (November 2003), amended by the Office of Business Development, LR 37:2594 (September 2011), LR 42:866 (June 2016), amended by the Department of Economic Development, Office of Business Development, LR 49:31 (January 2023), repromulgated LR 49:344 (February 2023).

Anne G. Villa
Undersecretary

2302#099

Notices of Intent

NOTICE OF INTENT

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 is proposing to amend 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 proposed amendment to Section 105 also delivers greater clarity on submitting petitions related to application decisions made by the board.

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)(l), 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:

§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:

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 parties may submit written comments to the Louisiana Board of Veterinary Medicine, Attention: Jared B. Granier, Executive Director, via U.S. Mail at 5825 Florida Blvd, Baton Rouge, LA 70806 or via e-mail attachment to director@lsbvm.org or via hand delivery. Comments will be accepted until 3 p.m. on Monday, March 13, 2023. All written comments must be dated and must include the first and last name, email address, mailing address, phone

number, and the original signature of the person submitting the comments.

Public Hearing

Interested parties may submit a written request to conduct a public hearing to the Louisiana Board of Veterinary Medicine, Attention: Jared B. Granier, Executive Director, via U.S. Mail at 5825 Florida Blvd, Baton Rouge, LA 70806 or via e-mail attachment to director@lsbvm.org or via hand delivery; however, such request must be received by no later than 3 p.m. on Monday, March 13, 2023. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, a public hearing will be conducted at 1 p.m. on Wednesday, March 29, 2023 at 5825 Florida Blvd, Baton Rouge, LA 70806. To confirm whether or not a public hearing will be held, interested parties should visit www.lsbvm.org/rulemaking-projects after Monday, March 13, 2023. If a public hearing is to be held, all interested parties 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 front of the Department of Agriculture and Forestry Building at 5825 Florida Blvd, Baton Rouge, LA 70806.

Jared B. Granier, MBA
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Petitions for Rule Modification

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no costs or savings to state or local governmental units, except for the cost associated with publishing the proposed rule amendment, which is normally included in the annual operating budget of the Board of Veterinary Medicine (Board), which is estimated at \$750 in FY 2023. The proposed rule amendment will provide clearer instructions on submitting petitions for the adoption of new rules, or to amend or repeal existing rules as well as greater clarity on submitting petitions related to application decisions made by the Board.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The proposed rule amendment will not affect revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
The proposed rule amendment has no impact on directly affected persons, small businesses, or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The proposed rule amendment will have no effect on competition or employment.

Alfred Stevens, DVM
Board President
2302#029

Alan M. Boxberger
Interim Legislative Fiscal Officer
Legislative Fiscal office

NOTICE OF INTENT

Department of Children and Family Services Division of Family Support

TANF Star Academy Program
(LAC 67:III.5532)

The Department of Children and Family Services (DCFS), Family Support, has exercised the provision of the Administrative Procedure Act, R.S. 49:953(A)(1)(a) to adopt LAC 67:III, Subpart 15 Temporary Assistance for Needy Families (TANF) Initiatives, Chapter 55 TANF Initiatives, Section 5532 Star Academy Program.

Pursuant to Louisiana's Temporary Assistance for Needy Families (TANF) Block Grant, adoption of Section 5532 is required to fund the TANF Star Academy Program which provides core curriculum through project based learning grounded in a positive classroom culture, social-emotional learning strategies, and safe spaces to build relationships with fellow students and educators. The program promotes student-led decision making, accountability, and leadership skills. The program has a strong potential for fostering a new generation of self-sufficient individuals who choose to experience a new and better economic future.

This action was made effective by an Emergency Rule dated and effective January 1, 2023.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 15. Temporary Assistance for Needy Families (TANF) Initiatives

Chapter 55. TANF Initiatives

§5532. Star Academy Program

A. The department shall enter into agreement(s) to fund the Star Academy Program which provides core curriculum through project based learning grounded in a positive classroom culture, social-emotional learning strategies, and safe spaces to build relationships with fellow students and educators. The program promotes student-led decision making, accountability, and leadership skills.

B. These services meet TANF Goal 3, to prevent and reduce the incidence of out-of-wedlock pregnancies by helping teachers better understand the gaps in executive functioning and the effect of poverty on students, establishing community service-based learning for students so that they can accept the perspectives of others, and workforce development alignment to assist students in gaining employability skills to begin their career pathway.

C. Eligibility includes any student selected by the school to participate in the program regardless of income.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq. and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Family Support, LR 49:

Family Impact Statement

The proposed Rule is not anticipated to have an adverse impact on family formation, stability, and autonomy as described in R.S. 49:972. This Rule is anticipated to help improve family relationships because the student is learning decision making, accountability, and leadership skills.

Poverty Impact Statement

The proposed Rule is not anticipated to have a significant negative impact on poverty as described in R.S. 49:973. This Rule is anticipated to help foster a new generation of self-sufficient individuals that choose to experience a new and better economic future.

Small Business Analysis

The proposed Rule is not anticipated to have an adverse impact on small businesses as defined in the Regulatory Flexibility Act.

Provider Impact Statement

The proposed Rule is not anticipated to have an impact on providers of services funded by the state as described in HCR 170 of the 2014 Regular Legislative Session.

Public Comments

All interested persons may submit written comments through, March 28, 2023, to Ashley Sias, Assistant Secretary of Family Support, Department of Children and Family Services, P.O. Box 94065, Baton Rouge, LA 70804.

Public Hearing

A virtual public hearing on the proposed Rule will be held at 9 a.m. on March 28, 2023, by the Department of Children and Family Services. All interested persons will be afforded an opportunity to submit data, views, or arguments via PC, Mac, Linux, iOS or Android at <https://stateofladcfs.zoom.us/j/88609868002>; via telephone by dialing (713) 353-0212 and entering conference code 430033. To find local AT&T numbers visit <https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=USA7133530212&accessCode=430033>. Individuals with disabilities who require special services should contact the DCFS Appeals Unit at least seven working days in advance of the hearing. For assistance, call (225) 342-4120 (Voice and TDD).

Terri Porche Ricks
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: TANF Star Academy Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This Rule is anticipated to cost approximately \$801,704 in FY 23 and \$100,000 in FYs 24 and 25, for a total of \$1,001,704 Federal funds from TANF over three years.

The proposed Rule adopts LAC 67:III, Subpart 15 Temporary Assistance for Needy Families (TANF) Initiatives, Chapter 55 TANF Initiatives, Section 5532 Star Academy Program, which provides core curriculum through project based learning activities for students. The change is anticipated to increase DCFS expenditures by approximately \$800,000 Federal from TANF in FY 23 and \$100,000 in FY 24 and FY 25 associated with the operation of the program. The cost of publishing this Rule change is approximately \$1,704. A summary of projected expenditures is as follows:

FY 23

\$200,000 for acquisition of furniture, computers, equipment, and other materials for four classrooms
\$200,000 for curriculum design and development
\$200,000 for software and licenses
\$100,000 for professional development
\$100,000 for technical support

\$1,704 for rulemaking
 \$801,704 total
 FY 24
 \$100,000 for continued professional development and technical support
 FY 25
 \$100,000 for continued professional development and technical support

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed Rule will not affect revenue collections for state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Implementation of this proposed Rule is not anticipated to have an economic cost or benefit to individuals, small businesses or non-governmental groups. This Rule adopts the Star Academy Program, which is anticipated to help alleviate poverty for those participating in the program.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Implementation of this proposed Rule is not expected to have an effect on competition and employment.

Ashley Sias
 Assistant Secretary
 2302#077

Evan Brasseaux
 Interim Deputy Fiscal Officer
 Legislative Fiscal Office

NOTICE OF INTENT

**Department of Children and Family Services
 Licensing Section**

12-Month License—Child Residential Care Class B, Residential Homes (Type IV), Child Placing Agencies—General Provisions, and Juvenile Detention (LAC 67:V.6955, 7107, 7311, 7507, and 7511)

In accordance with the provisions of the Administrative Procedure Act R.S. 49:953 (A)(1)(a), the Department of Children and Family Services (DCFS) proposes to amend LAC 67:V, Subpart 8, Chapter 69, Child Residential Care, Class B, Section 6955; Chapter 71, Residential Homes-Type IV, Section 7107; Chapter 73, Child Placing Agencies—General Provisions, Section 7311; and Chapter 75, Juvenile Detention Facilities, Section 7507 and 7511.

The department proposes to amend the current process that causes providers to submit unnecessary documentation and fees to the department. This presents an unnecessary economic burden to small businesses in dealing with a government entity. The proposed Rule removes any ambiguity in the current rule when the provider’s license expires outside of their renewal timeframe. In addition, the issuing of actual paper licenses every 60-90 days poses an undue burden on the workforce for the department. The proposed change does not give the department any additional authority or remove any authority currently held by the department and inefficiency in the licensing process. The proposed Rule also requires juvenile detention providers to maintain documentation of current general liability insurance and insurance for all vehicles used to transport youth.

Title 67

SOCIAL SERVICES

Part V. Child Welfare

Subpart 8. Residential Licensing

Chapter 69. Child Residential Care, Class B

§6955. Procedures

* * *

A. - C. ...

1. A license shall be renewed on an annual basis prior to the last day of the anniversary month of the license.

2. The provider shall submit, prior to its license expiration date, a completed renewal application form, applicable fee, and required documents. The following documentation shall be submitted with the renewal application form:

- a. Office of Fire Marshal approval for occupancy;
- b. Office of Public Health, Sanitarian Services approval;
- c. city fire department approval, if applicable;
- d. copy of proof of current general liability and property insurance for facility;
- e. copy of proof of current insurance for vehicle(s) used to transport residents;
- f. copy of a satisfactory fingerprint-based criminal record check through the FBI as noted in §6966.A and/or 6966.B, as applicable and required by R.S. 46:51.2 and 15:587.1 for all owners and §6966.C and/or 6966.D, as applicable for program directors as required by R.S.46:51.2 and 15:587.1; and
- g. copy of current state central registry clearance forms for all owners and program directors/administrators.

3. Prior to renewing the residential home license, an on-site inspection shall be conducted to ensure compliance with all licensing laws, standards, and any other required statutes, ordinances, or regulations. A license may be issued for a period of up to one year as determined by the department. If the provider is not found to be in compliance during the timeframe for which the license is issued, the department may proceed with adverse action.

4. Upon rule promulgation, providers with licenses that expire prior to the last day of their anniversary month may be issued a license with an expiration date which coincides with the last day of their anniversary month unless the license is pending adverse action.

D. - G.2.d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1410 et seq., R.S.46:1401-1424 and R.S. 46:1414.1.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 27:1565 (September 2001), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2740 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1617 (August 2009), amended LR 36:331 (February 2010), LR 36:836, 842 (April 2010), repromulgated LR 36:1032 (May 2010), repromulgated LR 36:1277 (June 2010), amended by the Department of Children and Family Services, Child Welfare Section, LR 36:1463 (July 2010), amended by the Department of Children and Family Services, Child Welfare Section and Economic Stability and Self-Sufficiency Section, LR 36:2522

(November 2010), repromulgated LR 36:2838 (December 2010), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:971 (April 2012), amended by the Department of Children and Family Services, Licensing Section, LR 45:508 (April 2019), effective May 1, 2019, LR 46:687 (May 2020), effective June 1, 2020, LR 49:

Chapter 71. Residential Homes—Type IV §7107. Licensing Requirements

A. - E.2.g. ...

3. Prior to renewing the facility license, an on-site inspection shall be conducted to ensure compliance with all licensing laws, standards, and any other required statutes, ordinances, or regulations. A license may be issued for a period of up to one year as determined by the department. If the provider is not found to be in compliance during the timeframe for which the license is issued, the department may proceed with adverse action.

4. Upon rule promulgation, providers with licenses that expire prior to the last day of their anniversary month may be issued a license with an expiration date which coincides with the last day of their anniversary month unless the license is pending adverse action.

F. - L.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S.46:1401 et seq., and R.S. 46:1414.1.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 36:807 (April 2010), amended LR 36:843 (April 2010), amended by the Department of Children and Family Services, Child Welfare Section, LR 36:1463 (July 2010), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:977, 984 (April 2012), amended by the Department of Children and Family Services, Licensing Section, LR 43:249 (February 2017), LR 43:1725 (September 2017), amended by the Department of Children and Family Services, Licensing Section, LR 45:519 (April 2019), effective May 1, 2019, LR 46:673 (May 2020), effective June 1, 2020, LR 49:

Chapter 73. Child Placing Agencies—General Provisions

§7311. Licensing Requirements—Foster Care, Adoption, Transitional Placing

A. - C.2.i. ...

3. Prior to renewing the child placing agency's license, an on-site inspection shall be conducted to ensure compliance with all licensing laws, standards, and any other required statutes, ordinances, or regulations. A license may be issued for a period of up to one year as determined by the department. If the provider is not found to be in compliance during the timeframe for which the license is issued, the department may proceed with adverse action.

4. Upon rule promulgation, providers with licenses that expire prior to the last day of their anniversary month may be issued a license with an expiration date which coincides with the last day of their anniversary month unless the license is pending adverse action.

D. - N.4....

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Licensing Section, LR 45:359 (March 2019), effective April 1, 2019, LR 46:681 (May 2020), effective June 1, 2020, amended LR 47:350 (March 2021), effective April 1, 2021, repromulgated LR 47:441 (April 2021), amended LR 47:1847 (December 2021), LR 49:

Chapter 75. Juvenile Detention Facilities §7507. Licensing Requirements

A. - E.2.e. ...

3. Prior to renewing the JDF license, an on-site inspection shall be conducted to ensure compliance with all licensing laws, standards, and any other required statutes, ordinances, or regulations. A license may be issued for a period of up to one year as determined by the department. If the provider is not found to be in compliance during the timeframe for which the license is issued, the department may proceed with adverse action.

4. Upon rule promulgation, providers with licenses that expire prior to the last day of their anniversary month may be issued a license with an expiration date which coincides with the last day of their anniversary month unless the license is pending adverse action. A provider's anniversary is determined by the month in which the initial license was issued to the juvenile detention facility and in which the license is eligible for renewal each year.

F. - I.7. ...

J. Corrective Action Plan (CAP)

1. A corrective action plan (CAP) shall be submitted for all deficiencies noted by Licensing Section staff regarding any licensing law or standard, or any other required statute, ordinance, or standard. The request for submission of the CAP does not restrict the actions which may be taken by DCFS. If the department does not specify an earlier timeframe for submitting the CAP, the CAP shall be submitted within 10 calendar days from receipt of the deficiencies. Receipt of the deficiencies by any staff person constitutes notice to the juvenile detention facility. The CAP shall include a description of how the deficiency will be corrected, the date by which correction(s) will be completed, and outline the steps the juvenile detention facility provider plans to take in order to prevent further deficiencies from being cited in these areas and the plan to maintain compliance with the licensing standards. If the CAP is not sufficient and/or additional information is required, the provider shall be notified and informed to submit additional information within five calendar days.

2. Provider may contest a specific deficiency or any information within a cited deficiency which the provider contends is factually inaccurate. The provider shall have one opportunity to request a review of a licensing deficiency within the timeframe specified for the submission of the CAP. A statement of why the deficiency is being disputed and supporting documents (if applicable) shall be submitted with the corrective action plan within the timeframe specified for the submission of the CAP.

3. The statement of deficiencies for which a review has been requested will not be placed on the internet for viewing by the public until a decision has been reached. As a result of the licensing deficiency review request, a deficiency may be upheld with no changes, the deficiency may be removed, or the deficiency may be upheld and revised to include pertinent information that was inadvertently omitted. Once a decision has been reached, provider will be informed in writing of the decision and the reason for the decision. If information within the deficiency was cited in error or the cited deficiency is revised by the DCFS Licensing Section staff, provider will receive a

revised “statement of deficiencies” with the decision letter. If any enforcement action was imposed solely because of a deficiency or finding that has been deleted through the licensing deficiency review process, the action will be rescinded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1110.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:1561 (July 2012), amended LR 38:3104 (December 2012), LR 39:1006 (April 2013), effective July 1, 2013, amended LR 42:395 (March 2016), amended by the Department of Children and Family Services, Licensing Section, LR 45:652 (May 2019), effective June 1, 2019, LR 49:

§7511. Facility Responsibilities

A. - H.2.b.ii. ...

3. Administrative File

a. Insurance Policies. Provider shall have an administrative file that contains the following information:

i. documentation of a current comprehensive general liability insurance policy; and

ii. documentation of current insurance for all vehicles used to transport youth. This policy shall extend coverage to any staff member who provides transportation for youth in the course and scope of his/her employment.

I. - L.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1110.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:1561 (July 2012), amended LR 38:3104 (December 2012), LR 39:1006 (April 2013), effective July 1, 2013, amended LR 42:395 (March 2016), amended by the Department of Children and Family Services, Licensing Section, LR 45:652 (May 2019), effective June 1, 2019, LR 49:

Family Impact Statement

The proposed Rule is not anticipated to have an adverse impact on family formation, stability, and autonomy as described in R.S. 49:972. This Rule is anticipated to help alleviate poverty for those participating in the program.

Poverty Impact Statement

The proposed Rule is not anticipated to have a significant negative impact on poverty as described in R.S. 49:973.

Small Business Analysis

The proposed Rule is not anticipated to have an adverse impact on small businesses as defined in the Regulatory Flexibility Act.

Provider Impact Statement

The proposed Rule is not anticipated to have an impact on providers of services funded by the state as described in HCR 170 of the 2014 Regular Legislative Session.

Public Comments

All interested persons may submit written comments through, March 28, 2023, to Angie Badeaux, Licensing Program Director, Department of Children and Family Services, P.O. Box 3078, Baton Rouge, LA 70821.

Public Hearing

A virtual public hearing on the proposed Rule will be held at 10 a.m. on March 28, 2023, by the Department of Children and Family Services. All interested persons will be afforded an opportunity to submit data, views, or arguments via PC, Mac, Linux, iOS or Android at <https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=USA7133530212&accessCode=4300>

33; via telephone by dialing (713)353-0212 and entering conference code 430033. To find local AT&T numbers visit <https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=USA7133530212&accessCode=4300> 33. Individuals with disabilities who require special services should contact the DCFS Appeals Unit at least seven working days in advance of the hearing. For assistance, call (225) 342-4120 (Voice and TDD).

Terri Porche Ricks
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: 12 Month License—Child Residential Care Class B, Residential Homes (Type IV), Child Placing Agencies General Provisions, and Juvenile Detention

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This Rule proposes to amend LAC 67:V, Sections 6955, 7107, 7311, 7507, and 7511, to modify the current process that causes providers to submit unnecessary documentation and fees to the department and to require juvenile detention providers to maintain documentation of current general liability insurance and insurance for all vehicles used to transport youth.

The only cost of this proposed Rule is the cost of publishing rulemaking which is estimated to be approximately \$2,769 (\$ 929 State General Funds and \$ 1,840 Federal Funds) in FY 22-23. This is a one-time cost that is routinely included in the department’s annual operating budget.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation of this Rule will have no effect on revenue collections for state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This Rule will have no impact on the estimated costs of any persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated impact on competition and employment.

Angie Badeaux
Program Director
2302#078

Evan Brasseaux
Interim Deputy Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Civics Assessment
(LAC 28:XI.6803; LAC 28:LXXIX.2111;
and LAC 28:CXV.2318)

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 proposes to amend LAC 28:XI in *Bulletin 118—Statewide Assessment Standards and Practices*; LAC 28:CXV in *Bulletin 741—Louisiana Handbook for School Administrators*, and LAC 28:LXXIX in *Bulletin*

741(Nonpublic)—Louisiana Handbook for Nonpublic School Administrators. The proposed revisions provide that, beginning with incoming freshmen in 2024-2025, the LEAP 2025 Civics assessment will replace the LEAP 2025 U.S. History assessment required for graduation. However, the U.S. History assessment will be available through 2026-2027 for students requiring a retest to fulfill graduation requirements.

**Title 28
EDUCATION**

Part XI. Accountability Testing

**Subpart 3. Bulletin 118—Statewide Assessment
Standards and Practices**

Chapter 68. LEAP 2025 Assessments for High School

Subchapter A. General Provisions

§6803. Introduction

[Formerly LAC 28:1803]

A. ...

B. Beginning in 2017-2018 through 2023-2024, LEAP 2025 assessments for high school will assess student learning in the high school courses:

1. algebra I;
2. geometry;
3. English I;
4. English II;
5. biology (beginning Fall 2018); and
6. U.S. history.

C. Beginning in 2024-2025 and beyond, LEAP 2025 assessments for high school will assess student learning in the high school courses:

1. algebra I;
2. geometry;
3. English I;
4. English II;
5. biology (beginning Fall 2018); and
6. civics.

D. Any student enrolled in and/or receiving credit for a LEAP 2025 course, regardless of grade inclusive of middle school students taking high school courses for high school credit, is required to take the LEAP 2025 high school assessment upon completion of that course.

E. LEAP 2025 high school assessments will be offered at the end of the fall and spring semesters and during the summer.

1. Students completing the course at the end of the fall semester shall participate in the fall test regardless of the grade earned during the fall semester.

2. Students completing the course at the end of the spring semester shall participate in the spring test regardless of the grade earned during the spring semester.

3. Students completing the course at the end of the summer semester shall participate in the summer test regardless of the grade earned during the summer semester.

F. Since these tests are being developed for use in Louisiana schools, any school selected for field tests shall participate in the field tests.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:214 (February 2009), LR 36:477 (March 2010), amended LR 38:35 (January 2012), LR 40:2514 (December 2014), LR 44:469 (March 2018), LR 44:2129

(December 2018), LR 47:567 (May 2021), LR 48:38 (January 2022), LR 49:

**Part LXXIX. Bulletin 741(Nonpublic)—Louisiana
Handbook for Nonpublic School Administrators
Chapter 21. Curriculum and Instruction
§2111. State Diploma**

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

b. For incoming freshmen in 2010-2011 through 2016-2017, students must pass three LEAP 2025 high school assessments in the following categories:

- i. English II or English III;
- ii. algebra I or geometry;
- iii. biology or U.S. history.

c. For incoming freshmen in 2017-2018 through 2023-2024, students must pass three LEAP 2025 assessments in the following categories:

- i. English I or English II;
- ii. algebra I or geometry;
- iii. biology or U.S. history.

d. Beginning with incoming freshmen in 2024-2025 and beyond, the LEAP 2025 civics assessment will replace the LEAP 2025 U.S. History assessment as the social studies assessment required for graduation. The LEAP 2025 U.S. history assessment will be available through 2026-2027 for those students requiring a retest to fulfill graduation requirements. Students must pass three LEAP 2025 assessments in the following categories:

- i. English I or English II;
- ii. algebra I or geometry;
- iii. biology or civics.

B.2. - E. ...

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. 44:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2351 (November 2003), amended LR 31:636 (March 2005), LR 31:3082 (December 2005), LR 36:1498 (July 2010), LR 39:1446 (June 2013), LR 48:38 (January 2022), LR 49:

**Part CXV. Bulletin 741—Louisiana Handbook for
School Administrators
Chapter 23. Curriculum and Instruction
Subchapter A. Standards and Curricula
§2318. The TOPS University Diploma**

A. - B.2.a.iii. ...

b. Incoming freshmen in 2017-2018 through 2023-2024 must pass three LEAP 2025 assessments in the following categories:

- i. English I or English II;
- ii. algebra I or geometry;
- iii. biology or U.S. history.

c. Beginning with incoming freshmen in 2024-2025 and beyond, the LEAP 2025 Civics assessment will replace the LEAP 2025 U.S. History assessment as the Social Studies assessment required for graduation. The LEAP 2025 U.S. History assessment will be available through 2026-2027 for those students requiring a retest to fulfill graduation requirements. Students must pass three LEAP 2025 assessments in the following categories:

- i. English I or English II;
- ii. algebra I or geometry;
- iii. biology or civics.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6, 17:7, 17:24.4, 17:183.2, and 17:395.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1291 (June 2005), amended LR 31:2211 (September 2005), LR 31:3070 (December 2005), LR 31:3072 (December 2005), LR 32:1414 (August 2006), LR 33:429 (March 2007), LR 33:432 (March 2007), LR 33:2050 (October 2007), LR 33:2354 (November 2007), LR 33:2601 (December 2007), LR 34:1607 (August 2008), LR 36:1486 (July 2010), LR 37:547 (February 2011), LR 37:1128 (April 2011), LR 37:2129 (July 2011), LR 37:2132 (July 2011), LR 37:3193 (November 2011), LR 38:754, 761 (March 2012), LR 38:1001 (April 2012), LR 38:1584 (July 2012), LR 40:994 (May 2014), LR 40:1328 (July 2014), LR 40:1679 (September 2014), LR 40:2525 (December 2014), LR 41:915 (May 2015), LR 41:1482 (August 2015), LR 41:2126 (October 2015), LR 42:232 (February 2016), LR 42:1062 (July 2016), LR 42:1878 (November 2016), LR 42:2176 (December 2016), LR 43:1287 (July 2017), LR 43:2132 (November 2017), LR 43:2483 (December 2017), LR 44:263 (February 2018), LR 44:1868 (October 2018), repromulgated LR 44:1998 (November 2018), amended LR 45:1454 (October 2019), LR 46:556 (April 2020), LR 47:860 (July 2021), amended LR 48:33 (January 2022), LR 48:39 (January 2022), repromulgated LR 48:1092 (April 2022), LR 48:2098 (August 2022), LR 48:2560 (October 2022), LR 49:

Family Impact Statement

In accordance with section 953 and 974 of title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on rules proposed for adoption, repeal, or amendment. All Family Impact Statements will be kept on file in the state board office which has adopted, amended, or repealed rules in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Poverty Impact Statement

In accordance with section 973 of title 49 of the Louisiana Revised Statutes, there is hereby submitted a Poverty Impact Statement on rules proposed for adoption, amendment, or repeal. All Poverty Impact Statements will be in writing and kept on file in the state agency which has adopted, amended, or repealed rules in accordance with the applicable provisions of the law relating to public records. For the purposes of this section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial authority? No.
2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? No.
3. Will the proposed Rule affect employment and workforce development? No.

4. Will the proposed Rule affect taxes and tax credits? No.

5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No.

Small Business Analysis

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the 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 via the U.S. Mail until noon, March 12, 2023, to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064. Written comments may also be hand delivered to Shan Davis, Executive Director, Board of Elementary and Secondary Education, Suite 5-190, 1201 North Third Street, Baton Rouge, LA 70802 and must be date stamped by the BESE office on the date received. Public comments must be dated and include the original signature of the person submitting the comments.

Shan N. Davis
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Civics Assessment**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no anticipated implementation costs or savings to state or local governmental units due to the proposed Rule revisions. The revisions update the effective date and assessment name of the civics assessment planned to replace the LEAP 2025 U.S. History assessment, beginning with the freshman cohort of the 2024-2025 school year. The cost of test development is not expected to increase and will be incorporated into the ongoing cost of state assessments.

The LDOE currently has a nine-year contract with WestEd in the amount of \$13.9 M for the development of the LEAP 2025 social studies assessments. This includes the development of test items, test forms, assessment frameworks, assessment guides, sample items documents, and related psychometric services. The LDOE anticipates that the cost of the contract will not increase because certain activities such as content

development, test forms construction, and field testing already occur on an annual basis, and test items are continuously developed over the life of the assessment.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed Rule revisions will not have an effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed Rule revisions will not result in costs and/or benefits to directly affected persons, small businesses, or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed Rule revisions will not have an effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
2302#049

Alan M. Boxberger
Interim Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Medication Administration Training (LAC 28:CLXI.1515 and 1725)

Editor's Note: This Notice of Intent is being repromulgated to fix an error in submission. The original Notice of Intent was printed on pages 84-85 of the January 2023 edition of the *Louisiana Register*.

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 proposes to amend LAC 28:CLXI in *Bulletin 137—Louisiana Early Learning Center Licensing Regulations*. The proposed revision is in response to legislation enacted by the 2022 Regular Legislative Session and R.S. 17:407.50.2. The revision provides a requirement that centers develop a policy regarding the use of auto-injectable epinephrine, that they share that policy with families of all children at the site, and requires training for administration of auto-injectable epinephrine to a child in an early learning center who is believed to be having an anaphylactic reaction.

Title 28 EDUCATION

Part CLXI. Bulletin 137—Louisiana Early Learning Center Licensing Regulations

Chapter 15. Minimum General Requirements and Standards

§1515. Child Records and Cumulative Files

A. - D. ...

E. An early learning center shall provide a written copy of all health-related policies established by the center, including policies regarding accidents, allergic reactions, fever, illness, immunizations, infection, administration of auto-injectable epinephrine to a child believed to be having an anaphylactic reaction, and injuries, to the parent or guardian of each child attending or enrolled in the early learning center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:630 (April 2015), effective July 1, 2015, amended LR 41:2106 (October 2015), LR 44:250 (February 2018), effective March 1, 2018, LR 47:1276 (September 2021), LR 49:

Chapter 17. Minimum Staffing Requirements and Standards

§1725. Medication Management Training

A. All staff members who administer medication shall have medication administration training that includes auto-injectable epinephrine.

B. ...

C. Training for auto-injectable epinephrine shall be completed every two years with an approved child care health consultant, registered nurse, licensed medical physician, a child care health consultant, an anaphylaxis training organization, or any other entity approved by the Louisiana Department of Health. Training for medication administration shall be completed every two years with an approved child care health consultant.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and 17:407.40(A)(1).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:636 (April 2015), effective July 1, 2015, amended LR 44:251 (February 2018), effective March 1, 2018, LR 44:1866 (October 2018), LR 47:1278 (September 2021), LR 49:

Family Impact Statement

In accordance with section 953 and 974 of title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on rules proposed for adoption, repeal, or amendment. All Family Impact Statements will be kept on file in the state board office which has adopted, amended, or repealed rules in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Poverty Impact Statement

In accordance with section 973 of title 49 of the Louisiana Revised Statutes, there is hereby submitted a Poverty Impact Statement on rules proposed for adoption, amendment, or repeal. All Poverty Impact Statements will be in writing and kept on file in the state agency which has adopted, amended, or repealed rules in accordance with the applicable provisions of the law relating to public records. For the purposes of this section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial authority? No.
2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? No.
3. Will the proposed Rule affect employment and workforce development? No.
4. Will the proposed Rule affect taxes and tax credits? No.
5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? Yes.

Small Business Analysis

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the 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 via the U.S. Mail until noon, February 9, 2023, to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064. Written comments may also be hand delivered to Shan Davis, Executive Director, Board of Elementary and Secondary Education, Suite 5-190, 1201 North Third Street, Baton Rouge, LA 70802 and must be date stamped by the BESE office on the date received. Public comments must be dated and include the original signature of the person submitting the comments.

Shan N. Davis
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Medication Administration Training**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed Rule revisions are in response to Act 335 of the 2022 Regular Legislative Session and R.S. 17:407.50.2. The revisions provide a requirement that early learning centers develop a policy regarding the use of auto-injectable epinephrine, that they share that policy with families of all children at the site, and requires training for administration of auto-injectable epinephrine to a child in an early learning center

who is believed to be having an anaphylactic reaction. The proposed Rule revisions require all staff members who administer medication complete training that includes auto-injectable epinephrine and that this training be completed every two years. There may be increased costs to local governmental units associated with the required training, but they are expected to be minimal. The cost of creating and communicating a new local policy in relation to the proposed rule revisions is also expected to be minimal.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed Rule will not have an effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed Rule revisions require all staff members who administer medication complete training that includes auto-injectable epinephrine and that this training be completed every two years. There may be increased costs to privately owned early learning centers associated with the required training, but they are expected to be minimal.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed Rule revisions will not have an effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
2302#048

Alan M. Boxberger
Interim Legislative Fiscal Officer
Legislative Fiscal Officer

NOTICE OF INTENT

Board of Elementary and Secondary Education

School Nurses (LAC 28:CXXXI.715)

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 proposes to amend LAC 28:CXXXI in *Bulletin 746—Louisiana Standards for State Certification of School Personnel*. The aforementioned revisions provide a mechanism by which a registered nurse who holds a current, valid license in good standing with the Louisiana State Board of Nursing is considered certified as a school nurse by BESE. The scope of practice for each type of nurse is governed by the nursing license held.

**Title 28
EDUCATION**

**Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel
Chapter 7. Ancillary School Service Certificate
Subchapter A. General Ancillary School Certificates
§715. School Nurse**

A. Beginning August 1, 2023, a registered nurse who holds a current, valid license in good standing with the Louisiana State Board of Nursing is considered certified by BESE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (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 48:447 (March 2022), repromulgated LR 48:1053 (April 2022), amended LR 49:

Family Impact Statement

In accordance with section 953 and 974 of title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on rules proposed for adoption, repeal, or amendment. All Family Impact Statements will be kept on file in the state board office which has adopted, amended, or repealed rules in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Poverty Impact Statement

In accordance with section 973 of title 49 of the Louisiana Revised Statutes, there is hereby submitted a Poverty Impact Statement on rules proposed for adoption, amendment, or repeal. All Poverty Impact Statements will be in writing and kept on file in the state agency which has adopted, amended, or repealed rules in accordance with the applicable provisions of the law relating to public records. For the purposes of this Section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial authority? No.
2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? No.
3. Will the proposed Rule affect employment and workforce development? Yes.
4. Will the proposed Rule affect taxes and tax credits? No.
5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? Yes.

Small Business Analysis

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the 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 via the U.S. Mail until noon, March 12, 2023, to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064. Written comments may also be hand delivered to Shan Davis, Executive Director, Board of Elementary and Secondary Education, Suite 5-190, 1201 North Third Street, Baton Rouge, LA 70802 and must be date stamped by the BESE office on the date received. Public comments must be dated and include the original signature of the person submitting the comments.

Shan N. Davis
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: School Nurses

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no anticipated implementation costs or savings to state or local governmental units due to the proposed Rule revisions to LAC 28:CXXXI in *Bulletin 746—Louisiana Standards for State Certification of School Personnel*. The proposed Rule revisions remove the two-year employment history requirement currently in policy and provide a mechanism by which a registered nurse who holds a current, valid license in good standing with the Louisiana State Board of Nursing is considered certified as a school nurse by BESE. The scope of practice for each type of nurse is governed by the nursing license held.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be an indeterminable decrease in state revenue collections due to the proposed rule revisions. Currently, a registered nurse must apply for certification to the Louisiana Department of Education (LDOE) and pay a \$25 application fee. Under the proposed Rule revisions, nurses will no longer need to provide a separate application and fee to be considered certified as a school nurse. The exact number of school nurse applications received is not available, as the school nurse certificate is grouped with a set of ancillary school services certificates that includes nineteen separate areas, such as occupational therapists, psychologists, social workers, and child nutrition program coordinators.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed Rule revisions will result in savings to nurses who must currently pay the \$25 fee to apply for initial certification and to renew certification every three or five years, depending on the level of certification held. School nurses will still complete licensure renewal requirements as dictated by the Louisiana State Board of Nursing.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed Rule revisions will streamline the process by which a registered nurse becomes qualified as a school nurse. Human resources managers will be able to increase the

candidate pools when filling school nurse positions due to removal of the two-year employment history and additional LDOE certification requirements currently in policy.

Beth Scioneaux
Deputy Superintendent
2302#050

Alan M. Boxberger
Interim Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Regents Office of Student Financial Assistance

Scholarship/Grant Programs—Mental Health Exception
(LAC 28:IV.2103)

The Board of Regents announces its intention to amend its Scholarship/Grant rules (R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1, R.S. 17:3048.1, R.S. 17:3048.5 and R.S. 17:3048.6).

This rulemaking adds a mental health sub-type to the temporary disability exceptions available to students when they are unable to meet the full time enrollment, continuous enrollment, and/or annual hours requirements for TOPS. (SG23208NI)

Title 28 EDUCATION

Part IV. Student Financial Assistance—Higher Education Scholarship and Grant Programs Chapter 21. Miscellaneous Provisions and Exceptions §2103. Circumstances Warranting Exception to the Initial and Continuous Enrollment Requirements

A. - D.3....

4.a. Temporary Disability—Student

i. Definition. The student/recipient is recovering from an accident, injury, illness or required surgery.

ii. Certification Requirements. The student/recipient must submit:

(a). a completed exception request form, the reason for the disability, the necessity of withdrawing, dropping hours, etc., the semester(s) involved, and any other information or documents that may be relevant to student's request; and

(b). a written statement from a qualified professional if a medical disability certifying the existence of a temporary disability, the dates of treatment, and opinions as to the impact of the disability on the student's ability to attend school.

iii. Maximum length of exception—up to two full academic years.

b. Temporary Disability—Student/Recipient's Care of Immediate Family Member

i.(a). Definition. The student/recipient is providing continuous care to his/her immediate family member due to an accident, illness, injury or required surgery.

(b). An immediate family member is his/her spouse, dependent, parent, stepparent, custodian, or grandparent.

ii. Certification Requirements. The student/recipient must submit:

(a). a completed exception request form, the reason for the disability, the necessity of withdrawing, dropping hours, etc., the semester(s) involved, and any other information or documents that may be relevant to student's request; and

(b). a written statement from a qualified professional of the existence of a temporary disability of the immediate family member, and the beginning and ending dates of the doctor's care; and

(c). a statement from a family member or a qualified professional confirming the care given by the student.

iii. Maximum length of exception—up to a maximum of two consecutive semesters (three consecutive quarters).

c. Temporary Disability—Mental Health

i. Definition. The student/recipient is receiving mental health care services.

ii. Certification Requirements. The student/recipient must submit:

(a). a completed exception request form, the reason for the disability, the necessity of withdrawing, dropping hours, etc., the semester(s) involved, and any other information or documents that may be relevant to student's request; and

(b). a written statement from a qualified professional or from a clergyman certifying the existence of an issue which requires mental health care, the dates of treatment, an opinion as to the impact of the disability on the student's ability to attend school, and a statement of when the disability is/was affecting student's ability to attend school.

iii. Maximum length of exception—up to two full academic years.

E. - I.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, R.S. 17:5001 et seq., and R.S. 17:3050.1-3050.4.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), amended LR 23:1648 (December 1997), repromulgated LR 24:647 (April 1998), amended LR 24:1916 (October 1998), LR 26:1015 (May 2000), LR 26:2002 (September 2000), LR 27:36 (January 2001), repromulgated LR 27:1866 (November 2001), amended LR 27:1875 (November 2001), LR 28:46 (January 2002), LR 28:449 (March 2002), LR 28:775 (April 2002), LR 28:2330 and 2333 (November 2002), LR 29:126 (February 2003), LR 29:2373 (November 2003), LR 29:2373 (November 2003), LR 30:785 (April 2004), LR 30:1167 (June 2004), LR 31:1060 (May 2005), LR 33:440 (March 2007), LR 35:1233 (July 2009), LR 38:3160 (December 2012), LR 41:657, 667 (April 2015), amended by the Board of Regents, Office of Student Financial Assistance, LR 44:562 (March 2018), LR 45:1173 (September 2019), amended LR 47:862 (July 2021), LR 47:867 (July 2021), amended LR 47:871 (July 2021), LR 49:

Family Impact Statement

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

Poverty Impact Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

Small Business Analysis

The proposed Rule will have no adverse impact on small businesses as described in R.S. 49:965.2 et seq.

Provider Impact Statement

The proposed Rule will have no adverse impact on providers of services for individuals with developmental disabilities as described in HCR 170 of 2014.

Public Comments

Interested persons may submit written comments on the proposed changes (SG22202NI) until 4:30 p.m., March 13, 2023, by email to LOSFA.Comments@la.gov or to Sujuan Williams Boutté, Ed. D., Executive Director, Office of Student Financial Assistance, P. O. Box 91202, Baton Rouge, LA 70821-9202.

Robyn Rhea Lively
Senior Attorney

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Scholarship/Grant Programs
Mental Health Exception**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed changes will not have an impact on state and local government expenditures. Current rules list several circumstances that warrant exception to the initial and continuous enrollment requirements of several state scholarship/grant programs. The proposed changes split an existing exception category into two categories for documentation purposes, and no additional students will qualify for an exception under these changes.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Revenue collections of state and local governments will not be affected by the proposed changes.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no costs and/or economic benefits due to these proposed changes.

B. Table 2—Additional Fees

Table 2 Additional Fees		
Fee Number	Fee Description	Amount
* * *		
2300 *Note 14*	Criteria Pollutant Annual Fee per Ton Emitted on an Annual Basis (Non-Title V Facility): Nitrogen oxides (NOx) Sulfur dioxide (SO2) Non-toxic organic (VOC) Particulate (PM10)	\$20.00/ton
2310 *Note 14*	Criteria Pollutant Annual Fee per Ton Emitted on an Annual Basis (Title V Facility): Nitrogen oxides (NOx) Sulfur dioxide (SO2) Non-toxic organic (VOC) Particulate (PM10)	\$20.00/ton
* * *		

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no impact on competition and employment due to these changes.

Robyn Rhea Lively
Senior Attorney
2302#044

Alan M. Boxberger
Interim Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

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

RLS Criteria Pollutant Fee Increase
(LAC 33:III.223)

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.223 (AQ393).

This Rule provides for the fee changes authorized in Act 405 of the 2021 Regular Legislative Session which authorizes a two step increase to fees for Criteria Pollutants. The basis and rationale for this Rule are to implement the fee changes authorized in Act No. 405 of the 2021 Regular Legislative Session. 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 2. Rules and Regulations for the Fee System of the Air Quality Control Programs

§223. Fee Schedule Listing

A. Table 1—Fee Schedule Listing

* * *

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054, 2341, and 2351 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:613 (September 1988), LR 15:735 (September 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1205 (December 1991), repromulgated LR 18:31 (January 1992), amended LR 18:706 (July 1992), LR 18:1256 (November 1992), LR 19:1373 (October 1993), LR 19:1420 (November 1993), LR 19:1564 (December 1993), LR 20:421 (April 1994), LR 20:1263 (November 1994), LR 21:22 (January 1995), LR 21:782 (August 1995), LR 21:942 (September 1995), repromulgated LR 21:1080 (October 1995), amended LR 21:1236 (November 1995), LR 23:1496, 1499 (November 1997), LR 23:1662 (December 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:267 (February 2000), LR 26:485 (March 2000), LR 26:1606 (August 2000), repromulgated LR 27:192 (February 2001), amended LR 29:672 (May 2003), LR 29:2042 (October 2003), LR 30:1475 (July 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2620 (December 2007), LR 34:2560 (December 2008), LR 37:1145 (April 2011), amended by the Office of the Secretary, Legal Division, LR 43:936 (May 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1239 (July 2018), amended by the Office of the Secretary, Legal Affairs Division, LR 48:1499 (June 2022), 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 AQ393. Such comments must be received no later than April 4, 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 by E-mail to DEQ.Reg.Dev.Comments@la.gov. Copies of the proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ393. The proposed regulation is available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

Public Hearing

A public hearing will be held via Zoom on March 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/88439604912?pwd=T0h5clYra0t1cUhTTIFRckNOZSt6UT09> 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.

The proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Courtney J. Burdette
Executive Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: RLS Criteria Pollutant Fee Increase

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change will have no impact on state expenditures. Local governmental units may experience an increase in expenditures to the extent these governmental units pay fees to the Department of Environmental Quality (DEQ).

The proposed rule change provides the regulatory framework for implementing the agency's fee increase package that was passed Act 405 of the 2021 Regular Legislative Session. The proposed rule change increases the criteria pollutant fee from \$16.61 per ton to \$20 per ton.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Based on the department's calculations, DEQ anticipates that its annual revenue collections for the Environmental Trust Dedicated Fund Account will increase by approximately \$800,000 annually. Current collections are approximately \$56 million annually; therefore, these regulations represent an increase of 1.5 percent.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Costs to industry businesses impacted by these regulations vary widely. All non-governmental groups that pay criteria pollutant fees to DEQ will be directly affected by the proposed rule change, which includes industries such as petrochemical, manufacturing, and construction. Workload adjustments and/or additional paperwork should not be required, as the billing and invoicing structure has not changed, only the amounts billed.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There may be impacts in employment in public or private sectors to the extent changes in employment are necessary to absorb the costs associated with the increase in fees. However, these fees have been discussed with industry participants who are subject to the increases and DEQ does not anticipate any significant impact on public or private sector employment.

Courtney J. Burdette
Executive Counsel
2302#035

Alan M. Boxberger
Interim Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health Board of Nursing

Authorized Practice
(LAC 46:XLVII.4513)

Notice is hereby given in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 37:918, that the Board of Nursing (LSBN) is proposing rule changes to Chapter 45, Section 4513, Subsection D, Paragraph 2, Subparagraph b, Clause i, Subclause a-b, under Title 46, Professional and Occupational Standards, Part XLVII. The proposed revision removes barriers preventing all Advanced Practice Registered Nurses (APRNs) from prescribing controlled substances in connection with the treatment of chronic or intractable pain and obesity. The rule change allows all categories of Advanced Practice Registered Nurses with prescriptive authority and controlled, dangerous substance authority to administer Food and Drug Administration (FDA) and Drug Enforcement Administration (DEA) approved controlled substances for chronic pain or intractable pain and obesity. The rule change does not expand prescriptive authority for APRNs; however, it does permit them to treat obesity and chronic pain with controlled substances. The FDA and DEA are the two federal agencies that determine which substances are added to or removed from the various schedules of controlled substances and determine the safety and efficacy of these medications.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLVII. Nurses: Practical Nurses and Registered Nurses

Subpart 2. Registered Nurses

Chapter 45. Advanced Practice Registered Nurses

§4513. Authorized Practice

A. - D.2.b. ...

i. an APRN granted authority to prescribe or distribute controlled substances shall not utilize such substances in connection with the treatment of oneself, a spouse, child or any other family member;

D.2.b.ii. - D.17.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K) and R.S. 37:1031-1034. HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 10:598 (August 1984), amended by the Department of Health and Hospitals, Board of Nursing, LR 22:283 (April 1996), amended by the Department of Health and Hospitals, Board of Nursing and Board of Medical Examiners, LR 22:981 (October 1996), LR 25:1245 (July 1999), LR), amended by the Department of Health and Hospitals, Board of Nursing, 27:727 (May 2001), amended by the Department of Health and Hospitals, Board of Nursing and Board of Medical Examiners, LR 28:487 (March 2002), repromulgated LR 28:1205 (June 2002), amended by the Department of Health and Hospitals, Board of Nursing, LR 31:2023 (August 2005), LR 33:1870 (September 2007), LR 40:63 (January 2014), LR 40:2249 (November 2014), LR 42:572 (April 2016), amended by the Department of Health, Board of Nursing, LR 44:276 (February 2018),), LR 45:1202 (September 2019), LR 49:

Family Impact Statement

The proposed additions and/or changes to the rules of the board, Board of Nursing should not have any known or foreseeable impact on any family as defined by R.S. 49.972(D) or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. a family's earnings and budget;
5. the behavior and personal responsibility of the children; or
6. the family's ability or that of the local government to perform the function as contained in the proposed Rule.

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 not have an 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

The proposed Rule has no known or foreseeable measurable impact on small businesses as described in R.S. 49:974.5.

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 not have an 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 on the proposed Rule to Dr. Karen C. Lyon, 17373 Perkins Road, Baton Rouge, LA 70810, or by facsimile to (225) 755-7585. All comments must be submitted by 5 p.m. on or before March 10, 2023.

Karen C. Lyon, PhD, MBA, APRN-CNS, NEA
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Authorized Practice

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule revision will result in a one-time expenditure of \$250 in FY 23 for the Louisiana State Board of Nursing (LSBN) to publish the notice of intent and proposed rule revision in the Louisiana Register. The proposed rule revision will not affect the expenditures of other state or local governmental units.

NOTICE OF INTENT

Department of Health Board of Pharmacy

Healthcare Workplace Violence Prevention (LAC 46:LIII.1103)

Current regulations prohibit Advanced Practice Registered Nurses (APRNs) including Certified Nurse Practitioners, Certified Nurse Midwives, Clinical Nurse Specialists, and Certified Registered Nurse Anesthetists from prescribing or distributing controlled substances in connection with (a) chronic or intractable pain, as defined in Louisiana Administrative Code (LAC) 46:XLVII. §6915-§6923 and (b) obesity, as defined in LAC 46:XLVII. §6901-§6913. Act 444 of the 2022 Regular Legislative Session authorizes Certified Nurse Practitioners in good standing with the LSBN and who have prescriptive authority conferred by the LSBN to recommend medical marijuana to patients. For the purposes of this legislation, “recommend” means an opinion of any authorized clinician, provided within a bona fide clinician-patient relationship, that, in the sincere judgment of the clinician, therapeutic cannabis may be helpful to the patient’s condition or symptoms and is communicated by any means allowed by the Louisiana Board of Pharmacy.

The proposed revision removes barriers preventing all APRNs from prescribing controlled substances in connection with the treatment of chronic or intractable pain. This will give Certified Nurse Practitioners the necessary discretion to exercise their medical training and judgment to treat conditions with controlled substances and/or medical marijuana. Currently, CNPs are discouraged from recommending medical marijuana because APRNs are prohibited from prescribing controlled substances for debilitating conditions of obesity and chronic pain in the LSBN rules. The proposed rule change allows all categories of Advanced Practice Registered Nurses to administer Food and Drug Administration (FDA) and Drug Enforcement Administration (DEA) approved controlled substances for chronic pain and obesity. The FDA and DEA are the two federal agencies that determine which substances are added to or removed from the various schedules of controlled substances.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule changes will not affect revenue collections for state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed revision will benefit the citizens of Louisiana by allowing CNPs, defined in Act 444 as authorized clinicians, to fully treat chronic or intractable pain and obesity by prescribing controlled substances and/or recommending medical/therapeutic marijuana based on the clinician’s medical knowledge and judgment. The recommendation of medical/therapeutic marijuana promotes delivery of quality health care and benefits patients under the care of a CNP as recipients of quality care. It will also benefit the citizens of Louisiana by allowing all APRNs to recommend controlled substances that have been approved as safe and effective for the treatment of chronic pain and obesity to prescribe those substances.

The proposed rule change will have no foreseeable costs to directly affected persons, small businesses, or non-governmental groups other than the cost of the medical marijuana to the patient or to their insurance providers.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed change will have no effect on competition and employment.

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Board of Pharmacy hereby gives notice of its intent to amend §1103 of its rules relative to prescription department requirements to address workplace violence against healthcare workers, in response to Act 461 of the 2022 Legislative Session. The proposed Rule amendment requires pharmacies to comply with the provisions of R.S. 40:2199.11 through 40:2199.19 including but not limited to signage, prevention plans, and reporting.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LIII. Pharmacists

Chapter 11. Pharmacies

Subchapter A. General Requirements

§1103. Prescription Department Requirements

A. - I.2. ...

J. Healthcare Workplace Violence Prevention. The pharmacy shall comply with the provisions of R.S. 40:2199.11 through 40:2199.19 including but not limited to signage, prevention plans, and reporting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:1310 (October 1997), amended LR 29:2087 (October 2003), effective January 1, 2004, LR 39:315 (February 2013), amended by the Department of Health, Board of Pharmacy, LR 46:579 (April 2020), LR 47:1642 (November 2021), LR 48:497 (March 2022), LR 49:

Family Impact Statement

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a family impact statement on the Rule proposed for adoption, repeal, or amendment. The following statements will be published in the *Louisiana Register* with the proposed agency Rule.

1. The Effect on the Stability of the Family. The proposed Rule amendment will have no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. The proposed Rule amendment will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect on the Functioning of the Family. The proposed Rule amendment will have no effect on the functioning of the family.

4. The Effect on Family Earnings and Family Budget. The proposed Rule amendment will have no effect on family earnings and family budget.

5. The Effect on the Behavior and Personal Responsibility of Children. The proposed Rule amendment

will have no effect on 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. The proposed Rule amendment will have no effect on the ability of the family or a local government to perform the activity as contained in the proposed Rule.

Poverty Impact Statement

In accordance with Section 973 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a poverty impact statement on the Rule proposed for adoption, repeal, or amendment.

1. The Effect on Household Income, Assets, and Financial Security. The proposed Rule amendment will have no effect on household income, assets, or financial security.

2. The Effect on Early Childhood Development and Preschool through Postsecondary Education Development. The proposed Rule amendment will have no effect on early childhood development or preschool through postsecondary education development.

3. The Effect on Employment and Workforce Development. The proposed Rule amendment will have no effect on employment and workforce development.

4. The Effect on Taxes and Tax Credits. The proposed Rule amendment will have no effect on taxes or tax credits.

5. The Effect on Child and Dependent Care, Housing, Health Care, Nutrition, Transportation, and Utilities Assistance. The proposed Rule amendment will have no effect on child and dependent care, housing, health care, nutrition, transportation, or utilities assistance.

Small Business Analysis

In accordance with Section 965 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a regulatory flexibility analysis on the Rule proposed for adoption, repeal, or amendment. This will certify the agency has considered, without limitation, each of the following methods of reducing the impact of the proposed Rule on small businesses:

1. The Establishment of Less Stringent Compliance or Reporting Requirements for Small Businesses. The proposed Rule amendment will have a slight increase in reporting requirements for small business. The proposed new rule requires reporting of incidents of workplace violence.

2. The Establishment of Less Stringent Schedules or Deadlines for Compliance or Reporting Requirements for Small Businesses. The proposed Rule amendment will have no effect on schedules or deadlines for compliance or reporting requirements for small business.

3. The Consolidation or Simplification of Compliance or Reporting Requirements for Small Businesses. The proposed Rule amendment will have no effect on consolidation or simplification of compliance or reporting requirements for small business.

4. The Establishment of Performance Standards for Small Businesses to Replace Design or Operational Standards Required in the Proposed Rule. The proposed Rule amendment will have no effect on establishment of performance standards for small businesses to replace design or operational standards for small business.

5. The Exemption of Small Businesses from All or Any Part of the Requirements Contained in the Proposed

Rule. There are no exemptions for small businesses in the proposed Rule amendment.

Provider Impact Statement

In accordance with House Concurrent Resolution No. 170 of the Regular Session of the 2014 Legislature, there is hereby submitted a provider impact statement on the Rule proposed for adoption, repeal, or amendment. This will certify the agency has considered, without limitation, the following effects on the providers of services to individuals with developmental disabilities:

1. The effect on the staffing level requirements or qualifications required to provide the same level of service. The proposed Rule amendment will have no 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 Provider to Provide the Same Level of Service. The proposed Rule amendment will have no effect on the cost to the provider to provide the same level of service.

3. The Overall Effect on the Ability of the Provider to Provide the Same Level of service. The proposed Rule amendment will have no effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments, via United States Postal Service or other mail carrier, or in the alternative by personal delivery to M. Joseph Fontenot Jr., Executive Director, at the office of the Louisiana Board of Pharmacy, 3388 Brentwood Drive, Baton Rouge, LA 70809-1700. He is responsible for responding to inquiries regarding the proposed Rule amendments. The deadline for the receipt of all written comments is 12 p.m. on Tuesday, March 28, 2023.

Public Hearing

A public hearing to solicit comments and testimony on the proposed Rule change is scheduled for 9:00 a.m. on Tuesday, March 28, 2023 at the office of the Louisiana Board of Pharmacy, 3388 Brentwood Drive, Baton Rouge, LA 70809-1700. During the hearing, all interested persons will be afforded an opportunity to submit comments and testimony, either verbally or in writing. The deadline for the receipt of all comments and testimony is 12 p.m. that same day. To request reasonable accommodations for persons with disabilities, please call the board office at 225.925.6496.

M. Joseph Fontenot Jr.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: **Healthcare Workplace Violence Prevention**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed Rule amendment will require the Louisiana Board of Pharmacy (LBP) to publish the proposed and final rules in the state register, resulting in printing expenses of \$250 in FY 2023 and \$250 in FY 2024. There will be no additional expenditures or cost savings for LBP. To the extent a state or local governmental unit operates a pharmacy, there could be additional costs to the pharmacy to compose prevention and

reporting plans and to provide signage. These costs are indeterminable, but are expected to be minimal.

The proposed Rule amendment addresses workplace violence against healthcare workers, in response to Act 461 of the 2022 Legislature. The proposed Rule amendment requires pharmacies to comply with the provisions of R.S. 40:2199.11 through 40:2199.19 including but not limited to signage, prevention plans, and reporting.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed Rule amendment will not affect revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed Rule amendment will benefit consumers and pharmacy personnel by requiring pharmacies to address and prevent workplace violence against healthcare personnel. There will be minimal cost to pharmacy owners to compose prevention and reporting plans and to provide signage.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed Rule amendment will have no effect on competition or employment.

M. Joseph Fontenot, Jr.
Executive Director
2302#025

Alan M. Boxberger
Interim Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health
Board of Pharmacy**

Pharmacy Benefit Managers (LAC 46:LIII.Chapter 30)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Board of Pharmacy hereby gives notice of its intent to amend §3003 and §3005 of its rules relative to pharmacy benefit managers to remove the requirement for a pharmacy benefit manager applicant to include copies of governance documents and the standard generic contract template used by the applicant with the initial permit application. Additionally, the board gives notice of its intent to amend Chapter 30 in its entirety due to Act 536 of the 2022 Regular Session which clarified legislative intent to mandate licensure of pharmacy benefit managers by the Board of Pharmacy.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LIII. Pharmacists

Chapter 30. Pharmacy Benefit Managers

§3003. Pharmacy Benefit Manager Permit

A. A pharmacy benefit manager, as defined at R.S. 40:2863, shall obtain and maintain a pharmacy benefit manager permit from the board prior to conducting business in Louisiana if it administers, develops, maintains, performs, or provides one or more of the pharmacy services enumerated in R.S. 40:2868 in the state or that affects one or more beneficiaries of a pharmacy benefit management plan, as defined at R.S. 40:2863, administered by the pharmacy benefit manager.

B. A pharmacy benefit manager permit shall authorize the permit holder to administer pharmacy benefit management services.

C. The board shall not issue a pharmacy benefit manager permit to any person or other entity which has not yet registered with the Louisiana Secretary of State to conduct business within the state.

D. A pharmacy benefit manager permit is not transferable from the original owner. The permit shall not be subject to sale, assignment or other transfer, voluntary or involuntary. Moreover, in the event the ownership of the pharmacy benefit manager changes by 50 percent or more after the initial issuance of the permit, the ownership will be deemed sufficiently different as to require a new pharmacy benefit manager permit. The continued operation of a pharmacy benefit manager permit after its ownership has changed by 50 percent or more shall constitute sufficient basis for the board to issue a finding for the operation of a pharmacy benefit manager without a valid permit, in violation of R.S. 40:2865.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1253.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Pharmacy, LR 47:591 (May 2021), amended LR 49:

§3005. Permitting Procedures

A. Application for Initial Issuance of Permit

1. The board shall develop an application form suitable for the pharmacy benefit manager permit. The board may revise that application form on its own initiative in order to collect the information it deems necessary to properly evaluate an applicant.

2. The board shall not process applications received by facsimile, or that are incomplete, or submitted with the incorrect fee.

3. Once received by the board, an application for the permit shall expire one year thereafter.

4. In the event any information contained in the application or accompanying documents changes after being submitted to the board and before the issuance of the permit, the applicant shall immediately notify the board in writing and provide corrected information.

5. The applicant may be required to personally appear before the board or any of its committees prior to any decision on the permit application.

6. Upon approval of the application, the board shall issue the pharmacy benefit manager permit to the applicant.

B. Application for Renewal of Permit

1. All pharmacy benefit manager permits shall expire two years after the date of its initial issuance and the renewals shall expire every two years thereafter on that anniversary date.

2. The board shall not process applications received by facsimile, or that are incomplete.

3. In the event a pharmacy benefit manager does not submit a properly completed renewal application to the board prior to the expiration of the permit, the permit shall be rendered null and void. The continued operation of a pharmacy benefit manager with an expired permit shall constitute sufficient basis for the board to issue a finding for

the operation of a pharmacy benefit manager without a valid permit, in violation of R.S. 40:2865.

4. A pharmacy benefit manager permit not renewed by 30 days after the expiration date shall be automatically terminated by the board.

C. Application for Reinstatement of Terminated, Suspended, or Revoked Permit

1. The applicant shall complete the application form for this specific purpose supplied by the board.

2. Upon the receipt of a properly completed application form, the board staff shall refer the application to the board's reinstatement committee for its consideration and shall notify the applicant of the time and place for the committee meeting.

D. Maintenance of Permit

1. A pharmacy benefit manager permit shall be valid for the entity to whom it is issued and shall not be subject to sale, assignment or other transfer, voluntary or involuntary.

2. Upon receipt of a written request and payment of the fee authorized in R.S. 37:1184, the board shall issue a duplicate or replacement permit to the applicant; however, such duplicate or replacement permit shall not serve or be used as an additional or second permit.

E. Permanent Closure of Permit

1. In the event the pharmacy benefit manager contemplates permanent closure of the pharmacy benefit manager business, the owner of the permit shall notify the board, in writing, 10 days prior to the anticipated date of closure and surrender its permit.

2. The notice required in this Subsection shall include an acknowledgement of the firm's obligation to maintain copies of all records for all patients and pharmacies in Louisiana for a minimum of two years following the date of closure and surrender of its permit, and further, the point of contact for all inquiries and requests for such records during that two-year period of time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1253.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Pharmacy, LR 47:591 (May 2021), amended LR 48:2105 (August 2022), amended and amended LR 49:

Family Impact Statement

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a family impact statement on the Rule proposed for adoption, repeal, or amendment. The following statements will be published in the *Louisiana Register* with the proposed agency Rule.

1. The Effect on the Stability of the Family. The proposed Rule changes will have no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. The proposed Rule changes will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect on the Functioning of the Family. The proposed Rule changes will have no effect on the functioning of the family.

4. The Effect on Family Earnings and Family Budget. The proposed Rule changes will have no effect on family earnings and family budget.

5. The Effect on the Behavior and Personal Responsibility of Children. The proposed Rule changes will have no effect on 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. The proposed Rule changes will have no effect on the ability of the family or a local government to perform the activity as contained in the proposed Rule.

Poverty Impact Statement

In accordance with Section 973 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a poverty impact statement on the Rule proposed for adoption, repeal, or amendment.

1. The Effect on Household Income, Assets, and Financial Security. The proposed Rule changes will have no effect on household income, assets, or financial security.

2. The Effect on Early Childhood Development and Preschool through Postsecondary Education Development. The proposed Rule changes will have no effect on early childhood development or preschool through postsecondary education development.

3. The Effect on Employment and Workforce Development. The proposed Rule changes will have no effect on employment or workforce development.

4. The Effect on Taxes and Tax Credits. The proposed Rule changes will have no effect on taxes or tax credits.

5. The Effect on Child and Dependent Care, Housing, Health Care, Nutrition, Transportation, and Utilities Assistance. The proposed Rule changes will have no effect on child and dependent care, housing, health care, nutrition, transportation, or utilities assistance.

Small Business Analysis

In accordance with Section 965 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a regulatory flexibility analysis on the Rule proposed for adoption, repeal, or amendment. This will certify the agency has considered, without limitation, each of the following methods of reducing the impact of the proposed Rule on small businesses:

1. The Establishment of Less Stringent Compliance or Reporting Requirements for Small Businesses. The proposed Rule changes will have no effect on compliance or reporting requirements for small business.

2. The Establishment of Less Stringent Schedules or Deadlines for Compliance or Reporting Requirements for Small Businesses. The proposed Rule changes will have no effect on schedules or deadlines for compliance or reporting requirements for small business.

3. The Consolidation or Simplification of Compliance or Reporting Requirements for Small Businesses. The proposed Rule changes will have no effect on compliance or reporting requirements for small business.

4. The Establishment of Performance Standards for Small Businesses to Replace Design or Operational Standards Required in the Proposed Rule. The proposed Rule changes will have no effect on standards.

5. The Exemption of Small Businesses from All or Any Part of the Requirements Contained in the Proposed Rule. There are no exemptions for small businesses in the proposed Rule changes.

Provider Impact Statement

In accordance with House Concurrent Resolution No. 170 of the Regular Session of the 2014 Legislature, there is hereby submitted a provider impact statement on the Rule proposed for adoption, repeal, or amendment. This will certify the agency has considered, without limitation, the following effects on the providers of services to individuals with developmental disabilities:

1. The effect on the staffing level requirements or qualifications required to provide the same level of service. The proposed Rule changes will have no effect on the staffing level requirements or the qualifications for that staff to provide the same level of service.

2. The Total Direct and Indirect Effect on the Cost to the Provider to Provide the Same Level of Service. The proposed Rule changes will have no effect on the cost to the provider to provide the same level of service.

3. The Overall Effect on the Ability of the Provider to Provide the Same Level of service. The proposed Rule changes will have no effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments, via United States Postal Service or other mail carrier, or in the alternative by personal delivery to M. Joseph Fontenot Jr., Executive Director, at the office of the Louisiana Board of Pharmacy, 3388 Brentwood Drive, Baton Rouge, LA 70809-1700. He is responsible for responding to inquiries regarding the proposed Rule amendments. The deadline for the receipt of all written comments is 12 p.m. Tuesday, March 28, 2023.

Public Hearing

A public hearing to solicit comments and testimony on the proposed Rule changes is scheduled for 9:00 a.m. on Tuesday, March 28, 2023 at the office of the Louisiana Board of Pharmacy, 3388 Brentwood Drive, Baton Rouge, LA 70809-1700. During the hearing, all interested persons will be afforded an opportunity to submit comments and testimony, either verbally or in writing. The deadline for the receipt of all comments and testimony is 12 p.m. that same day. To request reasonable accommodations for persons with disabilities, please call the board office at 225.925.6496.

M. Joseph Fontenot Jr.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Pharmacy Benefit Managers

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed Rule changes will require the Louisiana Board of Pharmacy (LBP) to publish the proposed and final rules in the state register, resulting in printing expenses of \$500 in FY 2023 and \$500 in FY 2024. There will be no additional expenditures or cost savings for LBP or other state or local governmental units.

The proposed Rule changes amend the rule for pharmacy benefit managers to remove the requirement for a pharmacy benefit manager applicant to include copies of governance documents and the standard generic contract template used by the applicant with the initial permit application.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed Rule changes will not affect revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed Rule changes will reduce the regulatory burden on pharmacy benefit manager applicants by reducing the documents required with an initial permit application. The LBP estimates this change will impact 19 applications in the near future, as well as any additional future applications.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed Rule changes will have no effect on competition and employment.

M. Joseph Fontenot, Jr.
Executive Director
2302#024

Alan M. Boxberger
Interim Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health Board of Pharmacy

Prescriptions (LAC 46:LIII.2511 and 2519)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Board of Pharmacy hereby gives notice of its intent to amend §2511 and §2519 of its rules relative to prescriptions. The proposed Rule changes in §2511 clarify the definition of an electronic prescription, define practitioner, add a description of patient authority to acquire a prescription drug or device, add a requirement for pharmacies to transfer filled and unfilled prescriptions when requested by the patient, add a definitive list of practitioners authorized to issue prescriptions, address clarification of information required on prescriptions and allow prescription adaptation by the pharmacist. The proposed Rule changes in §2519 prohibit pharmacies from requesting refill authorization from the prescriber in the absence of a request from the patient, his agent, or his caregiver and clarify that pharmacies may offer their patient an auto-refill service to facilitate refill requests. The implementation of the proposed Rule changes caused a reorganization of lettering in the sections.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LIII. Pharmacists

Chapter 25. Prescriptions, Drugs, and Devices

Subchapter B. Prescriptions

§2511. Prescriptions and Chart Orders

A. Definitions. As used in this Chapter, the following terms shall have the meaning ascribed to them in this Section:

Electronic Prescription—a prescription generated, signed, and transmitted in electronic form, excluding electronically transmitted facsimile documents.

Practice Affiliation—repealed.

Practitioner—an individual currently licensed, registered, or otherwise authorized by the appropriate licensing board to prescribe and administer drugs in the course of professional practice.

* * *

B. Patient Authority to Acquire Prescription Drug or Device

1. A prescription or chart order represents the lawful authority for a patient, or his agent or caregiver, to acquire a prescription drug or device from a pharmacy licensed to dispense prescription drugs and devices.

2. In the absence of refill instructions on the original prescription, the prescription shall not be refilled. A pharmacist, using his professional judgment, may dispense the total quantity authorized in one transaction, or in the alternative, may dispense partial quantities in multiple transactions, provided however, that the sum of the partial quantities shall not exceed the total quantity authorized.

3. In the event a prescription contains refill instructions, the prescription may be refilled when requested by the patient, or his agent or caregiver. A pharmacist, using his professional judgment, may dispense the quantity authorized for each refill in a single transaction, or in the alternative, may dispense partial quantities in multiple transactions, provided however that the sum of the partial quantities shall not exceed the total quantity authorized.

4. While the documentation of a prescription or chart order shall be retained by the dispensing pharmacy as evidence of its lawful dispensing of the prescription drug, the patient's lawful authority to obtain the drug conveyed by the prescription or chart order shall continue to exist until the earliest of the expiration date of the prescription or chart order, or in the alternative, when the total quantity authorized has been dispensed.

5. In the event a patient, or his agent or caregiver, requests a pharmacy to transfer an unfilled prescription for a medication not listed as a controlled substance to another pharmacy, the pharmacy shall comply with that request as soon as possible, but no later than the end of the next business day.

6. In the event a patient, or his agent or caregiver, requests a pharmacy to transfer the remainder of an unexpired prescription to another pharmacy, the pharmacy shall transfer that prescription information in compliance with the provisions of this Chapter as soon as possible but no later than the end of the next business day. Prior to such transfer, a pharmacy shall not cancel the remainder of an unexpired prescription unless such action is required by law or rule or is requested by the prescriber.

C. Persons Authorized to Issue Prescriptions and Chart Orders

1. A prescription for a drug or device may be issued by a practitioner with valid prescriptive authority.

2. A prescription may be prepared by the agent of the prescriber for the signature of the prescriber, but the prescriber retains accountability for the proper issuance of a valid prescription. A prescriber's agent may communicate a valid prescription to a pharmacy.

3. A pharmacist may issue a prescription when so authorized by law, rule, standing order, or practice agreement.

D. Required Information

1. A prescription shall contain the following data elements:

a. prescriber's name, licensure designation, address, telephone number, and if for a controlled substance, the Drug Enforcement Administration (DEA) registration number;

b. patient's name, and if for a controlled substance, address;

c. date prescription issued by the prescriber;

d. name of drug or device, and if applicable, strength, and quantity to be dispensed;

e. directions for use;

f. signature of the prescriber; and

g. refill instructions, if any. In the absence of refill instructions on the original prescription, the prescription shall not be refilled.

2. In the event a pharmacist receives a prescription or chart order lacking certain required information, the pharmacist, pharmacy intern or certified pharmacy technician may consult with the prescriber or his agent to clarify the prescriber's intent.

E. Manner of Issuance

1. Oral Prescriptions

a. Upon the receipt of an oral prescription from an authorized prescriber, the pharmacist or pharmacy intern or pharmacy technician shall reduce the order to a written form prior to dispensing the medication. As an alternative to recording such prescriptions on paper forms, a pharmacist may enter the prescription information directly into the pharmacy's dispensing information system.

b. In the event a pharmacy intern or pharmacy technician transcribes such a prescription, the supervising pharmacist shall initial or countersign the prescription form prior to processing the prescription.

2. Written Prescriptions. A written prescription shall conform to the following format.

a. The prescription form shall be of a size not less than 4 inches by 5 inches, and shall bear a single printed signature line.

b. The prescription form shall clearly indicate the authorized prescriber's name, licensure designation, address, telephone number, and if for a controlled substance, the Drug Enforcement Administration (DEA) registration number. In the event that multiple practitioners are identified on the prescription form, the authorizing prescriber's specific identity shall be clear and unambiguous. This identification may be indicated by any means, including but not limited to, a marked check box next to, or circling, the authorized prescriber's printed name.

c. No prescription form shall contain more than four active prescription drug orders. Each active prescription drug order on the form shall provide the following:

i. check box labeled "Dispense as Written", or "DAW", or both; and

ii. the number of refills, if any.

d. The prescription shall be written with ink or indelible pencil, typewriter, or printed on a computer printer and shall be manually signed by the practitioner on the date issued and in the same manner as he would sign a check or legal document (e.g., J. H. Smith or John H. Smith). Examples of invalid signatures include rubber stamps,

signatures of anyone other than the prescriber, and computer-generated signatures.

e. Receipt via Facsimile

i. Pharmacies may elect to receive written prescriptions via a facsimile machine located within the prescription department. The paper used to print such prescriptions shall produce a non-fading image. The pharmacy may elect to scan such documents in compliance with §1123 of this Part.

ii. Pharmacies may elect to receive written prescriptions via electronic facsimile directly within their pharmacy information system. The pharmacy shall retain such records in compliance with Section 1123 of this Part.

f. Chart orders and forms used by pharmacists to record telephoned or transferred prescriptions are exempt from the format requirements listed in this Section.

3. Electronic Prescriptions

a. The prescription shall clearly indicate the authorized prescriber's name, licensure designation, address, telephone number, and if for a controlled substance, the DEA registration number.

F. Prescription Adaptation

1. With the consent of the patient, or his agent or caregiver, a pharmacist may adapt a prescription drug order or chart order unless the prescriber has indicated adaptation is not permitted, subject to the following limitations:

a. A pharmacist may change the quantity of medication prescribed if:

i. the prescribed quantity or package size is not commercially available;

ii. the change in quantity is related to a change in dosage form;

iii. the change is intended to dispense up to the total amount authorized by the prescriber; or

iv. the change extends a maintenance drug for the limited quantity necessary to coordinate a patient's refills in a medication synchronization program.

b. A pharmacist may change the dosage form of the medication prescribed if it is in the best interest of patient care; however, the pharmacist shall modify the prescriber's directions to ensure an equivalent amount of the medication prescribed is dispensed.

c. A pharmacist may add information missing on the prescription drug order or chart order if there is evidence to support the change.

d. A pharmacist who adapts a prescription drug order or chart order shall document the adaptation in the patient's record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2102 (October 2003), effective January 1, 2004, LR 41:98 (January 2015), LR 41:2147 (October 2015), amended by the Department of Health, Board of Pharmacy, LR 43:2162 (November 2017), LR 46:585 (April 2020), LR 47:1644 (November 2021), amended LR 49:

§2519. Prescription Refills; Medication Synchronization and Refill Consolidation

A. Prescription Refills

1. Limitations on Number of Refills

a. The refilling of a prescription for a drug listed in Schedule II is prohibited.

b. A prescription for a drug listed in Schedule III or IV may be refilled up to five times if so indicated at the time issued.

c. A prescription for a drug listed in Schedule V may be refilled without limitation if so indicated at the time issued subject to the one-year expiration date of the prescription.

d. A prescription for a drug not listed as a controlled substance or for a medical device, medical gas, or durable medical equipment may be refilled without limitation if so indicated at the time issued subject to the one year expiration date of the prescription.

2. Refill Authorization. Prescription refills may be dispensed only with the prescriber's authorization, as indicated on the original prescription order. In the absence of the authorized practitioner's instructions on the original prescription, the prescription shall be considered non-refillable. When all refills authorized on the original prescription have been dispensed, then authorization from the prescribing practitioner shall be obtained prior to dispensing; when such authorization has been received, a new prescription shall be prepared and it shall be issued a different prescription number.

3. Patient Request for Continuation of Therapy. When previously authorized refills have been dispensed, or when the previous prescription has expired, and the patient, or his agent or caregiver, requests continuation of therapy, the pharmacy may submit a request to the prescriber for a new prescription. A pharmacy may offer their patient an auto-refill service to facilitate such requests for the life of that prescription. In the absence of a specific request for continuation of therapy from the patient, or his agent or caregiver, the pharmacy shall not submit a request for continuation of therapy to a prescriber.

4. Dispensing of Refills. Prescription refills authorized by the prescriber shall not be dispensed in the absence of a patient, or his agent or caregiver's, request or approval. A pharmacy may offer their patient an auto-refill service to facilitate such requests. This prohibition shall not apply to refills authorized by the prescriber which are to be dispensed to a patient residing in a long-term care facility.

B. Medication Synchronization and Refill Consolidation. These terms refer to a service which a pharmacist may perform for his patient, at the request of the patient, wherein he may proactively adjust the medication dispensing quantity and/or the refill schedule of a prescription in order to manage the patient's medication therapy, with the goal of improved medication adherence by the patient.

1. For the performance of this service, the pharmacist may adjust the dispensing quantity and/or the refill schedule originally ordered by the prescriber; however, the pharmacist shall not exceed the total quantity prescribed [dispensing quantity multiplied by the total number of fills authorized (original plus refills)], or what is otherwise allowed by law.

2. With respect to prescriptions for controlled substances where refills have been authorized, pharmacists may utilize partial fills, as described in §2747.C.5 of this Part, but may not exceed the dispensing quantity noted on the original prescription.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2104 (October 2003), effective January 1, 2004, LR 33:1133 (June 2007), amended by the Department of Health, Board of Pharmacy, LR 42:1519 (September 2016), LR 46:575 (April 2020), LR 47:1644 (November 2021), amended LR 49:

Family Impact Statement

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a family impact statement on the Rule proposed for adoption, repeal, or amendment. The following statements will be published in the *Louisiana Register* with the proposed agency Rule.

1. The Effect on the Stability of the Family. The proposed Rule changes will have no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. The proposed Rule changes will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect on the Functioning of the Family. The proposed Rule changes will have no effect on the functioning of the family.

4. The Effect on Family Earnings and Family Budget. The proposed Rule changes will have no effect on family earnings and family budget.

5. The Effect on the Behavior and Personal Responsibility of Children. The proposed Rule changes will have no effect on 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. The proposed Rule changes will have no effect on the ability of the family or a local government to perform the activity as contained in the proposed Rule.

Poverty Impact Statement

In accordance with Section 973 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a poverty impact statement on the Rule proposed for adoption, repeal, or amendment.

1. The Effect on Household Income, Assets, and Financial Security. The proposed Rule changes will have no effect on household income, assets, or financial security.

2. The Effect on Early Childhood Development and Preschool through Postsecondary Education Development. The proposed Rule changes will have no effect on early childhood development or preschool through postsecondary education development.

3. The Effect on Employment and Workforce Development. The proposed Rule changes will have no effect on employment and workforce development.

4. The Effect on Taxes and Tax Credits. The proposed rule changes will have no effect on taxes or tax credits.

5. The Effect on Child and Dependent Care, Housing, Health Care, Nutrition, Transportation, and Utilities Assistance. The proposed Rule changes will have no effect on child and dependent care, housing, health care, nutrition, transportation, or utilities assistance.

Small Business Analysis

In accordance with Section 965 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a regulatory flexibility analysis on the Rule proposed for adoption, repeal, or amendment. This will certify the agency has considered, without limitation, each of the following methods of reducing the impact of the proposed Rule on small businesses:

1. The Establishment of Less Stringent Compliance or Reporting Requirements for Small Businesses. The proposed Rule changes will have no effect on compliance or reporting requirements for small businesses.

2. The Establishment of Less Stringent Schedules or Deadlines for Compliance or Reporting Requirements for Small Businesses. The proposed Rule changes will have no effect on schedules or deadlines for compliance or reporting requirements for small business.

3. The Consolidation or Simplification of Compliance or Reporting Requirements for Small Businesses. The proposed Rule changes will have no effect on consolidation or simplification of compliance or reporting requirements for small business.

4. The Establishment of Performance Standards for Small Businesses to Replace Design or Operational Standards Required in the Proposed Rule. The proposed Rule changes will have no effect on establishment of performance standards for small businesses to replace design or operational standards for small business.

5. The Exemption of Small Businesses from All or Any Part of the Requirements Contained in the proposed Rule. There are no exemptions for small businesses in the proposed Rule changes.

Provider Impact Statement

In accordance with House Concurrent Resolution No. 170 of the Regular Session of the 2014 Legislature, there is hereby submitted a provider impact statement on the Rule proposed for adoption, repeal, or amendment. This will certify the agency has considered, without limitation, the following effects on the providers of services to individuals with developmental disabilities:

1. The effect on the staffing level requirements or qualifications required to provide the same level of service. The proposed Rule changes will have no 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 Provider to Provide the Same Level of Service. The proposed Rule changes will have no effect on the cost to the provider to provide the same level of service.

3. The Overall Effect on the Ability of the Provider to Provide the Same Level of service. The proposed Rule changes will have no effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments, via United States Postal Service or other mail carrier, or in the alternative by personal delivery to M. Joseph Fontenot Jr., Executive Director, at the office of the Louisiana Board of Pharmacy, 3388 Brentwood Drive, Baton Rouge, LA 70809-

1700. He is responsible for responding to inquiries regarding the proposed Rule amendments. The deadline for the receipt of all written comments is 12 p.m. noon on Tuesday, March 28, 2023.

Public Hearing

A public hearing to solicit comments and testimony on the proposed Rule changes is scheduled for 9:00 a.m. on Tuesday, March 28, 2023 at the office of the Louisiana Board of Pharmacy, 3388 Brentwood Drive, Baton Rouge, LA 70809-1700. During the hearing, all interested persons will be afforded an opportunity to submit comments and testimony, either verbally or in writing. The deadline for the receipt of all comments and testimony is 12 p.m. that same day. To request reasonable accommodations for persons with disabilities, please call the board office at 225.925.6496.

M. Joseph Fontenot Jr.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Prescriptions

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed Rule changes will require the Louisiana Board of Pharmacy (LBP) to publish the proposed and final rules in the state register, resulting in printing expenses of \$500 in FY 2023 and \$500 in FY 2024. There will be no additional expenditures or cost savings to state or local governmental units.

The proposed changes in §2511 clarify the definition of an electronic prescription, define practitioner, add a description of patient authority to acquire a prescription drug or device, add a requirement for pharmacies to transfer filled and unfilled prescriptions when requested by the patient, add a definitive list of practitioners authorized to issue prescriptions, address clarification of information required on prescriptions and allow prescription adaptation by the pharmacist. The proposed Rule changes in §2519 prohibit pharmacies from requesting refill authorization from the prescriber in the absence of a request from the patient, his agent, or his caregiver and clarify that pharmacies may offer their patient an auto-refill service to facilitate refill requests.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed Rule changes will not affect revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed Rule changes in §2511 affect consumers by defining the patient's authority to acquire a prescription drug or device, requiring pharmacies to transfer filled and unfilled prescriptions when requested by the patient, and allowing for prescription adaptation by the pharmacist. This documents the patient's lawful authority to obtain the drug conveyed by the prescription and prevents the cancellation of the prescription unless required by law or rule or requested by the prescriber. This also allows a pharmacist to adapt certain elements of a prescription, unless prohibited by the prescriber, and to add information missing on the prescription if there is evidence to support the change.

The proposed Rule changes in §2519 affect consumers and prescribers by prohibiting the pharmacy from requesting refill authorization from the prescriber in the absence of a request from the patient, his agent, or his caregiver, while allowing the

pharmacy to offer their patient an auto-refill service to facilitate refill requests. This will result in a decrease in the number of refill requests submitted to prescribers without patient knowledge and could result in a reduction in healthcare waste from unwanted prescriptions being filled.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed Rule changes will have no effect on competition or employment.

M. Joseph Fontenot, Jr.
Executive Director
2302#022

Alan M. Boxberger
Interim Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health Board of Pharmacy

Temporary Closure of Pharmacy (LAC 46:LIII.1107)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Board of Pharmacy hereby gives notice of its intent to amend §1107 of its rules relative to pharmacy operations. The proposed Rule amendment will address prepared prescriptions affected by the temporary closure of a pharmacy pursuant to a state of emergency declared by the governor or a need determined by the pharmacist-in-charge. The proposed Rule amendment allows for the storage of those prescriptions in a secure area and the delivery of those prescriptions to the patient, or an agent or caregiver of the patient, regardless of whether a pharmacist is on duty.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LIII. Pharmacists

Chapter 11. Pharmacies

Subchapter A. General Requirements

§1107. Pharmacy Operations

A. - D. ...

E. Temporary Closure of Pharmacy

1. When the governor issues or renews a state of emergency pursuant to the Emergency Assistance and Disaster Act of 1993, R.S. 29:721 et seq., or a state of public health emergency pursuant to the Louisiana Health Emergency Powers Act, R.S. 29:760 et seq., or when the pharmacist-in-charge determines it necessary to close the pharmacy for a temporary period of time, the following provisions shall apply.

a. The pharmacy shall notify the board in written form with information as to the anticipated duration of the temporary closure as well as the provisions for continuity of patient care no later than the next business day.

b. The pharmacy may establish a secure storage area separate from, but adjoining to, the secured prescription department within which the pharmacy may store prescriptions prepared for delivery to the patient, or his agent or caregiver. In the alternative, but only after receiving approval from the board, the pharmacy may establish a temporary secure storage area separate from and not adjoining the prescription department within which the

pharmacy may store prescriptions prepared for delivery to the patient, or his agent or caregiver.

c. Access to prescriptions stored in the temporary secure storage area shall be restricted to individuals designated by the pharmacist-in-charge.

d. Prepared prescriptions stored in a temporary secure storage area may be delivered to the patient, or his agent or caregiver, whether or not a pharmacist is on duty, but only when so authorized by the pharmacist-in-charge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:1310 (October 1997), amended LR 29:2088 (October 2003), effective January 1, 2004, LR 34:1408 (July 2008), amended by the Department of Health, Board of Pharmacy, LR 47:1643 (November 2021), LR 48:2105 (August 2022), amended LR 49:

Family Impact Statement

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a family impact statement on the Rule proposed for adoption, repeal, or amendment. The following statements will be published in the *Louisiana Register* with the proposed agency Rule.

1. The Effect on the Stability of the Family. The proposed Rule amendment will have no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. The proposed Rule amendment will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect on the Functioning of the Family. The proposed Rule amendment will have no effect on the functioning of the family.

4. The Effect on Family Earnings and Family Budget. The proposed Rule amendment will have no effect on family earnings and family budget.

5. The Effect on the Behavior and Personal Responsibility of Children. The proposed Rule amendment will have no effect on 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. The proposed Rule amendment will have no effect on the ability of the family or a local government to perform the activity as contained in the proposed Rule.

Poverty Impact Statement

In accordance with Section 973 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a poverty impact statement on the Rule proposed for adoption, repeal, or amendment.

1. The Effect on Household Income, Assets, and Financial Security. The proposed Rule amendment will have no effect on household income, assets, or financial security.

2. The Effect on Early Childhood Development and Preschool through Postsecondary Education Development. The proposed Rule amendment will have no effect on early childhood development or preschool through postsecondary education development.

3. The Effect on Employment and Workforce Development. The proposed Rule amendment will have no effect on employment or workforce development.

4. The Effect on Taxes and Tax Credits. The proposed Rule amendment will have no effect on taxes or tax credits.

5. The Effect on Child and Dependent Care, Housing, Health Care, Nutrition, Transportation, and Utilities Assistance. The proposed Rule amendment will have no effect on child and dependent care, housing, health care, nutrition, transportation, or utilities assistance.

Small Business Analysis

In accordance with Section 965 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a regulatory flexibility analysis on the Rule proposed for adoption, repeal, or amendment. This will certify the agency has considered, without limitation, each of the following methods of reducing the impact of the proposed Rule on small businesses:

1. The Establishment of Less Stringent Compliance or Reporting Requirements for Small Businesses. The proposed Rule amendment does not establish less stringent compliance requirements for small business. The proposed Rule amendment will require the affected pharmacy to notify the board in written form with information as to the anticipated duration of the temporary closure as well as the provisions for continuity of patient care no later than the next business day. Given the limited occurrences of temporary closures of pharmacies, the effect on reporting requirements for small businesses will be minimal.

2. The Establishment of Less Stringent Schedules or Deadlines for Compliance or Reporting Requirements for Small Businesses. The proposed Rule amendment does not establish less stringent schedules or deadlines for compliance or reporting requirements for small business.

3. The Consolidation or Simplification of Compliance or Reporting Requirements for Small Businesses. The proposed Rule amendment will have no effect on consolidation or simplification of compliance or reporting requirements for small business.

4. The Establishment of Performance Standards for Small Businesses to Replace Design or Operational Standards Required in the Proposed Rule. The proposed Rule amendment will have no effect on establishment of performance standards for small businesses to replace design or operational standards for small business.

5. The Exemption of Small Businesses from All or Any Part of the Requirements Contained in the Proposed Rule. There are no exemptions for small businesses in the proposed Rule amendment.

Provider Impact Statement

In accordance with House Concurrent Resolution No. 170 of the Regular Session of the 2014 Legislature, there is hereby submitted a provider impact statement on the Rule proposed for adoption, repeal, or amendment. This will certify the agency has considered, without limitation, the following effects on the providers of services to individuals with developmental disabilities:

1. The effect on the staffing level requirements or qualifications required to provide the same level of service. The proposed rule amendment will have no effect on the staffing level requirements or the qualifications for that staff to provide the same level of service.

2. The Total Direct and Indirect Effect on the Cost to the Provider to Provide the Same Level of Service. The

proposed Rule amendment will have no effect on the cost to the provider to provide the same level of service.

3. The Overall Effect on the Ability of the Provider to Provide the Same Level of service. The proposed Rule amendment will have no effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments, via United States Postal Service or other mail carrier, or in the alternative by personal delivery to M. Joseph Fontenot Jr., Executive Director, at the office of the Louisiana Board of Pharmacy, 3388 Brentwood Drive, Baton Rouge, LA 70809-1700. He is responsible for responding to inquiries regarding the proposed Rule amendments. The deadline for the receipt of all written comments is 12 p.m. on Tuesday, March 28, 2023.

Public Hearing

A public hearing to solicit comments and testimony on the proposed Rule changes is scheduled for 9:00 a.m. on Tuesday, March 28, 2023 at the office of the Louisiana Board of Pharmacy, 3388 Brentwood Drive, Baton Rouge, LA 70809-1700. During the hearing, all interested persons will be afforded an opportunity to submit comments and testimony, either verbally or in writing. The deadline for the receipt of all comments and testimony is 12 p.m. that same day. To request reasonable accommodations for persons with disabilities, please call the board office at 225.925.6496.

M. Joseph Fontenot Jr.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Temporary Closure of Pharmacy

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed Rule amendment will require the Louisiana Board of Pharmacy (LBP) to publish the proposed and final Rules in the state register, resulting in printing expenses of \$250 in FY 2023 and \$250 in FY 2024. There will be no additional expenditures or cost savings for LBP or other state governmental units.

To the extent a local governmental unit operates a pharmacy, there could be additional costs to pharmacies who choose to establish a secure storage area within which the pharmacy may store prescriptions prepared for delivery to the patient, or his agent or caregiver. The cost of doing so will vary among pharmacies.

The proposed Rule amendment will address prepared prescriptions affected by the temporary closure of a pharmacy pursuant to a state of emergency declared by the Governor or a need determined by the pharmacist-in-charge. The proposed Rule amendment allows for the storage of those prescriptions in a secure area and the delivery of those prescriptions to the patient, or an agent or caregiver of the patient, regardless of whether a pharmacist is on duty.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed Rule amendment will not affect revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed Rule amendment will benefit consumers by addressing the prepared prescriptions affected by the temporary closure of a pharmacy pursuant to a state of emergency declared by the Governor or a need determined by the pharmacist-in-charge. The proposed Rule amendment allows for the storage of those prescriptions in a secure area and the delivery of those prescriptions to the patient, or an agent or caregiver of the patient, regardless of whether a pharmacist is on duty.

The proposed Rule amendment will affect an indeterminate number of pharmacies who choose to establish a secure storage area within which the pharmacy may store prescriptions prepared for delivery to the patient, or his agent or caregiver. The cost of doing so will vary among pharmacies.

The proposed Rule amendment will have an indeterminable impact on a licensee's receipts or revenue by allowing the sale of prepared prescriptions during the temporary closure of a pharmacy pursuant to a state of emergency declared by the Governor or a need determined by the pharmacist-in-charge. The impact would vary due to the length of the temporary closure, the number of prescriptions sold during the temporary closure, and the price of those prescriptions sold.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed Rule amendment will have no effect on competition or employment.

M. Joseph Fontenot, Jr.
Executive Director
2302#023

Alan M. Boxberger
Interim Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health Bureau of Health Services Financing

Home Health Program American Rescue Plan Act Funding (LAC 50:XIII.801)

The Department of Health, Bureau of Health Services Financing proposes to adopt LAC 50:XIII.Chapter 8 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 U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) approved the Department of Health's administration and payment model for funds provided under section 9817 of the American Rescue Plan Act of 2021 (ARPA) to agencies that provide home health care services. In compliance with the CMS-approved model for administering ARPA funds, the Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which adopted provisions governing ARPA funding in the Home Health Program in order to establish recruitment and retention payments for nurses that provide extended home health services to

beneficiaries under the age of 21 who are in a Medicaid waiver program (*Louisiana Register*, Volume 49, Number 1). This proposed Rule is being promulgated to continue the provisions of the January 10, 2023 Emergency Rule.

Title 50

PUBLIC HEALTH—GENERAL

Part XIII. Home Health Program

Subpart 1. Home Health Services

Chapter 8. American Rescue Plan Act Funding

§801. Nursing Recruitment and Retention Payments

A. General Provisions

1. Nurses that provide extended home health (EHH) services may be eligible to receive recruitment and retention bonuses through April 2024.

2. A nurse is defined as an individual who possesses and maintains a valid license as a licensed practical nurse (LPN) or registered nurse (RN).

3. All payments shall be administered by the home health agency (HHA) that employs the nurse. If a nurse is employed at multiple agencies, only one HHA may pay the recruitment and retention payment.

4. HHAs shall submit an invoice and supporting documentation for each nurse that meets the requirements outlined in this Chapter on a monthly basis and shall comply with all other requirements established by LDH to receive a payment.

5. HHAs shall disburse the entire payment to the nurse and are prohibited from reducing the payment in any way.

6. HHAs that provide the required documentation, comply with all applicable requirements, and have at least one nurse a month receiving a bonus payment will be eligible to invoice LDH for an administrative fee of \$2,500 each month.

B. Recruitment

1. Recruitment is the hiring of a new nurse who commits to providing a minimum of 120 hours of EHH services to beneficiaries under the age of 21 who are in a Medicaid waiver program in each calendar month.

2. A one-time, lump sum payment of \$5,000 may be paid to any nurse who is hired by the HHA and commits to providing a minimum of 120 hours of EHH services to beneficiaries in a waiver program and has not received the retention lump sum bonus payment outlined in this Chapter.

3. Each nurse may only receive the lump sum recruitment bonus payment once.

C. Retention

1. Existing nurses who commit to providing a minimum of 120 hours of EHH services to eligible waiver beneficiaries in a calendar month and have not received the recruitment or retention lump sum bonus payment will receive a \$5,000 retention bonus.

2. Nurses who receive the recruitment or retention lump sum bonus payment shall be eligible to receive a monthly payment of \$200 if they provided at least 120 hours of EHH services to eligible waiver beneficiaries during the previous calendar month.

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:

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 may have a positive impact on small businesses as described in the Act as it provides an administrative fee to home health agencies to make the recruitment and retention payments.

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 and 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 since this proposed Rule provides an administrative fee to the home health agencies to make the recruitment and retention payments.

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 April 3, 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 March 13, 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 March 30, 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 March 13, 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.

Dr. Courtney N. Phillips
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Home Health Program
American Rescue Plan Act Funding**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
It is anticipated that implementation of this proposed rule will result in estimated programmatic costs of approximately \$961,128 for FY 22-23 and \$2,883,750 for FY 23-24. It is anticipated that \$756 (\$378 SGF and \$378 FED) will be expended in FY 22-23 for the state's administrative expense for promulgation of this proposed and 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 \$961,128 for FY 22-23 and \$2,883,750 for FY 23-24. It is anticipated that \$378 will be collected for the federal share of the expense for promulgation of the proposed and 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 January 10, 2023 Emergency Rule, which adopted provisions in the Home Health Program in order to establish recruitment and retention payments for nurses that provide extended home health (EHH) services to beneficiaries under the age of 21 who are in a Medicaid waiver program. The proposed rule complies with the Department's administration and payment model that was approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) for funds provided under Section 9817 of the American Rescue Plan Act of 2021. This proposed rule provides an administrative fee to home health agencies to make recruitment and retention payments to nurses which ensures that pediatric Medicaid waiver participants continue to receive EHH services. Implementation of this proposed rule is anticipated to increase expenditures for home health services by approximately \$1,921,500 for FY 22-23 and \$5,767,500 for FY 23-24.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
This proposed rule provides an administrative fee to home health agencies to make recruitment and retention payments to nurses that provide extended home health services to pediatric Medicaid waiver participants.

Tara A. LeBlanc
Medicaid Executive Director
2302#066

Evan Brasseaux
Interim Deputy Fiscal Officer
Legislative Fiscal Office

**NOTICE OF INTENT
Department of Health
Bureau of Health Services Financing**

Home Health Program
Authorizing Authority and Emergency Provisions
(LAC 50:XIII.Chapter 1)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:XIII.Chapter 1 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 181 of the 2021 Regular Session of the Louisiana Legislature directed the Department of Health to add nurse practitioners, clinical nurse specialists, and physician assistants as healthcare providers authorized to order home health services. In compliance with Act 181, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing the Home Health Program in order to add nurse practitioners, clinical nurse specialists, and physician assistants as healthcare providers authorized to order home health services and to repeal emergency provisions that are no longer applicable as a result of this change. In addition, this proposed Rule modifies the locations in which home health services may be provided to be consistent with U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) requirements.

**Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XIII. Home Health Program
Subpart 1. Home Health Services
Chapter 1. General Provisions
§101. Definitions**

[Formerly LAC 50:XIX.101]

A. The following words and terms, when used in this Subpart 1, shall have the following meanings, unless the context clearly indicates otherwise:

Authorized Healthcare Provider—a physician, nurse practitioner, clinical nurse specialist, or physician assistant licensed, certified, registered, or otherwise authorized to order home healthcare services consistent with Louisiana law.

Home Health Services—patient care services provided in the patient's home or place of residence under the order of an authorized healthcare provider that are necessary for the diagnosis and treatment of the patient's illness or injury, including one or more of the following services:

a. - e. ...

f. medical supplies, equipment and appliances suitable for use in the patient's home or place of residence.

Physical Therapy Services—rehabilitative services necessary for the treatment of the patient’s illness or injury or, restoration and maintenance of function affected by the patient’s illness or injury. These services are provided with the expectation, based on the authorized healthcare provider’s assessment of the patient’s rehabilitative potential, that:

a. - b. ...

Place of Residence—location where normal life activities take place but does not include a hospital, intermediate care facility for individuals with intellectual disabilities, or any setting in which payment is or could be made under Medicaid for inpatient services that include room and board.

* * *

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 30:431 (March 2004), amended by the Department of Health, Bureau of Health Services Financing, LR 44:59 (January 2018), LR 49:

§103. Requirements for Home Health Services
[Formerly LAC 50:XIX.103]

A. Home health services shall be based on an expectation that the care and services are medically reasonable and appropriate for the treatment of an illness or injury, and that the services can be performed adequately by the agency in the recipient's home or place of residence. For initial ordering of home health services, the authorized healthcare provider must document a face-to-face encounter that is related to the primary reason the recipient requires home health services. This face-to-face encounter must occur no more than 90 days before or 30 days after the start of services. For the initial ordering of medical supplies, equipment and appliances, the authorized healthcare provider must document that a face-to-face encounter that is related to the primary reason the recipient requires medical equipment occurred no more than six months prior to the start of services. A written plan of care for services shall be evaluated and signed by the authorized healthcare provider every 60 days. This plan of care shall be maintained in the recipient's medical records by the home health agency.

B. Home health services shall be provided in the recipient’s home or place of residence.

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 30:431 (March 2004), amended by the Department of Health, Bureau of Health Services Financing, LR 44:59 (January 2018), LR 49:

§104. Emergency 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 48:2293 (September 2022), 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 may have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by reducing the waiting time to receive an order for home health services.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Small Business Analysis

In compliance with 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.

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. 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 April 3, 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 March 13, 2023. If criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on March 30, 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 March 13, 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.

Dr. Courtney N. Phillips
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Home Health Program

Authorizing Authority and Emergency Provisions

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 22-23. It is anticipated that \$864 (\$432 SGF and \$432 FED) will be expended in FY 22-23 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 have no effect on revenue collections other than the federal share of the promulgation costs for FY 22-23. It is anticipated that \$432 will be collected in FY 22-23 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)

In compliance with Act 181 of the 2021 Regular Session of the Louisiana Legislature, this proposed rule amends the provisions governing the Home Health Program in order to add nurse practitioners, clinical nurse specialists, and physician assistants as healthcare providers authorized to order home health services and to repeal emergency provisions that are no longer applicable as a result of this change. In addition, this proposed rule modifies the locations in which home health services may be provided to be consistent with U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) requirements. This proposed rule will benefit Medicaid beneficiaries by ensuring access to home health services in more locations and reducing the waiting time to receive an order for home health services. It is anticipated that implementation of this proposed rule will not result in costs to home health providers in FY 22-23, FY 23-24, and FY 24-25, but will be beneficial by ensuring that additional healthcare providers are authorized to order services.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Tara A. LeBlanc
Medicaid Executive Director
2302#067

Evan Brasseaux
Interim Deputy Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

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

Medicaid Eligibility
Resource Disregards
(LAC 50:III.10705)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:III.10705 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Section 1902(r)(2) of the Social Security Act (SSA) grants states the authority to adopt resource disregards for the purposes of determining eligibility in the Medical Assistance Program (Medicaid). The Department of Health, Bureau of Health Services Financing determined that it was necessary to disregard unspent funds received as a class member pursuant to a class settlement in the case of *Nancy Anderson, et al. v. Bob Dean Jr., et al.*, 24th Judicial District Court, Parish of Jefferson, No. 820-839 from resources when determining Medicaid eligibility. Under the authority granted by section 1902(r)(2) of the SSA, the department promulgated an Emergency Rule which amended the provisions governing financial eligibility in the Medical Assistance Program in order to disregard unspent funds received by settlement class members in the case of *Nancy Anderson, et al. v. Bob Dean Jr., et al.*, 24th Judicial District Court, Parish of Jefferson, No. 820-839 from resources (*Louisiana Register*, Volume 49, Number 1). This proposed Rule is being promulgated to continue the provisions of the January 1, 2023 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part III. Eligibility

Subpart 5. Financial Eligibility

Chapter 107. Resources

§10705. Resource Disregards

A. - D. ...

E. Disregard from resources unspent funds received as a class member pursuant to a class settlement in the case of *Nancy Anderson, et al. v. Bob Dean Jr., et al.*, 24th Judicial District Court, Parish of Jefferson. No. 820-839.

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:

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 by allowing Medicaid beneficiaries to retain unspent funds received pursuant to a class settlement in the case of *Nancy Anderson, et al. v. Bob Dean Jr., et al* and maintain Medicaid benefits.

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 by allowing Medicaid beneficiaries to retain unspent funds

received pursuant to a class settlement in the case of *Nancy Anderson, et al. v. Bob Dean Jr., et al* and maintain Medicaid benefits.

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 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 April 3, 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 March 13, 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 March 30, 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 March 13, 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.

Dr. Courtney N. Phillips
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Medicaid Eligibility Resource Disregards

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no impact to the state to implement this rule since the members of the settlement class are currently receiving Medicaid services; however, in the absence of the rule, those individuals could be determined to be ineligible which would

result in a savings. It is anticipated that \$540 (\$270 SGF and \$270 FED) will be expended in FY 22-23 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)

There is no impact to implement this rule since the members of the settlement class are currently receiving Medicaid services; however, in the absence of the rule, these individuals could be determined to be ineligible which would decrease revenue collections. It is anticipated that \$270 will be collected in FY 22-23 for the federal 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 January 1, 2023 Emergency Rule, which amended the provisions governing financial eligibility in the Medical Assistance Program in order to disregard unspent funds received by settlement class members in the case of *Nancy Anderson, et al. v. Bob Dean Jr., et al.*, 24th Judicial District Court, Parish of Jefferson, No. 820-839 from resources. Implementation of this proposed rule will allow these Medicaid beneficiaries to continue receiving services since the unspent funds received as a class settlement member in the case of *Nancy Anderson, et al. v. Bob Dean Jr., et al.* will not be counted when their eligibility is determined.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Tara A. LeBlanc
Medicaid Executive Director
2302#069

Evan Brasseaux
Interim Deputy Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health Bureau of Health Services Financing

Medical Transportation Program
Non-Emergency Medical Transportation
American Rescue Plan Act
(LAC 50:XXVII.Chapter 5)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:XXVII.Chapter 5 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) approved the use of funds provided under the American Rescue Plan Act of 2021 (ARPA) for bonus payments to providers of non-emergency medical transportation (NEMT) services. The Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which adopted provisions in the Medical Transportation Program in order to establish guidelines for the administration and distribution of ARPA bonus payment funds to eligible NEMT providers (*Louisiana Register*, Volume 49, Number

2). This proposed Rule is being promulgated to continue the provisions of the January 20, 2023 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXVII. Medical Transportation Program

Chapter 5. Non-Emergency Medical Transportation

Subchapter A. General Provisions

§505. Requirements for Coverage

A. Payment shall only be authorized for the least costly means of transportation available. The least costly means of transportation shall be determined by the department or its designee and considered the beneficiary's choice of transportation, the level of service required to safely transport the beneficiary (e.g., ambulatory, wheelchair, transfer), and the following hierarchy:

1. - 3. ...

4. for-profit providers enrolled in the Medicaid Program.

B. - D. ...

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 47:1639 (November 2021), amended LR 49:

Subchapter C. Provider Responsibilities

§517. Provider Enrollment

A. - C. ...

D. All NEMT providers must agree to cover the entire parish or parishes for which he or she provides non-emergency medical transportation 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, Bureau of Health Services Financing, LR 47:1639 (November 2021), amended LR 49:

Subchapter E. Non-Emergency Medical Transportation

American Rescue Plan Act

§531. Non-Emergency Medical Transportation Bonus Payments

A. General Provisions

1. Non-emergency medical transportation (NEMT) providers that are fully credentialed in the Medicaid Program may be eligible to receive a bonus payment under the Department of Health's (LDH) American Rescue Plan Act (ARPA) NEMT Program until the program's federal funds are exhausted or through the conclusion of the program in March 2024.

2. Fully credentialed NEMT providers who meet all eligibility requirements are entitled to a monthly disbursement of \$500 per vehicle, for up to three vehicles per month, totaling a maximum payment of \$1,500 per month per transportation provider. LDH will determine eligibility for monthly payments based on the NEMT provider's ongoing compliance for all provider, driver, and vehicle requirements set forth by the Medicaid Program and the LDH ARPA NEMT Program.

3. A NEMT provider is a provider of NEMT services and for the purpose of this bonus payment, includes non-profit and for-profit providers.

4. LDH will administer all payments for the LDH ARPA NEMT Program.

5. In order to receive payments under the LDH ARPA NEMT Program, the NEMT provider shall do the following:

a. accede to all provisions of the LDH ARPA NEMT Program and execute a contractual agreement with LDH, solely for the distribution of ARPA funds;

b. create an account with LAGov to ensure eligibility of payment,

c. maintain ongoing compliance for all provider, driver, and vehicle requirements set forth by the Medicaid Program;

d. submit reporting and credentialing documentation for all drivers and vehicles within their individual company used for NEMT services on a monthly basis. Failure to meet program time requirements shall result in loss of the monthly bonus payment; and

e. submit a monthly attestation to certify the accuracy of the submitted supporting and credentialing documentation.

6. NEMT services are ineligible and shall not be submitted as a completed service if the status of the NEMT service rendered results in one of the following:

a. the provider is a no-show;

b. no NEMT vehicle is available;

c. no NEMT driver is available; or

d. the NEMT provider is late which causes the beneficiary to miss his or her scheduled Medicaid covered service

B. Payments

1. Transportation providers that meet the requirements for both the LDH ARPA NEMT Program and Medicaid Program will receive a single lump sum payment of \$500 per vehicle, for a maximum of three vehicles, totaling a maximum payment of \$1,500 per month. Transportation providers must meet all requirements on a monthly basis for payment eligibility.

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:

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

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability or autonomy as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual or family poverty in relation to individual or community asset development as described in R.S. 49:973.

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 as it increases reimbursement.

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 April 3, 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 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 March 13, 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 March 30, 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 March 13, 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.

Dr. Courtney N. Phillips
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Medical Transportation Program Non-Emergency Medical Transportation American Rescue Plan Act**

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 \$1,800,432 for FY 22-23 and \$1,350,000 for FY 23-24. It is anticipated that \$864 (\$432 SGF and \$432 FED) will be expended in FY 22-23 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$1,800,432 for FY 22-23 and \$1,350,000 for FY 23-24. It is anticipated that \$432 will be collected in FY 22-23 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 January 20, 2023 Emergency Rule, which adopted provisions in the Medical Transportation Program in order to establish guidelines for the administration and distribution of funds provided under the American Rescue Plan Act of 2021 (ARPA) as bonus payments to eligible providers of non-emergency medical transportation (NEMT) services. These increased payments will ensure that eligible NEMT providers continue rendering services to Medicaid beneficiaries. Implementation of this proposed rule is anticipated to increase expenditures for NEMT services by approximately \$3,600,000 for FY 22-23 and \$2,700,000 for FY 23-24.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Tara A. LeBlanc
Medicaid Executive Director
2302#068

Evan Brasseaux
Interim Deputy Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health Bureau of Health Services Financing and Office of Aging and Adult Services

Personal Care Services
Long Term Care
(LAC 50:XV.12901 and 12903)

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend LAC 50:XV.12901 and 12903 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 and the Office of Aging and Adult Services propose to amend the provisions governing long term-personal care services (LT-PCS) in order to update and remove obsolete terminology to reflect the current assessment tool used to determine LT-PCS eligibility, and to ensure that consistent language is used throughout the administrative Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 9. Personal Care Services

Chapter 129. Long Term Care

§12901. General Provisions

A. The purpose of long term-personal care services (LT-PCS) is to assist individuals with functional impairments with their daily living activities. LT-PCS must be provided in

accordance with an approved service plan and supporting documentation. In addition, LT-PCS must be coordinated with the other Medicaid and non-Medicaid services being provided to the participant and will be considered in conjunction with those other services.

B. Each individual requesting or receiving long term-personal care services (LT-PCS) shall undergo a functional eligibility screening utilizing an eligibility screening tool called the level of care eligibility tool (LOCET), or a subsequent eligibility tool designated by the Office of Aging and Adult Services (OAAS).

C. Each LT-PCS applicant/participant shall be assessed using a uniform interRAI home care assessment tool or a subsequent assessment tool designated by OAAS. The assessment is designed to verify that an individual meets eligibility qualifications and to determine resource allocation while identifying an individual's need for support in performance of activities of daily living (ADLs). The assessment generates a score which measures the individual's degree of self-performance of the following activities of daily living:

1. bed mobility;
2. toilet transfer;
3. toilet use; and
4. eating.

D. Based on the individual's ADL Index score, they are assigned and are eligible for a set allocation of weekly service hours associated with that score.

1. If the individual is allocated less than 32 hours per week and believes that they are entitled to more hours, the individual or their responsible representative may request a fair hearing to appeal the decision.

2. The individual may qualify for more hours if it can be demonstrated that:

- a. one or more answers to the questions involving the ADLs used in the ADL Index score are incorrect as recorded on the assessment; or
- b. they need additional hours to avoid entering into a nursing facility.

E. Requests for LT-PCS shall be accepted from the following individuals:

1. a Medicaid participant who wants to receive LT-PCS;
2. an individual who is legally responsible for a participant who may be in need of LT-PCS; or
3. a responsible representative designated by the participant to act on his/her behalf in requesting LT-PCS.

F. Each individual who requests LT-PCS has the option to designate a responsible representative. For purposes of these provisions, a responsible representative shall be defined as the person designated by the individual to act on his/her behalf in the process of accessing and/or maintaining LT-PCS.

1. The appropriate form authorized by OAAS shall be used to designate a responsible representative.

a. The written designation of a responsible representative does not give legal authority for that individual to independently handle the participant's business without his/her involvement.

b. The written designation is valid until revoked by the participant. To revoke the written designation, the

revocation must be submitted in writing to OAAS or its designee.

2. The functions of a responsible representative are to:

a. assist or represent, as needed, the participant in the assessment, care plan development and service delivery processes; and

b. to aid the participant in obtaining all necessary documentation for these processes.

3. No individual may concurrently serve as a responsible representative for more than two participants in OAAS-operated Medicaid home and community-based services. This includes but is not limited to:

- a. ...
- b. long term-personal care services;
- c. - d. ...

G. The Department of Health may remove an LT-PCS provider from the LT-PCS provider freedom of choice list and offer freedom of choice to LT-PCS participants when:

1. one or more of the following departmental proceedings are pending against an LT-PCS participant's service provider:

1.a. - 3....

H. The department may offer participants the freedom to choose another provider if/when the owner(s), operator(s), or member(s) of the governing body of the provider agency is/are under investigation related to:

1. - 8. ...

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 29:911 (June 2003), amended LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 32:2082 (November 2006), LR 34:2577 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2450 (November 2009), LR 39:2506 (September 2013), LR 41:540 (March 2015), LR 42:902 (June 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services and the Office for Citizens with Developmental Disabilities, LR 43:1980 (October 2017), LR 49:

§12903. Covered Services

A. *LT-PCS* are defined as those services that provide assistance with the distinct tasks associated with the performance of the activities of daily living (ADLs) and the instrumental activities of daily living (IADLs). Assistance may be either the actual performance of the personal care task for the individual or supervision and prompting so the individual performs the task by themselves.

1. ADLs are those personal, functional activities required by the participant. ADLs include tasks such as:

- a. eating;
- b. bathing;
- c. dressing;
- d. grooming/personal hygiene;
- e. transferring;
- f. ambulation;
- g. toileting; and
- h. bed mobility.

2. IADLs are those activities that are considered essential but may not require performance on a daily basis. IADLs include tasks such as:

- a. light housekeeping;
- b. food preparation and storage;
- c. shopping;
- d. laundry;
- e. assistance with scheduling medical appointments when necessary;
- f. accompanying to medical appointments when necessary;
- g. assistance with accessing transportation;
- h. medication reminders; and
- i. medically non-complex tasks where the direct service worker has received the proper training pursuant to R.S. 37:1031-1034.

3. Emergency and non-emergency medical transportation is a covered Medicaid service and is available to all participants. Non-medical transportation is not a required component of LT-PCS. However, providers may choose to furnish transportation for participants during the course of providing LT-PCS. If transportation is furnished, the provider agency must accept any liability for their employee transporting a participant. It is the responsibility of the provider agency to ensure that the employee has a current, valid driver's license and automobile liability insurance.

4. Constant or intermittent supervision and/or sitter services are not a component of LT-PCS.

5. For participants receiving LT-PCS with the Adult Day Health Care (ADHC) Waiver, LT-PCS may be provided by one worker for up to three LT-PCS participants who live together, and who have a common direct service provider.

A.6. - E. 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 29:912 (June 2003), amended LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2578 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:2507 (September 2013), LR 42:902 (June 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 42:1931 (November 2016), LR 47:593 (May 2021), 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 provider's ability to provide the same level of service as described in HCR 170.

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. 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 April 3, 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 March 13, 2023. If criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on March 30, 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 March 13, 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.

Dr. Courtney N. Phillips
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Personal Care Services Long Term Care

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 22-23. It is anticipated that

\$1,188 (\$594 SGF and \$594 FED) will be expended in FY 22-23 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 have no effect on revenue collections other than the federal share of the promulgation costs for FY 22-23. It is anticipated that \$594 will be collected in FY 22-23 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 long term-personal care services (LT-PCS) in order to update and remove obsolete terminology to reflect the current assessment tool used to determine LT-PCS eligibility, and to ensure that consistent language is used throughout the administrative rule. It is anticipated that implementation of this proposed rule will not result in costs to LT-PCS providers in FY 22-23, FY 23-24, and FY 24-25, but will be beneficial by ensuring that the current LT-PCS provisions 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.

Tara A. LeBlanc
Medicaid Executive Director
2302#070

Evan Brasseaux
Interim Deputy Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**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 hereby gives notice of its intent to promulgate *Regulation 128—Louisiana Timber and Agriculture Transportation Group Self-Insurance Funds*. The Department of Insurance is promulgating *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.

**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.

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:

§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:

§19305. Financial and Actuarial Reports

A. Each fund shall 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:

§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:

§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:

§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:

Family Impact Statement

1. Describe the Effect of the Proposed Regulation on the Stability of the Family. The proposed regulation should have no measurable impact upon the stability of the family.

2. Describe the Effect of the Proposed Regulation on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. The proposed regulation should have no impact upon the rights and authority of children regarding the education and supervision of their children.

3. Describe the Effect of the Proposed Regulation on the Functioning of the Family. The proposed regulation should have no direct impact upon the functioning of the family.

4. Describe the Effect of the Proposed Regulation on Family Earnings and Budget. The proposed regulation should have no direct impact upon family earnings and budget.

5. Describe the Effect of the Proposed Regulation on the Behavior and Personal Responsibility of Children. The proposed regulation should have no impact upon the behavior and personal responsibility of children.

6. Describe the Effect of the Proposed Regulation on the Ability of the Family or a Local Government to Perform the Function as Contained in the Rule. The proposed regulation should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in the Rule.

Small Business Analysis

The impact of the proposed regulation on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed regulation that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed regulation on small businesses.

1. Identification and Estimate of the Number of the Small Businesses Subject to the Proposed Rule. The proposed regulation should have no measurable impact upon small businesses.

2. The Projected Reporting, Record Keeping, and Other Administrative Costs Required for Compliance with the Proposed Rule, Including the Type of Professional Skills Necessary for Preparation of the Report or Record. The proposed regulation should have no measurable impact upon small businesses.

3. A Statement of the Probable Effect on Impacted Small Businesses. The proposed regulation should have no measurable impact upon small businesses.

4. Describe any Less Intrusive or Less Costly Alternative Methods of Achieving the Purpose of the Proposed Rule. The proposed regulation should have no measurable impact on small businesses; therefore, will have no less intrusive or less cost alternative methods.

Poverty Impact Statement

1. Describe the Effect on Household Income, Assets, and Financial Security. The proposed regulation should have no effect on household income assets and financial security.

2. Describe the Effect on Early Childhood Development and Preschool through Postsecondary Education Development. The proposed regulation should have no effect on early childhood development and preschool through postsecondary education development.

3. Describe the Effect on Employment and Workforce Development. The proposed regulation should have no effect on employment and workforce development.

4. Describe the Effect on Taxes and Tax Credits. The proposed regulation should have no effect on taxes and tax credits.

5. Describe the Effect on Child and Dependent Care, Housing, Health Care, Nutrition, Transportation and Utilities Assistance. The proposed regulation should have no effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance.

Provider Impact Statement

1. Describe the Effect on the Staffing Level Requirements or Qualifications Required to Provide the Same Level of Service. The proposed regulation will have no effect.

2. The Total Direct and Indirect Effect on the Cost to the Provider to Provide the Same Level of Service. The proposed regulation will have no effect.

3. The Overall Effect on the Ability of the Provider to Provide the Same Level of Service. The proposed regulation will have no effect.

Public Comments

Interested persons who wish to make comments may do so by writing to Lisa Henson, Staff Attorney, Louisiana Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214, by faxing comments to (225) 342-1632, or electronically at regulations@ldi.la.gov. Comments will be accepted through the close of business, 4:30 p.m., March 13, 2023.

James J. Donelon
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Regulation 128—Louisiana Timber and Agriculture Transportation Group Self-Insurance Funds**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule changes will not result in additional costs or savings for state or local governmental units. The rule promulgates 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.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule changes will not affect revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule change will not result in any costs and/or economic benefits to directly affected persons or non-governmental groups. The rule promulgates 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.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule changes will not affect competition or employment.

S. Denise Gardner
Chief of Staff
2302#039

Evan Brasseaux
Interim Deputy Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Office of Motor Vehicles**

**Designation or Restrictions on Driver’s
Licenses and Identification Cards
(LAC 55:III.108)**

Under the authority of R.S. 37:3270 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Office of Motor Vehicles hereby proposes to amend Section 108 under Chapter 1 to implement Act 210 of the 2022 Regular Session which required the creation of an autism spectrum disorder designation on a special identification card; the criteria for obtaining an autism spectrum disorder designation for new applicants or renewals. This legislation became effective August 1, 2022.

**Title 55
PUBLIC SAFETY**

Part III. Motor Vehicles

Chapter 1. Driver’s License

Subchapter A. General Requirements

**§108. Designations or Restrictions on Driver’s
Licenses and Identification Cards**

A. - A.6. ...

B. Autism

1. A special Louisiana driver's license or identification card shall be issued to any applicant upon request who has been diagnosed as having autism spectrum disorder. The designation shall be issued by the department and exhibited on the driver's license or identification card.

2. An autism designation shall be exhibited on a driver’s license, including a temporary instructional permit, or identification card.

3. Only applicants with autism spectrum disorder documented as required in Paragraph B.4. of this Section are eligible for the designation autism.

4. All applications for an autism designation shall be accompanied by one of the following to obtain the designation authorized in this Section:

a. a statement, on a form provided by the department, from a qualified medical professional licensed in Louisiana or another state or territory of the United States, stating the medical information which establishes the individual as having autism spectrum disorder; or

b. a statement from a qualified medical or mental health professional verifying the applicant's diagnosis; or

c. a statement from a qualified mental health professional licensed in Louisiana or any other state or territory of the United States verifying the applicant's disability.

5. If the holder of a driver's license or identification card with an autism designation no longer wishes to have the designation displayed on the driver's license or identification card, the holder shall return the credential to have the designation removed.

6. No additional fee shall be charged to include such a designation. The charge for an autism driver's license or identification card shall be the same as for regular driver's license or identification card.

C. - C.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:412(O), and R.S. 32:412(P) and R.S. 32:403.3.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 44:2020 (November 2018), LR 48:503 (March 2022), LR 49:

Family Impact Statement

The proposed Rule will not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of the children.

Local governmental entities have the ability to perform the enforcement of the action proposed in accordance with R.S. 40:1730.23.

Poverty Statement

The impact of the proposed Rule on child, individual, or family poverty has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on poverty in relation to individual or community asset development as provided in R.S. 49:973. The agency has considered economic welfare factors and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on poverty.

Small Business Analysis

The impact of the proposed Rule on small businesses has been considered and it is estimated that the proposed action is not expected to have any adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the

proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Provider Impact Statement

The proposed Rule does not impact or affect a provider. Provider means an organization that provides services for individuals with developmental disabilities as defined in HCR 170 of the 2022 Regular Session of the Legislature. In particular, the proposed Rule has no effect or impact on a provider in regards to:

1. The staffing level requirements or qualifications required to provide the same level of service.
2. The cost to the provider to provide the same level of service.
3. The ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments or requests for public hearing on these proposed rule changes to Jennifer Del Murray, Department of Public Safety & Corrections, Public Safety Services, Office of Legal Affairs, at 7979 Independence Blvd., Suite 307, P.O. Box 66614, Baton Rouge, LA 70896, 225-925-6103 (phone); 225-925-3974 (facsimile); jennifer.murray@la.gov; email). Comments will be accepted through close of business March 12, 2023.

Public Hearing

A public hearing will be at 7979 Independence Boulevard, Suite 308, Baton Rouge, Louisiana 70806 if the requisite number of comments are received. If the requisite number of comments are not received, the hearing will not be scheduled. Please call and confirm the hearing will be conducted before attending.

Karen St. Germain
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Designation or Restrictions on Driver's Licenses and Identification Cards

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule will not result in implementation costs or savings to state or local governmental units. The purpose of the proposed rule is to adopt provisions pursuant to Act 210 of the 2022 Legislative Session, which allows for the word "Autism" and a symbol representing Autism to be displayed on the identification card, and to provide a more comprehensive version of Title 55 – Public Safety as it relates to the rules governing designations on driver's licenses.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no anticipated direct material effect on revenue collections of 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 is no anticipated effect on revenue or economic benefit to persons or non-governmental groups as a result of the proposed rule changes.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

There is no estimated effect on competition and employment.

Robyn Temple
Administrator
2302#016

Alan M. Boxberger
Interim Legislative Fiscal Office
Legislative Fiscal Office

NOTICE OF INTENT

**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 hereby proposes to adopt 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 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 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. Beginning January 1, 2021, vehicles of model year 2011 and newer will be subject to odometer disclosure for 20 years.

B. Exemptions. 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 1st 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 C.F.R. 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:

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 March 21, 2023, to Jennifer Del Murray, Attorney, Office of Legal Affairs, Louisiana Department of Public Safety and Corrections, at P. O. Box 66614, Baton Rouge, LA 70896, or faxed to (225) 925-3974.

Public Hearing

A public hearing on the proposed Rule will be held on March 22, 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) 925-6291, 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 OMV Headquarters 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: Odometer Disclosure**

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 requested change clarifies the process for completing a federal odometer statement at the time of motor vehicle transfer.

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 is procedural in nature and does not establish new fees or impact collections of

any fees currently authorized by statute. The requirements are applied uniformly statewide.

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. The requirements are applied uniformly statewide.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated or foreseen impact on competition and employment. The requirements are applied uniformly statewide.

Jill Jarreau
Administrator
2302#037

Alan M. Boxberger
Interim Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Insurance
Office of the Commissioner**

Regulation 127—The Hurricane Property Insurance Claim Alternate Dispute Resolution Program (LAC 37:XIII.Chapter 195)

The Department of Insurance, pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950, et seq., hereby gives notice of its intent to promulgate Regulation 127—The Hurricane Property Insurance Claim Alternate Dispute Resolution Program. Regulation 127 is being promulgated as necessary to establish rules and regulations pertaining to the hurricane mediation program, codified at R.S. 22:2651, et seq., in accordance with Act 591 of the 2022 Regular Session of the Louisiana Legislature.

Regulation 127 addresses the nature and purpose of the hurricane mediation program and identifies who is eligible to participate in the hurricane mediation program, the circumstances under which it may be used, and the manner of requesting mediation. Regulation 127 also establishes guidelines for mediation firms that elect to participate in the hurricane mediation program. Lastly, Regulation 127 creates procedures for complying with the hurricane mediation program disclosure notice requirements, including the deadline and methods for delivering the notice to insureds, all in accordance with R.S. 22:2656.

**Title 37
INSURANCE**

Part XIII. Regulations

Chapter 195. Regulation 127—The Hurricane Property Insurance Claim Alternate Dispute Resolution Program

§19501. Authority

A. Regulation 127 is promulgated on behalf of the Department of Insurance by the Commissioner of Insurance pursuant to the authority granted under the Louisiana Insurance Code, R.S. 22:11, and as specifically instructed in accordance with R.S. 22:2657.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:2651, et seq., and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§19503. Purpose

A. The purpose of Regulation 127 is to establish rules and regulations pertaining to the hurricane mediation program, codified at R.S. 22:2651, et seq., in accordance with Act 591 of the 2022 Regular Session of the Louisiana Legislature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:2651, et seq., and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§19505. Scope and Applicability

A. Regulation 127 applies to all property and casualty insurers of residential property situated in a geographical area that is included in a state of emergency declaration issued by the governor of Louisiana in response to a hurricane, named storm, or named windstorm event.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:2651, et seq., and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§19507. Definitions

A. These terms when used in this Chapter shall have the following meanings:

Commissioner—the Louisiana Commissioner of Insurance.

Department—the Louisiana Department of Insurance.

Disclosure Notice—a written notification issued by insurers to insureds disclosing the existence of the hurricane mediation program as required in R.S. 22:2656.

Governor—the governor of the state of Louisiana.

Hurricane Mediation Program—the “Hurricane Property Insurance Claim Alternate Dispute Resolution Program” set forth in Chapter 22 of Title 22 of the Louisiana Revised Statutes of 1950, at R.S. 22:2651, et seq.

Mediation Firm—an entity or person that has elected to participate in the hurricane mediation program, complies with all requirements set forth in R.S. 22:2654, meets the qualifications set forth in R.S. 9:4106, and is listed as an approved mediation firm on the department’s website.

Parties—the insured and insurer, collectively.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:2651, et seq., and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§19509. Nature and Purpose of the Hurricane Mediation Program

A. The hurricane mediation program was enacted in response to a demonstrated need for effective, fair, and timely handling of residential property insurance claims for residential properties damaged by a hurricane, named storm, or named windstorm event.

B. The hurricane mediation program is voluntary and provides for a non-adversarial alternative dispute resolution procedure designed to give insurers and insureds a way to resolve disputed residential property insurance claims in a timely and low-cost manner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:2651, et seq., and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§19511. Participation in the Hurricane Mediation Program

A. Every insured may request mediation involving a residential property insurance claim, provided such claim:

1. arises from a hurricane, named storm, or named windstorm event that results in the governor declaring a state of emergency in accordance with R.S. 29:724,

2. is for damages to residential property that is situated within a geographical area included in the governor's state of emergency declaration, and

3. involves disputed amounts of up to \$150,000. Parties may agree to mediate and be subject to the provisions of R.S. 22:2651, et seq. for disputed amounts that exceed \$150,000.

B. Once the parties agree to mediate a damage claim in dispute through the hurricane mediation program, the insured must contact one of the participating mediation firms listed on the department's website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:2651, et seq., and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§19513. Mediation Firm Requirements for Participating in the Hurricane Mediation Program

A. Every mediation firm that elects to participate in the hurricane mediation program shall:

1. contact the department within ten calendar days regarding any change involving its official name, contact information, municipal address, electronic mail address, telephone number, and mediation qualification status,

2. give written notice to the parties within five business days after receiving the mediation assignment,

3. set the matter for mediation to occur within 30 days from the date the mediation assignment is received,

4. conduct the mediation in accordance with the standards of professional conduct for mediation adopted by the American Bar Association pursuant to R.S. 9:4107,

5. establish and describe the mediation procedures to be followed,

6. conduct in-person mediations statewide in a metropolitan statistical area and at an office or business location to be selected by the mediation firm, and

7. provide advanced notification as needed to accommodate a party's request to participate in the mediation remotely via telephone, video conference, or other similar electronic means.

B. Mediation firms may meet with the parties separately as needed to stimulate communications, promote meaningful negotiations, and to otherwise encourage settlement of the disputed claims.

C. Mediation sessions shall be conducted in accordance with the time limitations articulated in R.S. 22:2654(A)(10).

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:2651, et seq., and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§19515. Costs Associated With the Hurricane Mediation Program

A. Once an insured has contacted a participating mediation firm that is listed on the department's website, the mediation firm shall submit its proposed mediation rate for approval to the department's Property and Casualty Division, which will examine the proposed rate to confirm that it is reasonable in accordance with the prevailing mediation rates for the location where the residential property insurance claim arises.

B. Mediation costs shall be the responsibility of the insurer in accordance with R.S. 22:2655.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:2651, et seq., and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§19517. Notification of the Hurricane Mediation Program

A. Whenever a hurricane, named storm, or named windstorm event results in the governor declaring a state of emergency in accordance with R.S. 29:724, an insurer shall prepare and deliver a disclosure notice to all insureds who have filed a covered residential property insurance claim for property situated within the geographical area included in the state of emergency declaration.

B. The insurer must deliver a disclosure notice to the insured prior to conducting an initial investigation of the insured's residential property insurance claim.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:2651, et seq., and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§19519. Authorized Methods of Delivering a Disclosure Notice

A. A disclosure notice shall be delivered to the insured in a manner specified in R.S. 22:2656.A, which specifically authorizes delivery via United States mail, electronic mail, or by hand-delivery.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:2651, et seq., and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§19521. Proof That Disclosure Notice Was Timely Delivered

A. Delivery by Mail. If a disclosure notice is sent to the insured via United States mail, proof of such mailing shall be sufficient evidence to establish delivery of the disclosure notice, provided it reflects the date of the mailing and the name of the insured.

B. Electronic Delivery. If a disclosure notice is sent to the insured via email, the email delivery receipt or, if none, a copy of the as-sent email, shall be sufficient evidence to establish delivery of the disclosure notice, provided the delivery receipt or email reflects the date of the electronic mailing and the name of the insured.

C. Hand-Delivery. If a disclosure notice is hand-delivered to the insured, the representative of the insurer

perfecting delivery must complete and sign a certificate of hand-delivery, verifying pertinent details related to the delivery of the disclosure notice, including the date and location of the delivery, the name of the person accepting the delivery, and the name of the insured. Insurers may use the "Certificate of Hand-Delivery" form set forth in Appendix A of this Regulation, or insurers may create and use a substantially similar form to verify delivery details provided it complies with all requirements of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:2651, et seq., and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§19523. Severability Clause

A. The provisions of this Subpart are severable. If any provision or item of this Subpart, or application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of this Subpart, which are to be given effect without the invalid provision, item, or application of the Subpart.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:2651, et seq., and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§19525. Effective Date

A. Regulation 127 shall become effective upon publication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:2651, et seq., and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§19527. Appendix A

**CERTIFICATE OF HAND-DELIVERY
HURRICANE MEDIATION PROGRAM DISCLOSURE
NOTICE**

I hereby certify that on the ___ day of _____, 20___,
I appeared at:

(Physical address):

and personally hand-delivered a true and complete copy of the
hurricane mediation program disclosure notice to:

(Name of recipient):

Delivery of this disclosure notice was made in connection with
the following policy of insurance:

(Policy number):

(Insured):

(Printed name):

(Signature):

(Date signed):

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:2651, et seq., and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

Family Impact Statement

1. Describe the Effect of the Proposed Regulation on the Stability of the Family. The proposed regulation should have no measurable impact upon the stability of the family.

2. Describe the Effect of the Proposed Regulation on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. The proposed regulation should have no impact upon the rights and authority of parents regarding the education and supervision of their children.

3. Describe the Effect of the Proposed Regulation on the Functioning of the Family. The proposed regulation should have no direct impact upon the functioning of the family.

4. Describe the Effect of the Proposed Regulation on Family Earnings and Budget. The proposed regulation should have no direct impact upon family earnings and budget.

5. Describe the Effect of the Proposed Regulation on the Behavior and Personal Responsibility of Children. The proposed regulation should have no impact upon the behavior and personal responsibility of children.

6. Describe the Effect of the Proposed Regulation on the Ability of the Family or a Local Government to Perform the Function as Contained in the Rule. The proposed regulation should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in the rule.

Poverty Impact Statement

1. Describe the Effect on Household Income, Assets, and Financial Security. The proposed regulation should have no effect on household income assets and financial security.

2. Describe the Effect on Early Childhood Development and Preschool through Postsecondary Education Development. The proposed regulation should have no effect on early childhood development and preschool through postsecondary education development.

3. Describe the Effect on Employment and Workforce Development. The proposed regulation should have no effect on employment and workforce development.

4. Describe the Effect on Taxes and Tax Credits. The proposed regulation should have no effect on taxes and tax credits.

5. Describe the Effect on Child and Dependent Care, Housing, Health Care, Nutrition, Transportation and Utilities Assistance. The proposed regulation should have no effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Small Business Analysis

The impact of the proposed regulation on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed regulation that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed regulation on small businesses.

1. Identification and Estimate of the Number of the Small Businesses Subject to the Proposed Rule. The proposed regulation should have no measurable impact upon small businesses.

2. The Projected Reporting, Record Keeping, and Other Administrative Costs Required for Compliance with the Proposed Rule, Including the Type of Professional Skills Necessary for Preparation of the Report or Record. The proposed regulation should have no measurable impact upon small businesses.

3. A Statement of the Probable Effect on Impacted Small Businesses. The proposed regulation should have no measurable impact upon small businesses.

4. Describe any Less Intrusive or Less Costly Alternative Methods of Achieving the Purpose of the Proposed Rule. The proposed regulation should have no measurable impact on small businesses; therefore, there is no less intrusive or less costly alternative method of achieving the purpose of the proposed regulation.

Provider Impact Statement

1. Describe the Effect on the Staffing Level Requirements or Qualifications Required to Provide the Same Level of Service. The proposed regulation will have no effect.

2. The Total Direct and Indirect Effect on the Cost to the Provider to Provide the Same Level of Service. The proposed regulation will have no effect.

3. The Overall Effect on the Ability of the Provider to Provide the Same Level of Service. The proposed regulation will have no effect.

Public Comments

Interested persons who wish to make comments may do so by writing to Philip Dominique, Staff Attorney, Louisiana Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214, or by faxing comments to (225) 342-1632, or electronically at regulations@ldi.la.gov. Comments will be accepted through the close of business, 4:30 p.m., March 13, 2023.

James J. Donelon
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Regulation 127—The Hurricane Property Insurance Claim Alternate Dispute Resolution Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule is not anticipated to result in implementation costs or savings to the state or local governmental units. The proposed rule is promulgated to establish the rules and regulations of the Hurricane Property Insurance Claim Alternate Dispute Resolution Program, which was enacted with Acts 591 of the 2022 Regular Louisiana Legislative Session. The proposed rule identifies the circumstances under which a residential property insurance claim may be mediated through the hurricane mediation program, and it further establishes rules and procedural guidelines for insurers, insureds, and mediation firms who elect to participate in the hurricane mediation program in accordance with R.S. 22:2651, et seq.

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.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule applies to all property and casualty insurers of residential property situated in a geographical area that is included in a state of emergency declaration issued by the governor of Louisiana in response to a hurricane, named storm, or named windstorm event. The estimated costs and/or economic benefit of the Hurricane Property Insurance Claim Alternate Dispute Resolution Program to property and casualty insurers of residential property and their policyholders is indeterminable.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule does not effect competition and employment in the state. The rule provides guidelines for mediation firms that elect to participate in the hurricane mediation program.

S. Denise Gardner
Chief of Staff
2302#058

Evan Brasseaux
Interim Deputy Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Natural Resources Office of Conservation

Pipeline Safety

(LAC 43:XI:Chapters 1-47 and LAC 33:V:Chapters 301-303)

The Department of Natural Resources, Office of Conservation proposes to amend LAC 43:XI in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the power delegated under the laws of the state of Louisiana.

The proposed Rule changes combine carbon dioxide rules in Title 43 with Title 33 and amend the rules in Title 43 in accordance with the Commissioner's authority under R.S. 30:4(C)(17), and amend the damage prevention rules in accordance with the Commissioner's authority under R.S. 40:1749.27 and amend the pipeline operations rules in accordance with the Commissioner's authority under R.S. 30:546.

Title 43

NATURAL RESOURCES

Part XI. Office of Conservation—Pipeline Division

Subpart 1. Natural Gas and Coal

Chapter 3. Applications

§305. Applications Requiring Public Notice

A. - A.4. ...

B. The commissioner shall submit a copy of the public notice to the applicant. A copy of the public notice, with a copy of the application, shall be mailed by the applicant to all interested parties within two working days of the receipt of said public notice from the commissioner.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501-599, 601-606.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 4:76 (March 1978), amended LR 7:80 (March 1981), LR 49:

§307. Applications Requiring Public Hearing

A. No order, ruling or finding may be made or other action taken with respect to R.S. 30:553, 554, 555(A) and (C), 555(F), 556, 557, 558, 571 through 576, 593, 596, 598(E), 599, 722, and 723, without a public hearing after due notice to all interested parties unless the right to a public hearing is waived pursuant to the provisions of the Administrative Procedure Act, as amended, (R.S. 49:951-968) or the Natural Resources and Energy Act of 1973 expressly provides that no hearing is required in that instance.

B. - G. ...

H. Hearings on applications for approval to connect an intrastate natural gas pipeline, gas gathering line or coal slurry pipeline to an interstate natural gas pipeline or coal slurry pipeline filed pursuant to R.S. 30:555.H and Article IX of the Louisiana Constitution 1974 shall be held not less than 10 days after notice given in the manner provided in §311. Provided, however, that if the commissioner, in his judgment, determines that an emergency exists, which, in the interest of public health, safety or welfare, requires that said hearing be held on shorter notice, said emergency hearing may be held on any abbreviated notice, but not less than three days following the date of publication of notice of said hearing in the official journal of the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501-599, 601-606.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 4:77 (March 1978), amended LR 7:80 (March 1981), LR 49:

Chapter 5. Requirements

§503. Requirements for Abandonment of All or Any Portion of a Facility, or Any Service Rendered by Means of Such Facility under §§555.B and 722 of the Act

A. This regulation shall apply to requirements of an intrastate natural gas or coal slurry transporter to abandon all or any portion of a facility, or any service rendered by means of such facility, pursuant to the provisions of §§ 555.B or 722 of the Act; provided, however, that this regulation shall not apply to any coal slurry transporter then being regulated by a federal agency having jurisdiction or to abandonments authorized by §513.C.5. Except as provided in Section 513, application for abandonment shall be filed in accordance with the regulation and §§305 and 307. However, an application for the abandonment of a sale or transportation contract or related facility under this section shall be submitted to the commissioner at least 30 days, but no more than six months, prior to the contract termination date, or prior to the proposed date of termination of a service or abandonment of a facility in the absence of a contract. The commissioner may for good cause shown grant an exception to said time limitations.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501-599, 601-606.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 4:79 (March 1978), amended LR 7:82 (April 1981), LR 49:

§509. Requirements for Connections Pursuant to §§555.H and 722 of the Act and Louisiana Constitution 1974

A. ...

B. Except as provided otherwise in Section 513, no order, ruling or finding may be made or other action taken with respect to this regulation without a public hearing after due notice to all interested parties unless the right to a public hearing is waived pursuant to the provisions of Administrative Procedure Act, as amended (R.S. 49:951-968).

C. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501-599, 601-606.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 4:81 (March 1978), amended LR 7:84 (March 1981).

§513. Transportation of Intrastate Natural Gas and the Construction, Extension, Acquisition and Operation of Facilities or Extensions Thereof for the Purpose of Acquisition of Gas Supplies within a Gas Supply Acquisition Service Area or Transportation of Gas Supplies for Others within a Gas Supply Transportation Service Area Pursuant to the Provisions of §555(F) of the Act

A. ...

B. Each transporter owning or operating an intrastate pipeline, the construction and operation (or acquisition) of which has been approved by order of the commissioner under Section 555.C of the Act, shall have the right to apply to the commissioner for the establishment of a gas supply acquisition service area or gas supply transportation service area. Within such gas supply acquisition service area or gas supply transportation service area a transporter may at its option enlarge or extend its facilities by construction, acquisition, or interconnection, for the purpose of acquiring or transporting for others additional supplies of natural gas or may abandon certain facilities within such area. All applications by the transporter filed with the commissioner requesting the establishment of a gas supply acquisition service area or gas supply transportation service area shall be in writing, verified under oath by an individual having authority, shall be in the form approved by the commissioner, shall be noticed upon interested parties by publication in the official journal of the state of Louisiana and the official journal of each parish within which the gas supply acquisition service area or gas supply transportation service area will be located, and shall contain the information required by §505. All information required to be included within the application which has been presented to the commissioner through prior hearing evidence and all records and documents in the possession of the commissioner filed pursuant to the Natural Resources and Energy Act of 1973 may be incorporated in the application by reference. Each application shall include a map depicting the location of the transporter's existing intrastate pipeline to which facilities constructed, acquired, interconnected or abandoned pursuant to this regulation shall connect.

C. ...

1. Location. A gas supply acquisition service area or gas supply transportation service area shall be a defined geographic area in which some or all of the applicant's existing pipeline facilities are located.

2. Size. Facilities constructed or acquired pursuant to this regulation shall not exceed 42 inches nominal diameter pipe.

3. Duration. An order of the commissioner establishing a gas supply acquisition service area or gas supply transportation service area shall remain in effect until terminated or modified by subsequent order of the commissioner.

4. Facilities Not Subject to Jurisdiction of Commissioner. An order of the commissioner shall not establish gas supply acquisition service areas or gas supply transportation service areas in conjunction with facilities which are not subject to the jurisdiction of the commissioner under the Act.

5. Notice and Prohibition of Proposed Enlargement or Extension. Prior to abandoning, enlarging or extending its facilities within a gas supply acquisition service area or gas supply transportation service area, a transporter shall give the commissioner 20 days' notice, on a form approved by the commissioner, of the location, size, nature and purpose of the proposed abandonment, enlargement, or extension, or interconnection. The notice shall be contemporaneously mailed to those persons who are identified in the ad valorem tax records of the parish as the owners of the land traversed by the proposed facility and to those who will be connected or disconnected. Included in the notice to the interested parties shall be a statement that objections to the application shall be made to the commissioner within 20 days of the postmark date of the mailing of the notice. The commissioner may, within such 20-day period, beginning on the date of receipt of the written notice in the Office of Conservation, deny the application and require the transporter to apply for an order to construct and operate the proposed facilities pursuant to §555.C of the Act. Upon request by the transporter, the commissioner may notify the transporter orally at the end of the 20-day period.

D. - E. ...

F. All hearings under §555(F) of the Act shall be in accordance with the rules of procedure of the commissioner, except that notification of interested parties shall be in accordance with this regulation.

G. Nothing contained in this regulation shall be construed as a limitation upon the power of the commissioner to order overlapping gas supply acquisition service areas or gas supply transportation service areas for service of an area already being served by another transporter.

H. Any action taken by a transporter within a gas supply acquisition service area or gas supply transportation service area shall be subject to all other rules and regulations pursuant to R.S. 30:501 et seq., and the Louisiana Constitution of 1974.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501-599, 601-606.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 4:85 (March 1978), amended LR 7:80 (March 1981), LR 21:824 (August 1995), LR 49:

Chapter 9. Coal Slurry Water Usage and Disposal §903. Requirements for Disposal of Water Resulting from Coal Slurry Pipeline Operations under §723(G) of the Act

A. Water used in the transportation of coal by pipeline to any point in Louisiana shall conform to regulations of the Department of Environmental Quality prior to its discharge into rivers or streams or holding pits from which seepage can occur.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501-599, 601-606.

HISTORICAL NOTE: Promulgated by the Department of Natural Resource, Office of Conservation, LR 7:86 (March 1981), amended LR 49:

Chapter 11. Transportation, Usage, and Allocations §1103. Governing Compilation and Publication of Information Pursuant to §§546(A)(5) and 550 of the Act

A. ...

B. All information required by this regulation shall be filed on forms provided by the Office of Conservation. At the request of the commissioner, each natural gas transporter, gas distributor, power plant and industrial user shall file the information requested on the appropriate Office of Conservation questionnaire required for transporters, distribution companies, power plants and industrial users. Other persons required by law and this regulation to file a questionnaire should submit their name, mailing address and type of business to the Louisiana Office of Conservation, Post Office Box 94275, Baton Rouge, LA 70804-9275, in order to facilitate timely distribution of the questionnaires.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501-599, 601-606.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 8:650 (December 1982), amended LR 49:

Subpart 4. Carbon Dioxide

Chapter 33. General

§3301. Definitions

A. The words used in these regulations shall have their usual meanings unless specifically defined as follows in this §3301, or elsewhere in these regulations.

* * *

Facility—any component of a pipeline or pipeline systems through which carbon dioxide moves, including pipe, valves, and other appurtenances attached to the pipe, compressor units, pumps, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies and other components but shall not include:

a. facilities which constitute the replacement of previously approved existing facilities which have or will soon become physically deteriorated or obsolete to the extent that replacement is deemed advisable;

b. piping, metering, processing, compressing, regulating and other installations necessary to establish one or more delivery or injection point(s) for carbon dioxide within the confines of a secondary or tertiary recovery project for the enhanced recovery of liquid and gaseous hydrocarbons or geologic sequestration project previously approved by the commissioner.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), amended LR 49:

Chapter 35. Requirements

§3501. Operation, Construction, Extension, Acquisition, Interconnection or Abandonment of Carbon Dioxide Transmission Facilities

A. No person shall engage in the transmission of carbon dioxide or undertake the construction or extension of any facility therefor, or acquire or operate any such facility or extension thereof to serve secondary or tertiary recovery projects for the enhanced recovery of liquid or gaseous hydrocarbons or geologic sequestration project unless there is in force and effect with respect to such person an order of the commissioner authorizing such acts or operations. Provided, however, as to any person engaged in the transmission of carbon dioxide or the operation of any such facility to serve an existing secondary or tertiary recovery project for enhanced recovery of liquid or gaseous hydrocarbons or geologic sequestration project prior to the effective date of these regulations, over the routes and within the area for which application is made and has so operated since that time, the commissioner may issue such order without hearing and without requiring further proof that the public interest will be served upon certification by the operator that it is willing and able to comply with LAC 33:V, excepting the requirements for construction and design specifications, together with such other exceptions as the commissioner may grant to an applicant, if application for such order is made to the commissioner within 180 days after the effective date of these regulations. Pending the determination of any such application, the continuance of such operation shall be lawful. Provided further, that any person engaged in the construction of a facility for the transmission of carbon dioxide prior to the effective date of these regulations is authorized to continue such construction without an order of the commissioner for a period of 180 days after the effective date of these regulations, after which time said construction shall cease unless said person has filed an application with the commissioner for an order authorizing said construction. Pending the determination of any such application, the continuance of such construction shall be lawful.

B. - C. ...

D. No person shall exercise the rights of expropriation under the laws of this state in connection with the construction or operation of a carbon dioxide facility until the enhanced recovery project for liquid or gaseous hydrocarbons to be served or geologic sequestration project thereby has been approved by the commissioner and a certificate of public convenience and necessity for such facility has been issued. Provided, however, that the requirement for the issuance of a certificate of public convenience and necessity shall be limited to those facilities for which the right of expropriation of private property under the general state expropriation laws is asserted.

E. - F.1. ...

2. that the applicant proposes to construct and/or operate facilities for the transmission of carbon dioxide for injection in connection with a secondary or tertiary recovery project for the enhanced recovery of liquid or gaseous

hydrocarbons or geologic sequestration project which has been approved by the commissioner pursuant to the provisions of Title 30 of the Louisiana Revised Statutes and the rules and regulations promulgated thereunder; and

3. that the proposed facilities are reasonably necessary to serve such approved secondary or tertiary recovery project or geologic sequestration project.

G. - G.2. ...

3. that the applicant proposes to construct and/or operate facilities for the transmission of carbon dioxide for injection in connection with a secondary or tertiary recovery project for the enhanced recovery of liquid or gaseous hydrocarbons or geologic sequestration project which has been approved by the commissioner pursuant to the provisions of Title 30 of the Louisiana Revised Statutes and the rules and regulations promulgated thereunder; and

4. that the proposed facilities are reasonably necessary to serve such approved secondary or tertiary recovery project or geologic sequestration project.

H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), amended LR 49:

§3503. Hearings, Notice, Conferences and Orders

A. - C.1. ...

2. The commissioner shall mail submit a copy of the public notice to the applicant. A copy of the public notice, with a copy of the application, shall be mailed by the applicant to all interested parties within two working days of the receipt of said public notice from the commissioner.

3. ...

D. Interested parties who wish to object to said application or participate in the hearing must file a petition or notice with the commissioner and the applicant by 5:00 PM of the day prior to the hearing date. Petitions or notices filed in connection with the application shall set forth clearly and concisely the facts from which the nature of the interested party's alleged right or interest can be determined, the grounds of the proposed participation, and the position of the interested party in the proceeding so as to fully and completely advise the applicant and the commissioner as to the specific issues of fact or law to be raised concerning public interest, provided however, that the right to participate in a proceeding commenced under this regulation shall not extend to objections directed solely to the matters involving right-of-way including, but not limited to, the public purpose and necessity to be served in an expropriation thereof or the compensation therefor which is a judicial question pursuant to the Constitution of the State of Louisiana 1974, Article 1, Section 4. An interested party who fails to comply with the requirements of this rule, may, at the commissioner's discretion, be precluded from introducing witnesses or from presenting evidence at the hearing; however, any person shall be permitted to make statements confined to his position in the matter.

E. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), amended LR 49:

§3505. Applications, Form and Content

A. - B.4. ...

5. a map(s), of its pipeline system(s), which shall reflect the location and capacity of all compressor/pump sites, all points of connection between such system(s) and pipelines, or pipeline system(s) of other persons, the date of such connections, and all major points of supply;

6. a listing of applicant's points of CO₂ disposition to secondary and tertiary oil and gas recovery projects or geologic sequestration projects;

7. - 9. ...

10. a copy of the order of the commissioner approving the pertinent enhanced recovery project(s) or geologic sequestration projects;

11. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), amended LR 49:

Chapter 39. Transportation of Carbon Dioxide

§3901. Scope

A. This regulation prescribes the minimum standards for the state of Louisiana to regulate the construction, design, and operation of pipelines transmitting carbon dioxide in a gaseous or non-supercritical state within the jurisdiction of the state .

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17)

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), amended LR 49:

§3903. Applicability

A. - A.1. ...

2. transportation of carbon dioxide downstream from the outlet flange or other connection of each carbon dioxide pipeline where carbon dioxide is delivered to the operator’s secondary or tertiary recovery project or geologic sequestration project;

3. transportation of carbon dioxide through all facilities within the secondary or tertiary recovery project or geologic sequestration project;

4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), amended LR 49:

§3905. Definitions

A. As used in these regulations:

* * *

Line Section—a continuous run of pipe between adjacent pressure compressor stations, between a pressure compressor station and terminal, between a pressure compressor station and a block valve, or between adjacent block valves.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), amended LR 49:

Chapter 41. Incident Reporting for Carbon Dioxide Pipelines

§4101. Scope

A. - A.3.d. ...

4. estimated property damage to the property of the operator or others, or both, exceeding \$122,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), amended LR 49:

§4103. Telephonic Notice of Certain Accidents

A. - A.2. ...

3. caused estimated damage to the property of the operator or others, or both, exceeding \$122,000;

A.4. - A.5. ...

B. Reports made under Subsection A of this Section are made by telephone to the Office of Conservation, Pipeline Division, at 225-342-5505, and must include the following information:

1. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), amended LR 49:

§4105. Incident Reporting

A. Each operator that experiences an incident that is required to be reported under this Chapter shall, as soon as practicable but not later than 30 days after discovery of the incident, prepare and file an incident report on the form and in accordance with procedures established therefore by the commissioner and to the party he specifies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), amended LR 49:

§4107. Changes in or Additions to Incident Reports

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), amended LR 49:

§4109. Operator Assistance in Investigation

A. If the commissioner investigates an incident, the operator involved shall make available to the representative of the commissioner all records and information that in any way pertains to the incident, and shall afford all reasonable assistance in the investigation of the incident.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), amended LR 49:

§4313. External Loads

A. Anticipated external loads: e.g., earthquakes, vibration, thermal expansion, and contraction must be provided for in designing a pipeline system. In providing for expansion and flexibility, Section 419 of ASME/ANSI B31.4 must be followed.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), amended LR 49:

§4319. Valves

A. - A.3. ...

4. Each valve must be both hydrostatically shell tested and hydrostatically seat tested without leakage to at least the requirements set forth in Section 11 of ANSI/API 6D (incorporated by reference, see §3907).

5. - 6.d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), amended LR 49:

§4321. Fittings

A. Butt-welding type fittings must meet the marking, end preparation, and the burst strength requirements of ASME/ANSI B16.9 or MSS SP-75 (incorporated by reference, see §3907).

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), amended LR 49:

§4327. Closures

A. Each closure to be installed in a pipeline system must comply with the 2007 ASME Boiler and Pressure Vessel Code (BPVC) (Section VIII, Division 1) (incorporated by reference, see §3907), and must have pressure and temperature ratings at least equal to those of the pipe to which the closure is attached.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986).

Chapter 45. Construction Requirements for Carbon Dioxide Pipelines

§4519. Welders: Testing

A. Each welder must be qualified in accordance with section 6, section 12, Appendix A or Appendix B of API Std 1104 (incorporated by reference, see §3907), or section IX of the ASME Boiler and Pressure Vessel Code (ASME BPVC), (incorporated by reference, see §3907) except that a welder qualified under an earlier edition than listed in §3907 may weld but may not requalify under that earlier edition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), amended LR 49:

§4525. Welds and Welding Inspections: Standards of Acceptability

A. ...

B. The acceptability of a weld is determined according to the standards in Section 9 or Appendix A of API Std 1104. Appendix A of API Std 1104 may not be used to accept cracks.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), amended LR 49:

§4557. Compression Equipment

A. Adequate ventilation must be provided in compressor station buildings to prevent the accumulation of carbon dioxide vapors and/or vapors that could be dangerous. Warning devices must be installed to warn of the presence of such vapors in the compression station building.

B. The following must be provided in each compressor station:

1. safety devices that prevent over-pressuring of compression equipment, including the auxiliary compression equipment within the compression station;

2. a device for the emergency shutdown of each compression/ station;

3. if power is necessary to actuate the safety devices, an auxiliary power supply.

C. Each safety device must be tested under conditions approximating actual operations and found to function properly before the compression station may be used.

D. Except for offshore pipelines, compression equipment may not be installed:

1. on any property that will not be under the control of the operator; or

2. less than 50 feet from the boundary of the station.

E. Adequate fire protection must be installed at each compressor station.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), amended LR 49:

Chapter 49. Operating and Maintaining Carbon Dioxide Pipelines

§4909. Maps and Records

A. - A.1. ...

a. compressor station;

1.b. - 4. ...

B. Each operator shall maintain daily operating records that indicate the discharge pressures at each compressor station and any unusual operations of a facility. The operator shall retain these records for at least three years.

C. - C.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), amended LR 49:

§4919. Cathodic Protection

A. No operator may operate a pipeline that has an external surface coating material, unless that pipeline is cathodically protected.

B. ...

C. Each operator shall electrically inspect all buried compressor station piping, as to the need for cathodic protection, and cathodic protection shall be provided where necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), amended LR 49:

§4937. Signs

A. Each operator shall maintain signs visible to the public around each compressor station area. Each sign must contain the name of the operator and an emergency telephone number to contact.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), amended LR 49:

§1939. Security of Facilities

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), amended LR 49:

§1941. Smoking or Open Flames

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), amended LR 49:

§4941. Reports

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(C)(17).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:115 (February 1986), amended LR 49:

Subpart 6. Damage Prevention

Chapter 59. General

§5901. Scope

A. This Chapter applies to the prevention of damage of underground pipelines.

B. It is the public policy of this state to promote the protection of property, workmen, and citizens in the immediate vicinity of an underground pipeline from damage, death, or injury and to promote the health and well-being of the community by preventing the interruption of essential services which may result from the destruction of, or damage to, underground pipelines.

AUTHORITY NOTE: Promulgated in accordance with 40:1749.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 46:954 (July 2020), amended LR 49:

§5903. Definitions

A. The following words and terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Emergency—any crisis situation which poses an imminent threat or danger to life, health, or property which requires immediate action, if such action is taken. The term also includes an unplanned pipeline outage, which requires immediate action, if such action is taken.

Excavation or Excavate—any operation causing movement or removal of earth, rock, or other materials in or on the ground or submerged in a marine environment that could reasonably result in damage to underground or submerged pipelines by the use of powered or mechanical or manual means, including but not limited to pile driving,

digging, blasting, augering, boring, back filling, dredging, compaction, plowing-in, trenching, ditching, tunneling, land-leveling, grading, and mechanical probing. *Excavation or excavate* shall not include manual probing, normal commercial farming operations, or any force majeure, act of God, or act of nature.

Mark by Time—the date and time provided by the regional notification center by which the pipeline operator is required to mark the location or provide information to enable an excavator or demolisher, using reasonable and prudent means, to determine the specific location of the pipeline as provided for in §6301. The mark by time may be extended if mutually agreed upon and documented between the excavator and operator.

Normal Commercial Farming Operations—operations or activities for agricultural cultivation purposes that do not encroach on a pipeline servitude or operations or activities that do encroach on a pipeline servitude and the depth of excavation is less than 12 inches in the soil below the existing surface grade.

AUTHORITY NOTE: Promulgated in accordance with 40:1749.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 46:955 (July 2020), amended LR 49:

Chapter 61. Notifications

§6101. Excavation and Demolition; Prohibitions

A. ...

B. Except as provided in §6303, prior to any excavation or demolition, each excavator or demolisher shall serve telephonic or electronic notice of the intent to excavate or demolish to the regional notification center or centers serving the area in which the proposed excavation or demolition is to take place and shall include the specific location where the excavation or demolition is to be performed. Such notice shall be given to the notification center at least 48 hours, but not more than 120 hours, excluding weekends and holidays, in advance of the commencement of any excavation or demolition activity. Holidays shall consist of the following: New Year's Day; Martin Luther King, Jr. Day; Good Friday; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Christmas Eve; and Christmas Day. The marking of an operator's pipeline shall be provided for excavation or demolition purposes only.

1. ...

2. The excavator or demolisher shall provide the specific location for excavation or demolition using white paint, flags, stakes, or similar means under American Public Works Association guidelines prior to submitting notice.

3. The excavator or demolisher shall wait at least 48 hours, beginning at 7 a.m. on the next working day, following notification, unless mutually agreed upon and documented by the excavator and operator to extend such time, before commencing any excavation or demolition activity, except in the case of an emergency as defined in the provisions of this Chapter or if informed by the regional notification center that no operators are to be notified.

4. Concerning pipelines located on or in water, when an extension of time to mark a pipeline cannot be agreed upon and the operator has determined said pipeline(s) cannot

be adequately marked by the mark by time listed on the Regional Notification Center ticket, the operator may appeal to the commissioner for an extension to the mark by time. Said request shall be made via e-mail to PipelineInspectors@la.gov and the contact e-mail listed on the regional notification center ticket shall be copied on the request. The request shall contain the ticket no., location of the pipe and a summary explaining why the line cannot be located by the mark by time. The request shall be made on a form as provided by the commissioner.

C. This Chapter shall not apply to activities by operators or landowners excavating their own underground pipelines on their own property or operators' exclusive right-of-way provided there is no encroachment on the rights-of-way of any operator and the operator controls access to the location.

D. For purposes of this Section, any physical markings or electronic drawings identifying a specific location as provided for in Subsection B of this Section shall not exceed the actual area of excavation or demolition.

AUTHORITY NOTE: Promulgated in accordance with 40:1749.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 46:955 (July 2020), amended LR 49:

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Wastes and Hazardous Materials

Subpart 3. Natural Resources

Chapter 301. Transportation of Hazardous Liquids by Pipeline

[49 CFR Part 195]

Subchapter A. General [49 CFR Part 195 Subpart A]

§30125. Reporting Accidents [49 CFR 195.50]

A. - A.5. ...

6. in addition to those listed in §30125.A.1-5, any release of carbon dioxide resulting in the following:

a. any potential dangers to human beings and/or animals from the escaped material;

b. bodily harm to any person resulting in one or more of the following:

i. loss of consciousness;

ii. necessity carry a person from the scene;

iii. necessity for medical treatment;

iv. disability which prevents the discharge of normal duties or the pursuit of normal duties beyond the day of the accident

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 18:863 (August 1992), LR 21:816 (August 1995), LR 27:1524 (September 2001), LR 29:2811 (December 2003), LR 49:

§30167. Fracture Propagation [49 CFR 195.111]

A. A carbon dioxide pipeline system must be designed to mitigate the effects of fracture propagation. Piping systems must be analyzed for potential propagating fractures. Methods of limiting the extent of such fractures shall be applied where warranted [49 CFR 195.111]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 18:864 (August 1992), amended LR 29:2815 (December 2003), LR 49:

§30193. Additional Requirements for Carbon Dioxide Pipelines

A. Vents

1. Carbon dioxide may not be relieved into the atmosphere of a building or other confined space where hazardous levels of carbon dioxide might accumulate above the human exposure level set by the United States Department of Labor, Occupational Safety and Health Administration as depicted in the following table, unless the appropriate respiratory protection is provided.

Condition	Minimum Respiratory Protection Required above 5000 vppm
Gas concentration 50,000 vppm or less	Any supplied air respirator or self-contained respirator.
Greater than 50,000 vppm or entry and escape from unknown concentrations	Self-contained breathing apparatus with a full face-piece operated in pressure demand or other positive pressure mode. A combination respirator which includes a Type C supplied-air respirator with a full face-piece operated in pressure-demand or positive pressure or continuous flow mode and an auxiliary self-contained breathing apparatus operated in pressure-demand or other positive pressure mode.
Fire Fighting	Self-contained breathing apparatus with a full face-piece operated in pressure-demand or other positive pressure mode.
Escape	Any escape self-contained breathing apparatus

2. except for the reporting requirements of Subchapter B of this Subpart see §30199, transportation of a hazardous liquid through a pipeline by gravity; [49 CFR 195.1(b)(2)]

B. Sensing Devices

1. Each operator shall determine the appropriate location for and install sensing devices necessary to monitor the operation of components used in transporting carbon dioxide to detect malfunction which could cause a hazardous condition if permitted to continue; and

2. Buildings in which potentially hazardous quantities of carbon dioxide may exist must be continuously monitored by carbon dioxide sensing devices set to activate audible and visual alarms in the building and at the control center.

C. Fail-Safe Control

1. Control systems for components on carbon dioxide pipelines must have a fail-safe design where practical from good engineering practice. A safe condition must be maintained until personnel take appropriate action either to reactivate the component served or to prevent a hazard from occurring.

D. Sources of Power

1. Electrical control systems, means of communication, emergency lighting and firefighting systems must have at least two sources of power which function so that failure of one source does not affect the capability of the other source.

2. Where auxiliary generators are used as a second source of electrical power, they must be located apart or protected from components so that they are not unusable during a controllable emergency, and the fuel supply must be protected from hazards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 49:

Chapter 302. Transportation of Hazardous Liquids by Pipeline—Construction
[49 CFR Part 195 Subpart D]

§30266. Construction Records [49 CFR 195.266]

A. - A.6. ...

7. for pipelines transporting carbon dioxide, the location of each weighted pipe or other item connected to the pipe.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 29:2822 (December 2003), amended LR 49:

Chapter 303. Transportation of Hazardous Liquids by Pipeline—Pressure Testing
[49 CFR Part 195 Subpart E]

§30302. General Requirements [49 CFR 195.302]

A. Except as otherwise provided in this Section and in §30305.B, no operator may operate a pipeline unless it has been pressure tested under this Chapter without leakage. In addition, no operator may return to service a segment of pipeline that has been replaced, relocated, or otherwise changed until it has been pressure tested under this Chapter without leakage. Pipelines transporting carbon dioxide must be hydrostatically tested without leakage. [49 CFR 195.302(a)]

B. - C.2.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 29:2822 (December 2003).

§30306. Test Medium [49 CFR 195.306]

A. - B. ...

C. Carbon dioxide pipelines must use water as the test medium unless another medium is approved by the Commissioner. [49 CFR 195.306(c)]

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 29:2823 (December 2003), amended 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 businesses as described in R.S. 49:965.6.

Provider Impact Statement

This Rule has no known impact on providers as described in HCR 170 of 2014.

Public Comments

All interested parties will be afforded the opportunity to submit data, views, or arguments, in writing. Written comments will be accepted by hand delivery or USPS only, until 4 p.m., April 6, 2023, at Office of Conservation, Pipeline Division, P.O. Box 94275, Baton Rouge, LA 70804-9275; or Office of Conservation, Pipeline Division, 617 North Third Street, Room 931, Baton Rouge, LA 70802. Reference Docket No. PRA 2023-01. All inquiries should be directed to Michael Peikert at the above addresses or by phone to (225) 219-3799. No preamble was prepared.

Richard P. Ieyoub
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Pipeline Safety**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no anticipated implementation costs or savings to state or local governmental units due to the proposed rule change. The proposed rule changes are to amend the Natural Gas and Coal, Damage Prevention and Carbon Dioxide sections, reorganize the affected sections, combine additional state hazardous liquid carbon dioxide rules in Title 43 with Title 33 and update standards incorporated by reference in state only carbon dioxide gas rule in Title 43.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule changes are anticipated to have no effect on revenue collections of state and local government units. The proposed rule changes do not impose any new fees or change to existing fees.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no anticipated costs to directly affected persons or non-governmental groups. Operators and excavators are already required to comply with the Damage Prevention requirements of these regulations under LA RS 40:40:1749,11-27. Increased compliance could result in long term benefits to owner/operators in the form of reduced damages. There may be realized beneficial economic impacts to carbon dioxide transporters as geologic sequestration projects are now allowed for the transportation of carbon dioxide. In addition there may also be some beneficial economic impacts to natural gas transporters as changes remove the length restriction, increase pipe size and streamline the hearing process allowing for more timely processing of applications.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no effect on competition and employment.

Richard P. Ieyoub
Commissioner
2302#017

Alan M. Boxberger
Interim Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Natural Resources Office of Conservation

Use of Reclaimed Oilfield Waste (ROW) for Downhole Well Operations (LAC 43:XIX.301, 303, 311, 313, 501, 519 and 565)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950, et seq.) and Title 30 of the Louisiana Revised Statutes of 1950 (R.S. 30:4 et seq.), the Louisiana Department of Natural Resources, Office of Conservation hereby gives notice of its intent to amend LAC 43:XIX Subpart 1 (Statewide Order No. 29-B) Chapter 3 (Pollution Control—Onsite Storage, Treatment and Disposal of Exploration and Production Waste (E and P Waste) Generated from the Drilling and Production of Oil and Gas Wells (Oilfield Pit Regulations)) and Chapter 5. Off-Site Storage, Treatment and/or Disposal of Exploration and Production Waste Generated from Drilling and Production of Oil and Gas Wells to expand the use of produced water for all downhole well operations and allow operator-to-operator transfers. Benefits of these amendments include conservation of fresh water resources; reduced costs associated with disposal, transportation and water sourcing; reduced truck traffic and strain on disposal infrastructure.

Title 43

NATURAL RESOURCES

Part XIX. Office of Conservation—General Operations

Subpart 1. Statewide Order No. 29-B

Chapter 3. Pollution Control—Onsite Storage, Treatment and Disposal of Exploration and Production Waste (E and P Waste) Generated from the Drilling and Production of Oil and Gas Wells (Oilfield Pit Regulations)

§301. Definitions

* * *

ROW Fluid—reclaimed Oilfield Waste fluid as defined in §501.

* * *

Staging Location—a registered site used by the operator for receiving and storing reclaimed oilfield waste fluid for use in that operator's onsite or nearby downhole well operations.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2798 (December 2000), amended LR 33:1653 (August 2007), LR 36:2570 (November 2010), LR 49:

§303. General Requirements

A. - O.6. ...

P. ROW fluid received by an operator regulated pursuant to this Chapter shall be used solely as media for downhole well operations. Upon receiving possession of ROW fluid from a commercial facility, wellsite or staging location, the operator shall be solely responsible for ensuring that this requirement is met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2799 (December 2000), amended LR 30:254 (February 2004), LR 33:1654 (August 2007), LR 36:2570 (November 2010), LR 49:

§311. Pit Closure

A. Pits must be closed properly to assure protection of soil, surface water, groundwater aquifers and USDW's. Operators may close pits utilizing onsite land treatment, burial, solidification, onsite land development, or other techniques approved by the Office of Conservation only if done so in compliance with §313 and §315. Otherwise, all E and P waste must be manifested according to §511 and transported offsite to a permitted commercial facility unless used in downhole well operations in accordance with the requirements of LAC 43:XIX.313.J.

B. - F.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2803 (December 2000), amended LR 33:1658 (August 2007), LR 35:2464 (November 2009), LR 40:2596 (December 2014), LR 49:

§313. Pit Closure Techniques and Onsite Disposal of E and P Waste

A. Reserve pit fluids, as well as drilling muds, cuttings, etc. from holding tanks, may be disposed of onsite provided the technical criteria of §313.C, D, E, F, or G below are met, as applicable. All E and P waste must be either disposed of on-site, used in downhole well operations in accordance with the requirements of LAC 43:XIX:313.J or transported to an approved commercial facility or transfer station in accordance with the requirements of LAC 43:XIX.Chapter 5 or under the direction of the commissioner.

B. - I.3. ...

J. Use of E and P Waste (Produced Water, Rainwater, Drilling, Workover, Completion and Stimulation Fluids) for Downhole Well Operations

1. Produced water, rainwater, drilling, workover, completion and stimulation fluids generated at a wellsite (originating wellsite) that are classified as E and P Waste as defined in LAC 43:XIX.501 may be transported offsite for use in downhole well operations at another wellsite (receiving wellsite) in accordance with the following provisions.

a. Nothing in this rule is intended to authorize interstate transfer of E and P Waste between different operators or the intrastate transportation, storage, treatment, use, or disposal of such E and P Waste.

b. All residual waste generated in the treatment or processing of E and P Waste prior to its use in downhole well operations must be properly disposed of in accordance with the following:

i. All residual waste generated as a result of treatment or processing conducted at the originating wellsite must be either disposed of onsite at the originating wellsite in accordance with all the requirements of LAC 43:XIX.311 and 313, except and not including Subsection 313.J, or offsite in accordance with the requirements of LAC 43:XIX.Chapter 5.

ii. All residual waste generated as a result of treatment or processing conducted at the receiving wellsite meeting the definition of E and P waste in LAC 43:XIX.501

must be disposed of offsite in accordance with the requirements of LAC 43:XIX.Chapter 5.

c. The types and volumes of E and P waste generated for use along with the well name and well serial number of the receiving wellsite, and the receiving operator (if different) must be reported on either Form ENG-16 (oilfield waste disposition) for the originating well and/or Form ENG-17 (reclaimed oilfield waste fluid tracking ticket) and/or maintained in a substantively similar manifest system depending on the waste types involved. Waste tracking records documenting transfers between operators must be maintained for at least three years and must be submitted in a timely and legible manner to the Office of Conservation upon request.

d. Operators must have authority from surface owners to store and use E and P Waste from an offsite location at the receiving wellsite or staging location.

e. E and P waste intended for use must be stored at the receiving wellsite or at a staging location operated by the same operator of record as the receiving wellsite in an above ground storage tank or a lined production pit which conforms to the liner requirements and operational provisions of LAC 43:XIX.307.A.

f. The receiving operator assumes responsibility for ROW fluid once it is off-loaded from a transport or exits a transfer line at the receiving operator's staging location or wellsite.

2. The commissioner of Conservation, the secretary of the Department of Natural Resources, and the state of Louisiana shall be held harmless from and indemnified for any and all liabilities arising from use of E and P waste pursuant to this Subsection, and the operator of record and the surface owner shall execute agreements as the commissioner requires for this purpose.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2804 (December 2000), amended LR 33:1659 (August 2007), LR 35:2464 (November 2009), LR 36:1265 (June 2010), LR 40:2596 (December 2014), LR 49:

Chapter 5. Off-Site Storage, Treatment and/or Disposal of Exploration and Production Waste Generated from Drilling and Production of Oil and Gas Wells

§501. Definitions

* * *

Reclaimed Oilfield Waste Fluid (ROW fluid)—a material that would otherwise be classified as E and P Waste, but which has been reclaimed for the sole use as media for Office of Conservation permitted downhole well operations.

* * *

Reusable Material—a material that would otherwise be classified as E and P Waste, but which is capable of resource conservation and recovery and has been processed in whole or in part for reuse. To meet this definition, the material must have been treated physically, chemically, or biologically or otherwise processed so that the material is significantly changed (i.e., the new material is physically, chemically, or biologically distinct from the original material), and meets the criteria §565.F. This term does not include ROW Fluid

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2811 (December 2000), amended LR 27:1898 (November 2001), LR 29:937 (June 2003), LR 34:1421 (July 2008), LR 36:2570 (November 2010), LR 43:536 (March 2017), LR 45:1600 (November 2019), LR 49:

§519. Permit Application Requirements for Commercial Facilities

A. - A.1. ...

2. A major modification to an existing commercial facility or transfer station permit is one in which the facility requests approval to include ROW fluid operations or make significant technological changes to an existing E and P Waste treatment and/or disposal system, including the construction and operation of additional equipment or systems to treat and/or dispose of E and P waste streams other than those previously accepted by the facility. A major modification request may include a request to expand an existing commercial facility or transfer station onto adjacent property not previously permitted for E and P Waste disposal activities

A.3. - C.21. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2823 (December 2000), amended LR 27:1905 (November 2001), LR 29:938 (June 2003), LR 36:2570 (November 2010), LR 45:1601 (November 2019), LR 49:

§565. Resource Conservation and Recovery of Exploration and Production Waste

A. In order to encourage the conservation and recovery of resources in the oilfield industry, the processing of E and P waste into reusable materials or ROW fluid, in addition to or beyond extraction and separation methods which reclaim raw materials such as crude oil, diesel oil, etc., is recognized as a viable alternative to other methods of disposal.

B. Commercial facilities may function for the purpose of generating reusable material or ROW fluid only, or they may generate reusable material or ROW fluid in conjunction with other storage, treatment or disposal operations.

C. Commercial facilities that generate reusable material or ROW fluid are subject to all of the permitting requirements imposed on other commercial facilities. They are also subject to the same operational requirements without regard to the distinction between E and P waste and reusable material or ROW fluid. Existing permits may be amended to allow re-use or ROW fluid operations at commercial facilities which acquire the capability to engage in processing for reuse or ROW fluid operations. Commercial facilities which utilize extraction or separation methods to reclaim raw materials such as crude oil, diesel oil, etc. may do so without amendment of existing permits.

D. - I. ...

J. Onsite use of E and P waste for downhole well operations is permissible only as authorized by the Office of Conservation and in accordance with the requirements of LAC 43:XIX.313.J.

K. Existing commercial facilities who desire to commence ROW fluid operations must comply with the notification, application and permitting requirements of LAC 43:XIX.519.

L. The Commissioner of Conservation, the Secretary of the Department of Natural Resources, and the State of Louisiana upon issuance of a permit to a commercial facility operator for ROW fluid operations shall be held harmless from and indemnified for any and all liabilities arising from such operations and use of ROW fluid, and the commercial facility operator shall execute such agreements as the commissioner requires for this purpose.

M. Reporting. Each commercial facility which generates ROW fluid must furnish the commissioner a monthly report showing the disposition of all such material.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 27:1916 (November 2001), amended LR 29:939 (June 2003), LR 34:1422 (July 2008), LR 36:2571 (November 2010), 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

The proposed Rule is not anticipated to have an adverse impact on small businesses as described in R.S. 49:965.6; 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 are invited to submit written comments on the proposed regulation. Persons commenting should reference "Use of Reclaimed Oilfield Waste (ROW) for Downhole Well Operations". Such comments must be received no later than Friday, March 10, 2023, at 4:30 p.m., and should be sent to Mr. Chris Sandoz, Office of Conservation, Engineering Regulatory Division, P. O. Box 94275, Baton Rouge, LA 70804-9275; hand delivered to 617 North Third Street, 9th Floor, Baton Rouge, LA 70802; by email to christopher.sandoz@la.gov; or by fax to (225) 342-2584.

Public Hearing

If requested, a public hearing will be held on Tuesday, March 28, 2023 at 9 a.m. in the LaSalle Building, LaBelle Hearing Room, 617 N. Third Street, Baton Rouge, LA 70802. If accommodations are required under the Americans with Disabilities Act, please advise the Office of Conservation, Engineering Division at P.O. Box 94275, Baton Rouge, LA 70804-9275 in writing within ten working days of the hearing date.

Richard P. Ieyoub
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Use of Reclaimed Oilfield Waste (ROW) for Downhole Well Operations

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no anticipated implementation costs or savings to state or local governmental units due to the proposed rule change. The proposed rule change expands the use of produced water for all downhole well operations and allows operator-to-operator transfers, reducing costs associated with disposal, transportation and water sourcing. The intent of the proposed rule change is to expand the use of Exploration and Production (E&P) Waste in lieu of fresh water to conserve fresh water resources while protecting public health and the environment.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no effect on revenue collections of state or local government units anticipated due to the proposed rule change.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The primary group impacted by these rule changes will be Exploration and Production (E&P) companies. There are no anticipated cost increases associated with the proposed rule change. The proposed rule change may result in cost savings for certain E&P companies with high levels of activity in the Haynesville Shale Area.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition and employment.

Richard P. Ieyoub
Commissioner
2302#079

Alan M. Boxberger
Interim Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue Policy Services Division

Voluntary Disclosure Agreements (LAC 61:III.2103)

Under the authority of R.S. 47:1502, 1511 and 1603(A), and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, gives notice that rulemaking procedures have been initiated to amend LAC 61:III.2103.

R.S. 47:1603(A) specifically authorizes the secretary to promulgate rules and regulations concerning the waiver of penalties, including but not limited to the establishment of a voluntary disclosure program. Act 406 of the 2022 Regular Session of the Louisiana Legislature directs the department to establish a voluntary disclosure program for reporting undisclosed withholding tax liabilities that would have been due for workers who were not classified as employees. LAC 61:III.2103 outlines the department's current voluntary

disclosure program. The purpose of the amendments is to implement Act 406 and establish a specific program that allows employers who are registered for withholding tax but discover that they have been misclassifying one or more classes of workers as independent contractors to enter into a voluntary disclosure agreement for the undisclosed withholding tax associated with the misclassified workers.

The amendments set forth the conditions under which an applicant may qualify for a voluntary disclosure agreement specifically related to withholding taxes due for workers who were consistently treated as independent contractors or other non-employees by the taxpayer for the previous three years. The amendments also outline the process for entering into a voluntary disclosure agreement with the Department of Revenue, and the requirements that must be complied with for the Department of Revenue to remit or waive payment of the whole or any part of the penalties under a valid voluntary disclosure agreement. Finally, the amendments clarify that the look back period for collected-but-not-remitted taxes applies also to taxes that are withheld but not remitted.

Title 61

REVENUE AND TAXATION

Part III. Administrative and Miscellaneous Provisions

Chapter 21. Interest and Penalties

§2103. Voluntary Disclosure Agreements

A. Definitions. For purposes of this Section, the following terms have the meanings ascribed to them.

* * *

Look-Back Period—a period for which a qualified applicant agrees to disclose and pay the tax and interest due. The *look-back period* shall be as follows.

a. Except as provided in Subparagraphs b through e, the *look-back period* shall include the current calendar year up to the date of registration with the department and the three immediately preceding calendar years.

b. For taxes collected or withheld and not remitted, the look-back period shall include all periods in which tax was collected or withheld and not remitted. This look-back period shall not affect the look-back period described in Subparagraph a. of this Paragraph for undisclosed liabilities unrelated to tax collected or withheld and not remitted.

c. For discontinued, acquired, or merged entities, the look-back period shall include undisclosed liabilities in the last calendar year in which the qualified applicant had nexus within this state and the three immediately preceding calendar years.

d. For withholding taxes associated with misclassified employees, the look-back period shall include the current calendar year up to the date of the application and the three immediately preceding calendar years. This look-back period shall not apply to any taxes actually withheld from an employee and not remitted.

e. The secretary and the applicant may agree to adjust a look-back period to include other years.

f. The look-back period(s) shall be established at the time the secretary or his authorized representative signs the voluntary disclosure agreement.

Misclassified Employees—a class or classes of workers who were consistently treated as independent contractors or other non-employees by the taxpayer for the previous three years and for which the taxpayer filed all required IRS

Forms 1099-NEC, 1099-MISC or equivalent form, consistent with the non-employee treatment.

Qualified Applicant—any taxpayer subject to the reporting and payment of a tax imposed by the state of Louisiana that is not disqualified under Subsection B of this Section.

* * *

Withholding Tax—income tax that is required to be deducted or withheld by an employer from the wages paid to an employee in accordance with R.S. 47:112.

B. Disqualification. Any applicant who meets one or more of the criteria below shall be disqualified from entering into a voluntary disclosure agreement:

1. The applicant is registered with the department as of the application date but failed to file returns or underreported the amount due for a tax for which a voluntary disclosure agreement is requested.

a. Registration with the department for reporting and payment of any tax for which a voluntary disclosure agreement is not being requested will not disqualify a qualified applicant from entering into a voluntary disclosure agreement.

2. The applicant submitted returns, extensions, payments, or was registered with the department within three years of the application date for a tax for which a voluntary disclosure agreement is requested.

3. The applicant is requesting a voluntary disclosure agreement for withholding tax due for misclassified employees and:

a. the workers for which the agreement is requested do not qualify as misclassified employees; or

b. the applicant actually withheld taxes from wages paid to workers included in the class or classes for which a voluntary disclosure agreement request is being made; or

c. the applicant has not provided proof of worker's compensation coverage for all employees.

4. The applicant has been contacted by the department concerning a liability regarding a tax for which a voluntary disclosure agreement is requested, including but not limited to a potential liability or contact for the purpose of performing an audit of the taxpayer's records.

5. The applicant is affiliated with another entity that has been contacted by the department for the purpose of performing an audit of the affiliated entity's records. An applicant may become a qualified applicant after the audit of the affiliated entity has been completed, provided the applicant is not disqualified under any other criteria.

C. Acceptance of Offer to Enter into Voluntary Disclosure Agreement

1. After the secretary has reviewed the application and determined from the information included therein that the applicant qualifies for a voluntary disclosure agreement, the secretary shall send a copy of the agreement to the qualified applicant or the qualified applicant's representative for signature.

2. The qualified applicant or qualified applicant's representative, acting under the authority of a power of attorney, shall sign the agreement and return it to the secretary within 30 calendar days of the postmark or e-mail date, or within any extension of time authorized by the secretary beyond 30 calendar days from the postmark or e-mail date.

3. After the signed agreement is received from the applicant, the secretary or his authorized representative shall sign the agreement and return a copy of the agreement to the applicant which has been signed by both parties.

4. If the application was submitted to the Multistate Tax Commission, the applicant shall return signed agreements in accordance with policies established by the commission.

D. Waiver or Remittance of Payment of Penalty

1. After all tax and interest due for the look-back period have been paid, the delinquent penalties shall be waived, unless the tax disclosed was collected or withheld but not remitted.

2. Where the tax was collected or withheld but not remitted, the secretary may consider waiving payment of the whole or any part of the delinquent penalties on a case-by-case basis.

E. Payment of Tax, Interest, and Penalty Due

1. All tax due for the look-back period must be paid within 60 calendar days of the secretary's signing date of the voluntary disclosure agreement or within any extension of time authorized by the secretary beyond 60 calendar days of the signing date. All schedules or returns required by the secretary to show the amount of tax due must be included with this payment.

2. For purposes of withholding tax due for misclassified employees, any wages timely reported on a Louisiana individual income tax return filed by any worker in the class or classes of workers identified in the application as verified by the Department of Revenue shall be excluded for purposes of calculating the liability due by the qualified applicant.

3. The secretary shall compute the interest and penalty due for the tax disclosed by the applicant and send a schedule by mail or email to the applicant or his representative showing the amount of tax, interest and penalty due. The applicant must submit payment of the full amount of the interest and any penalties not waived within 30 calendar days from the postmark or e-mail date of the schedule or, if applicable, within any extension of time granted by the secretary. If payment of the full amount due has not been received at the expiration of such time, the secretary may void the agreement.

F. The secretary may disclose tax information to the Multistate Tax Commission or any political subdivision of the state which has entered into an information exchange agreement with the department in order to coordinate the delivery and acceptance of applications for voluntary disclosure agreements. Any information so furnished shall be considered and held confidential and privileged by the Multistate Tax Commission or the political subdivision to the extent provided by R.S. 47:1508.

G. The terms of the voluntary disclosure agreement shall be valid, binding, and enforceable by and against all parties, including their transferees, successors, and assignees.

H. The secretary reserves the right to void the voluntary disclosure agreement if the applicant fails to comply with any of the conditions outlined in the agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1502, R.S. 47:1511, R.S. 47:1580, and R.S. 47:1603.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 41:558 (March 2015), amended LR 49:

Family Impact Statement

The proposed Rule has no known or foreseeable impact on family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically, the proposed rule has no known or foreseeable impact 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.
6. The ability of the family or a local government to perform this function.

Poverty Impact Statement

The proposed Rule has no known impact on poverty as described in R.S. 49:973.

Small Business Analysis

The proposed Rule has no known or foreseeable measurable impact on small businesses as described in R.S. 49:974.5.

Provider Impact Statement

The proposed rule has no known or foreseeable effect on:

1. The staffing levels requirements or qualifications required to provide the same level of service.
2. The total direct and indirect effect on the cost to the provider to provide the same level of service.
3. The overall effect on the ability of the provider to provide the same level of service.

Public Comments

All interested persons may submit written data, views, arguments or comments regarding this proposed rule to Brandea Averett, Attorney, Policy Services Division, Office of Legal Affairs, P.O. Box 44098, Baton Rouge, LA 70804-4098. Written comments will be accepted until 4:30 p.m., March 27, 2023.

Public Hearing

A public hearing will be held on March 28, 2023 at 2 p.m. in the LaBelle Room located on the 1st floor of the LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana.

Kevin J. Richard, CPA
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Voluntary Disclosure Agreements

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule will not result in material implementation costs or savings to state or local governmental units. To the extent the Department incurs additional costs, they will be absorbed in the existing budget.

The proposed rule implements a portion of Act 406 of the 2022 Regular Session by adding a voluntary disclosure program per R.S. 47:1576.3(H) specific to withholding due for misclassified employees. The additional program criteria allow certain employers who are registered for withholding tax but discover they have been misclassifying workers to enter into a voluntary disclosure agreement to pay the taxes due for the lookback period of three years and obtain relief for certain penalties and withholding tax due for any periods prior to the

lookback period. The proposed rule also revises the general voluntary disclosure qualification as it relates to prior registration with the department.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule will have minimal direct impact on annual state or local revenue. The misclassified employees are expected to have paid the income tax due upon filing their individual income tax returns when classified as contracted workers and would continue to pay when classified as employees. To the extent the program is utilized, employers will be responsible for paying withholdings for the look back period if the classified employee failed to pay appropriate income tax during that time, which cannot be quantified. The state may also forego some penalties of an indeterminable amount that would be waived under the program. Impacts may also be tempered by the Fresh Start Proper Worker Classification Initiative authorized in Act 406 of the 2022 Regular Session, which is a temporary program effective during CY 2023 that waives similar withholding, penalty and interest obligations.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule will have minimal direct economic impact on directly affected persons, small businesses, or non-governmental groups. Affected businesses are employers who have been consistently misclassifying employees as independent contractors and who will avoid penalties and withholding tax liabilities for periods outside the lookback period to the extent the program allows. Additional paperwork will be required for employers applying for relief through the voluntary disclosure program, but the costs are not expected to be material.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule does not affect competition or employment.

Kevin J. Richard, CPA
Secretary
2302#028

Alan M. Boxberger
Interim Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

**Marking System for Gill Nets, Trammel Nets,
Hoop Nets, Slat Traps, and Wire Nets
(LAC 76:VII.114)**

The Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission do hereby provide notice of their intent to revise a Rule (LAC 76:VII.114) by removing the requirement of buoys on gill nets due to industry concerns of theft of fish and gear.

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 promulgate the final rule.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic life

Chapter 1. Freshwater Sports and Commercial Fishing

§114. Marking System for Gill Nets, Trammel Nets, Hoop Nets, Slat Traps, and Wire Nets

A. Each gill net or trammel net shall be marked with a waterproof tag attached to the corkline at each end of the net, no more than three feet from the edge of the webbing or on an attached buoy in indelible ink. Each hoop net, slat trap, or wire nets shall be marked with a waterproof tag attached directly to the device or written on an attached buoy in indelible ink. Said tags shall be supplied by fisherman and to be completely waterproof. Each tag or buoy shall have the fisherman's full name (no initials), and the appropriate commercial or recreational fisherman's license number (not the net license number) printed thereon in the English language, so as to be clearly legible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6, R.S. 56:320(F), and R.S. 56:326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 48:2372 (September 2022), 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 written comments relative to the proposed Rule to Robby Maxwell, Department of Wildlife and Fisheries, 1025 Tom Watson Rd., Lake Charles, LA, 70615, or via e-mail to rmaxwell@wlf.la.gov prior to April 4, 2023.

Joe McPherson
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Marking System for Gill Nets, Trammel Nets, Hoop Nets, Slat Traps, and Wire Nets**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change will have no impact on state or local governmental unit expenditures.

The proposed rule change removes a requirement to attach buoys to each gill net or trammel net deployed by anglers or commercial fishers in Louisiana freshwater bodies.

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 Louisiana Department of Wildlife and Fisheries (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 benefit anglers and commercial fishers who use gill nets or trammel nets in freshwater bodies. By removing the buoy, fishers are able to conceal their gear underwater more effectively which will reduce incidences of theft and the costs associated with replacing gear.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change is anticipated to have no impact on competition and employment in Louisiana.

Richard P. Ieyoub
Commissioner
2302#043

Alan M. Boxberger
Interim Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Workforce Commission
Plumbing Board**

Plumbers—Introductory Information; Licenses
(LAC 46:LV.101, 301, 303, 304, 305, 306, 307,
308, 309, 310, 312, 313, 314, 503, 701, and 901)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:953, the Plumbing Board (board), hereby determines that the implementation of amendments to LAC 46:LV. to clarify the meaning of “constant on-the-job supervision”; to amend the rules referring to a restricted plumber’s license to be in compliance with R.S. 37:1368 amended in August 2022; to identify the procedure followed when a board member is not available for an examination; the appointment of an interim vice chairman; amending to make reference to an advisory body consistent with the law and clarification on ID cards; amendment to Rule concerning NSF charges to be in compliance with R.S. 37:1371; clarification regarding posting of a physical address on signs of an employing entity; and clarification of administrative charges for processing an application.

This adjustment will be effective upon final publication in the *Louisiana Register*.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LV. Plumbers

Chapter 1. Introductory Information

§101. Definitions

* * *

Direct, Constant On-The-Job Supervision—a licensed journeyman plumber/master plumber or natural gas fitter/master natural gas fitter is physically present and in direct communication at the property or jobsite for residential construction and single-story or single building

commercial construction, and in the same building on the same floor level for multi-level or multi-story commercial construction, where the apprentice is engaged in plumbing. A licensed journeyman plumber/master plumber or natural gas fitter/master natural gas fitter may supervise apprentices who are engaged in plumbing or natural gas fitting at that time as governed by the Louisiana Workforce Commission. An apprentice doing work other than plumbing or natural gas fitting shall not be considered an apprentice for purposes of supervision.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1277 and R.S. 37:1366.

HISTORICAL NOTE: Adopted by the Department of Labor, Plumbing Board, 1968, amended and promulgated by the Department of Employment and Training, Plumbing Board, LR 17:49 (January 1991), amended by the Department of Labor, Plumbing Board, LR 21:1348 (December 1995), LR 26:329 (February 2000), amended by the Workforce Commission, Plumbing Board, LR 42:575 (April 2016). LR 43: 541 (March 2017), LR 43:972 (May 2017), LR 44:633 (March 2018), amended by the Workforce Commission, Plumbing Board, LR 44:1915 (October 2018), amended by the Workforce Commission, Plumbing Board, LR 47:274 (February 2021), LR 49:

Chapter 3. Licenses

§301. Licenses Required

A. ...

B. No natural person shall engage in doing the work of an apprentice unless he possesses a registration or renewal thereof issued by the board as established in §508. Registered apprentices may engage in the art of plumbing only when they are under the direct, constant on-the-job supervision of a licensed plumber as defined in §101, and as governed by the Louisiana Workforce Commission.

C. ...

D. No natural person shall engage in the work of a master plumber unless he possesses a master plumber's license or renewal thereof issued by the board. The board shall issue a master plumber license to any person who qualifies under the board's regulations and who desires to engage in doing the work of a master plumber if he passes a written examination given by the board and pays the fees established by the board. A written examination shall not be required for persons applying pursuant to this Section and §303. A master plumber shall not engage in the work of a journeyman plumber unless he also possesses a journeyman plumber's license issued by the board or previously possessed a journeyman plumber's license issued by the board. A person issued a master plumber's license shall designate to the board, as required by the rules of the board, an employing entity, which may be a corporation, partnership, or sole proprietorship. A licensed master plumber shall notify the board of any change of employment status with an employing entity within 30 days of the effective date of change in employment status. A master plumber shall designate no more than one employing entity at any time. The board may charge a reasonable fee for processing such redesignations.

E. No employing entity shall hold itself out as engaging in the business or art of plumbing unless it employs a master plumber. No master plumber shall knowingly allow an employing entity to hold itself out as employing such master plumber at a time when it does not employ him within the

meaning of R.S. 37:1368.C and this Section. Notwithstanding any other provision to the contrary, a journeyman plumber may repair existing plumbing independently and without the supervision of a master plumber. In the event a master plumber employed by an employing entity dies, the employing entity will be permitted to operate on the basis of the deceased master plumber's license for a period of time not to exceed six months following the death of the master plumber. The board may require proof of death. The six-month grace period provided herein must be applied for, in writing, within 30 days of the death of the master plumber. The employing entity must comply with all other regulations issued by the board during the grace period.

F. Every employing entity shall maintain an established place of business, with facilities for receiving complaints, calls and notices during normal business hours, from any person for whom it is performing plumbing or from the board and its representatives. It shall display a sign, plainly visible from the street at every place where it and its employees are performing plumbing work. If the employing entity is the sole-employing entity for a multi-site project, where employees are performing plumbing work, it may post one sign, plainly visible from the street, at the entrance of the project. All posted signs shall designate the employing entity's full name, physical address, telephone number and master plumber license number issued by the board to the designated active master plumber in its employ. The sign posted at a single site shall include legible lettering at least 2 inches high with the words "Louisiana Licensed Master Plumber" (or abbreviated "LA Lic. Master Plumber" or "LMP _____"). For multi-site projects, where only a single sign is posted, in addition to the above requirement, the lettering must be at least 4 inches high. The employing entity shall also identify itself by permanent signs or lettering affixed to its service vehicles on both sides of such vehicles indicating the same information required of job-site signs in at least 2-inch lettering." All public advertising, solicitations, customer invoices, and business correspondence issued by or on behalf of an employing entity shall set forth the information described herein.

G. Employment of an active master plumber by an employing entity on a regular paid basis, as required by R.S. 37:1368.C and this Section, shall mean employment or self-employment for wages or under a bona fide contract of hire with no more than one employing entity at any given time. Such employment or self-employment must include services performed by the active master plumber which is within the state of Louisiana or both within and without the state of Louisiana.

H. ...

I. Any individual who maintained a restricted journeyman's license or restricted master plumber's license prior to January 1, 2023, and maintained compliance with the provisions of R.S. 37:1371 and 1380 through January 1, 2023, shall be issued a journeyman's license or master plumber's license upon written request to the board. Any individual who was issued a restricted journeyman's license or master plumber's license prior to January 1, 2023, but did not maintain such license due to a lack of compliance with R.S. 37:1371 and 1380, shall be treated as if he was inactive upon his last day of compliance with such provisions. Upon

submission of a written request to the board, payment of renewal fees in accordance with R.S. 37:1371(A), and submission of a written showing of compliance with R.S. 37:1380, the board shall issue the individual a journeyman's license, if the individual previously held a restricted journeyman's license or master plumber's license, if the individual previously held a restricted master plumber's license. The board may refuse to grant a journeyman or master plumber's license to an individual who previously maintained a restricted journeyman or restricted master plumber's license, if the individual failed to comply with additional licensing requirements not provided for in R.S. 37:1371 and 1380.

J. An inactive master plumber, as that term is used in R.S. 37:1368.E, shall mean a natural person who is licensed by the board as a master plumber or who successfully applies for and passes the examination for master plumber license administered by the board pursuant to §305. An applicant for inactive master plumber status must state in a form supplied by the board that he does not wish or intend to practice as a master plumber. An inactive master plumber shall not be permitted to designate an employing entity, or knowingly allow an employing entity to hold itself out as employing him as a master plumber. An inactive master plumber can convert his status to that of a master plumber by submitting to the board an appropriate form supplied by the board and upon payment of a fee established by the board. During the period of his inactive status the inactive master plumber shall pay a fee established by the board. An inactive master plumber converting his status under this Section shall designate an employing entity. An inactive master plumber shall be permitted to work as journeyman plumber during the period or periods he maintains an inactive plumber's license, if he is currently or was previously licensed by the board as a journeyman plumber.

K. The board is empowered to assess special enforcement fees on a daily basis at a rate not to exceed \$10 a day relative to any master plumber or employing entity, or both, that fails or refuses, after due notice, to comply with the sign and posting requirements established by the board under this provision shall not exceed, in the aggregate, \$500. This special enforcement fee shall be in addition to any licensing fees required by law, or any other penalty or sanction assessed by a court of competent jurisdiction or by the board.

L. - M. ...

N. Apprentices may engage in the art of gas fitting only when they are under the direct, constant on-the-job supervision of a licensed gas fitter as defined in §101, and as governed by the Louisiana Workforce Commission.

O. ...

P. No natural person shall engage in the work of a master gas fitter unless he possesses a master gas fitter's license or renewal thereof issued by the board. The board shall issue a master gas fitter license to any person who qualifies under the board's regulations and who desires to engage in doing the work of a master gas fitter if he passes a written examination given by the board and pays the fees established by the board. A written examination shall not be required for persons applying pursuant to §310. A master gas fitter shall not engage in the work of a gas fitter unless he also possesses a gas fitter's license issued by the board or

previously possessed a gas fitter's license issued by the board. A person issued a master gas fitter's license shall designate to the board, as required by the rules of the board, an employing entity, which may be a corporation, partnership, or sole proprietorship. A licensed master gas fitter shall notify the board of any change of employment status with an employing entity within 30 days of the effective date of change in employment status. A master gas fitter shall designate no more than one employing entity at any time. The board may charge a reasonable fee for processing such redesignations.

Q. ...

R. Every employing entity shall maintain an established place of business, with facilities for receiving complaints, calls and notices during normal business hours, from any person for whom it is performing gas fitting or from the board and its representatives. It shall display a sign, plainly visible from the street at every place where it and its employees are performing gas-fitting work. If the employing entity is the sole-employing entity for a multi-site project, where employees are performing natural gas work, it may post one sign, plainly visible from the street, at the entrance of the project. All posted signs shall designate the employing entity's full name, physical address, telephone number and master gas fitter license number issued by the board to the designated active master gas fitter in its employ. The sign posted at a single site shall include legible lettering at least 2 inches high with the words "Louisiana Licensed Master Gas Fitter" (or abbreviated "LA Lic. Master Gas Fitter" or "LMNGF ____"). For multi-site projects, where only a single sign is posted, in addition to the above requirement, the lettering must be at least 4 inches high. The employing entity shall also identify itself by permanent signs or lettering affixed to its service vehicles on both sides of such vehicles indicating the same information required of job-site signs, in at least 2-inch lettering." All public advertising, solicitations, customer invoices, and business correspondence issued by or on behalf of an employing entity shall set forth the information described herein.

S. Employment of an active master gas fitter by an employing entity on a regular paid basis, as required by this Section, shall mean employment or self-employment for wages or under a bona fide contract of hire with no more than one employing entity at any given time. Such employment or self-employment must include services performed by the active master gas fitter which is within the state of Louisiana or both within and without the state of Louisiana.

T. - U. ..

V. The board is empowered to assess special enforcement fees on a daily basis at a rate not to exceed \$10 a day relative to any master gas fitter or employing entity, or both, that fails or refuses, after due notice, to comply with the sign and posting requirements established by this Section. The daily enforcement fees assessed by the board under this provision shall not exceed, in the aggregate, \$500. This special enforcement fee shall be in addition to any licensing fees required by law, or any other penalty or sanction assessed by a court of competent jurisdiction or by the board.

W. In the event any applicant for any license or endorsement who successfully completes a required

examination, but fails to pay to the board any requisite license or endorsement fee within 90 days of notice of his examination results shall not be issued the applicable license or endorsement unless and until he submits to and successfully completes re-examination and pays the appropriate fees for such re-examination and subsequent license or endorsement fee. Imposition of this re-examination requirement may be waived for good cause. Any special endorsement fees incurred before or during the re-examination process shall not be affected.

X. - Y. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(D).

HISTORICAL NOTE: Adopted by the Department of Labor, Plumbing Board, 1968, amended and promulgated by the Department of Employment and Training, Plumbing Board, LR 17:49 (January 1991), amended by the Department of Labor, Plumbing Board LR 19:897 (July 1993), LR 19:1593 (December 1993), LR 21:1348 (December 1995), LR 25:1857 (October 1999), amended by the Workforce Commission, Plumbing Board, LR 42:576 (April 2016). LR 43:541 (March 2017), LR 43:972 (May 2017), LR 47-274 (February 2021), LR 49:

§303. Application for License

A. - B. ...

C. Applications for master plumber license shall be completed and sworn to before a notary public by the applicant. The applicant must submit proof that he is licensed by the board at the time of application as a journeyman plumber or the applicant must submit proof that he is a professional engineer licensed by the state of Louisiana with experience in the art of plumbing as defined in R.S. 37:1377.D. He must furnish whatever other information relevant to his experience that is requested in the application form or specially requested by the board.

D. An application for medical gas piping installer shall be completed and sworn to before a notary public by the applicant. The applicant must submit proof that he has completed a course of training described in §304 by an organization certified by the board pursuant to R.S. 37:1368.G. Additionally, the applicant must present proof of maintenance of performance qualification as a brazer in accordance with §304. The applicant must furnish whatever other information relevant to his experience that is requested in the application form or specially requested by the board.

E. An application for a water supply protection specialist endorsement to a master or journeyman plumber license shall be completed and sworn to before a notary public by the applicant. The applicant must submit proof that he is licensed by the board at the time of application as a master or journeyman plumber. The applicant must submit proof that he has completed a course of training described in §310. He must furnish whatever other information relevant to his experience that is requested in the application form or specifically requested by the board.

F. An application for medical gas and vacuum systems verifiers license shall be completed and sworn to before a notary public by the applicant. The applicant must submit proof that he has successfully completed a course of training and related certification testing described in §315 by an organization certified by the board pursuant to R.S. 37:1368(I). The applicant must furnish whatever information relevant to his experience that is requested in the application form or specifically requested by the board.

G. Applications for gas fitter license shall be completed and sworn to before a notary public by the applicant. Each application shall state two years of having performed manual labor of gas fitting in that two-year training period was under the direct, constant on-the-job supervision of a licensed gas fitter as defined in §101.

G.1. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(D).

HISTORICAL NOTE: Adopted by the Department of Labor, Plumbing Board, 1968, amended and promulgated by the Department of Employment and Training, Plumbing Board, LR 17:50 (January 1991), amended by the Department of Labor, Plumbing Board, LR 21:1348 (December 1995), LR 26:329 (February 2000), amended by the Workforce Commission, Plumbing Board, LR 42:576 (April 2016), LR 43:542 (March 2017), LR 43:972 (May 2017), LR 49:

§304. Medical Gas Piping Installer License

A. No natural person shall engage in the work or business of medical gas piping installation unless he possesses a license or renewal thereof issued by this board. The board shall issue a medical gas piping installer license to any person who qualifies under the board's regulations and who desires to engage in the work or business of a medical gas piping installer if he passes a written and manual examination given by the board for this purpose and pays the fees established by the board. No person shall qualify for examination as a medical gas piping installer unless he completes a course of training provided by an organization recognized by the board pursuant to this Section.

B. - B.4. ...

5. Courses of instruction defined in this Section must be provided by a person or persons possessing a current medical gas system instructor certification compliant with the guidelines of *ASSE Series International Series 6000, Standard 6050*, pursuant to R.S. 37:1368(G).

C. ...

D. An applicant for a medical gas piping installer license must attach to his application a money order or check for the appropriate fee established in §312.

E. - G. ...

H. The board may accept, in lieu of an examination directly administered by the board to any applicant, the verifiable results of an examination administered by an organization meeting the criteria of *ASSE Series 6000, Standard 6010* §10-3.2.3, as certified pursuant to R.S. 37:1368(G) as evidence of successful completion of the examination referred to in R.S. 37:1368(G). Any papers from such examinations must be available for inspection and the board may require notarized affidavits from the applicant and the administering organization representative attesting to the accuracy of the examination results and the scope of any such examination, which must minimally include the subject areas of the practical examination described in this Section.

I. A medical gas piping installer shall, as a condition of licensing under these regulations, maintain his brazer performance qualification in accordance with *NFPA 99 Health Care Facilities Code*, pursuant to R.S. 37:1368(G).

J. Any person, who at any time is cited by the board for working as a medical gas piping installer without possessing the necessary license issued by the board, shall be subject to a special enforcement fee as a precondition to any

subsequent examination or licensing of any nature. This fee shall be in addition to the regular fees assessed by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(D) and R.S. 37:1368(G).

HISTORICAL NOTE: Promulgated by the Department of Labor, Plumbing Board, LR 21:1349 (December 1995), amended LR 25:1858 (October 1999), amended by the Workforce Commission, Plumbing Board, LR 42:576 (April 2016), LR 43:973 (May 2017), LR 49:

§305. Requirements to Take Exam for Journeyman Plumber's License

A. Requirements

1. An applicant for journeyman plumber's examination shall have performed 8,000 hours of manual labor of plumbing under the direct, constant on-the-job supervision of a licensed plumber as defined in §101.

B. - D. ...

E. The examination shall be given by one or more examiners. At least one board member shall be present. If one is not available, the executive director shall oversee examinations only after notification to all board members.

F. The chairman of the board shall appoint the examiner or examiners, who may be representatives of a private professional service provider qualified to administer a standardized, nationally recognized test duly adopted by the board. If necessary, the chairman shall appoint additional examiners to conduct the special examination described in this Section or an examiner to conduct any special examination required as an accommodation to a qualified disabled individual under the Americans with Disabilities Act.

G. An applicant for journeyman plumber's examination, who does not have sufficient education to read and write the answers to the examination questions, as required in this Section, can apply to the board for a waiver of that particular requirement upon producing satisfactory proof to the board that the applicant has 10 years experience in manual labor of plumbing under the direct, constant on-the-job supervision of a licensed plumber as defined in §101 and has no more than a fourth grade education. A fee for this examination may be established by the board.

G.1. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(A) and (D).

HISTORICAL NOTE: Adopted by the Department of Labor, Plumbing Board, 1968, amended and promulgated LR 14:440 (July 1988), amended LR 15:1088 (December 1989), amended and repromulgated by the Department of Employment and Training, Plumbing Board, LR 17:51 (January 1991), amended by the Department of Labor, Plumbing Board, LR 24:1948 (October 1998), LR 25:1857 (October 1999), amended by the Workforce Commission, Plumbing Board, LR 42:577 (April 2016), LR 49:

§306. Requirements to Take Exam for Master Plumber License

A. Requirements

1. An applicant for master plumber examination shall have a current journeyman plumber license issued by the board; or the applicant shall possess a current license issued by the State Board of Registration for Professional Engineers and Land Surveyors certifying or registering him as a professional engineer. A registered or certified professional engineer must further have experience in the art of plumbing as defined in R.S. 37:1377.D for a period of five years.

2. ...

3. The applicant shall furnish a 2-inch by 2-inch photograph of himself with the application.

4. He shall submit his application and required documents to the office of the state Plumbing Board of Louisiana not less than 30 days before any scheduled examination. The board shall inform all interested persons of the examination schedule.

5. He must attach a money order or check for the appropriate fee to the application. The fee is established in §309.

B. Regular quarterly examinations will be held in conjunction with the examination conducted pursuant to §305, or on such days specially set by the board.

C. ...

D. Special examinations may be held by the board under the same conditions described in §305.

E. The examination shall be given by one or more examiners. At least one board member shall be present. The examiner must be a master plumber licensed by the board or a special appointee under this Section.

F. - G. ...

AUTHORITY NOTE: Adopted in accordance with R.S. 37:1377 and R.S. 37:1366.

HISTORICAL NOTE: Adopted by the Department of Labor, State Plumbing Board, 1968, amended and promulgated by the Department of Employment and Training, State Plumbing Board, LR 17:52 (January 1991), amended by the Department of Labor, Plumbing Board, LR 25:1858 (October 1999), amended by the Workforce Commission, Plumbing Board, LR 42:577 (April 2016), LR 49:

§307. Requirements to Take Exam for Gas Fitter's License

A. Requirements

1. An applicant for gas fitter's examination must have been a registered apprentice with the board for two years and shall provide notarized affidavit of having performed manual labor of gas fitting in that two-year training period under the direct, constant on-the-job supervision of a licensed gas fitter as defined in §101.

A.2. - D. ...

E. The examination shall be given by one or more examiners. At least one board member shall be present. If one is not available, the executive director shall oversee examinations only after notification to all board members.

F. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(D).

HISTORICAL NOTE: Promulgated by the Workforce Commission, Plumbing Board, LR 43:543 (March 2017), amended LR 49:

§308. Requirements to take Exam for Master Gas Fitter License

A. - A.5. ...

B. Regular quarterly examinations will be held in conjunction with the examination conducted pursuant to §307, or on such days specially set by the board.

C. ...

D. Special examinations may be held by the board under the same conditions described in §307.

E. The examination shall be given by one or more examiners. At least one board member shall be present. If one is not available, the executive director shall oversee examinations only after notification to all board members.

The examiner must be a master gas fitter licensed by the board or a special appointee under this Section.

F. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(D).

HISTORICAL NOTE: Promulgated by the Workforce Commission, Plumbing Board, LR 43:543 (March 2017), amended LR 49:

§309. Requirements to Take Exam for Tradesman Plumber License

A. Requirements

1. An applicant for tradesman plumber's examination shall have a current apprentice registration certificate issued by the board and have performed 4,000 hours of manual labor of plumbing under the direct, constant, on-the-job supervision of a licensed plumber as defined in §101.

A.2. - D. ...

E. The examination shall be given by one or more examiners. At least one board member shall be present. If one is not available, the executive director shall oversee examinations only after notification to all board members.

F. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(D) and R.S. 37:1368(G).

HISTORICAL NOTE: Promulgated by the Workforce Commission, Plumbing Board, LR 43:973 (May 2017), amended LR 49:

§310. Renewals

A. ...

B. All renewal applications received at the board's office later than midnight the last day of December will be delinquent and will require a revival fee in addition to the renewal fee. Any license not renewed by the last day of December will pay a revival fee, in addition to the renewal fee, if renewed between January 1 and March 31. Any license renewed after March 31, will require an increased revival fee, in addition to the renewal fee. The fees are set forth in §312. Any person performing the work of a tradesman plumber, journeyman plumber or a master plumber without the appropriate license issued by the board after March 31 of any year without having renewed his license from the immediately preceding year shall be subject to the special enforcement fee established in §305 or §306 or §309.

C. A person who has allowed his previously issued tradesman plumber or journeyman plumber license to expire may be afforded the option, in lieu of re-examination, of paying a special revival fee of \$50 per year for each year the license was not renewed up to a limit of four consecutive years. However, any such person who performs the work of a journeyman plumber without possessing a license issued by the board during this period shall be subject to the special enforcement fee established in §305 or §309.

D. A person who has allowed his previously issued master plumber license, or inactive master plumber license to expire may be afforded the option, in lieu of re-examination, of paying a special revival fee of \$250 per year for each year the license was not renewed up to a limit of four consecutive years. Any person who performs the work of a master plumber without possessing a license issued by the board during any period of lapsed license shall be subject to the special enforcement fee established in §306.

E. - F.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(D).

HISTORICAL NOTE: Adopted by the Department of Labor, Plumbing Board, 1968, promulgated LR 2:419 (December 1976), amended LR 7:588 (November 1981), amended by Department of Employment and Training, Plumbing Board, LR 17:52 (January 1991), LR 18:30 (January 1992), amended by the Department of Labor, Plumbing Board, LR 21:1350 (December 1995), LR 26:329 (February 2000), amended by the Workforce Commission, Plumbing Board, LR 42:577 (April 2016), LR 43:544 (March 2017), LR 43:974 (May 2017), LR 49:

§312. Fees

A. - A.4. ...

5. special enforcement fee imposed under §301 - \$500.

B. - B.7. ...

8. administrative charges for processing application (to be retained by the board should applicant withdraw his application before taking examination) - 50 percent of examination fee;

9. ...

10. special enforcement fee imposed under §309 - \$500.

C. - C.7. ...

8. administrative charges for processing application (to be retained by the board should applicant withdraw his application before taking the examination) - 50 percent of examination fee;

9. ...

10. special enforcement fee imposed under §305 - \$500.

D. The fees and charges of the board relative to master plumbers and inactive master plumbers shall be as follows:

1. - 7. ...

8. special enforcement fee imposed under §306—\$500;

9. - 11. ...

12. special daily enforcement fee imposed under §301—\$10/day, not to exceed \$500 in the aggregate;

E. - E.7. ...

8. special enforcement fee imposed under §304—\$500.

F. - F.7. ...

8. special enforcement fee imposed under §313—\$500.

G. - G.7. ...

8. administrative charges for processing application (to be retained by the board should applicant withdraw his application before taking the examination)—50 percent of examination fee;

9. ...

10. special enforcement fee imposed under §307—\$500.

H. - H.8. ...

9. fee for N.S.F. or returned check—\$20;

10. special enforcement fee imposed under §307—\$500.

I. - I.6. ...

7. fee for N.S.F. or returned check—\$20;

8. special enforcement fee imposed under §306—\$500;

9. - 11. ...

12. special daily enforcement fee imposed under §308 - \$10/day, not to exceed \$500 in the aggregate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(D) and R.S. 37:1371.

HISTORICAL NOTE: Adopted by the Department of Labor, Plumbing Board, 1968, amended and promulgated LR 7:588 (November 1981), amended LR 15:1089 (December 1989), amended by the Department of Employment and Training, Plumbing Board, LR 16:23 (January 1990), LR 17:53 (January 1991), amended by the Department of Labor, Plumbing Board, LR 19:898 (July 1993), LR 19:1594 (December 1993), LR 21:1351 (December 1995), LR 26:327 (February 2000), amended by the Workforce Commission, Plumbing Board, LR 43:545 (March 2017), LR 43:975 (May 2017), LR 44:633 (March 2018), repromulgated LR 46:401 (March 2020), amended LR 49:

§313. Water Supply Protection Specialist Endorsement

A. ...

B. As authorized by R.S. 37:1368(H), the board shall recognize and certify certain programs of education and training of water supply protection specialist offered by private or public organizations or institutions compliant with *ASSE International, Cross-Connection Control Professional Qualifications Standard ASSE Series 5000* or a nationally recognized, board-approved program. A journeyman or master plumber licensed by this board who successfully completes any such program shall qualify for admission to an examination offered under §313.A of these regulations. Any such organization must satisfy the board that its program or programs includes training and testing as specified in the *ASSE International, Cross-Connection Control Professional Qualifications Standard ASSE Series 5000*, or a nationally-recognized, board-approved program.

C. Courses of instruction defined in this Section must be provided by a person or persons meeting the credentials and requirements of *ASSE Series 5000*, or a nationally-recognized board-approved program.

D. To be eligible for board certification pursuant to R.S. 37:1368(H), an interested organization providing water supply protection specialist training and education must complete a written application on a form or forms supplied by the board. The board shall be entitled to receive timely information on the program or programs administered by such organization and background of instructors upon request at any time. The board, acting through its representatives, may also inspect the facility and observe the actual training and education programs used and offered by such organization. Failure to cooperate with the board and its representatives may be grounds for denial or withdrawal of board certification of any such organization. The board may investigate complaints concerning such programs. Adverse administrative action affecting an organization's application for certification or its continued status as an organization certified by the board pursuant to R.S. 37:1368(H) will be subject to the Administrative Procedure Act.

E. The board may accept, in lieu of an examination directly administered by the board to any applicant, the verifiable results of an examination administered by an organization certified pursuant to R.S. 37:1368(H) as evidence of successful completion of the examination referred to in R.S. 37:1368(H). Any papers from such examinations must be available for inspection and the board may require notarized affidavits from the applicant and the

administering organization representative attesting to the accuracy of the examination results and the scope of any such examination, which must minimally include the subject areas described in this Section.

F. An applicant for a water supply protection specialist endorsement must attach to his application a money order or check for the appropriate fee established in §312.

G. Regular quarterly examinations for water supply protection specialist endorsements may be held in conjunction with examinations for journeyman or master plumber license applications, or on such days specially set by the board. Interested persons shall be notified of the examination schedule.

H. A water supply protection specialist endorsement application must be submitted to the office of the state Plumbing Board of Louisiana not less than 30 days before any scheduled examination.

I. The chairman of the board shall appoint an examiner or examiners to conduct water supply protection specialist endorsement examinations. An examiner may be a representative of a private or public professional service provider qualified to administer a standardized, nationally recognized test duly adopted by the board.

J. Any person, who at any time is cited by the board for working as a water supply protection specialist without possessing an endorsement to that effect, shall be subject to a special enforcement fee as a precondition to any subsequent examination or licensing of any nature. This fee shall be in addition to the regular fees assessed by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(D) and R.S. 37:1368(H).

HISTORICAL NOTE: Promulgated by the Department of Labor, Plumbing Board, LR 21:1350 (December 1995), amended by the Department of Labor, Plumbing Board, LR 25:1859 (October 1999), amended by the Workforce Commission, Plumbing Board, LR 42:577 (April 2016), repromulgated LR 43:546 (March 2017), LR 43:976 (May 2017), LR 49:

§314. Integrity of Examination

A. ...

B. The board is empowered to act upon reports of violation of Subsection A of this Section by examinees received from private or public organizations recognized as examiners under §§304, 306, 313, or 310 and impose sanctions as described in this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366.D.

HISTORICAL NOTE: Promulgated by the Department of Labor, Plumbing Board, LR 24:1948 (October 1998), amended LR 26:328 (February 2000), repromulgated by the Workforce Commission, Plumbing Board, LR 43:547 (March 2017), LR 43:977 (May 2017), LR 49:

Chapter 5. The Board

§503. Officers

A. - A.1.e. ...

f. Appoint a vice chairman in his vacancy until the next board meeting, where a nomination committee will recommend the next vice chairman, subject to a vote by the entirety of the board.

2. - 3.p. ...

AUTHORITY NOTE: Adopted in accordance with R.S. 37:1377 and R.S. 37:1366.

HISTORICAL NOTE: Adopted by the Department of Labor, State Plumbing Board, 1968, amended and promulgated by Department of Employment and Training, State Plumbing Board,

LR 17:53 (January 1991), amended by the Workforce Commission, Plumbing Board, LR 49:

Chapter 7. Board Employees

§701. Seasonal and Part-Time Employees

A. Board members and advisory committee members shall be given photo ID cards so that they can act as special enforcement officers for the board.

B. - C.5. ...

D. Examiners

1. Examiners employed to conduct any examination for a journeyman plumber license must be licensed journeyman plumbers or possess such skill and knowledge relating to the pipe trades as the board may deem appropriate. Examiners employed to conduct any examination for a master plumber license shall conform with §306. They shall be notified two weeks prior to date of examination, and shall notify the board if they are unable to attend. They shall receive for their wages a fee fixed by the board. The journeyman plumber examiner shall report at least 15 minutes prior to time of the examination, to the board member presiding over examination, and his duties shall be as follows:

a. ...

b. correct any papers pertaining to the examination and tabulate for final grades, before leaving, unless the examination is administered by a representative of a private professional service provider as described in §305;

D.1.c. - E. ...

AUTHORITY NOTE: Adopted in accordance with R.S. 37:1377 and R.S. 37:1366.

HISTORICAL NOTE: Adopted by the Department of Labor, State Plumbing Board, 1968, amended and promulgated by Department of Employment and Training, State Plumbing Board, LR 17:54 (January 1991), amended by the Department of Labor, Plumbing Board, LR 25:1858 (October 1999), amended by the Workforce Commission, Plumbing Board, LR

Chapter 9. Revocation and Related Administration Proceedings

§901. Revocation, Suspension and Probation Procedures

A. All adjudication proceedings initiated pursuant to R.S. 37:1378 and conducted by the board shall be in accordance with the Administrative Procedure Act, R.S. 49:955 et seq. The term *licensee*, as used in this Section, shall refer, where applicable, to the holder of a tradesman plumber, journeyman plumber, master plumber, inactive master plumber, gas fitter, master gas fitter, medical gas piping installer or medical gas and vacuum systems verifier license, and holder of a water supply protection specialist endorsement.

B. - K.3.a. ...

b. The definite time of suspension shall be stipulated by the board in the order to the licensee. Upon termination of the time period the licensee shall be entitled to receive his license upon payment of the required fee and upon documented compliance with the conditions which may have been imposed by the board at the time of the original order. The reinstatement fee shall not exceed the special enforcement fee under §305, §306, or §309.

c. If a license is suspended for an indefinite term, the licensee may petition for reinstatement of his license only after one calendar year has lapsed from the date of the original order. The board may terminate the suspension and

reinstate such license after a hearing is held and the board determines that the cause/causes for the suspension no longer exist or that intervening circumstances have altered the condition leading to the suspension. If reinstatement is granted the licensee shall pay the required reinstatement fee, which shall not exceed the amount established as the special enforcement fee under §305, §306, or §309.

L. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(D).

HISTORICAL NOTE: Adopted by the Department of Labor, Plumbing Board, 1968, amended and promulgated by the Department of Employment and Training, Plumbing Board, LR 17:55 (January 1991), amended by Department of Labor, Plumbing Board, LR 21:1352 (December 1995), LR 26:331 (February 2000), amended by the Workforce Commission, Plumbing Board, LR 43:549 (March 2017), LR 43:978 (May 2017), LR

Family Impact Statement

The proposed amendments and the adoption of LAC Rule should have no known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically, the implementation of this proposed Rule has no known or foreseeable effect on:

1. The stability of the family.
2. The authority and rights of parents regarding the education and supervision of their children.
3. The functioning of the family.
4. Family earnings and family budget.
5. The behavior and personal responsibility of children.
6. The ability of the family or local government to perform this function.

Poverty Impact Statement

The proposed amendments should have no impact on poverty as described in R.S. 49:973.

Small Business Impact Statement

The proposed amended rules should have no adverse impact on small businesses as defined in the Regulatory Flexibility Act.

Provider Impact Statement

The proposed amended rules are not anticipated to have any impact on providers of services funded by the state as described in HCR 170 of the 2014 Regular Legislative Session.

Public Comments

Any interested person may submit written comments regarding the content of this proposed Rule change to Ashley Jones Tullier, Executive Director of the Board, 11304 Cloverdale Avenue, Baton Rouge, LA, no later than 5:00 p.m., March 10, 2023.

Ashley Jones Tullier
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Plumbers

Introductory Information; Licenses

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed Rule changes do not result in any cost savings to the state or local governmental units. The proposed Rule changes reduces the NSF charge from \$35 to \$20, resulting in a \$15 loss to the board on each NSF check received. Although the bank charge for an NSF check is \$35, the maximum charge allowed by the statute is currently \$20. This loss to the board of \$15 per NSF check is on average less than \$500 per year and will be absorbed by the general budget of the board.

The proposed Rule changes adds the definition of “direct, constant on-the-job supervision” to clarify the meaning of the term in specific parts of the existing rules; adds “physical” for the address requirements posted on signage required to notify the public of the employing entity’s established place of business for receiving complaints, calls and notices during regular working hours; allows individuals who previously held a restricted master plumber license to submit a written request to the board for a journeyman plumber’s license or a master plumber’s license, thereby allowing the individual to practice throughout the state of Louisiana; provides for the executive director to oversee examinations if a board member is unable to do so; provides that, upon a vacancy, the chair appoint an interim vice chairman to serve until a nomination committee can make a permanent recommendation at the next board meeting; corrects the language used to identify the committee members; revises the NSF charge relative to gas fitters and master gas fitters to be in compliance with the statute; provides for certain updates and corrects citations; corrects a typographical error and removes 312.D.13 and 312.I.12 published in error.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed Rule changes required by LA R.S. 37:1371 will result in a less than \$500 per year reduction in revenue collected for NSF checks from licensures each calendar year.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Several of the proposed Rule changes will increase potential income for small plumbing businesses. One proposed Rule change, requiring an adjustment to signage, will have a nominal cost to plumbing businesses.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Several of the proposed Rule changes will increase competition and employment since restricted plumbers will have statewide access and journeymen will lose less man hours supervising apprentices. These changes will increase the number of plumbing hours available statewide.

Julie Ricard Spencer
Board Attorney
2302#033

Alan M. Boxberger
Interim Legislative Fiscal Officer
Legislative Fiscal Office

Committee Reports

COMMITTEE REPORT

House of Representatives
Committee on Natural Resources and Environment
and
Senate
Committee on Natural Resources

Oversight Consideration of the Proposed
Department of Wildlife and Fisheries Rule Regarding
Spotted Seatrout Management Measures
(LAC 76:VII.341)

In accordance with the powers conferred in the Administrative Procedure Act by R.S. 49:966, the House Committee on Natural Resources and Environment and the Senate Committee on Natural Resources met jointly on February 1, 2023, to exercise oversight authority on the attached Notice of Intent from the Louisiana Department of Wildlife and Fisheries on “Spotted Seatrout Managing Measures.”

After a thorough hearing on the matter, including a presentation by the department and discussion from members, the committees found a lack of sufficient data to support the path chosen by the department. As such, the House and Senate committees each found the proposed rule unacceptable as provided in R.S. 49:966(D)(3).

By transmittal of this written report of committee action, and pursuant to R.S. 49:966(F), the House Committee of Natural Resources and Environment and the Senate Committee on Natural Resources is hereby notifying the Governor, the Wildlife and Fisheries Commission, the Department of Wildlife and Fisheries, and the *Louisiana Register* of the committee action taken.

Jean-Paul Coussan, Chairman
House Committee on Natural Resources and
Environment
and
Bob Hensgens, Chairman
Senate Committee on Natural Resources

2302#086

Potpourri

POTPOURRI

Department of Economic Development Office of the Secretary

Small Business Innovation Retention Fund Program (LAC 13:I.Chapter 49)

The Department of Economic Development published a Notice of Intent in the December 2022 issue of the *Louisiana Register* (LR 48:12, 2999-3001). A public hearing was held on January 25, 2023 and interested parties were invited to provide comment. While the feedback overall was positive, concerns were raised over §4905.A.3.b which sought to address LED's role in administering both this SBIR Innovation Retention Fund Program and the Research and Development Tax Credit Program, which are both based on the same criteria of securing a federal research award. After a thorough review and careful consideration of the comments and testimony received, the department therefore proposes to revise §4905.A.3 and delete §4905.A.3.b. No fiscal or economic impact will result from the amendments proposed in this notice.

Title 13

ECONOMIC DEVELOPMENT

Part I. Financial Incentive Programs

Chapter 49. Small Business Innovation Retention Fund Program

§4901. Purpose

A. The purpose of this Chapter is to implement the Small Business Innovation Retention Fund Program as established by R.S. 51:2401.

B. This Chapter shall be administered to achieve the following purposes:

1. to support and retain Louisiana jobs in STEM and other high-tech industries; and
2. to retain Louisiana small innovative businesses by providing financial assistance to certain businesses that have received certain small business innovation research (SBIR) or small business technology transfer (STTR) grant funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 51:2401.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 49:

§4903. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in R.S. 51:2401, unless the context clearly requires otherwise.

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

Applicant—a person requesting a grant award from LED under this program.

Department—Louisiana Department of Economic Development.

Federal Notice of Award—a document issued by a federal agency evidencing approval of an SBIR or STTR application, including but not limited to amount of funding awarded, agreement number and topic number.

LED—Louisiana Department of Economic Development.

LED Grant Letter—a letter issued by LED to a person for a particular calendar year, setting forth the amount, terms and conditions of the grant.

Louisiana Small Business—a for profit, Louisiana domiciled business with fewer than 500 employees.

Person—any natural person or legal entity including an individual, corporation, partnership, or limited liability company.

Retention Fund—Small Business Innovation Retention Fund.

Secretary—Secretary of the Louisiana Department of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 51:2401

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 49:

§4905. General Principles

A. The following general principles will direct the administration of the program.

1. Awards are not be considered as an entitlement for companies, and the secretary has the final authority to determine whether or not each particular applicant is eligible and meets the criteria of the award, and in all such circumstances, the exercise of that discretion shall be deemed to be a final determination of the applicant's award status.

2. Applications shall be accepted on a year round basis, subject to availability of funding in any given year, or as otherwise determined by LED.

3. Applicants may apply for more than one program administered by LED, provided that separate applications are submitted per program.

B. Program Issuance Cap

LED may issue no more than \$1,000,000 per fiscal year from the Retention Fund as follows:

a. up to \$500,000 shall be allocated for Phase I SBIR or STTR federal grant recipients;

b. up to \$500,000 shall be allocated for Phase II SBIR or STTR federal recipients.

C. Applicant Issuance Cap

1. Each selected applicant shall receive an amount equal to 25 percent of the Phase I SBIR or STTR federal grant the applicant has received, not to exceed \$50,000 per applicant;

2. Each selected applicant shall receive an amount equal to 20 percent of the Phase II SBIR or STTR federal grant the applicant has received, not to exceed \$100,000 per applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 51:2401.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 49:

§4907. Eligibility

A. Eligible applicants for the benefits of this program shall be Louisiana small businesses that receive a Federal Notice of Award on or after June 15, 2022.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 51:2401.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 49:

§4909. Application Procedure

A. LED will provide a standard application form which applicants will be required to use to apply for assistance under this program. The application form will contain, but not be limited to, the following:

1. business name;
2. contact person and their title;
3. business physical address;
4. business phone number and email address;
5. brief description of the nature of the business;
6. number of employees;
7. secretary of state registration;
8. information evidencing SBIR or STTR award, including name of issuing federal agency;
9. any additional information requested by LED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 51:2401.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 49:

§4911. Selection Criteria

A. LED will consider various factors when determining which applications will be funded. Among the factors which may be taken into consideration are the following:

1. disbursing of funding statewide;
2. availability of funding; and
3. best interests of the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 51:2401.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 49:

§4913. LED Action—Grant Approval or Denial Provisions

A. In the event LED determines that an applicant is eligible, funding is available and a grant would be appropriate, a grant letter will be issued, specifying the amount, the terms and conditions of the grant.

B. Grant funds will be disbursed to the approved applicants as follows:

1. Phase I SBIR or STTR applicants shall receive 25 percent of the federal grant received, not to exceed \$50,000 per applicant;
2. Phase II SBIR or STTR applicants shall receive 20 percent of the federal grant received, not to exceed \$100,000 per applicant;
3. Each grant awarded shall be divided into two equal amounts and disbursed over a period of two consecutive years as follows:

a. Year 1 funding may be awarded based upon the amount stated in the federal notice of award;

b. Year 2 funding shall be awarded contingent upon the actual federal grant funding received, as supported by reporting documentation of recipient and any other compliance information requested by LED. In the event of

any deviation from the anticipated total federal grant funding, LED reserves the right to increase or decrease the Year 2 award to ensure compliance with the maximum award provisions.

C. In the event LED determines that an applicant is not selected for an award, a denial letter will be issued by the secretary, specifying the basis for denial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 51:2401.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 49:

Public Comments

Interested persons should submit written comments on the proposed Rules to Stephanie Le Grange through the close of business on Monday, March 27, 2023 at Department of Economic Development, 617 North Third Street, 11th Floor, Baton Rouge, LA 70802 or via email to Stephanie.LeGrange@la.gov.

Public Hearing

A meeting for the purpose of receiving the presentation of oral comments will be held at 11:00 a.m. on Tuesday, March 28, 2023 in the Griffon Conference Room at the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

Brenda Guess
Assistant Secretary

2302#086

POTPOURRI

**Department of Economic Development
Office of Business Development**

Quality Jobs Program (LAC 13:I.Chapter 11)

Editor's Note: This Rule may be viewed in this edition of the *Louisiana Register*.

The Department of Economic Development, Office of Business Development, amended the rules for the Quality Jobs Program, pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. The Rules were submitted to and approved by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs, in a joint committee meeting on January 31, 2023, pursuant to the provisions of La. R.S. 51:2459.

Anne G. Villa
Undersecretary

2302#034

POTPOURRI

**Office of the Governor
Division of Administration
Office of Broadband Development and Connectivity**

Public Hearing for Substantive Change—Granting Unserved Municipalities Broadband Opportunities (GUMBO) (LAC 4:XXI.Chapters 1-7)

The Office of the Governor, Division of Administration, Office of Broadband Development and Connectivity proposes to amend LAC 4:XXI.Chapters 1-7 as authorized

by R.S. 51:2370-2370.16, relative to the administration of the Granting Unserved Municipalities Broadband Opportunities (GUMBO) grant program by the Office of Broadband Development and Connectivity, in response to Acts 288 and 760 of the 2022 Regular Legislative Session.

Acts 288 and 760 of the 2022 Regular Legislative Session made several substantive changes to the GUMBO grant program. Broadband internet access has become a critical piece of infrastructure, relied upon to ignite economic growth and competitiveness, contribute to improved outcomes in healthcare, enhance agricultural output, and advance the educational experience of our children. Failure to connect the unconnected, and any further delay in constructing broadband infrastructure to serve those residents without it, would continue the substantial risk of hardship currently faced by hundreds of thousands of residents throughout the state. Further, these amendments allow for the alignment of administrative rules with the newly passed legislation in a timely manner, affords the Office of Broadband Development and Connectivity the opportunity to implement program changes and solicit applications, and provides potential GUMBO grant program applicants with guidance and requirements necessary for participation in the program ahead of the normal rulemaking process timeline.

Title 4

ADMINISTRATION

Part XXI. Granting Unserved Municipalities Broadband Opportunities (GUMBO)

Chapter 1. Program Summary

§101. Background and Authorization

A. ...

B. The Louisiana Office of Broadband Development and Connectivity, as authorized by R.S. 51:1361-51:1365.3 and 51:2370.1-2370.16, provides grants to providers of broadband services to facilitate the deployment of broadband service to unserved areas of the state. The Granting Unserved Municipalities Broadband Opportunities (GUMBO) grant program funds eligible projects, through a competitive grant application process, in economically distressed parishes throughout the state.

C. The application materials, program guidelines, and criteria set forth in this Part govern the GUMBO grant program and have been developed based on the enacting legislation for the program, Act 477 of the 2021 Regular Legislative Session, and amending legislation for the program, Acts 288 and 760 of the 2022 Regular Legislative Session.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2370-2370.16.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Broadband Development and Connectivity, LR 48:1504 (June 2022), amended LR 49:

§103. Definitions

Broadband Service—deployed internet access service with a minimum of 100 Mbps download and 20 Mbps upload transmission speeds (100:20 Mbps).

* * *

Internet Service Provider—any entity, public or private, providing internet service to at least one location in the state.

* * *

Unserved—notwithstanding any other provision of law, any federal funding awarded to or allocated by the state for broadband deployment shall not be used, directly or indirectly, to deploy broadband infrastructure to provide broadband internet service in any area of the state where broadband internet service of at least 100:20 Mbps is available from at least one internet service provider.

Unserved Area—a designated geographic area that is presently without access to broadband service offered by a wireline or fixed wireless provider. Areas included in an application where a provider has been designated to receive funds through other state or federally funded programs designated specifically for broadband deployment shall be considered served if such funding is intended to result in the initiation of activity related to the construction of broadband infrastructure in such area within 24 months of the expiration of the 60-day period related to such application established pursuant to R.S. 51:2370.4.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2370-2370.16.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Broadband Development and Connectivity, LR 48:1504 (June 2022), amended LR 49:

§105. Non-Applicability of other Procurement Law

A. In accordance with R.S. 51:2370.14(C), grants solicited and awarded pursuant to the GUMBO grant program shall not be subject to the provisions of the Louisiana Procurement Code, R.S. 39:1551 et seq., or the public bid law, R.S. 38:2181 et seq.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2370-2370.16.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Broadband Development and Connectivity, LR 48:1505 (June 2022), amended LR 49:

Chapter 2. Mapping Areas for Broadband Service and Project Area Eligibility Requirements

§201. Mapping Requirements on Internet Service Providers

A. Internet service providers (ISPs) shall submit information to the office to assist in compiling a statewide parish by parish broadband map identifying the locations and capability of broadband service in the state. ISPs shall submit to the office on or before fifteen days following the expiration of the date required for submission to the federal government, broadband deployment information containing the same information and in the same format the information is submitted to the Federal Communications Commission, in a manner specified by the office. In no instance shall an entity be required to provide any data beyond that which it is required to provide to the Federal Communications Commission.

B. Any broadband availability data provided in accordance with this emergency rule shall strictly be used for the purpose of identifying served, underserved, and unserved areas to aid in the administration of the GUMBO program, and for no other purpose whatsoever.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2370-2370.16.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Broadband Development and Connectivity, LR 49:

§202. Penalty for Lack of Compliance

A. Any ISP that does not comply with the requirements of this emergency rule or submits inaccurate information may be ineligible to participate in, or receive any funding from, any state-administered grant program designated for broadband infrastructure deployment in the state in the calendar year of noncompliance and the following calendar year.

B. Any location in the state purportedly served by an ISP that does not comply with the requirements of this Section may be deemed to have internet access service of less than 25 megabits per second for download and 3 megabits per second for upload.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2370-2370.16.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Broadband Development and Connectivity, LR 49:

§203. Mapping and Project Area Protest Process

A. Any ISP submitting broadband development data to the office as required by this emergency rule may review the proposed draft of the state broadband map and submit any necessary corrective data to the office prior to the final publication or utilization of the state broadband map for any state-administered grant program designated for broadband infrastructure in the state.

B. Any entity submitting broadband data to the office as required by this emergency rule may challenge any area submitted by another entity. Any individuals, civic groups, or local governments may also challenge submitted areas.

C. All submitted mapped areas shall be publicly available on the office's website for a period of at least 60 days prior to final map publication and utilization. During the 60-day period, any interested party may submit comments to the director concerning any submitted area.

D. The protest process, official decisions, and provider appeals shall be conducted in accordance with R.S. 51:2370.4(C) and 2370.5, as well as this Chapter.

E. An individual, civic group, local government, or provider of broadband service may submit a protest of any area on the grounds that the area is unserved or served, or whether the area has a serviceable location or not. Additionally, one may protest if the construction of broadband infrastructure will begin within 24 months as described in §206 of the GUMBO rules and defined within the GUMBO grant program. Comments and protests shall be submitted in writing through the office's website, and all protests shall be accompanied by all relevant supporting documentation and shall be considered by the office in connection with the review of the application or project area. The protesting party bears the burden of proof.

F. Protests shall contain all relevant supporting documentation, including, but not limited to, the following:

1. a signed and notarized affidavit affirming the protest and attached information are true;
2. current Federal Communications Commission (FCC) Form 477 or equivalent;
3. minimum/maximum speeds available in the area;

4. number of serviceable locations within the area, including the speeds serviceable locations are able to receive;

5. street level data of customers receiving service within the area;

6. point shapefiles that show each passing in the challenged area, designated by a singular mapped point, in the protested area containing attribute data showing the addresses of each point;

7. polygon shapefiles delineating the general challenged area(s);

8. through the use of the area map submitted by the applicant, a map indicating where the protested serviceable locations are within the area;

9. heat maps indicating received signal strength indicator (RSSI) in the challenged area.

G. The office reserves the right to initiate contact with a protesting party to seek clarification of a protest, the data contained therein, or to request additional information.

H. Should a protest be validated, the office shall work with an ISP to amend a submitted map area. The office shall revise the statewide map in accordance with amended submissions.

I. Protest and appeal decisions provided by the director and the Commissioner of Administration shall be provided in writing to the protesting party.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2370-2370.16.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Broadband Development and Connectivity, LR 49:

§204. Penalties upon Protest Resolution

A. Upon protest resolution, at its sole discretion, the office may impose a penalty to the losing ISP or party of \$1,000 per misrepresented location and may also declare the losing party ineligible to participate in, or receive any funding from, any state-administered grant program designated for broadband infrastructure deployment in the state in the calendar year of protest initiation and the following calendar year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2370-2370.16.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Broadband Development and Connectivity, LR 49:

§205. Broadband Availability Map Maintenance

A. Every six months, within 15 days of when ISPs submit updated information to the Federal Communications Commission, ISPs shall submit the same information to the office to assist in maintaining the statewide parish by parish broadband map identifying the locations and capability of broadband service in the state. ISPs shall submit to the office on or before 15 days following the expiration of the date required for submission to the federal government, broadband deployment information containing the same information and in the same format the information is submitted to the Federal Communications Commission, in a manner specified by the office. In no instance shall an entity be required to provide any data beyond that which it is required to provide to the Federal Communications Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2370-2370.16.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Broadband Development and Connectivity, LR 49:

§206. Eligible and Ineligible Project Areas (Formerly §201)

A. Eligible areas for the GUMBO grant program are areas without deployed internet access service providing reliable transmission speeds of at least 100:20 Mbps through wireline or fixed wireless technology, and which qualify as an unserved area as defined in this Part. The office, at its sole discretion, may determine an applicable standard of what, whether a technology, network design, or transmission speed delivered, is considered “reliable.” This standard may be adjusted for each succeeding grant round, as technology improves and reliable measurable techniques and reporting advances. This standard may also be applied to any singular location, area, or geographic boundary, as established by the office. These areas are the focus of broadband expansion under this grant program. Technology such as digital subscriber line is considered “unreliable”, and areas serviced solely by this technology are considered eligible for GUMBO program funding.

B.1. Ineligible areas for the program are areas that already have reliable internet access service available to them at transmission speeds of at least 100:20 Mbps through wireline or fixed wireless technology. In addition, areas, inclusive of any singular location where a provider has been fully authorized to receive funding through Universal Service, Connect America Phase II, Rural Digital Opportunity Fund, or other public funds shall be considered served and therefore ineligible for the GUMBO grant program if such funding is intended to result in the initiation of activity related to construction of wireline broadband infrastructure in the area within 24 months from the expiration of the grant application period. In order to designate areas as ineligible and subject to exclusion, providers shall submit to the office individual addresses not less than 60 days prior to the beginning date of the application period. Such individual addresses shall be submitted in shapefile and table format, and shall be inclusive of longitudinal and latitudinal coordinates, specific to each individual address. Should such an address be assigned a specific geolocator number or other specific identifier by the federal government prior to submission to the office, relative to federal broadband availability mapping efforts, such identifier shall be included with each address. Such addresses shall also be denoted by individual points within the shapefile. Any location or area of the state, subject to a Rural Digital Opportunity Fund award, in which the provider receiving the award has proposed to provide broadband internet access service through a technology other than a wireline technology, may be eligible for the GUMBO grant program.

2. A provider with firm plans to privately fund broadband deployment within 20 months from the expiration of the grant application period may qualify the area for protection by submitting to the office, within 30 days of the close of the application period, a listing of the individual addresses comprising the privately-funded project areas meeting this requirement. Such individual addresses shall be submitted in shapefile and table format, and shall be

inclusive of longitudinal and latitudinal coordinates, specific to each individual address. Should such an address be assigned a specific geolocator number or other specific identifier by the federal government prior to submission to the office, relative to federal broadband availability mapping efforts, such identifier shall be included with each address. Such addresses shall also be denoted by individual points within the shapefile. A provider seeking to qualify the area for protection shall provide the office with evidence of plans to deploy within 20 months, which shall include detailed project plans, schedules, detailed budgets, or executive affidavits. Providers that block competitive bidding for GUMBO grant program funding through credible evidence of intent to build, as evaluated and determined at the office’s sole discretion, shall be required to sign a commitment with penalties for failure to execute. Such penalties may be determined and imposed at the office’s sole discretion. The office may also, at its sole discretion, grant an extension of the 20-month period.

3. A provider seeking to privately fund broadband deployment shall construct and provide deployable and reliable broadband service within the 20-month period to at least 80 percent of the designated locations. The office may, at its sole discretion, grant an extension of the 20-month period. Such a provider shall furnish to the office a bond to guarantee the faithful performance of work, in an amount equal to the cost of proposed construction and deployment. If such a provider fails to perform in any material manner, as determined by the office at its sole discretion, and the performance bond becomes due, the provider shall become ineligible for any state-administered grant program designated for broadband development efforts, for a time period to be determined by the office.

4. A local governing authority, to include a parish or municipal governance board comprised of publicly elected members, but not to include school district governance boards, may submit, in writing, an official resolution to the office objecting to any provider that has received, at the time of the passage of the resolution, a letter grade rating of “D” or “F”, or any subsequently equivalent rating, from the Better Business Bureau. At the request of the local governing authority, such a provider shall be ineligible to bid or place an application, solely or in partnership with any other provider, to deploy broadband services within the jurisdictional boundary of the local governing authority through the GUMBO grant program. Any such resolution shall be duly passed and submitted to and received by the office prior to the date of the opening of any associated grant application period. A local governing authority shall not be limited as to the number of resolutions it may pass, nor the number of providers to which it may object. Any such objection shall be applicable for one grant application period, only, and a local governing authority reserves the right to submit additional resolutions, in the future, specific to any succeeding grant application period.

5. Failure on the part of a provider to submit a relevant project area for ineligibility and exclusion shall result in those areas being eligible for GUMBO grant funding for the applicable grant application period. However, a provider with existing wireline technology facilities in the area, or a provider that intends to deploy reliable broadband service within either 24 months of the

close of the application period as a result of receiving public funds specifically for broadband deployment, or 20 months of the close of the application period as a result of plans to privately fund deployment, upon submitting evidence to the office, shall be able to utilize the protest process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2370-2370.16.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Broadband Development and Connectivity, LR 48:1505 (June 2022), amended LR 49:

§207. Resources for Identification of Project Areas (Formerly §203)

A. Applicants can apply for funding to serve individual addresses as set forth in Chapter 3, Applications of this Part.

B.1. The office shall secure broadband availability mapping information and data from any entity, public or private, providing internet access service to at least one location, within the jurisdiction of the state, to assist the office in compiling a statewide parish-by-parish broadband availability map identifying the locations, technologies, and reliable transmission speed capabilities of broadband service in the state. At the request of the office, any such entity shall submit to the office, on or before the fifteenth day following the expiration of the date required for submission of broadband availability and deployment information to the federal government, any such broadband availability and deployment information. Such information shall be submitted to the office and shall contain the same information and be provided in the same format as it was submitted to the Federal Communications Commission, or any other federal entity, in a manner specified by the office. Specific to this requirement, in no instance shall an entity be required to provide any data or information beyond that which it is required to provide to the Federal Communications Commission or any other federal entity.

2. Any entity that does not comply with this submission requirement or submits inaccurate information, may be ineligible to participate in, or receive any funding from, any state-administered grant program designated for broadband infrastructure deployment in the state in the calendar year of noncompliance and through the following calendar year.

a. Any location in the state purportedly served by any entity providing internet access service to at least one location in the state, that does not comply with this submission requirement, may be considered to have internet access service of less than 100:20 Mbps.

3. Any broadband availability mapping data and information, submitted as part of this mapping submission requirement, shall be used solely for the purpose of identifying served, underserved, and unserved locations and areas to aid in the administration of the GUMBO grant program and for no additional purpose.

4. Any entity submitting broadband availability mapping data and information, submitted as part of this mapping submission requirement, may be afforded the opportunity to review a proposed draft of the state broadband map prior to publication or utilization of the map for any state-administered grant application period or program designated for broadband infrastructure deployment in the state, and submit any necessary corrective data and information to the office. In conjunction with this review, the

office shall provide for a challenge period and process to allow any such entity to challenge any location or area deemed eligible for any state-administered grant program designated for broadband infrastructure deployment in the state that overlaps with the challenging entity's verified service territory.

5. The office may contract with a private entity, third-party consultant, or state agency, or any combination thereof, to develop and maintain the state broadband availability map. Any contract entered into by the office with any private entity, third-party consultant, or state agency, or any combination thereof, for such purpose shall include a confidentiality agreement prohibiting the disclosure of any broadband availability mapping data and information. During the development and maintenance of the state broadband availability map, in no instance shall a regional planning district or commission of the state have access to provider-identifying broadband availability mapping data and information submitted as part of this mapping submission requirement.

6. Broadband availability mapping data and information submitted as part of this mapping submission requirement shall be exempt from the public records law and shall be considered confidential, proprietary, and a trade secret of the entity providing such information. The Office, as well as any private entity, third-party consultant, or state agency retained or employed in the development or maintenance of the map, specific to provider-identifying information, shall keep such information strictly confidential and shall not disclose such information, or cause or permit to be disclosed such information, to any third person, private entity, or public body as defined in R.S. 44:1 and shall take all actions reasonably necessary to ensure that such information remains strictly confidential and is not disclosed to or seen, used, or obtained by any third person, private entity, or public body as defined in R.S. 44:1.

7. This broadband availability mapping data and information submission requirement shall be subject to the termination provisions provided for in R.S. 51:2370.3.

C. The office advises potential applicants to consider mapping tools and other resources located within the office's website as a starting point for identifying project areas.

NOTE: Mapping tools and other resources can be found on the website of the office, at connect.la.gov.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2370-2370.16.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Broadband Development and Connectivity, LR 48:1505 (June 2022), amended LR 49:

Chapter 3. Applications

§303. Applications with Multiple Providers or Project Areas

A. An applicant may submit one application with multiple service providers if the applicant can demonstrate how the providers are collaborating to achieve universal coverage for the unserved location or area.

B. ...

C. Units of local government may endorse multiple applications with different service providers and may include project areas that cross jurisdictional boundaries.

1. Units of local government that provide letters of support, matching funds, or in-kind contributions to any

application should provide the same, on a percentage basis relative to matching funds and in-kind contributions, to all applications proposing the use of like technologies in identical unserved areas with access provided to the exact number of prospective broadband recipients within its jurisdiction. Should multiple applications propose to serve unserved areas within its jurisdiction and include the use of unlike technologies, differing unserved areas, or a non-analogous number of prospective broadband recipients to be served, as compared against other applications, a local government may use reasonable judgement and reserve the right to determine its level of support, to include letters of support, matching funds, or in-kind contributions, on an application-by-application basis. A unit of local government that provides differing levels of support, to include letters of support, matching funds, or in-kind contributions, to differing applicants proposing one or more projects within its jurisdiction shall provide an explanation to the office, at the office's request, as to why the local government's differing levels of support do not present an unreasonable or undue preference or advantage to itself or to any provider of broadband service. If, in the opinion of the office, differing levels of support by a unit of local government for differing applications presents an undue or unreasonable preference or advantage to itself or to any provider of broadband service, the office may disqualify from grant funding consideration any application or project area within the jurisdiction of the unit of local government.

D. An applicant may apply for one contiguous project area or multiple non-contiguous project areas

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2370-2370.16.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Broadband Development and Connectivity, LR 48:1506 (June 2022), amended LR 49:

§305. Application Requirements

A. As set forth in greater detail in §§307-315 of this Chapter, each application shall include these components:

1. ...
2. project area and locations to be served;
3. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2370-2370.16.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Broadband Development and Connectivity, LR 48:1506 (June 2022), amended LR 49:

§307. Application Information, Statement of Qualifications, and Partnerships

A. Every application shall include:

1. the identity of the applicant and its qualifications and experience with the deployment of broadband; in addition, the applicant shall include the following:

a. ...

b. a history of the number of households and consumers, by year of service, to which the applicant has provided broadband internet access, as well as the current number of households to which broadband internet access (at least 100:20 Mbps) is offered;

1.c. - 2.

3. the identity of any partners or affiliates, if the applicant is proposing a project for which the applicant

affirms that a formalized agreement or letter of support exists between the provider and one or more unaffiliated partners where the partner is one of the following:

a. a separate provider or potential provider of broadband service, requiring a formalized agreement; or

b. a nonprofit or not-for-profit, or a for-profit subsidiary of either, and the applicant is:

i. - ii. ...

iii. the recipient of a letter of support. A parish, municipality, or school board, or any instrumentality thereof, may qualify as a nonprofit for the purposes of this section. Letters of support by a parish, municipality, or school board, or any instrumentality thereof, supporting an application shall be in the form of an official and duly passed resolution by the governing board and shall be submitted as part of an application. A letter of support does not require a formalized agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2370-2370.16.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Broadband Development and Connectivity, LR 48:1506 (June 2022), amended LR 49:

§309. Project Area(s) and Locations to be Served

A. Every application shall include the following.

1. Mapping and Descriptions

a. Data and information relating to areas proposed to be served is required in order to confirm that the project is serving eligible areas, to accurately score the application; and track progress and completion of the project if awarded. If documentation is deemed insufficient, the office reserves the right to request additional supporting documentation. If the proposed project would result in the provision of broadband service to areas that are not eligible for funding, those ineligible areas shall be identified in the application along with the eligible areas. An applicant is allowed to propose construction of broadband infrastructure to GUMBO-ineligible locations if the proposed project includes GUMBO-eligible locations, and the applicant reports this intention. An applicant may not use any GUMBO grant funding to build to these ineligible locations. Broadband infrastructure deployment to ineligible areas must result as a natural byproduct of broadband infrastructure deployment to eligible areas, and an applicant is not allowed to use any GUMBO grant funding for deployment to ineligible areas. Any potential grant awardee proposing to build broadband infrastructure to GUMBO-ineligible areas will be subjected to additional and rigorous auditing and control standards to ensure compliance with all applicable state and federal law. In no instance shall the number of ineligible locations proposed exceed 25 percent of the number of GUMBO-eligible locations contained within an application.

b. Data and information included shall be relevant to the proposed project area and include the number of prospective broadband recipients that will be served and have access to broadband as a result of the project. For the proposed area to be served, the total cost per prospective broadband recipient must be provided, as well as the GUMBO cost per prospective broadband recipient.

c. The office reserves the right to request any additional data and technical information the office deems necessary.

d. Additionally, applicants may also submit applications for areas where transmission speeds are advertised as reliably meeting or exceeding 100:20 Mbps, if indisputable data is available to establish, to the satisfaction of the office, at its sole discretion, that delivered transmission speeds are reliably less than 100:20 Mbps. Such data should be statistically significant and fully support the application. In no instance should such data provide conflicting data points. Technology such as digital subscriber line is deemed unreliable to meet or exceed 100:20 Mbps and therefore ineligible for GUMBO program funding.

e. Data Submission Requirements

i. Address-Level Data—data shall be submitted at the address level. The acceptable submission formats are GIS shapefile, kml file, Excel file or csv file. If submitting in GIS shapefile (which must be composed of the collection of .shp, .shx, .dbf and .prj files) or kml file format, one point should represent one address and must have a defined projection/coordinate system of either unprojected Geographic latitude/longitude WGS84 EPSG 4326 coordinate system or projected Louisiana State Plan Zone N/S (NAD83) coordinate system. If submitting in Excel or csv file format, one record should represent one address and must include attributes/column data for the latitude and longitude coordinates representing the address. The latitude and longitude coordinates must be in decimal degrees (DD) and at a minimum precision of 8 and scale of 6 (8,6). Regardless of the type of submission file, the submission must also include the full street address represented by the point/record as attributes/column data. The street portion of the address may be concatenated into a single attribute/data column or parsed into separate attribute/data columns. The address city, state, and ZIP code must be parsed into separate attribute/data columns. Refer to the table below for the suggested structure of the attributes/data columns.

Attribute/Column Name	Description
Address ID	Unique identifier of data record.
Address Number*	Address Number: Whole numbers 0 to 999999. Example: "1600" in "1600 Pennsylvania Avenue"
Street Pre-Direction*	Street Name Pre-Directional: a word preceding the Street Name element that indicates the direction taken by the road. Note, values are conditional as not every address contains a directional. Example: "South" in "South Congress Avenue" or "NW" in "NW 1 st St"
Street Name*	Official name of the street. The street name is a minimum requirement. Example: "Main" in "N Main St"
Street Suffix*	Street Name Suffix: a word or phrase that follows the Street Name element and identifies a type of thoroughfare in a complete street name. Note, values are conditional as not every address contains a street suffix.

Attribute/Column Name	Description
Street Post-Direction*	Street Name Post Directional: a word following the Street Name element that indicates the direction taken by the road. Note, values are conditional as not every address contains a directional. Example: "North" in "Elm Avenue North"
Unit*	A group or suite of rooms within a building that are under common ownership or tenancy, typically having a common primary entrance. Example: "Apt 1"
Urbanization**	Raw area/sector (used mostly in territories)
City	City where address is located.
State	State where address is located. Example: "VA" or "Virginia"
Zip5	Five-digit ZIP Code of an address, as given by USPS. Example: "92562" or "04616"
Zip4**	Four-digit ZIP+4 extension. Example: "92562-3860" or "04616-4410"

NOTE: * Indicates values that may be concatenated into a single attribute/data column.

** If not applicable or is unknown, exclude the attribute/data column or leave blank/<Null>

f. Additional Data Sets

i. To assist in clarifying or providing for a greater level of detail regarding the areas and locations to be served by a proposed project, additional data sets may be provided within the application. These data sets should serve as supporting information to the required data listed above and should not be submitted as an alternative. This information will be evaluated as supporting information, only.

Examples of additional data include, but are not limited to:

- Scrubbed data (no raw data) from citizen survey results or demand aggregation results, with speed tests. This data must identify the areas that have less than 100:20 service.
- Affidavits from citizens or other individuals certifying one or more of the following:
 - o they are not able to receive broadband service; or
 - o the only available service is cellular or satellite; or
 - o the only broadband service available by the existing providers is less than 100:20 service.

2. - 2.a. ...

3. Attestation of Project Area Eligibility

a. Applicants are required to sign the statement of attestation to attest to the office that the project area identified within the application is eligible as of the close of the applicable application period, as defined by Louisiana Revised Statutes 51:2370.1 through 2370.16 and this Part, to the best of their knowledge. The attestation statement and signature shall be included as part of the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2370-2370.16.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Broadband Development and Connectivity, LR 48:1507 (June 2022), amended LR 49:

§311. Technical Report

- A. ...
- B. Reporting requirements for all deployments:
 - 1. - 2. ...
 - 3. if the applicant is claiming a partnership, the applicant must provide a brief narrative explaining the partnership or affiliation. For applications where a nonprofit or not-for-profit partner provides only matching financial support, that information can be documented in the budget section within the relevant application. The applicant must also provide evidence of a formalized agreement, when applicable, as required in §307 of this Part;
 - 4. - 6. ...
- C. Reporting requirements for wired infrastructure deployment:
 - 1. ...
 - 2. explanation of existing networks and equipment to be used for the project, if applicable;
 - a. - b. ...
 - 3. detailed explanation of how the new or upgraded infrastructure will serve the prospective broadband recipients. In the case of the installation or upgrade of a specific site infrastructure, such as a point of presence or fiber hut (fiber), the applicant must include:
 - a. ...
 - b. the distance from the specific site infrastructure to the end user(s) and the expected broadband speed that will be effectively and reliably delivered;
 - 4. ...
- D. Reporting requirements for fixed wireless deployment:
 - 1. ...
 - 2. explanation of existing networks and equipment to be used for this project, if applicable;
 - a. If the applicant requires assets owned by another entity, the applicant should explain how the assets will be used for this project and, if applicable, provide a copy of the agreement between the applicant and the owner; and
 - b. the number of towers or vertical assets to be used for the project, the height (in feet) of each tower or vertical asset, and whether each tower or vertical asset is existing or will be constructed. For scoring purposes, tower or vertical asset height will be converted to miles through the following equation: 1 foot of tower or vertical asset height = 1/20 mile.
 - 3. detailed explanation of how the new or upgraded infrastructure will serve the prospective broadband recipients. In the case of the installation or upgrade of a specific site infrastructure, such as a vertical asset, the applicant must include:
 - a. - c. ...
 - d. the distance from the vertical asset to the end user(s) and the expected broadband speed that will be effectively and reliably delivered;
 - 4. - 5. ...
 - 6. explanation of the frequency/frequencies to be utilized for the deployment, whether the deployment will use licensed or unlicensed frequency/frequencies and technologies, as well as mitigation of line-of-sight challenges (which should correspond to the number of recipients to be served).

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2370-2370.16.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Broadband Development and Connectivity, LR 48:1508 (June 2022), amended LR 49:

§313. Project Budget, Matching Funds, Costs, and Proof of Funding Availability

- A. Budget and Narrative
 - 1. The project budget should reflect all eligible project costs. The project budget should include the minimum provider funding match of at least 25 percent, any local government funding match from a parish, municipality, and/or school board, or any instrumentality thereof, as well as in-kind contributions, and the requested GUMBO grant program funding.
 - 2. Matching funds, and their associated sources, shall be detailed within the project budget and budget narrative. Eligible grant recipients are required to provide at least 25 percent matching funds of the total proposed project cost to participate in the GUMBO grant program. A local government, including a parish, municipality, or school board, or any instrumentality thereof, may provide matching funds for a project, in addition to the applicant. Local government matching funds are optional and not required. There is no limitation on the minimum or maximum percentage of a project’s total cost that a local government may provide through a funding match. In-kind contributions to the project by a local government should also be listed in the project budget and budget narrative, if applicable.
 - 3. ...

B. Total Project/Infrastructure Cost

- 1. ...

* * *

C. Total Project/Infrastructure Cost—per prospective broadband recipient.

D. GUMBO Cost—per prospective broadband recipient.

E. Proof of Funding Availability

- 1. Applicants must submit a signed letter of funding availability from each source of funds committed for the project. If loan or other grant funds are pledged, a loan/grant commitment letter from each source of funds must be included.
- 2. Should an applicant be an awardee of Universal Service, Connect American Phase II, Rural Digital Opportunity Fund, or other public funds for the deployment of broadband service, the applicant shall attest as to whether or not the applicant’s GUMBO application and associated project’s buildout is dependent upon such awarded funds.
- 3. The applicant shall indicate whether the applicant, a subsidiary or affiliate of the applicant, or the holding company of the applicant has ever filed for bankruptcy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2370-2370.16.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Broadband Development and Connectivity, LR 48:1509 (June 2022), amended LR 49:

§315. Proposed Services, Marketing, Adoption, and Community Support

A. Every application shall include:

- 1. - 3. ...

- 4. a plan to encourage users to connect that incorporates, at a minimum, community education forums, multimedia advertising, and marketing programs; and

5. any low-income household service offerings, digital equity or literacy support, or programs or partnerships to provide these services. The applicant shall also indicate current participation in, or plans to, accept the federal Lifeline subsidy.

B. It is highly encouraged that every application should include:

1. a workforce plan prioritizing the hiring of local, Louisiana resident workers, to include a signed letter of intent with a post-secondary educational institution that is a member of the Louisiana Community and Technical College System, containing an obligation upon the applicant, and contractors or subcontractors of the applicant, to put forth a good-faith effort to hire, when possible, recent graduates of broadband-related programs. At minimum, the workforce plan should also contain a commitment to offer wages at or above the prevailing rate and a description of the applicant's safety and training standards; and

2. evidence of support for the project from citizens, local government, businesses, and institutions in the community. The applicant may provide letters or other correspondence from citizens, local government, businesses, and institutions in the community that supports the project. Letters of support from a parish, municipality, or school board, or any instrumentality thereof, will be deemed material for scoring purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2370-2370.16.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Broadband Development and Connectivity, LR 48:1509 (June 2022), amended LR 49:

Chapter 4. Scoring

§401. Overview

A. The GUMBO grant program is a competitive grant program. Applications shall be scored independently as provided in this Chapter, based upon a system that awards a single point for criteria considered to be the minimum level for the provision of broadband service, with additional points awarded to criteria that exceed minimum levels.

B. Applications shall be scored independently, and applications receiving the highest score shall receive priority status for the awarding of grants. Should the final application or project area with priority status for the awarding of a grant have a request for GUMBO funding that exceeds the remaining GUMBO funds available, the final applicant with priority status shall have the option to agree to complete its proposed project in full with the remaining GUMBO funds available in that round. Should the final priority applicant decline, the office shall propose the same to the next highest scored application. This process shall continue until such time as an applicant has agreed, or all remaining applications within the current grant round have declined. Should all applicants decline the office's offer, the remaining balance of GUMBO funding shall be added to the next succeeding round of GUMBO, subject to the guidance and restrictions of the funding source.

C. Applications are required to earn points in the three Minimal Program Outlay, Affordability, and Fair Labor Practices categories to be considered eligible for GUMBO funding.

D. As a means of breaking a tie for applications receiving the same score, relative to any scoring metric or in the scoring aggregate, the office shall give priority to the application proposing the lowest GUMBO cost per prospective broadband recipient.

E. Upon the close of the application period, and throughout the evaluation and scoring phase of the program process, a blackout period shall be instituted. This blackout period shall remain in effect until the announcement of awards. During this blackout period, applicants shall not initiate contact with the office, except as otherwise provided within this part. The office reserves the right to initiate contact with an applicant to seek clarification of an application or the data and information contained therein, request additional data or information, or as necessary in response to an overlapping application or protest. An applicant may initiate contact with the office for the purposes of amending an application due to overlapping or a protest, or to withdraw an application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2370-2370.16.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Broadband Development and Connectivity, LR 48:1510 (June 2022), amended LR 49:

§403. Overlapping Applications or Project Areas

A. At the close of the application period, should one or more applications overlap one or more other applications; relative to one or more unserved individual addresses, the impacted applicants shall have the option and ability to resolve the overlapping individual addresses through the applicants' own volition, discussion, and efforts. Applicants working to resolve an instance of overlapping applications, following the close of the application period, shall jointly notify the office of such efforts. An acceptable resolution and amended applications will be accepted by the office until 5 p.m. on the 15th day of the 30-day evaluation period. Such an acceptable resolution between impacted applicants shall not result in the addition of partners to a previously submitted application nor the expansion of an application's project area.

B. Following 5 p.m. on the fifteenth day of the 30-day evaluation period, should one or more applications overlap one or more other applications; relative to one or more individual addresses, each application shall be scored independently. The application receiving the highest score shall proceed to grant funding consideration with its project area boundary intact. Any lower-scored application overlapping a higher-scored application shall be removed from grant funding consideration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2370-2370.16.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Broadband Development and Connectivity, LR 48:1510 (June 2022). Amended LR 49:

§405. Factors Subject to Scoring

A. Minimal Program Outlay

1. Provider Matching Funds. The office shall calculate the provider's matching funds percentage of the total/infrastructure cost of the project and award points

based on matching funds. Points shall be awarded as follows.

Provider Matching Funds (Percentage of Total/Infrastructure Cost)	Points
25 percent	42
35 percent	84
45 percent	132
55 percent	180
75 percent or more	264

NOTE: Points are awarded based upon the total percentage of matching funds provided beyond the required 25 percent, irrespective of the number of providers contributing to a single project.

2. Local Government In-Kind Contributions and Matching Funds. The office shall award points to projects receiving in-kind contributions or matching funds from a local government for eligible projects within the jurisdictional area of the local government. A local government is defined as a parish, municipality, or school board, or any instrumentality thereof. Each local government has the option to provide in-kind contributions or matching funds to a project, and more than one local government can provide in-kind contributions or matching funds to any one project. Points shall be awarded as follows.

Local Gov't In-Kind and Matching	Points
No in-kind contribution or funding match	0
5 percent or higher	6

NOTE: Points are awarded based upon the total percentage of in-kind contributions and matching funds provided by local governments, irrespective of the number of local governments contributing to the project.

B. Affordability

1. Consumer Price. The office shall award points based upon the ultimate price of broadband service to the consumer as a result of the proposed project and shall reference the average price of all broadband service packages offering transmission speeds that meet or exceed 100:20 Mbps offered to consumers by an applicant as the result of the proposed project. Points shall be awarded as follows.

Consumer Price (Lowest Average Base Package Price)	Points
More than \$80	0
Participates in FCC's Affordable Connectivity Program	6
\$80 or cheaper	18
\$50 or cheaper	36

NOTE: An applicant that has offered broadband service to at least 1,000 consumers for a period of at least 5 consecutive years is required to offer broadband service at prices that are, at least, consistent with offers to consumers in other areas of the state.

2. Price Stability. The Office shall award points based upon the length of time the applicant commits to maintain the above Consumer Price. Points shall be awarded as follows.

Consumer Price Stability (Length of Time in Years)	Points
4 years	24
5 years or longer	54

C. Business and Fair Labor Practices.

1. Certified Hudson and Veteran Grant Recipient. The office shall award points to projects in which the eligible grant recipient is a small business entrepreneurship certified by the Hudson Initiative (R.S. 39:2001 et seq.) or the Veteran Initiative (R.S. 39:2171 et seq.). Points shall be awarded as follows.

Certified Hudson / Vet Initiative Grant Recipient	Points
Grant recipient not certified by the Hudson and/or the Veterans Initiative	0
Grant recipient certified by the Hudson and/or the Veterans Initiative	30

2. Certified Hudson and Veteran Subcontractor. The office shall award points in which the grant recipient commits to a good faith subcontracting plan to contract with or employ contracts with a small business, entrepreneurship, or entrepreneurs, certifies by the Hudson Initiative (R.S. 39:2001 et seq.) or the Veteran Initiative (R.S. 39:2171 et seq.) to substantially participate in the performance of the project. Points shall be awarded as follows.

Certified Hudson / Vet Initiative Subcontractor	Points
0 project contracts with certified Hudson and/or Veterans Initiative businesses.	0
At least 1 project contract with certified Hudson and/or Veterans Initiative businesses.	30
At least 25 percent project contracts with certified Hudson and/or Veterans Initiative businesses.	66
At least 50 percent project contracts with certified Hudson and/or Veterans Initiative businesses.	90

D. Speed to Deployment—Leverage of Existing Infrastructure. The office shall award points based upon the applicant's ability to leverage its own or nearby or adjacent broadband service infrastructure in the proposed project area. For reference, the office will refer to the project's proposed estimated construction timeline, as measured from the award of the grant agreement to construction completion. Points shall be awarded as follows.

Construction Completion Date	Points
Longer than 12 months	0
Within 12 months	6
Within 6 months	18

E. Speed of Network and Other Technical Abilities - Broadband Speeds and Scalability. The office shall award points based upon the broadband transmission speeds and scalability of future bandwidth increases (Mbps download and upload) that will be deployed as a result of the project. If more than one set of transmission speeds are offered to consumers, scoring shall be based on the fastest transmission

speeds and scalability offered. Points shall be awarded as follows.

Broadband Speeds and Scalability (Mbps Down:-Mbps Up)	Points
Less than 1000:1000	0
At least 1000:1000	6
At least 2000:2000, or scalable to 2000:2000	18

F. Local and Tribal Coordination. The office shall award points based on defined local and tribal coordination to discuss workforce development, permitting, project construction execution, and other topics. Points shall be awarded as follows.

Local and Tribal Coordination Meetings	Points
Less than quarterly meetings with the Governor's Office of Rural Development	0
Quarterly meetings with the Governor's Office of Rural Development	30

NOTE: Quarterly meetings with Governor's Office of Rural Development will be verified via meeting minutes submitted by the Governor's Office.

G. Climate Resiliency. The office shall award points based on project climate resiliency for underground infrastructure. Points shall be awarded as follows.

Climate Resiliency (Technical Ability)	Points
Less than 60 percent underground construction deployment	0
60 percent underground deployment or greater	66

H. Applicant Experience. The office shall award points based upon the applicant's experience, technical ability, financial wherewithal in successfully deploying and providing broadband service, and the matching funds percentage of the total cost of the project. For experience, the office shall reference, by date of application submittal and without regard to the potential project, the number of years the applicant has provided internet services; the number of households to which the applicant currently provides broadband internet service access (at least 100:20 Mbps); the number of internet service infrastructure projects completed by the applicant, funded in part through federal or state grant programs, prior to the date of application submittal; penalties paid by the applicant, relative to internet service infrastructure projects funded in part through federal or state grant programs, prior to the date of application submittal; and whether the applicant, a subsidiary or affiliate of the applicant, or the holding company of the applicant has ever been a defendant in any federal or state criminal proceeding or civil litigation as a result of its participation in an internet service infrastructure project funded in part through federal or state grant programs, prior to the date of application submittal. Points shall be awarded as follows.

Completed Internet Projects	Points
14 or less	0
15 or more	2

I. Financial Wherewithal. The office shall reference the number of bankruptcies filed (prior to the date of application submission). Points shall be awarded as follows.

Bankruptcies	Points
1 or more	0
No prior bankruptcies	2

J. Letter of Local Government Support. The office shall award points based upon letters of support from local governments. The office shall reference letters submitted by a parish, municipality, or school board, or any instrumentality thereof. Letters of support eligible for scoring shall be in the form of officially and duly passed resolutions by the governing board, consisting of publicly elected members, of the parish, municipality, or school board, or any instrumentality thereof. Such a resolution shall be submitted with the application prior to the close of the application period. Points shall be awarded as follows.

Local Government Letters of Support, Numbers	Points
1 local government	1
3+ local governments	2

K. Estimated Number of Unserved Households. The office shall award points to projects based upon the estimated number of unserved households within the eligible economically distressed parish, as determined by the most recent data published by the Federal Communications Commission or the most reliable source of information available as of the close of the application period, as determined by the office. Points shall be awarded as follows.

Number of Unserved Households	Points
499 or fewer	1
10,000 or more	2

NOTE: If a contiguous project area crosses from an eligible parish into one or more eligible adjacent parishes, the project shall be deemed to be located in the parish where the greatest number of unserved households are proposed to be served.

L. Percentage of Total Unserved Households Served. The office shall award points to projects that will provide broadband service based upon the percentage of the total unserved households within the eligible economically distressed parish that the project will newly and directly serve. Unserved households served as a result of other, non-GUMBO federal or state grant programs shall not be used in the calculation of this criterion. The number of unserved households shall be determined using the most recent data published by the Federal Communications Commission or the most reliable source of information available as of the close of the application period, as determined by the office. Points shall be awarded as follows.

Percent of Unserved Households Newly and Directly Served	Points
5 percent or less	1
50 percent or more	2

NOTE: If a contiguous project area crosses from an eligible parish into one or more eligible adjacent parishes, the project shall be deemed to be located in the parish where the greatest number of unserved households are proposed to be served.

M. Unserved Businesses Served. The office shall award points to projects that will provide broadband service to unserved businesses newly and directly served by the project located within the eligible economically distressed parish, as determined by the most recent data published by the Federal Communications Commission or the most reliable source of information available as of the close of the application period, as determined by the office. Unserved businesses served as a result of other, non-GUMBO federal or state grant programs shall not be used in the calculation of this criterion. A residential-based business shall be classified by the applicant as either a residence or a business and shall not be counted as both. Points shall be awarded as follows.

Number of Unserved Businesses	Points
5 or fewer	1
20 or more	2

N. Summary of Scored Sections. As set forth in this Section, the scored categories of GUMBO program applications or project areas shall be as follows, repeated for comprehensive clarity.

Summary	
Scored Section	Points
A-1. Minimal Program Outlay (Provider Matching Funds)	0 – 264
A-2. Minimal Program Outlay (Local Government Matching)	0 – 6
B-1. Affordability (Consumer Price)	0 – 36
B-2. Affordability (Price Stability)	0 – 54
C-1. Fair Labor Practices (Certified Hudson / Vet Initiative Grant Recipient)	0 – 30
C-2. Fair Labor Practices (Certified Hudson / Vet Initiative Subcontractor(s))	0 – 60
D. Speed to Deployment – Leverage of Existing Infrastructure	0 – 18
E. Speed of Network and Other Technical Abilities – Broadband Speeds and Scalability	0 – 18
F. Local and Tribal Coordination	0 – 30
G. Climate Resilience (Technical Ability)	0 – 66
H. Applicant Experience	0 – 2
I. Financial Wherewithal	0 – 2
J. Letter of Local Government Support	0 – 2
K. Estimated Number of Unserved Households	0 – 2
L. Percentage of Total Unserved Households Served	0 – 2
M. Unserved Businesses Served	0 – 2
Total Possible Points:	0 – 600

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2370-2370.16.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Broadband Development and Connectivity, LR 48:1511 (June 2022), amended LR 49:

Chapter 5. Awards, Protests, and Grant Agreements
§501. Award Announcements

A. All GUMBO applications shall be publicly available on the office’s website for a period of at least 30 days prior to an award announcement. Following administrative review, evaluation, and scoring, as well as fulfilling the requirement that applications be publicly available for 30

days prior to award, the office may publicly announce award winners.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2370-2370.16.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Broadband Development and Connectivity, LR 49:

§503. Protests
(Formerly §501)

A. The protest process shall be conducted in accordance with R.S. 51:2370.4(C) and 2370.5, as well as this Chapter. The deadline to submit a protest shall not exceed 30 days following the announcement of awards.

B. Following an announcement of awards, any aggrieved party may submit a protest of any award. The sole basis for the submission of a protest shall be whether a location or area is served or unserved by broadband service. Also qualifying as served for the purposes of a protest are those locations or areas where construction of broadband infrastructure will begin within either 24 months as the result of public funding or 20 months as the result of private funding, respectively, as described in §201 of this part and defined within the GUMBO grant program. Protests shall be submitted in writing in a manner determined by the office, and all protests shall be accompanied by all relevant supporting documentation.

C. Protests shall contain all relevant supporting documentation, including, but not limited to, the following:

1. a signed and notarized affidavit affirming the protest and attached information are true;
2. current Federal Communications Commission (FCC) reporting;
3. maximum speeds available in the proposed project area;
4. number of serviceable locations within the protested area, including the maximum speeds those serviceable locations are able to receive, and the technology used to deliver such transmission speeds;
5. street-level data of customers receiving service within the protested area, including speed test data;
6. referencing the data submitted by the applicant, shapefiles in GIS or kml file format, with accompanying excel and/or attribute table data including individual addresses, longitudinal and latitudinal coordinates, and any specific geolocator number or other specific identifier assigned by the federal government to location, that show each protested passing in the protested area, designated by a singular mapped point;
7. if applicable, heat maps indicating received signal strength indicator (RSSI) in the challenged area.

D. Upon the close of the application period, a blackout period shall be instituted. This blackout period shall remain in effect until an announcement of awards. During this blackout period, neither a protesting party nor an applicant shall initiate contact with the office, except as provided by this section. The office reserves the right to initiate contact with a protesting party or applicant to seek clarification of an application, a protest, the data contained therein, or to request additional information.

E. Should a protest be granted in any manner, the office shall work with an awardee to amend an awarded application to reduce the number of unserved prospective broadband

recipients and re-scope the awarded application, the office shall revise awarded application scores in accordance with amended data and information. Should an awarded application be amended as a result of a granted protest, it is possible that the revised score would subject such an awarded application to the removal of its priority status for an award. As a result of a granted protest and a reduction in the number of unserved prospective broadband recipients, an awardee shall also have the option to withdraw its awarded application.

F. Any applicant or protesting party receiving access to any other provider's proprietary or confidential information, through the required processes of the grant program and as defined within R.S. 51:2370-2370.16 and this part and subject to confidential protection, shall not disclose such information to any other third party.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2370-2370.16.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Broadband Development and Connectivity, LR 48:1514 (June 2022), amended LR 49:

§505. Grant Agreements [Formerly §603]

A. Following the close of the protest period, the office may issue grant agreements to eligible awardees not subject to an ongoing protest. An awardee shall have 30 days, from official issuance of the grant agreement, to sign and return the agreement. If the grant agreement is not signed by the awardee and returned to the office within 30 days from official issuance of the grant agreement, the office shall reserve the right to rescind the award and proceed to official issuance of a grant agreement to the next highest scored applicant with priority status for the awarding of a grant.

B. Construction start and completion dates shall be calculated for scoring, compliance, and failure to perform purposes and evaluations, beginning with the date the grant agreement is received by the office (following successful negotiation, if any, and with proper and legal signature affixed).

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2370-2370.16.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Broadband Development and Connectivity, LR 48:1514 (June 2022), amended LR 49:

Chapter 6. Compliance

§601. Speed and Cost Compliance [Formerly §701]

A. The office shall require that grant recipients offer download and upload speeds of at least 100:20 Mbps. Slower speeds may be offered, but speeds that meet or exceed 100:20 Mbps must be offered. Additionally, speeds that meet or exceed 100:100 Mbps are expected to be offered, except in the rare case of a prohibitive barrier such as geography, topography, or excessive cost in deploying speeds that meet or exceed 100:100 Mbps. Should an applicant propose to offer a maximum available speed of less than 100:100 Mbps, a substantiating explanation, accompanied by corroborating evidence, shall be submitted to the office as a part of the application submission.

B. Grant recipients that have offered broadband service to at least one thousand consumers for a period of at least five consecutive years shall offer broadband service at prices consistent with offers to consumers in other areas of the state. Any other broadband provider shall ensure that the broadband service is priced to consumers at no more than the cost rate identified in the project application, for the duration of the five-year service agreement. In calculating cost, the recipient may adjust annually, consistent with the annual percentage increase in the Consumer Price Index in the preceding year.

C. In calculating cost, the recipient may adjust annually, consistent with the annual percentage increase in the Consumer Price Index in the preceding year.

D. At least annually, a grant recipient shall provide to the office evidence consistent with Federal Communications Commission attestation, or future federal equivalent, that the grant recipient is making available the proposed advertised speed, or a faster speed, as contained in the grant agreement.

E. For the duration of the agreement, grant recipients shall disclose any changes to data caps.

F. Grant recipients shall be required to participate in federal programs that provide low-income consumers with subsidies on broadband internet access services. Grant recipients will be required to participate in the federal Affordable Connectivity Program, or future federal or state equivalent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2370-2370.16.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Broadband Development and Connectivity, LR 48:1515 (June 2022), amended LR 49:

§603. Reporting [Formerly §703]

A. Grant recipients shall submit to the office, no more than quarterly, unless otherwise required by federal statute or regulation, a report for each funded project for the duration of the agreement. The report shall include reporting requirements selected at the discretion of the office. Such reporting requirements, once selected, shall be consistently applied to all grant recipients of any grant program round and be effective for at least one program year. Reporting may be revised from program year to program year, at the discretion of the office.

B. Grant recipients, upon request from the office, shall provide:

1. project and expenditure reports, to include but not limited to: expenditures, project status, subawards, civil rights compliance, equity indicators, community engagement efforts, geospatial data, workforce plans and practices, and information about subcontracted entities; and

2. performance reports, to include but not limited to project outputs and outcomes.

C. Grant recipients shall submit to the office an annual report for each funded project for the duration of the agreement. The report shall include, but not be limited to, the following summary of the items contained in the grant agreement and the following details:

1. the number of residential and commercial locations that have broadband access as a result of the project;

2. percentage of households in the project area who have access to broadband service;
3. percentage of subscribers in the project area to the broadband service;
4. average monthly subscription rate for residential and commercial broadband service in the project area;
5. any right-of-way fees or permit fees paid to local government, state government, railroad, private entity or person during the fulfillment of the grant awarded;
6. any delays encountered when obtaining a right-of-way permission.

D. The office, at its sole discretion and at any time, shall reserve the right to request any additional data and reporting information that the office deems necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2370-2370.16.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Broadband Development and Connectivity, LR 48:1515 (June 2022), amended LR 49:

**§605. Disbursement and Reimbursement
[Formerly §705]**

A. The Division of Administration shall be the designated agency for receipt and disbursement of state and federal funds intended for the state for broadband expansion or allocated by the state for broadband expansion.

B. All federal grant funds received by the state for the purpose of broadband expansion shall be disbursed in accordance with the GUMBO program.

C. Funding in accordance with completion shall be distributed to a grantee once the grantee has demonstrated, to the satisfaction of the office, that a project has reached the following percentile completion thresholds, which shall be defined as a percentage of the total number of prospective broadband recipients proposed to be served by the project:

1. 10 percent;
2. 35 percent;
3. 60 percent;
4. 85 percent;
5. 100 percent.

D. The final 15 percent payment shall not be paid without an approved completion report. Invoice for final payment shall be submitted within 90 days of completion date. All invoices are subject to audit for three years from the completion date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2370-2370.16.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Broadband Development and Connectivity, LR 48:1515 (June 2022), LR 49:

**§607. Failure to Perform
[Formerly §707]**

A. A grant recipient shall forfeit the amount of the grant received if it fails to perform, in material respect, the obligations established in the agreement.

B. Grant recipients that fail to provide advertised connection speeds and costs shall forfeit any matching funds, up to the entire amount received through the GUMBO program.

C. The office shall use its discretion to determine the amount forfeited.

D. A grant recipient that forfeits amounts disbursed under this part is liable for up to the amount disbursed plus interest.

E. The number of subscribers that subscribe to broadband services offered by the provider in the project area shall not be a measure of performance under the agreement for the purposes of this Section.

F. A grant recipient shall not be required to forfeit the amount of the grant received if it fails to perform due to a natural disaster, an act of God, force majeure, a catastrophe, pandemic, the failure to obtain access to private or public property or any government permits under reasonable terms, such claims that shall be evaluated to the satisfaction of the office, or such other occurrence over which the grant recipient has no control, as evaluated to the satisfaction of the office.

G. If a grant recipient fails to complete a project, in a material respect, the grant recipient, at the discretion of the office, may be required to reimburse the state the actual cost to finish the project. The actual cost to finish the project shall be determined by the office, in consultation with the grant recipient. The Office shall not require a grant recipient that it deems has made a good faith effort to complete a project to reimburse the state an amount greater than the remaining GUMBO cost per prospective broadband recipient as set forth in the grant recipient's application.

H. If a grant recipient fails to perform and fails to return the full forfeited amount required, the ownership and use of the broadband infrastructure funded by the GUMBO program shall revert to the Division of Administration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2370-2370.16.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Broadband Development and Connectivity, LR 48:1516 (June 2022), amended LR 49:

**§609. State and Federal Oversight, Civil Rights Compliance, and Other Applicable Federal Law
[Formerly §709]**

A. Grant recipients are subject to audit or review by the state and federal government.

B. Grant recipients shall not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities:

1. Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. 2000d-1 et seq., and the Treasury Department's implementing regulations, 31 C.F.R. part 22;
2. Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. 794;
3. Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Treasury Department's implementing regulations, 31 C.F.R. part 28; and
4. Age Discrimination Act of 1975, 42 U.S.C. 6101 et seq., and the Treasury Department's implementing regulations, 31 C.F.R. part 23.

C. Grant recipients and all proposed projects must comply with all applicable federal environmental laws.

Additionally, grant recipients and all proposed projects must comply with the following federal laws and regulations:

1. the 2019 National Defense Authorization Act (NDAA);
2. 2 C.F.R. Part 200; and
3. the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations 29 C.F.R. Part 5.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2370-2370.16.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Broadband Development and Connectivity, LR 48:1516 (June 2022), amended LR 49:

Chapter 7. Applicability of Amended Rule

§701. Applicability of Amended Rule

A. Any application received through the GUMBO grant program on or following February 1, 2023, or any protest, appeal, or other filing, including any judicial filing arising from an application submitted on or following to February 1, 2023, shall be subject to Acts 288 and 760 of the 2022 Regular Legislative Session and the Notice of Intent published on February 20, 2023.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2370-2370.16.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Broadband Development and Connectivity, LR 49:

Public Hearing for Substantive Change

Should a public hearing be requested on these proposed amendments, such hearing shall be scheduled for, Monday, March 22, 2023, at 9:30 a.m. in Room 2-207, 1201 North Third Street, Baton Rouge, LA 70802. At that time all interested persons will be afforded an opportunity to submit data, views, or arguments either orally or in writing

Jay Dardenne
Commissioner

2303#062

POTPOURRI

Office of the Governor Commission on Law Enforcement and Administration of Criminal Justice Crime Victims Reparations Board

Public Hearing—Crime Victims Reparations Program
(LAC 22:XIII.301, 303, and 503)

The Crime Victims Reparations Board published a Notice of Intent to promulgate rules regarding eligibility and claim benefits in the January 20, 2023, Volume 49, No. 1 edition of the *Louisiana Register*. The board proposes amending §301, 302, and 503 in LAC 22:XIII to clarify program eligibility and expand program benefits.

The board will conduct a public hearing in this matter in accordance with the statutory provision contained in the Administrative procedure Act, including specifically those in R.S. 49:968(H)(2). The public hearing will be held in accordance with the particulars published in this Potpourri, and all interested persons are invited to attend and participate in the hearing.

Public Hearing

A public hearing on the proposed changes will be held by the Louisiana Crime Victims Reparations Board on March 3, 2023 at 12:00 noon in the Pensacola Room, Galvez Building, 602 North Fifth Street, Baton Rouge, LA. Interested persons who wish to make comments may do so at the public hearing or by writing to Mr. Bob Wertz, LA Commission on Law Enforcement, P.O. Box 3133, Baton Rouge, LA 70821. Written comments will be accepted no later than March 17, 2023, by the close of business at 5:00pm.

Judy Dupuy
Chairperson

2302#031

POTPOURRI

Department of Justice

Occupational Licensing Review Program
Accepting Participants for FY 2023-2024

The Department of Justice is currently accepting occupational licensing boards into the Department of Justice Occupational Licensing Review Program established by R.S. 49:260. This program provides for active state supervision and was established to ensure that participating boards and board members will avoid liability under federal antitrust laws. Participants for the 2023-2024 Fiscal Year will be accepted into the program through May 31, 2023. For information about participating in the program, contact Terrence “Joe” Donahue, Jr., Assistant Attorney General, Louisiana Department of Justice, Civil Division at 225-326-6000.

Terrence “Joe” Donahue, Jr.
Assistant Attorney General

2302#034

POTPOURRI

Department of Natural Resources Office of Conservation

Announcement for Public Comment
Statewide Order No. 29-B
(LAC 43:XIX.137)

The Office of Conservation is seeking comments on the draft proposed regulatory amendment to LAC 43:XIX, Subpart I, Chapter 1. The objective of this draft is to restrict the Commissioner’s ability to grant an extension or exemption to Inactive, Future Utility Wells. This potpourri announcement is not an agency engagement of the formal Louisiana Administrative Code rulemaking process and is intended only to obtain comments from interested parties prior to taking any further steps toward rulemaking. The deadline for submitting any comments for this potpourri announcement is 4:00 p.m., March 20, 2023, as detailed in the Public Comments section located at the end of this

announcement. The following details the agency's draft proposed path to obtain the objective stated above.

The Department of Natural Resources, Office of Conservation proposes to amend LAC 43:XIX, Subpart I, Chapter 1 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the power delegated under the laws of the state of Louisiana. The purpose of this proposed amendment is to restrict the Commissioner's ability to grant an extension or exemption to Inactive, Future Utility Wells.

Title 43

NATURAL RESOURCES

Part XIX. Office of Conservation—General Operations

Subpart 1. Statewide Order No. 29-B

Chapter 1. General Provisions

§137. Plugging and Abandonment

A. Deadlines for Abandonment

1. Inactive, Future Utility Wells. All inactive wells classified as having future utility shall be plugged within five years of the date of the well becoming inactive. Failure to accurately report wells on the inactive well report shall be subject to the provisions of R.S. 30:17.

a. For wells that have been inactive for a period of four years or more on the effective date of this rule, the well shall be plugged within one year of the effective date of this Rule.

b. If an operator chooses not to plug an inactive well in accordance with this Section for reasons of future utility, an annual assessment of \$250 per well per year shall be assessed until the well is plugged.

c. For all inactive wells not already covered by financial security as required in §104, financial security shall be provided within one year of the promulgation of this Rule.

d. All inactive wells shall be subject to the above provisions until the well has reported production for three consecutive months.

2. Other Wells on or after Effective Date of Order

a. All such wells classified on the inactive well report by either the operator, the Engineering Enforcement Section Manager or the district manager as having no future utility shall be plugged within 90 days from the date of such classification.

b. All wells classified on the inactive well report as having no future utility shall be subject to an annual assessment of \$500 per well per year until the well is plugged.

c. For all inactive wells not already covered by financial security as required in §104, financial security shall be provided within one year of the promulgation of this Rule.

B. Reporting

1. All wells wherein production operations or use as a service well have ceased on or after the effective date of this order shall continue to be reported on the Form DM-1-R or Form DT-1 with the appropriate notation that the well is off production or no longer in use as a service well along with the date of last production or date the service well ceased to

be used; and, after six months, if such a well has not been restored to production or use as a service well, it shall thereafter be reported by the operator on the semiannual inactive well report, Form INACT WR-1 (1974) which report shall be filed with the Department of Conservation showing the status of such well as of May 1 and November 1 of each year (report to be filed no later than May 25 and November 25). Such wells shall continue to be reported on the Form DM1-R or Form DT-1 showing the date of last production or the date the well ceased to be used as a service well, together with a notation showing the well is carried on the Form INACT WR-1 (1974), Inactive Well Report, until the well is plugged and abandoned.

2. The inactive well report shall list the field, well name, well number and other pertinent data and provide an appropriate column to classify such well as having either future utility, or no future utility. If the well is classified as having future utility, operator shall specify such utility by completing the appropriate column on the form. Wells so classified shall be reviewed periodically by the district manager who, at his discretion, may require an operator to supply additional information to justify the classification.

3. Administrative Interpretation. For purposes of administering the heretofore mentioned paragraphs, it is understood that:

a. a wellbore which is completed in more than one common source of supply (multiple completions) shall not be considered as ceasing to produce and shall not be reported on the inactive well report as long as there is production from or operations in any completion in the wellbore;

b. wells classified as having future utility may be off production or shut-in but are considered to have future utility for producing oil or gas, or for use as a service well.

C. The responsibility of plugging any well over which the commissioner of conservation has jurisdiction shall be the owner(s) of record.

D. In the event any owner(s) responsible for plugging any well fails to do so, and after a diligent effort has been made by the department to have said well plugged, then the commissioner may call a public hearing to show cause why said well was not plugged.

E. The commissioner or his agent may require the posting of a reasonable bond with good and sufficient surety in order to secure the performance of the work of proper abandonment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Adopted by the Department of Conservation (August 1943), amended (March 1974), amended by the Department of Natural Resources, Office of Conservation, LR 40:2597 (December 2014), LR 41:953 (May 2015), repromulgated LR 41:1120 (June 2015).

Public Comments

All interested parties will be afforded the opportunity to submit data, views, or arguments, in writing. Written comments will be accepted by hand delivery or USPS only, until 4:00 p.m., March 20, 2023, at Office of Conservation, Engineering—Regulatory Division, P.O. Box 94275, Baton

Rouge, LA 70804-9275; or Office of Conservation, Environmental Division, 617 North Third Street, Room 874-D, Baton Rouge, LA 70802. Reference Docket No. R A 2023-10. All inquiries should be directed to F. Jonathan Rice at the above addresses or by phone to (225) 342-5540.

Richard P. Ieyoub
Commissioner

2302#001

POTPOURRI
Department of Natural Resources
Office of Conservation

Orphaned Oilfield Sites

Office of Conservation records indicate that the Oilfield Sites listed in the table below have met the requirements as set forth by Section 91 of Act 404, R.S. 30:80 et seq., and as such are being declared Orphaned Oilfield Sites.

Operator	Field	District	Well Name	Well Number	Serial Number
Exoro Energy, L.L.C.	Welsh	L	M Santacoloma	001	250834
Hawkeye Drilling Co.	Iberia	L	Schwing	008	23504
Hawkeye Drilling Co.	Iberia	L	J B Schwing B	001	149472
Hawkeye Drilling Co.	Iberia	L	J B Schwing D	004	162203
Hawkeye Drilling Co.	Iberia	L	J B Schwing D	007	173348
Hawkeye Drilling Co.	Iberia	L	J B Schwing D	008	173349
Hawkeye Drilling Co.	Iberia	L	J B Schwing D	009	173350
Hawkeye Drilling Co.	Iberia	L	J B Scwing D Swd	006	974115
Herman Fields	Caddo Pine Island	S	Gayle	002	43465
Herman Fields	Caddo Pine Island	S	Victory	016	59866
John W. Ballard	Caddo Pine Island	S	Gamm	001	51484
Ross Exploration, Inc.	Caddo Pine Island	S	Caddo Oil & Mining Co	004	198368 (30)
Tahoe Corporation	Monroe	M	Turner	001	84023
Tahoe Corporation	Monroe	M	Hayhurst	001	95646
Tahoe Corporation	Monroe	M	Hayhurst	002	150683

Operator	Field	District	Well Name	Well Number	Serial Number
Tahoe Corporation	Monroe	M	Harrell	002	150844
Tahoe Corporation	Monroe	M	Harrell	005	151088
Tahoe Corporation	Monroe	M	Union Producing	014	151529
Tahoe Corporation	Monroe	M	Union Producing	001	151530
Tahoe Corporation	Monroe	M	Union Producing	004	151533
Tahoe Corporation	Monroe	M	Union Producing	005	151630
Tahoe Corporation	Monroe	M	Allen	001	151637
Tahoe Corporation	Monroe	M	Allen	002	151638
Tahoe Corporation	Monroe	M	Griffin	001	151639
Tahoe Corporation	Monroe	M	Collins	001	151715
Tahoe Corporation	Monroe	M	LGP	007	151717
Tahoe Corporation	Monroe	M	LGP	008	151718
Tahoe Corporation	Monroe	M	Allen	003	151829
Tahoe Corporation	Monroe	M	Collins	002	151918
Tahoe Corporation	Monroe	M	Collins	004	151951
Tahoe Corporation	Monroe	M	LGP	009	152008
Tahoe Corporation	Monroe	M	Collins	003	152104
Tahoe Corporation	Monroe	M	LGP	015	152105
Tahoe Corporation	Monroe	M	LGP	017	152107
Tahoe Corporation	Monroe	M	LGP	018	152108
Tahoe Corporation	Monroe	M	LGP	006	152248
Tahoe Corporation	Monroe	M	LGP	004	152254
Tahoe Corporation	Monroe	M	LGP	011	152255
Tahoe Corporation	Monroe	M	LGP	013	152439

Operator	Field	District	Well Name	Well Number	Serial Number
Tahoe Corporation	Monroe	M	LGP	014	152440
Tahoe Corporation	Monroe	M	LGP	016	152447
Tahoe Corporation	Monroe	M	Grant-D	001	152561
Tahoe Corporation	Monroe	M	Grant-D	002	152562
Tahoe Corporation	Monroe	M	Grant-D	003	152563
Tahoe Corporation	Monroe	M	Grant-D	004	152564
Tahoe Corporation	Monroe	M	Grant-D	005	152565
Tahoe Corporation	Monroe	M	Grant-D	006	152566
Tahoe Corporation	Monroe	M	Grant-D	007	152567
Tahoe Corporation	Monroe	M	Grant-D	008	152568
Tahoe Corporation	Monroe	M	Grant-D	010	152569
Tahoe Corporation	Monroe	M	Grant-D	009	152651
Tahoe Corporation	Monroe	M	Grant-D	013	152681
Tahoe Corporation	Monroe	M	Grant-D	011	152682
Tahoe Corporation	Monroe	M	Grant-D	012	152715
Tahoe Corporation	Monroe	M	Grant-D	014	152716
Tahoe Corporation	Monroe	M	Grant-D	015	152717
Tahoe Corporation	Monroe	M	Grant-D	021	152796
Tahoe Corporation	Monroe	M	Grant-D	024	152797
Tahoe Corporation	Monroe	M	Grant-D	018	152798
Tahoe Corporation	Monroe	M	Grant-D	019	152799
Tahoe Corporation	Monroe	M	Grant-D	020	152800
Tahoe Corporation	Monroe	M	Grant-D	022	152843
Tahoe Corporation	Monroe	M	Grant-D	023	152844

Operator	Field	District	Well Name	Well Number	Serial Number
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Tahoe Corporation	Monroe	M	Grant-D	016	152878
Tahoe Corporation	Monroe	M	Grant-D	017	152879

Richard P. Ieyoub
Commissioner

2302#030

POTPOURRI

Department of Transportation and Development

Construction Management at Risk (CMAR) Project

State Project No. H.005121
Federal Project No. H005121
LA 1/LA 415 Connector
West Baton Rouge Parish

The Louisiana Department of Transportation and Development (LA DOTD) is announcing its intent to enter into a Construction Management at Risk (CMAR) contract with a CMAR Contractor possessing qualified construction contracting capability for the LA 1/LA 415 Connector Project (the “Project”) in West Baton Rouge, Louisiana.



The major elements of the Project as currently proposed may include the following:

- New connector between LA 1 near LA 988 (Beaulieu Lane) and the Interchange of I-10 and LA 415, which includes a four-lane roadway and bridge(s) over the Gulf Intracoastal Waterway;

- Half-diamond interchange at LA 1;
- Interchange at Sun Plus Parkway with LA 415;
- Modifications to the LA 415 Interchange and I-10 ramps and frontage roads;
- Intersection improvements along LA 1 between Richardson Drive and Riverside Drive, including American Way;
- Right-of-way coordination;
- Utility coordination; and
- Maintenance of traffic in a congested urban environment.
- The anticipated Pre-construction Services Agreement execution date for the Project is no later than October 2023. The Project's cost is anticipated to not exceed \$200 million.

Responses to this Notice of Intent (NOI) and the following Request for Qualifications (RFQ) will be evaluated to determine the most highly qualified Proposer that is able to provide both pre-construction services and, if successfully negotiated, construction services for the Project.

The LA DOTD is seeking a CMAR Contractor for the Project that is committed to quality; has proven experience in pre-construction and construction services related to the construction of highway and bridge projects; will bring innovative approaches and a collaborative work effort to the Project; will ensure timely completion; and is willing to partner with the LA DOTD and its Designer and Independent Cost Estimator for the mutual success of the Project.

Firms/teams interested in providing the services for the Project should submit a Letter of Interest (LOI) to LA415CMAR@la.gov. All correspondence with the LA DOTD on matters concerning this NOI and the subsequent RFQ for the Project should be made in writing to this E-mail address.

An LOI from firms/teams in response to this NOI will be due by April 13, 2023. The LOI should, at a minimum, name the proposed primary team members (if a team is submitting the LOI) and contact information (name, telephone number, physical address, and E-mail address) for the official point of contact for the firm/team.

Firms/Teams that provide the LA DOTD with an LOI prior to the deadline will be issued the RFQ and placed on a list of interested firms posted to the LA DOTD Website (<http://www.dotd.la.gov>).

Shawn D. Wilson, PhD
Secretary

2302#041

POTPOURRI

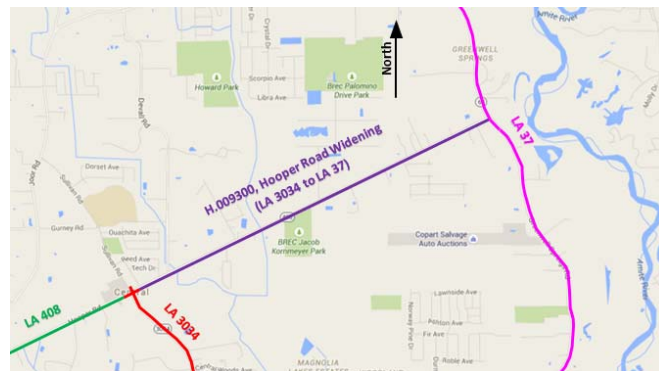
Department of Transportation and Development

Construction Management At Risk (CMAR) Project

State Project No. H.009300
Hooper Road Widening (LA 3034 – LA 37)
East Baton Rouge Parish

The Louisiana Department of Transportation and Development (LA DOTD) is announcing its intent to enter into a Construction Management at Risk (CMAR) contract

with a CMAR Contractor possessing qualified construction contracting capability for the Hooper Road Widening (LA 3034 – LA 37) Project (the "Project") in East Baton Rouge, Louisiana.



The major elements of the Project as currently proposed may include the following:

- Widen and reconstruct existing two-lane Hooper Road (LA 408) between Sullivan Road (LA 3034) and Greenwell Springs Road (LA 37) to four lanes;
- Improvements to the LA 408/LA 3034 and LA 408/LA 37 intersections which may include roundabouts;
- Right-of-way coordination;
- Utility coordination; and
- Maintenance of traffic in a congested urban environment.
- The anticipated Pre-construction Services Agreement execution date for the Project is no later than September 2023. The Project's cost is anticipated to not exceed \$50 million.

Responses to this Notice of Intent (NOI) and the following Request for Qualifications (RFQ) will be evaluated to determine the most highly qualified Proposer that is able to provide both pre-construction services and, if successfully negotiated, construction services for the Project.

The LA DOTD is seeking a CMAR Contractor for the Project that is committed to quality; has proven experience in pre-construction and construction services related to the construction of highway and bridge projects; will bring innovative approaches and a collaborative work effort to the Project; will ensure timely completion; and is willing to partner with the LA DOTD and its Designer and Independent Cost Estimator for the mutual success of the Project.

Firms/teams interested in providing the services for the Project should submit a Letter of Interest (LOI) to HooperRoadCMAR@la.gov. All correspondence with the LA DOTD on matters concerning this NOI and the subsequent RFQ for the Project should be made in writing to this E-mail address.

An LOI from firms/teams in response to this NOI will be due by March 30, 2023. The LOI should, at a minimum, name the proposed primary team members (if a team is submitting the LOI) and contact information (name, telephone number, physical address, and E-mail address) for the official point of contact for the firm/team.

Firms/Teams that provide the LA DOTD with an LOI prior to the deadline will be issued the RFQ and placed on a list of interested firms posted to the LA DOTD Website (<http://www.dotd.la.gov>).

Shawn D. Wilson, PhD
Secretary

2302#042

POTPOURRI

**Workforce Commission
Office of Workers' Compensation**

Mileage Update

Pursuant to R.S. 23:1203(D), effective January 1, 2023 the workers' compensation mileage reimbursement is updated to reflect modified language established by the state of Louisiana in the Division of Administration's PPM 49 guide.

Mileage Reimbursement—\$0.655 per mile

This information updates R.S. 23:1203 of the Louisiana Workers Compensation Act.

Tavares A. Walker
Deputy Assistant Secretary

2302#014

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