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# Executive Orders

## EXECUTIVE ORDER JBE 22-12

### Bond Allocation 2022 Ceiling

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

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

WHEREAS, pursuant to the Act and Act No. 51 of 1986, Executive Order Number JBE 2016-35 was issued to establish: (a) the manner in which the ceiling shall be determined, (b) the method to be used in allocating the ceiling, (c) the application procedure for obtaining an allocation of Bonds subject to such ceiling, and (d) a system of record keeping for such allocations; and

WHEREAS, the Louisiana Housing Corporation (hereafter the "Corporation") has applied for an allocation of the 2022 ceiling to be used in connection with its Single Family Mortgage Revenue Bonds (Homeownership Program) Series 2022A (Non-AMT) (Social Bonds) in the amount of \$78,000,000 ("Series 2022A Bonds") and paying for costs of issuance.

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

SECTION 1: The bond issue, as described in this Section, shall be and is hereby granted an allocation from the 2022 ceiling in the amount shown:

Amount of Allocation	Name of Issuer	Name of Project
\$78,000,000	Louisiana Housing Corporation	Single Family Mortgage Revenue Bonds (Home Ownership Program) Series 2022A (Non-AMT) (Social Bonds)

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

SECTION 3: The allocation granted herein shall be valid and in full force and effect through August 23, 2022.

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

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the State of Louisiana in the City of Baton Rouge, on this 25th day of May, 2022.

John Bell Edwards  
Governor

ATTEST BY  
THE GOVERNOR  
R. Kyle Ardoin  
Secretary of State  
2206#006

# Policy and Procedure Memoranda

## POLICY AND PROCEDURE MEMORANDA

### Office of the Governor Division of Administration

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

#### Title 4

#### ADMINISTRATION

#### Part V. Policy and Procedure Memoranda

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

#### §1501. Authorization and Legal Basis

A. In accordance with the authority vested in the Commissioner of Administration by R.S. 39:231 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950-968. Notice is hereby given of the revisions to Policy and Procedures Memorandum No. 49 (PPM 49), the State's general travel regulations, effective July 1, 2022. These amendments are both technical and substantive in nature and are intended to clarify certain portions of the previous regulations or provide for more efficient administration of travel policies. These regulations apply to all state departments, higher education, boards and commissions created by the legislature or executive order and operating from funds appropriated, dedicated, self-generated, federally funded, or funds generated from any other source.

B. R.S. 28:231(A) states: "The Commissioner of Administration, with the approval of the Governor, shall, by rule or regulation, prescribe the conditions under which each of various forms of transportation may be used by state officers and employees in the discharge of the duties of their respective offices and positions in the state service and the conditions under which allowances will be granted for traveling expenses."

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

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, published LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 6:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16:965 (November 1990), LR 26:1252 (June 2000), LR 27:802 (June 2001), LR 28:1125 (June 2002), LR 29:822 (June 2003), LR 30:1111 (June 2004), LR 31:1183 (June 2005), LR 32:938 (June 2006), LR 33:966 (June 2007), republished LR 33:1314 (July 2007), amended LR 34:1299 (July 2008), LR 35:1192 (July 2009), LR 36:1647 (July 2010), LR 42:981 (July 2016), LR 43:1110 (June 2017), LR 45:811 (June 2019), LR 46:840 (June 2020), LR 47:814 (June 2021), LR 48:1446 (June 2022).

#### §1502. Definitions

A. For the purpose of PPM 49, the following words have the meaning indicated.

*Agency*—any board, commission, department, division, agency, office, or other entity within the executive, judicial, and legislative branches of state government.

*Allowance*—maximum amount allowed for travel expenses while traveling on official state business.

*Authorized Persons*—

a. advisors, consultants, contractors, and other persons who are called upon to contribute time and service to the state who are not otherwise required to be reimbursed through a contract for professional, personal, or consulting services. (Contractors are not exempted from paying state sales taxes; therefore, if a contractor is working on behalf of an agency, the agency may reimburse them for the state sales taxes.);

b. members of boards, commissions, and advisory councils required by federal or state legislation or regulation;

c. persons authorized to travel for official state business as deemed by the department head or his/her designee;

d. college/university students must be deemed authorized travelers by the higher education entity head or his/her designee to be reimbursed for state business purposes;

*Common Carrier*—a business or agency that is available to the public for transportation of persons, goods, or messages.

*Conference/Convention*—a non-routine event for a specific purpose or objective such as a seminar, conference, convention, or training.

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

*Corporate Travel Card*—credit cards issued in a State of Louisiana employee's name used for specific, high cost travel expenses. Corporate Travel Cards are State liability cards paid by each agency.

*Extended Stays*—any assignment made for a period of 30 or more consecutive days at a place other than the traveler's official domicile.

*GSA per Diem Rates*—U.S. General Services Administration per diem rates: <https://www.gsa.gov/travel/plan-book/per-diem-rates>

*High Cost Travel*—airfare, lodging, vehicle rental, and conference registrations.

*Higher Education Entities*—entities listed under Schedule 19 Higher Education of the general appropriations bill.

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

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

*Lowest Logical Airfare*—the lowest logical airfare is the cheapest available flight at the time of booking without causing undue inconvenience. These types of airfare are typically non-refundable.

*Official Domicile*—

a. except where fixed by law, official domicile of a state officer or employee assigned to an office shall be the parish in which the office is located. The department head or his/her designee should determine the extent of any surrounding area to be included, such as a region. As a guideline, a radius of at least 30 miles is recommended;

b. the official domicile of a person that works in the field shall be the parish where most work is performed. The department head may designate this area or region. In all cases, the designation must be in the agency's best interest and not for the person's convenience.

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

*Passport*—an official document issued by a government, certifying the holder's identity and citizenship and entitling them to travel under its protection to and from foreign countries.

*Per Diem*—daily allowance to cover meals and incidentals while on official state business.

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

*Sub Recipient*—a non-Federal entity that receives a sub award from a pass-through entity to carry out part of a Federal program.

*Temporary Assignment*—any assignment made for a period of less than 30 consecutive days at a place other than the official domicile.

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

*Visa*—an endorsement on a passport indicating that the holder is allowed to enter, leave, or stay for a specified period of time in a country.

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

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, published LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 6:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16:965 (November 1990), LR 26:1252 (June 2000), LR 27:802 (June 2001), LR 28:1125 (June 2002), LR 29:822 (June 2003), LR 30:1111 (June 2004), LR 31:1183 (June 2005), LR 32:938 (June 2006), LR 33:966 (June 2007), republished LR 33:1314 (July 2007), amended LR 34:1299 (July 2008), LR 35:1192 (July 2009), LR 36:1647 (July 2010), LR 43:1110 (June 2017), LR 45:811 (June 2019), LR 46:840 (June 2020), LR 47:814 (June 2021), LR 48:1446 (June 2022).

### **§1503. General Specifications**

#### **A. General Travel Policies**

1. Department heads may establish travel regulations within their respective agencies, but agency regulations shall not exceed the maximum limitations set by the Commissioner of Administration. A final draft and a draft highlighting any deviations from PPM 49 must be submitted via email to StateTravel@LA.Gov for prior review and approval by the Commissioner of Administration.

2. Department heads will take actions necessary to minimize all travel in order to carry on the department's mission.

3. Agencies must place all high-cost expenditures on the LaCarte Purchasing Card, Travel Card, or agency CBA account unless prior approval is granted by the Commissioner of Administration.

4. Department heads or their designee must submit fiscal year exemption requests annually. No exemption requests are granted on a permanent basis.

5. Grant Funds. Any agency that receives grant funds must follow PPM 49 rules and regulations and any travel regulations contained in the grant. Sub recipients that are not classified as a state agency are not subject to PPM 49.

Example: DOTD receives a federal grant and the City of New Orleans is a sub recipient of that grant, the City of New Orleans is not required to follow PPM 49 but must follow their established policies and any regulations contained in the grant.

6. Travel Scholarships. If any scholarship for travel is received by a state traveler, it is the agency's and employee's responsibility to comply with all ethics laws and requirements.

7. Contracted Travel Services. The state has a mandatory travel agency contract to book airfare unless prior exemptions have been granted by the Office of State Travel before the airfare purchase. The contracted travel agency has an online booking system which should be used by all travelers to book airfare. Use of the online booking systems can drastically reduce the State's agent fee paid per transaction for airfare purchases.

8. Contracted Hotel Services. The state has a contract for hotel booking services with HotelPlanner. Travelers are encouraged to use HotelPlanner. Travelers are responsible for adhering to the hotel's cancellation policy when booking through HotelPlanner. If a traveler does not cancel a hotel stay within the cancellation period set by the hotel, the traveler will be responsible for payment or reimbursing the agency. Any exceptions for hotel rates or cancellation reimbursements must be approved by the Commissioner of Administration. Use of HotelPlanner does not exempt a traveler from adhering to PPM 49 tier rates for the applicable travel location.

9. Contracted Vehicles Rentals. The state has mandatory contracts for all in-state and out-of-state business travel through Enterprise, National, and Hertz. These contracts are applicable to all authorized travelers and contractors.

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

#### **11. Authorization to Travel**

a. All non-routine travel must be authorized with prior approvals, in writing, by the department head or his/her designee, from whose funds the traveler is paid. Agencies must maintain a file on all approved travel authorizations. Electronic files and approvals are acceptable using certified electronic signatures.

b. Annual travel authorizations for routine travel are allowed if determined to be in your agency's best interest. If annual travel authorizations are used, prior approved travel authorizations are still required for non-routine meetings,

conferences, and out-of-state travel. Annual travel authorizations cannot be used for non-routine meetings, conferences, and out-of-state travel.

c. The Commissioner of Administration must sign all authorizations for travel and expenses for the Governor of Louisiana.

12. A department head or his/her designee may approve a traveler's reimbursement request for a communicable disease test if the employee will be traveling on official state business. Receipts are required to be reimbursed. Hotel, meals, and internet expenses are allowed to be reimbursed per the published PPM 49 tier rates when quarantine is required for a certain period.

#### B. Funds for Travel Expenses

1. State Issued Credit Cards and CBA Accounts. All high cost travel expenditures must be placed on the LaCarte Purchasing Card, Travel Card, or agency CBA account unless prior approval is granted from the Commissioner of Administration. The State Travel Office maintains the contract for the State's corporate card program to establish one source of payment for travel expenditures. If a supervisor recommends an employee be issued a state travel card, the employee should make the request through their agency travel program administrator.

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

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

2. Persons traveling on official state business will provide themselves with sufficient funds for all travel expenses that are not covered by the Corporate Travel Card, LaCarte Purchasing Card, and/or agency's CBA account.

3. For agencies participating in the LaCarte, Travel, and/or CBA card programs, group/athletic travel must be placed on one of the card programs. This does not eliminate any approvals that must be granted from the Commissioner of Administration and/or the Office of State Travel.

4. Advance of funds for travel shall only be made in extraordinary circumstances and any excess funds should be promptly repaid upon return. Cash advances meeting the exception requirement(s) listed below must have an original and itemized receipt to support all expenditures in which a cash advance was given, including meals. At the Agency's discretion, cash advances may be allowed for:

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

b. state travelers who accompany and/or are responsible for students or athletes for group travel. For group travel advancements, a roster with signatures of each group member along with the amount of funds received by each group member may be substituted for individual receipts;

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

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

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

f. employees traveling to remote destinations in foreign countries;

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

h. registration for seminars, conferences, and conventions.

5. Sponsored or Scholarship Travel. Travel expenses paid by a sponsor or scholarship are considered a gift per R.S. 42:1115 and requires completion of Ethics Disclosure Form 413. It is the traveler's responsibility to properly complete and submit to the Board of Ethics in the time required. The form can be downloaded at: <http://ethics.la.gov/pub/CampFinan/Forms/Form413f.pdf?20190402>

a. Reimbursements are not allowed when the traveler does not incur any expense. This includes, but is not limited to, reimbursements for any lodging or meals provided at a state institution or agency or provided by any other party at no cost to the traveler.

6. Travel expenses shall be limited to the necessary expenses incurred by a traveler and must be within the limitations set by PPM 49.

#### C. Requests for Reimbursement

1. Official domicile/temporary assignment. Travelers are eligible to receive reimbursement for travel only when they are away from their "official domicile" or on a temporary assignment unless exemption is granted in accordance with these regulations. Temporary assignments will end after a period of thirty consecutive calendar days. After thirty days, the place of assignment shall be deemed his/her official domicile. The traveler shall not be allowed travel and subsistence reimbursement unless permission to extend the thirty-day period has been previously approved by the Commissioner of Administration.

a. Travelers cannot be reimbursed while traveling within their official domicile.

b. Travelers cannot be reimbursed when traveling to/from their residence when their residence location is different from their official domicile.

c. At the discretion of the department head or his/her designee, an exception may be allowed for mileage to/from airports as stated in §1504.F.3.

d. The department head or his/her designee may approve an authorization for routine travel for an employee who must travel to perform his/her regular job duties. This may include traveling within the employee's official domicile if it is a regular and necessary part of the employee's duties. Attending infrequent/irregular meetings and conferences within their official domicile are not reimbursable.

2. All claims for travel reimbursement shall be submitted on the State's Travel Expense Form, BA-12, or in your agency's travel expense management system. Travel Expense Forms must include all travel details and be signed by the person claiming reimbursement and approved by his/her immediate supervisor. In all cases, the date and hour of departure and return to domicile must be shown along with each final destination throughout the trip clearly defined on the form. Agencies must get an exemption from

the Commissioner of Administration to use a Travel Expense form other than the BA-12. For every travel authorization request, the purpose of the trip for travel must be stated in the space provided on the front of the form. The second page of the BA-12 must be completed with the breakdown of the travel expenses. This is required for every trip. Form BA-12 can be found at: <https://www.doa.la.gov/media/apro1q2x/travelexpense.docx>

3. Air transportation, registration, lodging, rental vehicles, shuttle service, and all other allowable charges outlined in section II(F)(4) of the State of Louisiana State Liability Travel and CBA policy should be invoiced directly to the agency, or charged to a state liability card. The traveler must provide receipts for all items charged or billed directly to the agency.

4. Cost of meals shall be paid by the traveler and claimed on the travel expense form for reimbursement.

5. Travel Expense Forms must include all expenses related to the trip, which includes expenses paid by the agency and reimbursable expenses paid by the traveler. Expenses paid by the agency must be noted on the Travel Expense Form or marked "prepaid" on the LaGov expense statement and these expenses must be excluded from the traveler's reimbursable costs.

6. Travelers should submit claims within 30 days of the travelers' return date. If a travel reimbursement is less than \$25, it is recommended that the traveler wait until a minimum of \$25 is reimbursable to submit the request unless there is no travel scheduled for the traveler in the future. Department heads may make the 30-day submittal mandatory on a department wide basis.

7. Any person who submits a claim pursuant to these regulations and who willfully makes any claim which he/she does not believe to be true and correct or who willfully aids, procures, counsels, or advises the preparation of a false or fraudulent claim, shall be guilty of official misconduct. If a traveler receives an allowance or reimbursement by means of a false or fraudulent claim, the traveler(s) involved shall be subject to disciplinary actions as well as being criminally and civilly liable within the provisions of state law.

8. Agencies shall review travel reimbursements to verify the documentation and complete processing within 30 days of receiving the final reimbursement submission.

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

A. The most cost-effective method of transportation that will accomplish the purpose of the travel shall be selected. Official state travelers must use the most direct travel route. Among the factors to be considered are the length of travel

time, vehicle operation cost, and cost/availability of common carrier services. Common carriers shall be used for out-of-state travel unless it is documented that utilization of another method of travel is more cost efficient or practical and approved in accordance with these regulations.

#### **B. Air Travel**

1. Privately Owned or Charter Planes. Prior approval is required by the department head when traveling by privately-owned or chartered aircraft. The traveler must certify:

a. at least two hours of working time will be saved by such travel; and

b. no other form of transportation such as commercial air travel or a state plane will serve the same purpose.

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

ii. Reimbursement for using a chartered or un-chartered privately owned aircraft under the above guidelines will be made per the published GSA rate or the cost of coach economy airfare, whichever is the lesser. GSA Airplane mileage rate: <https://www.gsa.gov/travel/plan-book/transportation-airfare-pov-etc/privately-owned-vehicle-pov-mileage-reimbursement-rates>

iii. If there are extenuating circumstances requiring reimbursement not listed above, approval must be granted by the Commissioner of Administration.

iv. When common carrier services are unavailable and time is at a premium, travel via state aircraft shall be requested and if a state aircraft is not available, the file shall be documented to show non-availability of a common carrier and state aircraft. The documentation shall be readily available in the department's travel reimbursement files.

#### **2. Commercial Airlines**

a. All state travelers are to purchase commercial airline tickets through the state contracted travel agency. This requirement is mandatory unless approval is granted from the Office of State Travel. In the event travelers seek approval to book without using the state's travel agency, the traveler shall submit their request through their agency's travel program administrator, who will determine if the request should be submitted to the Office of State Travel.

b. State contractors are not required to use the state's contracted travel agency when purchasing airfare, but it is the agency's responsibility to monitor costs to ensure the contractors are purchasing the lowest, most logical airfare.

c. The State supports purchasing the lowest logical ticket. Once all rates are received, the traveler must compare costs and options to determine which fare will be the best value ticket for their trip. To make this determination, the traveler must consider whether or not there is a likelihood the itinerary will change or be cancelled. Depending on this assessment, the traveler must determine if the additional costs associated with changing a non-refundable ticket alters the determination of the lowest logical ticket.

d. Travelers should advise the agent of their flexibility with dates and/or time of travel to ensure the most cost-effective rate.

e. Travelers are to seek airfare allowing a sufficient amount of lead-time prior to departure date. The lead-time should be no less than 10 to 14 days in advance of travel dates to ensure the lowest fares are available.



f. Commercial air travel will not be reimbursed in excess of the lowest logical airfare. Receipts are required for reimbursement for commercial air travel. Upgrades above economy at the expense of the State are not permitted without prior approval from the Commissioner of Administration or in accordance with Subparagraph h of this Subsection. If an upgrade is not approved prior to the travel date and the traveler chooses to upgrade, the cost associated with the upgrade must be paid separately by the traveler. If space is not available in economy in enough time to carry out the purpose of the travel, the traveler must obtain a statement from the airline or contracted travel agency with this information. The certification is required for travel reimbursement.

g. The state will pay for the airfare and/or penalty incurred for a change in plans or cancellation when the change or cancellation is required by the State or there are unavoidable circumstances approved by the agency's department head. Justification for the change or cancellation by the traveler's department head is required on the travel expense form.

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

i. Travelers may retain frequent flyer miles earned on official state travel unless an agency deems the points as property of the state. If a traveler makes travel arrangements that favor a preferred airline/supplier to receive these reward points and this circumvents purchasing the lowest logical airfare, they are in violation of this travel policy. Any costs in excess of the lowest logical airfare resulting from this violation are not reimbursable.

#### C. Unused Tickets

1. A lost or unused airline ticket is the responsibility of the person to whom the ticket was issued. Unused tickets should always be monitored by the traveler and the agency. Travelers should ensure that any unused ticket is considered when planning future travel arrangements. Some airlines have a policy that will allow for a name change to another traveler within the agency. A view of the latest airline policies regarding unused tickets are available at the Office of State Travel's website: <https://www.doa.la.gov/doa/ost/transportation/airfare-airport/>

2. Upon initial notification, it is the traveler's responsibility to determine if the ticket will be used in the future. Unused tickets are to be monitored every 30 days. If it is determined that the ticket will not be used prior to expiration and there is a possibility to transfer the ticket, the traveler must immediately advise the agency's travel administrator that the ticket is available for use by another traveler, section, or agency. The travel administrator should attempt to use the ticket for another traveler within the agency.

3. Department heads must review all unused airfare and the traveler's justification to determine if reimbursement from the traveler must be made to the agency for the cost of the unused ticket. All files must be properly documented.

4. Monitoring unused tickets can be accomplished with the unused ticket report sent to the agency's program administrator each month from the contracted travel agency. This report, in conjunction with traveler notifications while booking other flights and traveler email notifications every 120, 90, 60, 30 and 14 days prior to ticket expiration should be sufficient to reduce the loss of unused airfare.

#### D. Motor Vehicle

1. No vehicle may be operated in violation of state or local laws. No traveler may operate a vehicle without having a valid U.S. driver's license in his/her possession. All occupants must use safety restraints. Accidents, major or minor, shall be reported first to the local police department or appropriate law enforcement agency. An accident report form, available from the Division of Administration's Office of Risk Management (ORM), should be completed as soon as possible and must be returned to ORM with names, addresses, and phone numbers of principals and witnesses. Contact ORM with questions regarding this report.

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

a. violating the terms and conditions of use of the vehicle

b. violating the direction of his/her employer, and

c. acting beyond the course and scope of his/her employment with the State of Louisiana.

3. A person should not be authorized to operate or travel in a state-owned or state-rented vehicle unless the person is an employee of the State of Louisiana or deemed an authorized traveler. All authorized traveler approvals must be kept on file at the agency.

4. Students and non-state employees are not authorized to drive state-owned or state-rented vehicle unless deemed an "authorized traveler" on behalf of the State by the department head or his/her designee. Authorized travelers can be reimbursed for their travel expenses. Anyone who is not an employee of the State of Louisiana must sign the Acknowledgement of Non-State Employees Utilizing State Vehicles form, located on the Office of State Travel's website, <https://www.doa.la.gov/media/jcfcj2il/nse-acknowledgement.pdf>, prior to riding in or driving a state-owned or state-rented vehicle. Each agency is responsible for ensuring that this form and any other necessary requirements are completed and made part of the travel file prior to travel dates.

5. Persons operating a state-owned, state-rented, or personal vehicle on official state business are responsible for all traffic, driving, and parking violations. This does not include vehicle violations for registration or inspection sticker for state-owned or state-rented-vehicles, as the State and/or rental company would be liable for any cost associated with these types of violations.

6. For official in-state business, travelers must use the options below in sequential order:

a. first: a traveler should utilize a state vehicle when available;

b. second: a traveler should rent a vehicle from the State's in-state contracts with Enterprise, National, or Hertz for travel over 99 miles;

c. third: a traveler must receive prior approval from their department head to use his/her personal vehicle and be reimbursed more than 99 miles. Reimbursements must be based on the GSA rate for mileage rounded down to the penny. The current GSA mileage rate can be found here: <https://www.gsa.gov/travel/plan-book/transportation-airfare-pov-etc/privately-owned-vehicle-pov-mileage-reimbursement-rates>

7. Motorcycles/bicycles/mopeds/motorized scooters (including e-scooters) shall not be used for official State travel. No passengers may be transported, at any time on official State Travel, on motorcycles/bicycles/mopeds/motorized scooters (including e-scooters).

#### E. State-Owned Vehicles

1. Travelers in state-owned automobiles who purchase fuel, repairs, and equipment needed while in travel status shall make use of the Statewide Fleet Fuel and Repair/Maintenance and bulk fuel contracts, when applicable. Purchases require receipts and only the lowest manufacturer recommended fuel should be reimbursed.

2. Department heads must give prior approval for State-owned vehicles to be used for out-of-state travel. If a state-owned vehicle is used to travel to a destination more than 500 miles from its usual location, documentation that this is the most cost-effective means of travel must be kept in the department's travel reimbursement files. When the use of a state-owned vehicle has been approved by the department head for out-of-state travel for the traveler's convenience, the traveler is personally responsible for any other expense en route to and from their destination, which includes meals and lodging.

3. If a state vehicle is needed or requested to be kept at the home of a state traveler overnight, the agency and traveler should ensure it is in accordance with requirements outlined in R.S. 39:361-364.

#### F. Personally Owned Vehicles

1. Personal vehicle mileage is reimbursed at the published GSA rate for mileage rounded down to the penny. Personal vehicle mileage reimbursements should be based on actual physical addresses and require an odometer reading or website mileage calculator. The current GSA mileage rate can be found here: <https://www.gsa.gov/travel/plan-book/transportation-airfare-pov-etc/privately-owned-vehicle-pov-mileage-reimbursement-rates>.

2. When two or more persons travel in the same personally owned vehicle, only one reimbursement is allowed for the expense of the vehicle. The person claiming reimbursement shall report the names of the other passengers on the travel expense form.

3. At the discretion of the department head or his/her designee, mileage to and from airport(s) may be allowed while on official state business. This approval may include reimbursement for a traveler who is being dropped off and/or picked up from the airport.

4. Mileage reimbursements must not exceed the cost of the lowest logical airfare for the same trip. Travelers are personally responsible for any other expenses en route to and from the destination, which includes meals and lodging.

5. If a traveler is requested to take his/her personally owned vehicle out-of-state for a purpose that will benefit the agency, then the department head may, on a case-by-case basis, determine to pay a traveler for all or part of en route travel expenses (for example – lodging, meals, and mileage). Documentation must be kept on file to show cost savings or justification as to why personal vehicle mileage, lodging, and meals while in transit were approved for out-of-state travel exceeding 99 miles.

6. A traveler shall never receive any benefits or reimbursements because his/her residence is different from his/her official domicile. A traveler may be reimbursed mileage when starting travel from his/her residence if the mileage is less than starting travel in the traveler's official domicile. If a traveler is leaving on a non-work day or leaving before or after work hours, the department head may determine to pay the actual mileage from the traveler's residence.

7. When a traveler is required to regularly use his/her personally owned vehicle for agency activities, the agency head may request prior authorization from the Commissioner of Administration for a vehicle allowance. Requests for vehicle allowances must contain a detailed account of routine travel listing exact mileage for each route and justification as to why a rental vehicle is not feasible. Justifications should include a three-month travel history with a complete mileage log for all travel incurred, showing all points traveled to/from and the exact mileage. Requests for vehicle allowances are granted for one fiscal year and must be requested again each fiscal year if there is still a need. A centralized file must be kept containing all approvals.

a. If an employee is granted a vehicle allowance then mileage, fuel, and rental vehicle reimbursements or charges are not allowed for that employee. Rental vehicles are allowed for these employees when traveling out-of-state.

8. Travelers are required to pay all operating expenses for his/her personal vehicle including fuel, repairs, and insurance.

#### G. State-Rented Vehicles

1. The state has mandatory contracts for in-state and out-of-state vehicle rentals for business travel with Enterprise, National, and Hertz. These contracts also apply to all authorized travelers and contractors. The state does not have international vehicle rental contracts.

2. Employees receiving a vehicle allowance are only allowed to rent a vehicle when traveling out-of-state.

##### 3. In-State and Out-of-State Vehicle Rentals

a. A rental vehicle should be used if a state owned vehicle is not available for all travel over 99 miles. In the event that an agency or traveler chooses to use a personal vehicle, refer to §150.F, of this policy, Personally Owned Vehicles.

b. All state contractors who have entered into a contract with the State of Louisiana on or after March 1,

2013, and whose contracts are required to follow PPM 49 for travel reimbursements, must use the state's mandatory contracts while conducting business on behalf of the State.

c. In-state rental vehicle reservations shall not be made at an airport location for daily routine travel unless prior approval is granted by the department head. Airport rental locations charge extra fees that will add unnecessary costs to your rental charges.

d. Charges added to the vehicle rental price must be in accordance with the mandatory rental vehicle contracts.

4. Payments. Rentals through the vehicle rental contracts shall be made using the "LaCarte" purchasing card, an agency's CBA account, an employee's state corporate travel card, or through direct bill to the agency. Agencies may decide which of these forms of payment to be used.

5. Approvals. Travel authorization forms must be approved by the department head or his/her designee prior to renting a vehicle. Agencies are allowed to approve rental vehicles on an annual basis if the travel is routine and a regular part of an employee's job duties.

#### 6. Vehicle Rental Size

a. Only the cost of an economy, compact, intermediate, or standard vehicle is reimbursable, unless:

- i. non-availability is documented; or
- ii. the vehicle will be used to transport more than

two persons.

- iii. if a larger vehicle is necessary to carry equipment or multiple passengers, the vehicle shall be upgraded only to the next smallest size and lowest price necessary to accommodate the need. The file must include a justification approved by the department head or his/her designee.

b. A department head or his/her designee may authorize a larger vehicle on a case-by-case basis and provide detailed justification in the file. Justification could include, but is not limited to, specific medical requirements when supported by a doctor's recommendation or traveling with equipment.

7. Personal use of a State-rented vehicle is not allowed.

#### 8. Fuel

a. Fuel should be placed on an agency's fuel card for rental vehicles. If your agency does not have a fuel card, reimbursements require an original receipt. If you are not able to obtain a receipt from the pump or cashier, a time stamped photo of the pump showing the number of gallons purchased and total price will suffice.

b. A traveler must purchase fuel with the State's Fuel Card, other approved credit card, or with personal funds at reasonable cost from a fuel station prior to returning the rental. Pre-paid fuel options or replacement of gasoline from the rental company is not allowed. If a traveler purchases any fuel options or programs allowing the rental vehicle company to replace gasoline without justification and prior approval from the department head, the traveler must reimburse the agency. Each agency shall familiarize itself with the Statewide Fleet Fuel and Repair/Maintenance and bulk fuel contracts. Agencies and travelers should review the terms, conditions, and locations of vendors for each contract.

9. Insurance for Vehicle Rentals within the United States

a. State rental contracts include Collision and Damage Waiver (CDW) insurance and \$1,000,000 Liability Protection Coverage. Additional insurance billed by car rental companies is not reimbursable and must not be billed to an agency.

b. Should a collision occur while on official state business, the accident should immediately be reported to the Office of Risk Management and the rental company. Any damage involving a third party must be reported to the appropriate law enforcement agency to obtain a police report.

c. Lost keys and unlocking services for rental vehicles are not covered under the damage waiver policy and can be costly. Agencies should establish an internal procedure regarding the liability of these costs.

10. Insurance for Vehicle Rentals Outside of the United States

a. The Office of Risk Management (ORM) recommends the appropriate insurance (liability and physical damage) provided through the car rental companies be purchased when the traveler is renting a vehicle outside of the United States. With the approval of the department head or his/her designee, required insurance costs must have receipts and may be reimbursed for travel outside of the United States only.

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

- ii. loss damage waiver (LDW);
- iii. auto tow protection (ATP);
- iv. supplementary liability insurance (SLI);
- v. theft and/or super theft protection (coverage of contents lost during a theft or fire);

vi. vehicle coverage for attempted theft or partial damage due to fire by the car rental company.

c. The following are examples of insurance packages available by rental vehicle companies that are not reimbursable:

- i. personal accident coverage insurance (PAC);
- ii. emergency sickness protection (ESP).

d. Insurance is only allowed to be charged or reimbursed when renting outside of the United States.

11. Navigation Equipment (GPS System). Must be rented, not purchased, from a rental car company and may only be reimbursed if the traveler justifies the need for such equipment. Prior approval from the department head or his/her designee must be obtained and included with the travel file.

#### H. Ground Transportation

1. The cost of public ground transportation such as buses, subways, airport shuttles/limousines, ferries, tolls, and taxis are reimbursable when the expenses are incurred as part of approved State travel. Credit card fees charged by these services are reimbursable.

2. Public transportation to and from the airport may be reimbursed with a receipt while on official state business.

3. If utilizing Uber or Lyft type services, only a standard size vehicle is reimbursable with an itemized receipt. Premium or larger vehicles are not reimbursable. Agencies may reimburse tolls, surcharges, and fees (excluding wait time fees) when it is determined that these services are the most cost effective option. Wait time fees are not a reimbursable expense. Travelers should try to utilize

the most economic ground transportation without incurring additional fees or surge pricing.

4. When travelers utilize a free shuttle service, a \$5 tip may be allowed (no receipt is required).

5. Airport shuttles, taxis, and all other public transportation require a receipt for reimbursement. A driver's tip may be given and the tip must not exceed 20 percent of the total charge. The tip amount must be included on the receipt received from the driver/company.

6. All other forms of public ground transportation other than those listed above are limited to \$10 per day when a receipt is not possible. Claims in excess of \$10 per day require a receipt. At an agency's discretion, the department head may implement an agency policy requiring receipts for all public transportation requests less than \$10 per day.

7. To assist agencies with verification of taxi fares, you may contact the taxi company for an estimate or visit an online taxi fare estimator. A traveler should obtain prior approval if multiple taxis will be used during a trip (not just to and from an airport). It may be in the agency's best interest to rent a vehicle rather than reimbursing multiple taxi expenses.

#### I. Parking and Related Parking Expenses

1. Baton Rouge Airport. The State has contracted rates for parking in the indoor parking garage and the outside fenced parking lot at the Baton Rouge Airport. The airport parking certificate and State Employee ID must be presented to receive the contract price. If the agency does not issue a State ID, the traveler will need a business card and a driver's license along with the certificate to be eligible for the state contracted rate. Receipts are required for reimbursement of the contracted rates listed in the resource section. The airport certificate may be found on the State Travel Office's website at: <https://www.doa.la.gov/oa/ost/parking/>

2. New Orleans Airport Parking. Travelers have the option to park at New Orleans Airport in the Surface Lot or the Airline Economy Garage. Receipts are required for reimbursement for the allowable rates listed in the resource section.

3. Travelers using motor vehicles on official state business may be reimbursed for all other parking, including airport parking except as listed in Paragraphs 1 and 2 above, ferry fares, and road/bridge tolls. For each transaction over \$5, a receipt is required.

4. Tips for valet parking are not to exceed \$5 per day.

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## §1505. Lodging (Formerly §1506)

### A. General Lodging Information

1. The State has contracted with HotelPlanner for hotel booking (use is not mandatory). Lodging rate, plus tax (other than Louisiana Sales Tax) and any mandatory surcharges are allowed.

2. When traveling in-state on official state business and expenses are being charged to an employee's State Corporate Travel Card, State's LaCarte Card, or the agency's CBA account, it is the employee's responsibility to ensure state sales taxes are not charged.

3. When two or more employees, on official state business, share a lodging room, the State will allow the actual cost of the room; subject to a maximum amount allowed for an individual traveler multiplied by the number of employees per room.

### B. Conference Lodging Allowance

1. Travelers may be allowed the conference lodging rates, plus tax (other than Louisiana Sales Tax) and any mandatory surcharge. Receipts are required along with documentation showing the actual conference rate. Department heads or his/her designee have the authority to approve the actual cost of conference lodging for a single occupancy or standard room when the traveler is staying at the designated conference hotel and nearby hotels are not logical. If there are multiple designated conference hotels, the lower cost conference hotel should be booked, if available. In the event the designated conference hotel(s) have no room availability, a department head or his/her designee may approve to pay the actual hotel cost not to exceed the conference lodging rates for other hotels in the immediate vicinity of the conference hotel. This allowance does not include Agency Hosted Conference Lodging Allowances. Documentation required is a formal agenda, program, letter of invitation, or registration fee. Participation as an exhibiting vendor in an exhibit /trade show also qualifies as a conference. For a hotel to qualify for conference rate lodging, it requires that the hotel is hosting or is in conjunction with hosting the meeting.

2. Training courses held over several consecutive days and have a designated hotel and rate, could be considered a "conference hotel."

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

4. No reimbursements are allowed for functions not related to a conference. Examples include tours, dances, and golf tournaments.

### C. Extended Stays

1. For travel assignments approved by the Commissioner of Administration involving duty for extended periods (30 or more consecutive days) at a fixed location, the reimbursement rates indicated should be adjusted downward whenever possible. Claims for meals and lodging may be reimbursed on a per diem basis supported by a lodging receipt.

2. The only exemptions which do not require the Commissioner of Administration's approval when traveling 30 days or more are students, professors, or other state travelers which are traveling on a grant, scholarship, studying aboard or any other occasion where funds utilized are not state funds. Department head approval is required for these travelers.

#### D. Lodging Fees

1. Non-Conference Related Fees. Many hotels charge mandatory fees variously termed *resort fees*, *amenity fees*, *urban destination fees*, *facilities fees* and *daily destination fees*, among others. Agencies should review these fees and see what they include before authorizing reimbursement, as they can vary from simply covering internet access to including items that may be considered gifts, like tours or tickets. If the fees do not include an item that can be considered a gift, these fees are reimbursable but should not exceed the applicable tier rate when combined with the daily room rate. These fees require department head approval if the additional cost is less than a 50 percent increase of the daily tier rate. Increases above 50 percent require prior approval from the Commissioner of Administration.

2. Added value charges which include, but are not limited to, early check-in fees, additional person fees, mini-bar/snack fees, gym fees, and spa fees are not reimbursable.

3. Tax recovery charges are not allowed when booking through companies other than the State of Louisiana's travel agency or its affiliated company.

#### E. Louisiana Sales Tax

1. Travelers are responsible for reimbursing the agency for any Louisiana sales taxes when the agency's tax exemption form is not presented at time of check-in at hotel. Contractors are subject to Louisiana sales tax and can be reimbursed for this expense.

2. Travelers should use the tax-exempt form located on the State Travel Office website for all in-state lodging: <https://www.doa.la.gov/media/er0b2lwj/travelexemption-travelexpense.pdf>

#### F. Lodging with Relative or Friends

1. May not be reimbursed unless the host can substantiate costs for accommodating the traveler. The reimbursement will be at the actual cost of lodging but must not exceed the PPM 49 lodging rate for the applicable area. The host must show proof of the added costs for water, electricity, and other expenses.

#### G. Hotel Reward Points

1. Travelers may retain hotel reward points earned on official state travel unless an agency deems the points as property of the state.

#### H. Lodging Exceptions

1. Non-Conference Lodging Overage Allowances. Department head or his/her designee has the authority to approve actual costs for routine lodging on a case by case basis, but shall not exceed 50 percent over the PPM 49 lodging rate for the applicable travel location. (This authority is for routine lodging only and not for conference lodging or any other area of PPM 49). Receipts, justification, and approval must be maintained in the file to show that attempts were made with hotels in the area to receive the best rate.

a. Travelers are responsible for reimbursing the agency for lodging rates that exceed the published PPM 49

tier rates for the travel location unless prior approval is granted by the Commissioner of Administration.

2. In areas where the Governor has declared an emergency, a department head or his/her designee has the authority to approve actual routine lodging provisions on a case-by-case basis, but shall not exceed 75 percent over the PPM 49 lodging rate for the applicable travel location. Each case must be documented to justify necessity (e.g. proximity to meeting place) and cost effectiveness. Documentation, including receipts, must be readily available in the agency's travel reimbursement files and kept in accordance with record retention policies.

3. Lodging overages in excess of Paragraphs H.1 and H.2 of this Section require approval from the Commissioner of Administration prior to being paid or reimbursed by the agency. Requests for approval must contain justification and estimated costs. If prior approval is not obtained, overages must be repaid to the agency by the traveler.

4. Actual expenses for Elected Officials, Board Members (if allowed by the Board), State Officers, persons authorized by statute, or any individual with a preapproved exception will be reimbursed on an actual expense basis, for meals and lodging only, while in travel status, except in cases where other provisions for reimbursement have been made by statute. Itemized receipts are required for reimbursement. Requests must be reasonable in relation to the purpose of travel. Travelers entitled to actual expense reimbursement are only exempt from meals and lodging rates; they are subject to all other requirements as listed in these travel regulations.

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### §1506. Meals

#### A. Meals While In Travel Status

1. Meal Reimbursement for Single Day Travel. Meals are not eligible for reimbursement on single day travel. When an authorized traveler of the State is in travel status where no overnight stay is required, meals are not eligible for reimbursement. However, the department head is allowed to authorize single day meal reimbursements on a case-by-case basis or by types(s) of single day travel when it is determined to be in the best interest of the agency. In those cases, the agency must keep the approvals in the travel file and agencies are responsible for reporting the reimbursement as taxable wages to the traveler. Each department head or his/her designee is to determine whether the travel is best suited for single day or overnight.

a. If a department head or his/her designee determines that single day meals will be reimbursed, they must adhere to the following allowances: To receive meal

reimbursements on single day travel, a traveler must be in travel status for more than 12 but less than 24 hours. Reimbursement must not exceed the applicable travel location's PPM 49 rates.

2. Meal Reimbursement for Travel with Over Night Stay

a. Travelers may be reimbursed up to PPM 49 meal per diem rates for the applicable travel location.

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

c. Lunch: when travel begins at/or before 10 a.m. on the first day of travel or extends at/or beyond 2 p.m. on the last day of travel, and for any intervening days.

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

3. Reimbursement for alcohol is prohibited.

4. Meal allowances are to be reimbursed at the published PPM 49 per diem rates for the applicable location. PPM 49 meal rates include taxes and tips, travelers cannot be reimbursed separately for those items. Receipts are not required for meals within these allowances unless a cash advance was received.

5. If meals are included in a conference schedule and are part of the registration fee, the traveler cannot request/receive additional reimbursement for that meal. If a traveler has dietary restrictions, agencies may allow the traveler to claim reimbursements for any meals provided at a conference, meeting, or other work function that may pose a health risk to the traveler if consumed.

6. Meals provided by relatives and/or friends may not be reimbursed unless the host can substantiate costs for providing meals to the traveler. The reimbursement amount for the traveler's portion of the meal must be reimbursed at the actual cost but shall not exceed the published PPM 49 rate for the applicable travel location. The traveler must provide documentation and obtain approval from the department head.

B. Special Meals

1. Special meal needs are infrequent, extraordinary, and/or emergency situations when state employees are required by their supervisor to work more than a twelve-hour weekday or six-hours on a weekend. Special meals also includes meals provided during working meetings of department staff. Special meals do not include normal visits, meetings, or reviews.

2. Special meals must have prior approval from the Commissioner of Administration for all state agencies other than higher education. The entity head of higher education institutions or his/her designee may approve special meals prior to the meal date. Special meals should be placed on a state issued credit card.

3. All special meals must have a sign-in sheet.

4. Requests for one-time special meals must be signed by the department head and require prior approval by the Commissioner of Administration. These requests must include:

- a. date of event;
- b. name of each recipient;
- c. total number of attendees;
- d. estimated cost of meal;

- e. estimated cost per person;
- f. justification for special meal.

5. The Commissioner of Administration may delegate approval to a department head on a fiscal year basis. Requests must be submitted every fiscal year the delegation is needed. Once approval is received, the department head may authorize a special meal within the published PPM 49 rate of the meeting location. A reasonable delivery fee and tip may be allowed if ordered from an outside vendor. Tips should never exceed 20 percent of the meal cost.

a. Requests to the Commissioner of Administration for special meal delegations must:

i. be submitted on agency letterhead and signed by the department head;

ii. include clear justification of the necessity and appropriateness of the request;

iii. include a statement that allowances for meal reimbursements will be in accordance with PPM 49 unless specific approval is received from the Commissioner of Administration to exceed PPM 49 meal rates.

6. Agencies with a special meals delegation must report all special meals on a quarterly basis to StateTravel@LA.Gov. Higher education institutions must send the special meals report to the entity's management board. The Special Meals Report template can be found here: <https://www.doa.la.gov/media/s43etwyx/special-meals-report-template.xlsx> The special meals report must include:

- a. year and quarter being reported;
- b. agency name;
- c. name of report preparer;
- d. phone number and email address of report preparer;
- e. date of event;
- f. event title;
- g. name and title of person(s) receiving reimbursement, if applicable;
- h. if a state credit card was used, the name and title of the cardholder must be reported;
- i. name and title of each recipient;
- j. total number of attendees;
- k. total cost of meal;
- l. cost per person;
- m. justification for special meal.

7. In order for an agency's special meals delegation renewal to be considered for approval, the special meals quarterly reports must be submitted.

8. Special meals also apply to visiting dignitaries or executive-level persons from other governmental units.

9. Special meal documentation must be kept on file and must include:

- a. a detailed breakdown of all expenses incurred, with appropriate receipts(s);
- b. subtraction of any alcoholic beverage costs.
- c. copy of prior written approval from the Commissioner of Administration or for higher education, the entity head or his/her designee.

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

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, published LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 6:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October

1989), LR 16:965 (November 1990), LR 26:1256 (June 2000), LR 27:807 (June 2001), republished LR 27:1495 (September 2001), LR 28:1130 (June 2002), LR 30:1116 (June 2004) LR 31:1189 (June 2005), LR 32:939 (June 2006), LR 33:967 (June 2007), republished LR 33:1320 (July 2007), amended LR 34:1305 (July 2008), LR 35:1198 (July 2009), LR 36:1654 (July 2010), LR 42:990 (July 2016), LR 43:1119 (June 2017), LR 45:821 (June 2019), LR 46:849 (June 2020), LR 46:1484 (October 2020), LR 47:823 (June 2021), LR 48:1454 (June 2022).

**§1507. Reimbursement for Other Expenses while in Travel Status (Formerly §1508)**

**A. Communication and Internet Expenses**

1. Travelers with a state issued phone or receiving a monthly stipend are not allowed communication reimbursements.

2. State business communication costs may be reimbursed with receipts.

3. For international travel: up to \$10 for personal calls upon arrival at each destination and up to \$10 for personal calls every second night after the first night, if the travel extends several days.

4. Internet access charges for official state business from hotels or other travel locations are reimbursable with receipts.

**B. Storage and Handling Charges**

1. Storage and handling charges for state equipment/materials are allowed to be placed on the agency's CBA account. Receipts are required for these transactions.

**C. Incidental Tips**

1. Limited to a maximum of \$5 per day for all incidental tips

a. Hotel Tips—allowed for check-in and check-out

b. Airport Baggage Tips—allowed for arrival and departure

**D. Luggage Allowances**

1. Department head or his/her designee may approve reimbursement to a traveler for airline charges for one checked bag for a business trip of five days or less and for two checked bags for business trips exceeding five days. Additional luggage or equipment required for the business travel may be reimbursed with justification and receipts.

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

a. when traveling with heavy or bulky materials or equipment necessary for business.

b. the excess baggage contains agency records or property.

3. The traveler should always consider shipping material to the final destination or splitting material into additional pieces of luggage to determine the most cost-effective method for the State.

4. Laundry Services. If traveling for more than seven days, laundry services may be reimbursed with the department head or his/her designee's prior approval. Receipts are required and may be reimbursed up to the actual cost.

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

**HISTORICAL NOTE:** Written by the Office of the Governor, Division of Administration, November 1, 1972, published LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 6:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16:965 (November 1990), LR 26:1258 (June 2000), LR 27:808 (June 2001), LR 28:1131 (June 2002), LR 30:1118 (June 2004), LR 31:1190 (June 2005), LR 32:941 (June 2006), republished LR 33:1322 (July 2007), amended LR 34:1307 (July 2008), LR 35:1200 (July 2009), LR 36:1656 (July 2010), LR 42:992 (July 2016), LR 43:1121 (June 2017), LR 45:823 (June 2019), LR 46:852 (June 2020), LR 47:826 (June 2021), LR 48:1456 (June 2022).

**§1508. Agency-Hosted Conferences (Formerly §1510)**

**A. Applies to both in-state and out-of-state. State Sponsored Conferences:** agencies must solicit three bona fide competitive quotes in accordance with the current Governor's Small Purchase Executive Order.

1. **Attendee Verification.** All state sponsored conferences must have a sign-in sheet or some type of attendee acknowledgment to justify the number of meals charged.

2. **Conference Lunch Allowance.** Lunch directly billed to an agency in conjunction with a state sponsored conference shall not exceed the combined PPM 49 breakfast and lunch rates of the conference location. Any gratuity not required by the caterer must not exceed 20 percent of the total meal cost.

Example: If the PPM 49 meal rates for New Orleans are \$17 for breakfast and \$18 for lunch, the conference lunch allowance will be \$35.

3. **Breakfast and dinner** require approval from the Commissioner of Administration. Approvals for higher education entities can be made by the entity head or his/her designee.

4. **Conference Refreshment Allowance.** Cost for break allowances for meetings, conferences, or conventions are not to exceed \$5.50 per person. Refreshments are allowed twice per day, morning and afternoon. Gratuity may be added if refreshments are being catered.

5. **Conference Lodging Allowances.** Conference lodging rates should be within the published PPM 49 lodging rates for the conference location but cannot exceed 50 percent over the published rate without prior approval from the Commissioner of Administration.

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

**HISTORICAL NOTE:** Written by the Office of the Governor, Division of Administration, November 1, 1972, published LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 6:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16:965 (November 1990), LR 26:1256 (June 2000), LR 27:807 (June 2001), republished LR 27:1495 (September 2001), LR 28:1130 (June 2002), LR 30:1116 (June 2004), LR 31:1191 (June 2005), LR 32:941 (June 2006), republished LR 33:1323 (July 2007), amended LR 34:1308 (July 2008), LR 35:1201 (July 2009), LR 36:1657 (July 2010), LR 42:993 (July 2016), LR 43:1122 (June 2017), LR 45:824 (June 2019), LR 46:853 (June 2020), LR 47:827 (June 2021), LR 48:1456 (June 2022).

**§1509. International Travel  
(Formerly §1511)**

A. International travel must be approved by the Commissioner of Administration for all state agencies other than higher education.

B. The entity head of higher education institutions or his/her designee may approve international travel prior to the departure date.

C. All requests for approval must be accompanied by a detailed account of expected expenditures including airfare, room rates, dates, meals, local transportation, and any other known travel costs.

D. International travelers will be reimbursed based on the PPM 49 Tier IV rates for meals and lodging. Agencies may request approval from the Commissioner of Administration to use the Department of State's rates. Higher education entities can obtain approval to use the Department of State rates from the higher education entity's department head.

E. Agencies may decide to allow state travelers to be reimbursed for a Visa and/or immunizations when the traveler is traveling on behalf of the agency/university on official state business and must keep justification with the travel file. Passport reimbursements must be submitted to the department head for approval along with detailed justification as to why this reimbursement is being requested/approved.

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

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, published LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 8:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16:965 (November 1990), LR 26:1258 (June 2000), LR 27:809 (June 2001), LR 28:1132 (June 2002), LR 30:1119 (June 2004), LR 31:1192 (June 2005), republished LR 33:1323 (July 2007), amended LR 34:1308 (July 2008), LR 35:1201 (July 2009), LR 36:1657 (July 2010), LR 42:994 (July 2016), LR 43:1123 (June 2017), LR 45:824 (June 2019), LR 46:853 (June 2020), LR 47:827 (June 2021), LR 48:1457 (June 2022).

**§1510. Waivers  
(Formerly §1512)**

A. The Commissioner of Administration may waive, in writing, any provision in these regulations when the State's best interest will be served. All waivers of PPM 49 must receive prior approval from the Commissioner of Administration, except in declared emergencies.

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

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, published LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 6:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16:965 (November 1990), LR 26:1258 (June 2000), LR 27:809 (June 2001), LR 28:1132 (June 2002), LR 30:1118 (June 2004), LR 31:1191 (June 2005), republished LR 1322 (July 2007), amended LR 34:1307 (July 2008), LR 35:1200 (July 2009), LR 36:1656 (July 2010), LR 42:993 (July 2016), LR 43:1122 (June 2017), LR 45:825 (June 2019), LR 46:854 (June 2020), LR 47:829 (June 2021), LR 48:1457 (June 2022).

**§1511. PPM 49 Tier per Diem Rates  
(Formerly §1506)**

A. Lodging rates include charges such as resort fees, facility fees, and reservation fees.

1. Tier I

TIER I	
Breakfast	\$16
Lunch	\$17
Dinner	\$31
Total	\$64
Lodging Area	Routine Lodging
In-State Cities (except as listed)	\$96
Alexandria/Leesville/Natchitoches	\$99
Baton Rouge-EBR	\$99
Covington/Slidell-St.Tammany	\$96
Lake Charles-Calcasieu	\$96
Lafayette	\$96

2. Tier II

TIER II	
Breakfast	\$17
Lunch	\$18
Dinner	\$34
Total	\$69
Lodging Area	Routine Lodging
New Orleans - Orleans, St. Bernard, Jefferson and Plaquemines Parishes	
July- September	\$136
October - December	\$136
January - May	\$158
Out-Of-State (Except Cities Listed in Tier III & IV)	\$96

3. Tier III

TIER III	
Breakfast	\$17
Lunch	\$18
Dinner	\$34
Total	\$69
Lodging Area	Routine Lodging
Austin, TX; Atlanta, GA; Cleveland, OH; Dallas/Fort Worth, TX; Denver, CO; Ft. Lauderdale, FL; Hartford, CT; Houston, TX; Kansas City, MO; Las Vegas Los Angeles, CA; Miami, FL; Minneapolis/St. Paul, MN; Nashville, TN; Oakland, CA; Orlando, FL; Philadelphia, PA.; Phoenix, AZ; Pittsburgh, PA; Portland, OR; Sacramento, CA; San Antonio, TX; San Diego, CA; Sedona, AZ; St. Louis, MO; Wilmington, DE; all of Alaska and Hawaii; Puerto Rico; US Virgin Island; American Samoa; Guam, Saipan	\$170

4. Tier IV

TIER IV	
Breakfast	\$18
Lunch	\$21
Dinner	\$36
Total	\$75



<b>Lodging Area</b>	<b>Routine Lodging</b>
Baltimore, MD; San Francisco, CA; Seattle, WA; Chicago, IL; Boston, MA	\$212
Alexandria, VA; Arlington, VA; New York City, NY; Washington DC	\$225
International Cities	\$200

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

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, published LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 6:405 (August 1980), LR

7:7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16:965 (November 1990), LR 26:1256 (June 2000), LR 27:807 (June 2001), republished LR 27:1495 (September 2001), LR 28:1130 (June 2002), LR 30:1116 (June 2004) LR 31:1189 (June 2005), LR 32:939 (June 2006), LR 33:967 (June 2007), republished LR 33:1320 (July 2007), amended LR 34:1305 (July 2008), LR 35:1198 (July 2009), LR 36:1654 (July 2010), LR 42:990 (July 2016), LR 43:1119 (June 2017), LR 45:821 (June 2019), LR 46:849 (June 2020), LR 46:1484 (October 2020), LR 47:823 (June 2021), LR 48:1511 (June 2022).

2206#005

# Rules

## RULE

### Department of Children and Family Services Economic Stability Section

SNAP Gross Income Limits  
(LAC 67:III.1953 and 1987)

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:III, Subpart 3 Supplemental Nutrition Assistance Program, Chapter 19, Section 1953 Income Eligibility Standards and Subchapter J Determining Household Eligibility and Benefit Levels, Section 1987 Categorical Eligibility for Certain Recipients.

Section 1953 has been amended to increase the gross income limit for broad-based categorically eligible households. Section 1987 has been amended to increase the gross income limit from 130 percent to 200 percent of the federal poverty limit for broad-based categorically eligible households. Increasing the gross income limit will allow families with high expenses for child care, housing, or other necessities to avoid losing SNAP benefits when they experience a modest increase in income. For low-income families with relatively higher wages and high living expenses, a higher gross income threshold would still provide valuable help affording basic necessities. This Rule is hereby adopted on the day of promulgation, and it is effective July 1, 2022.

#### Title 67

#### SOCIAL SERVICES

#### Part III. Economic Stability

#### Subpart 3. Supplemental Nutrition Assistance Program Chapter 19 Certification of Eligible Households Subchapter I. Income and Deductions §1953. Income Eligibility Standards

A. The income eligibility standards for SNAP shall be as follows.

1. Gross Income. (All households except those specified in Paragraph 2 below.) The income eligibility standards for the contiguous 48 states and the District of Columbia, Guam, Puerto Rico and the Virgin Islands shall be 130 percent of the Office of Management and Budget's (OMB) nonfarm income poverty guidelines for the 48 states and the District of Columbia. Broad-based categorically eligible households shall meet 200 percent of the income poverty guidelines instead of 130 percent.

2. - 4. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 46:44712 et seq., F.R. 47:55463 et seq. and 47:55903 et seq., 7 CFR 273.9, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:9 (January 1982), amended LR 9:131 (March 1983), amended by the Department of Social Services, Office of Family Support, LR 29:606 (April 2003), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section,

LR 36:2529 (November 2010), amended by the Department of Children and Family Services, Economic Stability Section, LR 48:1459 (June 2022).

#### Subchapter J. Determining Household Eligibility and Benefit Levels

#### §1987 Categorical Eligibility for Certain Recipients

A. - E.3. ...

4. Broad-based categorically eligible household shall meet 200 percent of the federal poverty guidelines.

5. Broad-based categorically eligible households must meet all Supplemental Nutritional Assistance Program eligibility factors except as outlined above.

6. Benefits for broad-based categorically eligible households shall be based on net income as for any other household.

NOTE: One- and two-person households will receive a minimum benefit as required by 7 CFR 273.10(e)(2)(ii)(C). Households of three or more shall be denied if net income exceeds the level at which benefits are issued.

AUTHORITY NOTE: Promulgated in accordance with F.R. 51:28196 et seq., 7 CFR 271, 272, 273.10, and 274, F.R. 56:63612-63613, P.L. 104-193, 7 CFR 273.2(j)(2)(xi), Act 58, 2003 Reg. Session, 7 CFR 273.2, (j), and P.L. 110-246. HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:90 (February 1987), amended by the Department of Social Services, Office of Family Support, LR 18:1267 (November 1992), LR 24:1783 (September 1998), LR 26:349 (February 2000), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 30:495 (March 2004), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2531 (November 2010), amended by the Department of Children and Family Services, Economic Stability Section, LR 40:1312 (July 2014), LR 44:444 (March 2018), amended by the Department of Children and Family Services, Economic Stability Section, LR 45:1441 (October 2019), LR 46:1220 (September 2020), LR 48:1459 (June 2022).

Marketa Garner Walters  
Secretary

2206#065

## RULE

### Department of Children and Family Services Economic Stability Section

TANF Fatherhood (LAC 67:III.5571)

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:III, Subpart 15 Temporary Assistance for Needy Families (TANF) Initiatives, Chapter 55 TANF Initiatives, Section 5571 Parenting/Fatherhood Services Program (Effective September 30, 2002).

Pursuant to Louisiana's Temporary Assistance for Needy Families (TANF) Block Grant, amendment of Section 5571 is required to update the TANF goal and eligibility criteria. TANF goal 2 (to end the dependence of needy parents on

government benefits by promoting job preparation, work, and marriage) has been removed and the income eligibility criteria related to goal 2 has been removed. TANF goal 4 meets the initiative's objectives and its associated eligibility criteria allows the most flexibility for providers to serve a wide variety of disadvantaged families. This Rule is hereby adopted on the day of promulgation, and it is effective July 1, 2022.

**Title 67**  
**SOCIAL SERVICES**

**Part III. Economic Stability**

**Subpart 15. Temporary Assistance for Needy Families (TANF) Initiatives**

**Chapter 55. TANF Initiatives**

**§5571. Parenting/Fatherhood Services Program (Effective September 30, 2002)**

A. The department shall enter into contracts to create programs that will assist fathers with various skills which may include but are not limited to employment, life, positive parenting, fatherhood, marriage and/or relationship building activities, and other skills in order to increase their ability to provide emotional and financial support for their children and build a solid foundation for stronger relationships between mothers and fathers.

B. These services meet TANF goal 4, to encourage the formation and maintenance of two-parent families by eliminating emotional, social, financial, and legal barriers that hinder a father's ability to be fully engaged in his children's lives.

C. Eligibility for services is limited to fathers of minor children. The mothers of their children, as well as their children, are eligible to participate in program activities.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 13, 2002 Reg. Session, Act 18, 2007 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 29:191 (February 2003), amended LR 34:697 (April 2008), amended by the Department of Children and Family Services, Economic Stability Section, LR 48:1460 (June 2022).

Marketa Garner Walters  
Secretary

2206#066

**RULE**

**Department of Economic Development  
Office of Business Development  
and**

**Louisiana Economic Development Corporation SSBCI**

Collateral Support Program ARPA 2021  
(LAC 19:VII.Chapter 91)

The Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., R.S. 36:104, 36:108 and 51:2312, has adopted rules for the Collateral Support Program for the State Small Business Credit Initiative (SSBCI) authorized by the American Rescue Plan Act (ARPA) of 2021, otherwise

known as "SSBCI Collateral Support Program ARPA 2021". This Rule is hereby adopted on the date of promulgation.

**Title 19**

**CORPORATION AND BUSINESS**

**Part VII. Louisiana Economic Development Corporation**

**Subpart 13. Collateral Support Program**

**Chapter 91. SSBCI Collateral Support Program ARPA 2021**

**§9101. Purpose**

A. The Louisiana Economic Development Corporation (LEDC or Corporation) wishes to stimulate the flow of private capital, including short, medium and long-term loans, lines of credit loans, and other related financial assistance for the sound financing of the development, expansion, and retention of small business concerns in Louisiana, as a means of helping them grow and expand their businesses and of providing higher levels of employment, income growth, and expanded economic opportunities, especially to small businesses owned by socially and economically disadvantaged individuals (SEDI).

B. Through The American Rescue Plan Act of 2021, which reauthorized the State Small Business Credit Initiative (SSBCI), the U.S. Congress has appropriated funds to be allocated and disbursed to the states that have created programs to increase the amount of capital made available by private lenders to small businesses, and the State of Louisiana has been approved to receive and disburse SSBCI funds within the SSBCI Program. The Louisiana Department of Economic Development (LED), which will be working with and through the LEDC, has been designated to provide services for the SSBCI, including the collateral support program (CSP), which by a master lender CSP participation agreement previously entered into, and a LEDC CSP loan and deposit agreement, each between LEDC and the lender, will provide for the LEDC to place a cash deposit with the lender to make additional capital available for a portion of the loan, and to serve as cash collateral for a portion of the loan. The Louisiana Economic Development Corporation (LEDC), working with LED, will utilize SSBCI funds to increase access to credit and capital funding to further assist small businesses statewide, to expand loan capabilities to a broader range of businesses statewide, to direct a greater concentration on those small businesses, and to reach, identify and promote small business growth in low and moderate income communities, in minority communities, in other underserved communities, and to small businesses owned by socially and economically disadvantaged individuals across our state.

C. The CSP establishes pledged cash collateral accounts with participating lenders to enhance loan collateral for qualified small business borrowers exhibiting a shortfall in collateral and who would not otherwise be able to obtain financing on acceptable terms and conditions. Collateral deposits are established on an individual loan basis and are available to cover loan losses in the event of default by the borrower. Upon loan maturity and repayment, deposits are returned to LEDC for recycling to other qualified small business borrowers.

D. Interested small businesses will be referred to participating lenders for loan and collateral support deposit

qualification purposes. Participating lenders will apply to LEDC for collateral support deposits on behalf of their qualified small business borrowers. Participating lenders are responsible for their own credit underwriting decisions and originating the loans. LEDC's responsibilities are: to ensure compliance with CSP requirements; to establish and manage collateral support accounts; to promote and market the CSP through outreach activities to inform lenders, small businesses and trade associations of the Program; to generate increased small business activity, awareness and access to additional sources of capital to start and expand existing business opportunities, as well as participation in the Program; and to report to the U.S. Treasury.

E. In considering approval or acceptance of the loans presented to LEDC through lenders having previously agreed to participate in the Collateral Support Program (CSP), the corporation will consider sound business purpose loans and lines of credit, so long as SSBCI resources permit. The board of directors of the corporation recognizes that collateralizing loans and lines of credit carries certain risks and is willing to undertake reasonable exposure.

F. LEDC will monitor the program, including the repayment progress of borrowers, as well as the servicing performance of participating lenders, in order to ensure successful outcomes in the form of program utilization and eventual securing of funds for these groups.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1460 (June 2022).

### §9103. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in prevailing federal guidelines issued by the U.S. Treasury, 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.

*Accepted Loan*—a loan accepted by LEDC as eligible under the collateral support program (CSP).

*Affiliate of the Borrower*—any person or entity directly or indirectly controlled by the borrower or directly or indirectly controlling the borrower or under common control with the borrower. For purposes of this definition, a person controls another person if such person directly or indirectly, or acting through or in concert with one or more persons:

a. owns, controls, or has the power to vote twenty percent (20 percent) or more of any class of voting securities or interests of the other person;

b. controls in any manner the election or appointment of a majority of the directors or management of the other person; or

c. has the power to exercise a controlling influence over the management or policies of the other person.

*Affiliate of the Lender*—any person or entity directly or indirectly controlled by the lender or directly or indirectly controlling the lender or under common control with the lender. For purposes of this definition, a person controls another person if such person directly or indirectly, or acting through or in concert with one or more persons:

a. owns, controls, or has the power to vote 20 percent or more of any class of voting securities or interests of the other person;

b. controls in any manner the election or appointment of a majority of the directors or management of the person; or

c. has the power to exercise a controlling influence over the management or policies of the other person.

*Board*—the Board of Directors of Louisiana Economic Development Corporation (LEDC).

*Borrower*—an eligible borrower which is the recipient of a loan which is, has been, or will be registered by the lender under the CSP for collateral support through a collateral deposit account.

*Business Day*—any day other than a Saturday, Sunday, or any other day on which commercial banks in Louisiana are required or authorized to be closed.

*CDFI-Community Development Financial Institution*—has the meaning given that term under section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994.

*CDFI Investment Area*—as defined by Treasury for the SSBCI Program, are generally low-income, high-poverty geographies that receive neither sufficient access to capital nor support for the needs of small businesses, including minority-owned businesses.

*Collateral Deposit Account*—the interest bearing account or certificate of deposit opened with lender in the name of LEDC pledged as collateral for an accepted eligible loan.

*Corporation*—the Louisiana Economic Development Corporation (LEDC).

*CSP*—the Collateral Support Program.

*CSP Application*—program application for the collateral support request where the lender and borrower each sign and agree to abide by the assurances and certifications as required by the U.S. Treasury.

*CSP Collateral Analysis Form*—form completed by the lender evaluating the borrower's collateral value position.

*CSP Claim Form*—form completed by the lender to LEDC in the event of a default and subsequent loan loss.

*Default*—delinquent in making payment, when due, of any installment of principal or interest on any note, for a period of more than 90 days.

*Eligible Borrower*—a Louisiana business enterprise which meets all requirements of federal law and the CSP.

*Eligible Loan*—a loan (or a line of credit) that meets the criteria for an eligible loan under the CSP in effect at the time the loan is registered and for which each of the assurances, representations and warranties set forth in the CSP is true and correct.

*Enrolled Loan*—a loan (or a line of credit loan) which has been approved for acceptance in the CSP and in which the loan instruments have been fully executed.

*Financial Institution*—also referred to herein as a *Bank*, *Financial Lending Institution*, *Lending Institution*, *Commercial Lending Entity*, or *Lender*—includes any insured depository institution, insured credit union, or community development financial institution, as those terms are defined in section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702).

*LED*—the Louisiana Department of Economic Development (LED).

*LEDC*—the Louisiana Economic Development Corporation (LEDC).

*LEDC CSP Loan and Deposit Agreement*—the loan and deposit agreement (“deposit agreement”), to be executed by LEDC and the lender, for the deposit of cash collateral by LEDC with the lender, as security for a portion of the loan accepted under this program.

*Lender*—an insured depository institution, insured credit union, or community development financial institution, as those terms are each defined in section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702) which is experienced in the making of loans to businesses of the type provided for under the CSP, has an office and business operations in the State of Louisiana, and is regulated by the Office of the Comptroller of the Currency (including by merger, the Office of Thrift Supervision), the Federal Reserve Board, the Louisiana Department of Finance or similar regulatory agency. All participating lenders must execute a lender Participation Agreement with LEDC; and is the entity that will make or originate the accepted eligible loan with the eligible borrower under this program.

*Lender Insider*—an executive officer, director, or principal shareholder of the lender, or a member of the immediate family of an executive officer, director or principal shareholder of the lender, or a related interest of such executive officer, director, principal shareholder or member of the immediate family. For the purposes of this provision, the terms *executive officer*, *director*, *principal shareholder*, *immediate family*, and *related interest* shall have the respective meaning ascribed thereto in Federal Reserve Act Sections 22(g) and (h), Federal Reserve Board Regulation O and applicable Office of the Comptroller of the Currency or Office of Thrift Supervision.

*Loan*—any temporary advance or provision of money to an eligible borrower by the participating lender for a business purpose, usually for a limited term and requiring the payment of interest along with the repayment of the loaned funds under the CSP, that is evidenced by a promissory note that obligates the borrower to repay the advance. When used herein, the word loan includes a line of credit loan.

*Loss*—any principal amount due and not paid at a time the lender determines in a manner consistent with its normal method and timetable for making such determinations that a qualified loan is uncollectible and is to be charged off as a loss. The amount included in the loss shall not exceed the unpaid principal balance of the enrolled loan.

*Master Lender CSP Participation Agreement*—agreement between lender and LEDC accepting the lender as an approved CSP participating lender whereby the Participating lender agrees to program assurances and certifications as required by the U.S. Treasury.

*Net Proceeds of the Loan*—the gross loan amount less costs incurred in issuing the loan which are paid by the borrower out of the gross loan amount.

*Participating Lender*—a financial institution that has executed an agreement with the Louisiana Economic Development Corporation (LEDC) to participate in the program.

*Program*—the collateral support program.

*Small and Emerging Business*—a Louisiana business certified as a Small and Emerging Business (SEB) by the Louisiana Department of Economic Development's Small Business Services.

*Small Business Concern*—for purposes of size eligibility for this program will be limited to businesses with 100 employees or less.

*Socially and Economically Disadvantaged Individual (SEDI) Owned Business*—

a. business enterprises that certify that they are owned and controlled by individuals who have had their access to credit on reasonable terms diminished as compared to others in comparable economic circumstances, due to their:

i. membership of a group that has been subjected to racial or ethnic prejudice or cultural bias within American society;

ii. gender;

iii. veteran status;

iv. limited English proficiency;

v. physical handicap;

vi. long-term residence in an environment isolated from the mainstream of American society;

vii. membership of a federally or state-recognized Indian tribe;

viii. long-term residence in a rural community;

ix. residence in a U.S. Territory;

x. residence in a community undergoing economic transitions (including communities impacted by the shift towards a net-zero economy or deindustrialization); or

xi. membership of another *underserved community* as defined in Executive Order 13985;

b. business enterprises that certify that they are owned and controlled by individuals where residences are in CDFI investment Areas, as defined by Treasury for the SSBCI Program;

c. business enterprises that certify that they will operate a location in a CDFI Investment Area, as defined by treasury for the SSBCI Program; or

d. business enterprises that are located in CDFI investment areas, as defined by the U.S. Treasury for the SSBCI Program.

*Very Small Business*—a business with fewer than 10 employees; may include independent contractors and sole proprietors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1461 (June 2022).

### **§9105. Application Process**

A. Any applicant/borrower(s) applying for either a loan or a line of credit will be required first to contact a CSP participating financial lending entity that is willing to entertain, originate, process and service such a loan or line of credit with the prospect of an LEDC cash collateral deposit, and the participating lender will then contact LEDC for qualification and shall submit a complete application to LEDC for its review, approval and acceptance. The financial lender shall also submit to LEDC the lender's assurances,

certifications, representations and warranties, and shall be responsible for obtaining and submitting to LEDC assurances of eligibility, including certifications, representations and warranties from each borrower, all as required by the American Rescue Plan Act of 2021 and the SSBCI.

B. Information submitted to LEDC with the application representing the applicant/borrower's business plan, financial position, financial projections, personal financial statements and background checks will be kept confidential to the extent allowed under the Louisiana Public Records Law, R.S. 44:1 et seq. Confidential information in the files of LEDC and its accounts acquired in the course of its duty will be used solely by and for LEDC.

C. The following CSP submission and review policies shall be followed.

1. The participating lender is expected to use its best efforts to provide small Louisiana businesses, SEDI, with the maximum practicable opportunity to participate in the CSP.

2. The participating lender shall request approval from LEDC to become an approved participating lender under the CSP by executing a master lender participation agreement.

3. The borrower's completed Louisiana Economic Development Corporation CSP loan packet must be submitted by the lender to LEDC to include:

a. borrowers completed CSP application and related information and materials.

b. small and emerging businesses (SEBs) applying for assistance under the program will have to submit a copy of the certification from the Louisiana Department of Economic Development's Small Business Services, along with the request for financial assistance.

c. businesses applying for consideration as a SEDI owned business will have to self-certify under conditions in Subparagraph a-c as noted above in §9103 under SEDI-owned business definition.

d. the participating lender shall submit to LEDC its complete analysis and evaluation, proposed loan structure, and commitment letter to the borrower. LEDC staff may do its own review and evaluation of the application packet. The participating lender shall submit to LEDC the same pertinent data that it submitted to the lending institution's loan committee, whatever pertinent data the lending institution can legally supply.

e. lender's and borrower's signed assurances and certifications as required by the U.S. Treasury.

4. LEDC staff will review the application and analysis, and then approve and accept or disapprove and reject the application, if the dollar amount of the loan is within the staff's board approved authority, or make recommendations to the board committees and to the board for approval and acceptance or disapproval and rejection.

5. The LEDC's board of directors, or the board's designated committee, will review only the completed applications and related materials submitted by LEDC staff and may approve and accept or disapprove and reject applications for approval or acceptance or the designated board committee may simply make recommendations to the LEDC board for its decision.

6. The applicant/borrower(s) or their designated representative(s), and the loan officer or a representative of the lender shall be required to attend the LEDC's board of

directors meeting wherein the application will be considered by the board; but shall not be required to attend meetings of the LEDC Staff or the designated board committee, unless the LEDC requests their presence.

7. LEDC's board of directors, or the board's designated committee that has considered the application has the final approval and acceptance or disapproval and rejection authority for such applications; except for those loans which shall be within the staff's authority to approve or disapprove, as established by the LEDC board, the staff shall have the final approval and acceptance or disapproval and rejection authority, unless the board overrules the staff's decision.

8. The lender will be notified within three to five business days by mail or e-mail of the outcome of the application process.

9. Funds approved for each CSP application will have a reservation period of 90 calendar days from the approval date.

a. If an approved CSP loan does not close within 90 calendar days from the final LEDC approval date, the reservation period will expire and funds will be released to the general program fund to be used for other CSP requests, unless an extension has been approved by LEDC board or its designated committee, or LEDC staff.

b. Once a reservation period has expired, a lender will need to re-apply and start the application and review process over with a new or up-dated application.

D. The following CSP Loan Closing Policies shall be followed by the lender.

1. An LEDC CSP Loan and Deposit Agreement, including LEDC's terms, and any stipulations or requirements, will be mailed or e-mailed by LEDC staff to the lender for review within five business days of approval and acceptance by either LEDC Staff, LEDC's board of directors, or the board's designated committee.

2. Lender shall notify LEDC of its loan closing five business days prior to the closing date.

3. LEDC will open and pledge an interest bearing collateral deposit account (a certificate of deposit) with the lender in LEDC's name, as follows:

a. the cash collateral deposit provided to the lender will be funded in two phases; 50 percent of the approved collateral deposit support will be funded at the time of the loan closing (within two business days) and the remaining approved collateral deposit support will be deposited within 30 calendar days after LEDC is notified by lender in writing of a default against the lender's loan and a request for the additional funding.

4. At the loan closing, lender will execute the LEDC CSP loan and deposit agreement, and will return the signed original to LEDC with the loan documents.

5. Immediately following the loan closing the lender will furnish to LEDC copies of all fully executed loan documents.

E. Loan Purpose Requirements and Prohibitions. In addition to the application process provisions provided above, and in connection with each and any loan (including a line of credit loan) that the participating lender requests be approved and accepted by LEDC to be enrolled under this program, the lender shall also be responsible for obtaining and providing LEDC with the lender's application

assurances and certifications as well as application assurances and certifications from each applicant/borrower stating that the loan proceeds shall not be used for any impermissible purpose under the SSBCI program, and the loan proceeds shall be used for an *eligible business purpose*, as that term is defined in §9107.A hereinafter; and additionally:

1. The loan proceeds shall be used for a business purpose. A business purpose includes, but is not limited to, start-up costs, working capital, business procurement, franchise fees, equipment, inventory, as well as the purchase, construction, renovation or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. The definition of business purpose excludes activities that relate to acquiring or holding passive investments such as commercial real estate ownership, the purchase of securities; and lobbying activities as defined in section 3(7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended.

2. The loan proceeds will not be used to:

- a. repay any delinquent federal or state income taxes unless the borrower has a payment plan in place with the relevant taxing authority; or
- b. repay taxes held in trust or escrow, e.g. payroll or sales taxes; or
- c. reimburse funds owed to any owner, including any equity injection or injection of capital for the business' continuance; or
- d. to purchase any portion of the ownership interest of any owner of the business.

3. The borrower is not:

- a. an executive officer, director, or principal shareholder of the financial institution lender; or
- b. a member of the immediate family of an executive officer, director, or principal shareholder of the financial institution lender; or
- c. a related interest of any such executive officer, director, principal shareholder, or member of the immediate family.

NOTE: For the purposes of these three borrower restrictions, the terms *executive officer*, *director*, *principal shareholder*, *immediate family*, and *related interest* refer to the same relationship to a financial institution lender as the relationship described in part 215 of title 12 of the Code of Federal Regulations, or any successor to such part.

4. The borrower is not:

- a. a business engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade, such as wildcatting for oil, investments in stock market, and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business; or

NOTE: Permissible borrowers include state-designated charitable, religious, or other non-profit or eleemosynary institutions, government-owned corporations, consumer and marketing cooperatives, and faith-based organizations provided the loan is for a business purpose as defined above.

- b. a business that earns more than half of its annual net revenue from lending activities; unless the business is a non-bank or non-bank holding company certified as a community development financial institution; or

- c. a business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants; or

- d. a business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted. (Included in these activities is the production, servicing, or distribution of otherwise legal products that are to be used in connection with an illegal activity, such as selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution); this category of business includes direct and indirect marijuana businesses, as defined in SBA Standard Operating Procedures 50 10 6; or

- e. a business engaged in gambling enterprises, unless the business earns less than 33 percent of its annual net revenue from lottery sales.

5. No principal of the borrowing entity has been convicted of a sex offense against a minor (as such terms are defined in §111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)). For the purposes of this certification, *principal* is defined as if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds a 20 percent or more ownership interest in the partnership; and if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives or officers of the entity, and each natural person who is a direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity."

6. The corporation shall not knowingly approve any CSP request if the applicant/borrower has presently pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit or any legal proceeding involving a criminal violation other than misdemeanor traffic violations. Nor should they approve any CSP request if the applicant/borrower or his/her/its principle management has a criminal record showing convictions for any criminal violations other than misdemeanor traffic violations in which the applicant/borrower or his/hers/its principle management has not been reinstated into society.

F. The financial institution lender must also provide to LEDC with the application, in connection with each loan to be enrolled under this Chapter 91 Program, and assurances affirming:

1. the loan has not been made in order to place under the protection of the approved state Capital Access Program (CAP) prior debt that is not covered under the approved state CAP and that is or was owed by the borrower to the financial institution lender or to an affiliate of the financial institution lender;

2. the loan is not a refinancing of a loan previously made to that borrower by the financial institution lender or an affiliate of the financial institution lender;

3. no principal of the financial institution lender has been convicted of a sex offense against a minor (as such terms are defined in §111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)). For the purposes of this certification, *principal* is defined as if a sole proprietorship, the proprietor; if a partnership, each partner;

if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity.

4. The borrower business structure either is a sole proprietor qualified to do and doing business in Louisiana, or is a for-profit corporation, partnership, limited liability company, limited liability partnership, joint venture, cooperative, non-profit entity with an eligible business purpose as defined above or other entity which is registered and authorized to conduct business in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1462 (June 2022).

### **§9107. Eligibility/Ineligibility for Participation in this Program**

A. This program is for loans (including lines of credit) for an eligible business purpose, having a principal amount of \$1,000,000 or less, to eligible borrowers doing business in Louisiana having 100 employees or less at the time the loan is enrolled in this program. An *eligible business purpose* includes but is not limited to: start-up costs; working capital; business procurement; franchise fees; and acquisition of equipment, inventory, or services used in the production, manufacturing, or delivery of a business's goods or services, or the purchase, construction, renovation, or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. The definition of *eligible business purpose* excludes activities that relate to acquiring or holding passive investments such as commercial real estate ownership for investment or leasing; the purchase of securities; and lobbying activities as defined in Section 3 (7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended.

B. The loan should be a new extension of credit to the borrower, and shall not be used to support existing extensions of credit, including but not limited to prior loans, lines of credit, or other borrowings that were previously made available as a part of a state small business credit enhancement program; no portion of the loan shall be used for any guaranteed or unguaranteed portion of a Small Business Administration (SBA) guaranteed loan or any other federal loan without prior written consent of the U.S. Treasury; and SBA guaranteed loans shall not be purchased through this program.

C. In connection with the business purpose for the requested loan the applicant/borrower(s) shall create or retain in this State at least one new permanent full-time job.

D. The following businesses shall be eligible for participation in this program, except for those ineligible businesses and purposes hereinafter shown:

1. small business concerns organized as a sole proprietorship qualified to do and doing business in Louisiana, or either a for profit corporation, partnership, limited liability company, limited liability partnership, joint venture, cooperative, non-profit entity with an eligible business purpose as defined above, or other entity which is

registered and authorized to conduct business in the state of Louisiana that maintain an office in Louisiana;

2. small and emerging businesses (SEBs) certified by LED's small business services that maintain an office in Louisiana;

3. small businesses owned by socially and economically disadvantaged individuals (SEDI);

4. funding requests for any eligible business purpose may be considered, except for the following ineligible businesses or purposes:

a. restaurants (except for regional or national franchises), grills, cafes, fast food operations, motorized vehicle, trailer, curb-side, sidewalk or street vender food operations, and any other business or project established for the principal purpose of dispensing cooked food for consumption on or off the premises that have been in business less than two years;

b. bars, saloons, daiquiri shops, operations for the sale of alcoholic popsicles and other alcoholic food items, packaged liquor stores, including any other business or project established for the principal purpose of dispensing, packaging, or distributing alcoholic beverages;

c. any business or establishment which has gaming or gambling as its principal business;

d. any business or establishment which has consumer or commercial financing or lending activities as its business;

e. any business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants;

f. any business engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade, such as stock market investments, dealing in commodities futures, wildcatting for oil, and other speculative activities;

g. any business engaged in activities that are prohibited by applicable federal, state or local law in the jurisdiction where the business is located or conducted. (Included in these activities is the production, servicing, or distribution of products that are to be used in connection with any illegal activity, such as but not limited to selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution); this category of business includes direct and indirect marijuana businesses, as defined by SBA Standard Operating Procedures 50 10 6; or

h. funding for the acquisition, renovation, or alteration of a building or property for the principal purpose of real estate speculation, rental, or any other passive real estate investment purposes;

i. funding for the purpose of establishing a park, theme park, amusement park, or camping facility;

j. funding for the principal purpose of refinancing existing debt; a refinancing of a loan previously made to the borrower by the lender or an affiliate of the lender; or a loan made in order to place under the CSP prior debt that is not covered under the CSP and that is or was owed by the borrower to the lender or to an affiliate of the lender;

k. funding for the purpose of buying out any stockholder or equity holder by another stockholder or equity holder in a business; for the purpose of purchasing any portion of the ownership interest of any owner of a



business; or for buying out any family member or reimbursing any family member;

l. funding for the purpose of reimbursing funds owed to any owner, including any equity injection or injection of capital for the business's continuance;

m. funding for paying any person to influence or attempt to influence any agency, elected official, officer or employee of a state or local government in connection with lobbying activities, the making, award, extension, continuation, renewal, amendment, or modification of any state or local government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. §1352;

n. funding for paying any costs incurred in connection with:

i. any defense against any claim or appeal of the United States Government, any agency or instrumentality thereof (including the U.S. Department of Treasury), against the state of Louisiana, or

ii. any prosecution of any claim or appeal against the United States Government, any agency or instrumentality thereof (including the U.S. Department of Treasury), which the state of Louisiana instituted or in which the state of Louisiana has joined as a claimant;

o. funding to be used to pay any delinquent federal or state income taxes, as well as any taxes held in trust or escrow, such as payroll taxes or sales taxes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1465 (June 2022).

### **§9109. General Lender Provisions**

A. The Louisiana Economic Development Corporation will be guided by the following general principles in approving or accepting loans or lines of credit under this program.

1. The corporation shall confirm that the financial institution lender has sufficient commercial lending experience and financial and managerial capacity to participate in this program. The corporation may utilize, among other resources, the lender's most recent call report or audited financial statement showing the percentage of commercial loans in its portfolio.

2. The corporation shall not knowingly approve any loan (or line of credit loan) if the applicant/borrower has presently pending or outstanding any claim or liability relating to failure or inability to pay promissory notes or other evidence of indebtedness, state or federal taxes, or a bankruptcy proceeding; nor shall the corporation approve any loan if the applicant/borrower has presently pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit or any legal proceeding involving a criminal violation other than misdemeanor traffic violations. Further, the corporation shall not approve any loan if the applicant/borrower or his/her/its principle management has a criminal record showing convictions for any criminal violations other than misdemeanor traffic violations in which the applicant/borrower or his/her/its principle management has not been reinstated into society.

3. The terms or conditions imposed and made part of any loan (or line of credit) authorized by vote of the corporation's board, or its designated board committee, or LEDC staff shall not be amended or altered by any member of the board or employee of the LEDC or the Department of Economic Development except by subsequent vote of approval by the board, or designated board committee at the next meeting of the board or committee in open session with full explanation for such action.

4. Each participating lender shall be required to have a meaningful amount of its own capital resources at risk in each small business loan included in this program. Such lenders shall bear at least 20 percent or more of the loss from a small business loan default. The LEDC accepted loan (including line of credit loan) enrolled into this program shall not be sold, assigned to, or participated with other lenders (within lender's 20 percent risk interest, as described above), or otherwise transferred by lender without the prior written consent of the LEDC board.

5. The corporation shall not subordinate its position to other creditors.

B. Interest Rates. On all loans (or lines of credit), the interest rate is to be negotiated between the borrower and the lender, but shall not exceed the National Credit Union Administration's (NCUA) interest rate ceiling for loans made by federal credit unions as described in 12 U.S.C. § 1757(5)(A)(vi)(I) and set by the NCUA board. Further, on all loans and lines of credit, the interest rate shall not exceed the lesser interest rate of either: the National Credit Union Administration (NCUA) interest rate ceiling, that established by the Federal Credit Union Act (FCUA), that established by the Office of the Comptroller of the Currency (OCC), or applicable state legislation that may be enacted.

#### **C. Borrower's Collateral**

1. The value of the borrower's collateral shall be determined according to the lender's normal lending criteria and policy. The borrower is required to provide collateral to the loan as the intent of the CSP is to enhance loan collateral for qualified small business borrowers exhibiting a shortfall in collateral as required by the lender and who would not otherwise be able to obtain financing on acceptable terms and conditions.

2. The collateral position may be negotiated, but it shall be no less than a sole second position.

#### **3. Borrower's Collateral Value Determination**

a. Lender shall be required to verify the collateral value using commonly accepted collateral coverage standards.

b. The appraiser must be certified by a recognized organization in the area of the collateral.

c. The appraisal shall not be more than 90 days old, except in the instance of real estate which shall not be more than six months old.

4. Acceptable collateral from the borrower may include, but shall not be limited to, the following:

a. fixed assets—business real estate, buildings, fixtures;

b. business equipment, machinery, inventory;

c. accounts receivable with supporting aging schedule; but not to exceed 80 percent of receivable value.

5. Unacceptable borrower collateral may include, but shall not be limited to the following:

- a. stock in applicant/borrower company and/or related companies;
- b. personal items or borrower's primary residence;
- c. intangibles; including but not limited to, digital currency such as cryptocurrency and non-fungible tokens (NFTs);
- d. leasehold improvements.

6. Personal guarantees may be offered and accepted but will not count toward the value of the collateral; if to be used, signed and dated personal financial statements of the guarantors must also be submitted to LEDC.

**D. Equity Requirements**

1. Equity requirements shall be determined according to the lender's normal credit criteria and policy, but in no case shall the equity position be less than 10 percent.

2. Equity is defined to be:

- a. cash;
- b. paid-in capital;
- c. paid-in surplus and retained earnings; or
- d. partnership capital and retained earnings.

3. No research, development expense nor intangibles of any kind will be considered equity.

**E. Limit on the Amount of LEDC's cash collateral deposit.** For small business loans or lines of credit under this program, the corporation's loan cash collateral deposit shall be:

1. no greater than 50 percent, and not to exceed \$250,000, of the total principal amount of the loan (or line of credit) for loans or lines of credit amounts equal to or less than \$500,000;

2. no greater than 25 percent, and not to exceed \$250,000, of the total principal amount of the loan (or line of credit) for loans or lines of credit amounts greater than \$500,000, but not to exceed \$1,000,000.

**F. Terms**

1. Maturity, collateral, and other loan terms shall be negotiated between the borrower and the lender, and the LEDC shall have an opportunity to approve the terms of such loans prior to the closing; but loan term periods with regard to various types of loans shall be limited as follows:

- a. for equipment term loans, term periods may extend for up to and not exceed five years.
- b. for Revolving Lines of Credit (RLOC), term periods may extend for up to and not exceed three years.
- c. for Non-Revolving Lines of Credit (NRLOC), term periods may extend for up to and not exceed two years.
- d. for business real estate term loans, term periods may extend for up to and shall not exceed five years.

**G. LEDC Program Fees**

1. LEDC may charge a \$100 application fee, unless the board of directors, the board's designated committee, or LEDC staff waives the application fee.

2. Depending on the applicant/borrower's equity position in the business, LEDC will charge a collateral deposit program fee of up to 2 percent on the collateralized loan deposit amount, unless the board, the board's designated committee, or LEDC staff waives the collateral deposit program fee.

**H. Use of Loan Funds (including Line of Credit Funds):**

1. Loan funds shall be used for business purposes, including but not limited to the purchase of fixed assets, including buildings that will be owner occupied to the extent of at least 51 percent by the borrower for its own business purposes.

2. Loan funds may be used for the purchase of business equipment, machinery, or inventory.

3. Loan funds may be used for a line of credit for business accounts receivable or inventory.

4. Debt restructure may be considered by LEDC, but will not be considered when the debt:

- a. exceeds 25 percent of the total loan;
- b. pays off a creditor or creditors who are inadequately secured;
- c. provides funds to pay off a debt to principals of the borrower business; and/or
- d. provides funds to pay off family members.

5. Loan funds may not be used to buy out stockholders or equity holders of any kind, by any other stockholder or equity holder.

6. Loan funds may not be used to purchase any speculative investment or for real estate development.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1466 (June 2022).

**§9111. General Agreement Provisions**

**A. Master Lender CSP Participation Agreement**

1. The lender shall conduct all of the customer/borrower interaction, and shall be responsible for the proper administration and monitoring of the loan (or line of credit), including monthly invoicing, collections, and loan workouts, and the proper liquidation of the collateral in the event of a default.

2. The lender shall agree to underwrite each loan (including line of credit) using its normal underwriting criteria and will perform a credit analysis of the borrower for each loan, assuming full responsibility for credit and ongoing security of the loan and will follow prudent industry loan underwriting processes and will determine that the collateral support to be provided under the CSP will be instrumental in order for the lender to make the loan. Lender will also determine that the amount required for deposit to the LEDC's collateral deposit account does not exceed the amount necessary to provide sufficient collateral for the loan.

3. The lender shall be responsible for the preparation of all loan (including line of credit) documents to be used in connection with such loans made and accepted under this program.

4. The lender shall rely solely on the funds deposited with the lender by LEDC in the cash collateral deposit account (the principal amount, but not the accrued interest on the deposit which is not included as a portion of the security for the unpaid principal due on the loan) provided as security for the repayment of the agreed percentage of the principal amount of the unpaid principal balance due on the loan made and accepted under this program. The lender shall

indemnify and hold harmless the LEDC, the state of Louisiana, including any commissioners, directors, participants, officers, agents, employees and contractors (collectively, the "Indemnified Person(s)") who shall not be liable to the lender for any reason arising out of or related in any way to the loan, the loan documents or the participation agreement, against all claims, costs and expenses. This Section shall survive the payment in full of the loan, any return or draw upon the cash collateral deposit for the loan, or any termination of the applicable deposit agreement or other loan documents.

5. The LEDC accepted loan (including line of credit) enrolled into this program shall not be sold, assigned, participated with other lenders (within lender's 20 percent risk interest, as provided above in §9109.A.4), or otherwise transferred by lender without the prior written consent of the LEDC board.

6. Loan delinquency will be defined according to the lender's normal lending policy. Notification of delinquency will be made to the corporation in writing by lender submitting a completed, signed and dated CSP banker loan status monthly report within five business days after the end of the month/reporting period as stated in the Master lender CSP participation agreement.

7. If default by borrower continues for more than 90 calendar days in making payment, when due, of any installment of principal or interest on any note, the lender may demand in writing to LEDC to fully fund the deposit account by submitting a completed, signed and dated claim form notifying LEDC of the default reasonably describing the circumstances of the default. LEDC will deposit the remaining cash deposit of 50 percent of the current principal balance within 30 days after LEDC receives the written demand. Once the full collateral support deposit is requested for the deposit account, the lender may begin their standard collection and liquidation process.

8. All collection efforts, legal and liquidation processes shall be handled by the lender. In all collection efforts, legal and liquidation processes through foreclosure or otherwise, the lender will sell the collateral, handle the legal proceedings and documents, and absorb all expenses associated with these activities. All servicing actions, including collections, shall be the responsibility of the holder who shall follow accepted standards of loan servicing and collection employed by prudent lenders generally.

9. Thereafter, should any funds remain in the deposit account after the withdrawal and application of such funds, the remaining amount on deposit shall be returned by lender to LEDC, plus all interest accrued on the deposit account, which accrued interest on LEDC's deposit account is not included as a portion of the collateral securing the loan.

#### B. LEDC CSP Loan and Deposit Agreement

1. The LEDC CSP loan and deposit agreement shall provide for the pledge by LEDC of cash collateral to the lender under this collateral support program (CSP). On or about the closing of the loan documents, LEDC shall deposit with the lender cash collateral in an amount not to exceed 50 percent of the principal amount of the loan, and not to exceed a maximum of \$250,000, on loan amounts no greater than \$500,000; or LEDC shall deposit with the lender cash collateral in an amount not to exceed 25 percent of the principal amount of the loan, and not to exceed a maximum

of \$250,000, on loan amounts greater than \$500,000 but less than \$1,000,000, accepted by LEDC under this program to be placed in an interest bearing account or certificate of deposit (the LEDC CSP loan and deposit account or deposit account) in the name of LEDC to be maintained with the lender until the loan has been repaid, or the deposited funds are applied to the payment of not to exceed 25 percent or 50 percent (depending on the principal amount of the loan) or \$250,000 of the outstanding unpaid principal balance (but not the interest, lender fees or costs of collection) due on the loan; and thereafter, should any funds remain in the deposit account after the application of such funds, the remaining amount shall be returned by lender to LEDC, plus all interest accrued on the deposit account which is not included as a portion of the collateral securing the loan.

2. The corporation's cash collateral deposit shall be no greater than 25 percent or 50 percent (depending on the principal amount of the loan) for qualifying loan amounts not to exceed \$250,000 of the total original principal amount of the loan (or line of credit). LEDC's cash collateral deposit shall be pledged by LEDC to provide security for the payment of the agreed percentage of the principal amount of the loan or line of credit, not including interest due thereon. The lender shall retain an at risk position on each loan (or line of credit) of at least 20 percent of the original principal amount of the loan, or as payments are made and funds from other efforts are applied to the loan, and the principal amount is thereby reduced, lender's risk shall be likewise reduced to 20 percent of the unpaid principal balance remaining due, plus all interest accrued on the loan.

3. There may be from time to time, in the event LEDC elects to do so, a reduction of the LEDC's cash collateral deposit in proportion to the principal reduction of the amortized portion of the loan or line of credit; or if no principal reduction has occurred in any annual period of the loan (or line of credit), a reduction in the cash collateral deposit amount may be made in proportion to the remaining life of the loan or line of credit.

4. The LEDC's cash collateral deposit will secure and cover up to no more than 25 percent or 50 percent (depending on the principal amount of the Loan) on the unpaid balance on the principal amount owed only. The remaining 50 percent of the approved collateral support deposit will be deposited with the lender within 30 days of the time that LEDC receives the completed, signed and dated claim form as mentioned in §9111.A.7 above.

5. The corporation's cash collateral deposit account shall not be cross-pledged nor cross-collateralized with any other loan.

#### C. Reporting

1. Reporting will be required by all lenders under this program as required by the U.S. Treasury under the SBCI program and as required by the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1467 (June 2022).

#### §9113. Confidentiality

A. Confidential information in the files of the corporation and its accounts acquired in the course of its duty is to be used solely for the corporation. The corporation

is not obliged to give out any credit rating or confidential information regarding the applicant/borrower. (See Louisiana Attorney General's Opinion #82-860.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1468 (June 2022).

**§9115. Conflict of Interest**

A. No member of the corporation, employee thereof, or employee of the Department of Economic Development, or members of their immediate families shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with the corporation for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such corporation. If any contract or agreement shall be made in violation of the provisions of this Section, the same shall be null and void, and no action shall be maintained thereon against the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1469 (June 2022).

**§9117. Guidelines**

A. The Louisiana Economic Development Corporation (LEDC), or the Louisiana Department of Economic Development, also known as Louisiana Economic Development (LED), as the administrators of this program, may make, create, or issue from time to time Guidelines interpreting, construing, explaining and/or supplementing these Rules; and may revise, supplement, or otherwise change or modify the guidelines at any time with or without notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1469 (June 2022).

Anne G. Villa  
Undersecretary

2206#030

**RULE**

**Department of Economic Development  
Office of Business Development  
and  
Louisiana Economic Development Corporation**

**Small Business Loan Guaranty Program (SBLGP)  
(LAC 19:VII.Chapter 1)**

The Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., R.S. 36:104, 36:108 and 51:2312, has amended rules for the Small Business Loan Guaranty

Program ("SBLGP"). This Rule is hereby adopted on the date of promulgation.

**Title 19**

**CORPORATION AND BUSINESS**

**Part VII. Louisiana Economic Development Corporation**

**Subpart 1. Small Business Loan Guaranty Program**

**Chapter 1. Loan Guaranty Policies**

**§101. Purpose**

A. ...

B. The corporation will consider sound business loans, lines of credit, loan guaranties and loan participations so long as resources permit. The board of directors of the corporation recognizes that lending money, guaranteeing loans or participating in loans carries certain risks and is willing to undertake reasonable exposure.

C. ...

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:445 (June 1989), re-promulgated LR 23:40 (January 1997), LR 26:2255 (October 2000), amended LR 26:2255 (October 2000), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:993 (April 2012), LR 48:1469 (June 2022).

**§103. Definitions**

\* \* \*

*Line of Credit*—Repealed.

*Lender Insider*—an executive officer, director, or principal shareholder of the lender, or a member of the immediate family of an executive officer, director or principal shareholder of the lender, or a related interest of such executive officer, director, principal shareholder or member of the immediate family. For the purposes of this provision, the terms executive officer, director, principal shareholder, immediate family, and related interest shall have the respective meaning ascribed thereto in Federal Reserve Act Sections 22(g) and (h), Federal Reserve Board Regulation O and applicable Office of the Comptroller of the Currency or Office of Thrift Supervision.

*Loan*—the temporary provision of money or funds for a business purpose, usually for a limited term and requiring the payment of interest along with the repayment of the loaned funds. As used herein, the word "loan" includes a line of credit loan guarantee, term loan guarantee and loan participation.

\* \* \*

*Small and Emerging Business*—a Louisiana business certified as a Small and Emerging Business (SEB) by the Louisiana Department of Economic Development's Small Business Services.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:40 (January 1997), amended LR 26:2255 (October 2000), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:993 (April 2012), LR 48:1469 (June 2022).

**§105. Application Process**

A. Any applicant/borrower(s) applying for either a loan guarantee, line of credit guarantee, or loan participation will be required first to contact a financial lending institution (a bank or other commercial lending entity) that is willing to entertain, originate, process and service such a loan or line of credit with the prospect of a guaranty or a participation, and the lender will then contact LEDC for qualification and shall submit a complete application to LEDC for review and approval. The financial institution shall also be responsible for obtaining assurances of eligibility from each borrower.

B. - C.1. ...

2. Small and Emerging Businesses (SEBs) applying for assistance under that provision will have to submit a copy of the certification from the Louisiana Department of Economic Development's Small Business Services, along with the request for financial assistance.

3. - 10. ...

11. The applicant/borrower or the lending institution will be notified within five (5) business days by mail or e-mail of the outcome of the application process.

12. An LEDC commitment letter, including LEDC's terms, and any stipulations or requirements, will be mailed or e-mailed by LEDC staff to the lending institution within five business days of approval by the LEDC Board or its committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department Economic Development, Economic Development Corporation, LR 15:446 (June 1989), amended LR 23:40 (January 1997), LR 26:2255 (October 2000), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:994 (April 2012), LR 48:1470 (June 2022).

**§107. Eligibility/Ineligibility for Participation in this Program**

A. - B. ...

1. Small business concerns organized as a sole proprietorship qualified to do and doing business in Louisiana, or either a for profit corporation, partnership, limited liability company, limited liability partnership, joint venture, cooperative, non-profit entity with an eligible business purpose as defined above, or other entity which is registered and authorized to conduct business in the State of Louisiana that maintain an office in Louisiana;

2. Small and Emerging Businesses (SEBs) certified by LED's Small Business Services that maintain an office in Louisiana;

3 - 4. ...

a. restaurants (except for regional or national franchises), including grills, cafes, fast food operations, motorized vehicle, trailer, curb-side, sidewalk or street vender food operations, and any other business or project established for the principal purpose of dispensing cooked food for consumption on or off the premises having been in operations less than two years;

b. bars, saloons, daiquiri shops, operations for the sale of alcoholic popsicles and other alcoholic food items, packaged liquor stores, including any other business or project established for the principal purpose of dispensing, packaging, or distributing alcoholic beverages;

c. - e. ...

f. funding for the principal purpose of refinancing existing debt unless under the following conditions:

i. a lender may refinance a borrower's existing loan, line of credit, extension of credit, or other debt originally made by an unaffiliated lender only if the following conditions are met:

(a). the amount of the refinanced loan or other debt is at least 150 percent of the previous outstanding balance;

(b). the transaction results in a 30 percent reduction in the fee-adjusted APR contracted for the term of the new debt, to help ensure that funding is used only for transactions that meaningfully benefit borrowers by providing access to sustainable products; and

(c). proceeds of the transaction are not used to finance an extraordinary dividend or other distribution.

ii. a lender may use funds to support a new extension of credit that repays the amount due on a matured loan or other debt that was previously used for an eligible business purpose when all the following conditions are met:

(a). the amount of the new loan or other debt is at least 150 percent of the outstanding amount of the matured loan or other debt;

(b). the new credit supported with funding is based on a new underwriting of the small business's ability to repay the loan and new approval by the lender;

(c). the prior loan or other debt has been paid as agreed and the borrower was not in default of any financial covenants under the loan or debt for at least the previous 36 months (or since origination, if shorter); and

(d). proceeds of the transaction are not used to finance an extraordinary dividend or other distribution.

g. - i. ...

j. funding for the purpose of pyramid sales;

k. funding activities related either directly or indirectly to cryptocurrency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:446 (June 1989), amended LR 23:41 (January 1997), LR 26:2255 (October 2000), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:994 (April 2012), LR 48:1470 (June 2022).

**§109. General Loan Guaranty and Loan Participation Provisions**

A. The Louisiana Economic Development Corporation will be guided by the following general principles in approving loan guaranties, line of credit guaranties, or loan participations.

1. The corporation shall confirm that the financial institution lender has sufficient commercial lending experience and financial and managerial capacity to participate in this program. The corporation may utilize, among other resources, the financial institution's most recent call report showing the percentage of commercial loans in its portfolio.

2. The corporation shall not knowingly approve any loan guarantee, line of credit guarantee, or loan participation if the applicant/borrower has presently pending or outstanding any claim or liability relating to failure or

inability to pay promissory notes or other evidence of indebtedness, state or federal taxes, or a bankruptcy proceeding; nor shall the corporation approve any loan, line of credit, loan guarantee or participation if the applicant/borrower has presently pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit or any legal proceeding involving a criminal violation other than misdemeanor traffic violations. Further, the corporation shall not approve any loan guarantee, line of credit guarantee, or participation if the applicant/ borrower or his/her/its principle management has a criminal record showing convictions for any criminal violations other than misdemeanor traffic violations.

3. The terms or conditions imposed and made part of any loan guarantee, line of credit guarantee, or loan participation authorized by vote of the corporation board, its board screening committee or its other designated committee shall not be amended or altered by any member of the Board or employee of the Department of Economic Development except by subsequent vote of approval by the board, its board screening committee or other designated committee at the next meeting of the board or committee in open session with full explanation for such action.

4. Each financial institution lender shall be required to have a meaningful amount of its own capital resources at risk in each small business loan included in this program. Such lenders shall bear at 20 percent or more of the loss from a small business loan default.

5. The corporation shall not subordinate its position to other creditors.

**B. Interest Rate**

1. On all loans or lines of credit guarantees, the interest rate is to be negotiated between the borrower and the lender, but shall not exceed the lesser interest rate of either; 5 percent per annum above New York prime as published in the Wall Street Journal at either a fixed or variable rate; the interest rate cap as established by either the Federal Credit Union Act (FCUA), that established by the Office of the Comptroller of the Currency (OCC), or applicable State legislation that may be enacted.

2. ...

**C. Collateral**

1. The value of the collateral shall be no less than the guaranteed portion of the loan.

2. The value of the collateral required for certified small and emerging businesses loans may be up to 80 percent.

3. The collateral position may be negotiated, but it shall be no less than a sole second position.

**4. Collateral Value Determination**

a. The appraiser must be certified by a recognized organization in the area of the collateral.

b. The appraisal shall not be more than 90 days old, except for real estate loans, which shall not be more than 6 months old.

5. Acceptable collateral may include, but shall not be limited to, the following:

- a. fixed assets—business real estate, buildings, fixtures;
- b. equipment, machinery, inventory;

c. accounts receivable with supporting aging schedule; but not to exceed 80 percent of receivable value (to be used with personal guarantee only).

6. Unacceptable collateral may include, but shall not be limited to the following:

a. stock in applicant/borrower company and/or related companies;

b. personal items or borrower's primary residence;

c. intangibles; to include but not limited to, digital currency such as cryptocurrency and NFTs.

7. Personal guarantees may be offered but will not count towards the value of the collateral; if to be used, a signed and dated personal financial statements of the guarantors must also be submitted to LEDC.

**D. Equity Requirements**

1. Equity required will be no less than 15 percent of the loan or line of credit amount for a start-up operation, or acquisition, or expansion. However, if the equity requirement as noted above is not available for a guarantee the following chart may be applied which provides for a guarantee fee attached to a lesser equity position.

Equity Percent	Guarantee Fee
15 Percent	3.00 Percent
14 Percent	3.20 Percent
13 Percent	3.40 Percent
12 Percent	3.60 Percent
11 Percent	3.80 Percent
10 Percent	4.00 Percent

\*In no case shall the equity position be less than 10 percent.

2 - 3. ...

**E. Limit on the Amount of LEDC's Guarantee:**

1. For small business loans, the corporation's loan guarantee shall be no greater than 80 percent of a loan not to exceed a guaranty amount of \$1,500,000.

2. For certified small and emerging business loans, or disabled person's business enterprise loans, the corporation's loan guarantee shall be no greater than 90 percent of a loan not to exceed a guaranty amount of \$1,500,000.

3. For small businesses, the corporation's loan participation shall be no greater than 40 percent, but in no case shall it exceed \$1,500,000.

4. For certified small and emerging businesses, or disabled person's business enterprises, the corporation's loan participation shall be no greater than 50 percent, but in no case shall it exceed \$1,000,000.

**F. Terms**

1. Maturity, collateral, and other loan terms shall be negotiated between the borrower and the applicant/lending institution, and the LEDC shall have an opportunity to approve the terms of such loans prior to the closing; but guaranty term periods with regard to various types of loan guaranties shall be limited as follows:

a. for revolving lines of credit (RLOC) guarantee term periods may extend for up to and not exceed seven years.

b. for equipment term loans guarantee term periods may extend for up to and not exceed 10 years.

c. for real estate term loans guarantee term periods may extend for up to and shall not exceed 25 years.

G. LEDC SBLGP Program Fees

1. LEDC will charge a guaranty program fee not to exceed a maximum amount of 4 percent on the guaranteed loan amount, unless the board, the board screening committee or other designated committee waives the guaranty fee.

2. LEDC will charge a \$100 application fee, unless the board, the board screening committee or other designated committee waives the application fee.

3. LEDC will share in a pro-rata position in any fees assessed by the lender on a loan participation.

4. LEDC will waive the application fee and program fee for businesses certified by LED as an SEB.

H. Use of Loan Funds

1. Loan funds may be used for business purposes, including but not limited to the purchase of fixed assets, including buildings that will be occupied by the applicant/borrower to the extent of at least 51 percent.

2. Loan funds may be used for the purchase of equipment, machinery, or inventory.

3. Loan funds may be used for a line of credit for accounts receivable or inventory.

4. Debt restructure may be considered by LEDC, but will not be considered when the debt:

a. exceeds 25 percent of the total loan, with the following exception:

i. a maximum of 35 percent may be considered on a guaranteed loan, but the guaranteed percentage will be decreased by 5 percent;

b. pays off a creditor or creditors who are inadequately secured;

c. provides funds to pay off a debt to principals of the borrower business; and/or

d. provides funds to pay off family members.

5. Loan funds may not be used to buy out stockholders or equity holders of any kind, by any other stockholder or equity holder.

6. Loan funds may not be used to purchase any speculative investment or real estate development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:448 (June 1989), amended LR 23:41 (January 1997), LR 26:2256 (October 2000), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:995 (April 2012), LR 40:LR: (January 2018), LR 48:1470 (June 2022).

§111. General Guaranty Agreement Provisions

A. - A.2 ...

3. If liquidation through foreclosure occurs, the lender will sell the collateral, handle the legal proceedings, and absorb all expenses associated with these activities.

4. - 5. ...

6. Delinquency will be defined according to the lender's normal lending policy and all remedies will be outlined in the guarantee agreement. Notification of delinquency will be made to the corporation in writing by submitting a completed, signed and dated SBLGP banker loan status monthly report within five business days after the end of the month/reporting period and as stated in the guarantee-agreement.

B. Loan Participation Agreement

1. - 3 ...

4. Should liquidation through foreclosure occur, the lender will sell the collateral and handle the legal proceedings and absorb all expenses associated with these activities.

5. ...

6. Delinquency will be defined according to the lender's normal lending policy and all remedies will be outlined in the participation agreement. Notification of delinquency will be made to the corporation in writing by submitting a completed, signed and dated SBLGP banker loan status monthly report within five business days after the end of the month/reporting period; as stated in the loan participation agreement.

C. - C.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:448 (June 1989), amended LR 23:42 (January 1997), LR 26:2257 (October 2000), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:996 (April 2012), LR 48:1472 (June 2022).

Anne G. Villa  
Undersecretary

2206#031

**RULE**

**Department of Economic Development  
Office of Business Development  
and  
Louisiana Economic Development Corporation**

SSBCI Loan Guaranty ARPA 2021  
(LAC 19:VII.Chapter 5)

The Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., R.S. 36:104, 36:108 and 51:2312, has adopted rules for the Loan Guaranty Program for the State Small Business Credit Initiative (SSBCI) authorized by the American Rescue Plan Act (ARPA) of 2021, otherwise known as "SSBCI Loan Guaranty ARPA 2021". This Rule is hereby adopted on the date of promulgation.

**Title 19**

**CORPORATION AND BUSINESS**

**Part VII. Louisiana Economic Development Corporation**

**Subpart 1. Small Business Loan Guaranty Program**

**Chapter 5. SSBCI Loan Guaranty ARPA 2021**

**§501. Purpose**

A. The purpose of this program is to utilize federal SSBCI funds to strengthen state programs that support private financing to small businesses as a response to the economic effects of the COVID-19 pandemic, in accordance with prevailing federal guidelines issued by the U.S. Treasury.

B. The Louisiana Economic Development Corporation (LEDC) will utilize SSBCI funds from ARPA 2021 to increase access to credit and capital funding to further assist small businesses statewide, to expand loan capabilities to include a broader range of businesses statewide, to direct a greater concentration on those small businesses, and to reach, identify and promote small business growth, especially to Socially and Economically Disadvantaged Businesses (SEDI) and Small and Emerging Businesses (SEB).

C. This LEDC program and the SSBCI funding will be marketed through outreach activities to inform venture capital funds, local foundations, small businesses, trade associations, incubator associations, and economic development organizations of the program, and to generate increased small business activity, awareness of and access to additional sources of capital to start and expand existing business opportunities, as well as participation in the program. The marketing will also be used to find investment opportunities located in the underserved markets that will be targeted with SSBCI funds.

D. The LEDC will also monitor these plans, including the progress of individual businesses receiving investments and the performance of participating venture capital organizations, to ensure successful outcomes in the form of program utilization and eventual securing of funds for these groups.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1472 (June 2022).

### §503. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in prevailing federal guidelines issued by the U.S. Treasury, 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.

*Board*—Board of Directors of Louisiana Economic Development Corporation.

*Borrower*—also referred to herein as the *applicant/borrower* or *customer/borrower*; the business person or entity borrowing and accepting the loaned funds from the Lender.

*CDFI-Community Development Financial Institution (CDFI)*—has the meaning given that term under Section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994.

*CDFI Investment Area*—areas defined by CDFI which are generally low-income, high-poverty geographies that receive neither sufficient access to capital nor support for the needs of small businesses, including minority-owned businesses. For purposes of SSBCI, Treasury has determined that the entirety of American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands constitute a CDFI Investment Area.

*Corporation*—Louisiana Economic Development Corporation.

*Disabled Person's Business Enterprise*—a small business concern which is at least 51 percent owned and controlled by a disabled person, as defined by the federal Americans with Disabilities Act of 1990.

*Financial Institution*—also referred to herein as a *Bank, Financial Lending Institution, Lending Institution, Commercial Lending Entity, or Lender*; includes any insured depository institution, insured credit union, or community development financial institution, as those terms are defined in Section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702).

*Lead Lender*—the bank or other lender that makes or originates the loan with the borrower.

*LED*—Louisiana Department of Economic Development.

*LEDC*—Louisiana Economic Development Corporation.

*Lender*—also referred to herein as the *applicant/lender*; the Financial Institution originating the loan and providing the loan funds to the borrower.

*Lender Insider*—an executive officer, director, or principal shareholder of the Lender, or a member of the immediate family of an executive officer, director or principal shareholder of the Lender, or a related interest of such executive officer, director, principal shareholder or member of the immediate family. For the purposes of this provision, the terms *executive officer, director, principal shareholder, immediate family, and related interest* shall have the respective meaning ascribed thereto in Federal Reserve Act Sections 22(g) and (h), Federal Reserve Board Regulation O and applicable Office of the Comptroller of the Currency or Office of Thrift Supervision.

*Loan*—the temporary provision of money or funds for a business purpose, usually for a limited term and requiring the payment of interest along with the repayment of the loaned funds. As used herein, the word *loan* includes a line of credit loan guarantee, term loan guarantee and loan participation.

*Loan Guaranty or Guarantee*—an agreement to pay the loan of another borrower, up to any limit in the amount guaranteed as provided in the agreement, in case the original borrower defaults in or is unable to comply with his repayment obligation.

*Loan Participation*—an agreement to participate as a lender in a loan or to acquire from the lender a share or ownership interest in a loan. A *purchase participation* or *purchase transaction* is one in which the State purchases a portion of a loan originated by a lender; and a *companion loan, a parallel loan, or a co-lending participation* is one in which the lender originates a loan and the state originates a second loan to the same borrower. (In the latter case, the State's second loan may be subordinate or co-equal to the first loan originated by the lender.) Loan participations enable the state to act as a lender, in partnership with a financial institution lender, to provide small business loans at attractive terms.



*Permanent Full-Time Jobs*—refers to direct jobs which are not contract jobs, that are permanent and not temporary in nature, requiring employees to work an average of 30 or more hours per week.

*Small and Emerging Business*—a Louisiana business certified as a Small and Emerging Business (SEB) by the Louisiana Department of Economic Development's Small Business Services.

*Small Business Concern*—as defined by SBA for purposes of size eligibility as set forth by 13 C.F.R. 121.

*Socially and Economically Disadvantaged Individual (SEDI) Owned Business*—(for the purposes of this program)

a. business enterprises that certify that they are owned and controlled by individuals who have had their access to credit on reasonable terms diminished as compared to others in comparable economic circumstances, due to their (

i. membership of a group that has been subjected to racial or ethnic prejudice or cultural bias within American society;

ii. gender;

iii. veteran status;

iv. limited English proficiency;

v. physical handicap;

vi. long-term residence in an environment isolated from the mainstream of American society;

vii. membership of a federally or state-recognized Indian Tribe;

viii. long-term residence in a rural community;

ix. residence in a U.S. territory;

x. residence in a community undergoing economic transitions (including communities impacted by the shift towards a net-zero economy or deindustrialization); or

xi. membership of another *underserved community* as defined in U.S. Executive Order 13985;

b. business enterprises that certify that they are owned and controlled by individuals whose residences are in CDFI investment areas, as defined in prevailing federal guidelines issued by the U.S. Treasury;

c. business enterprises that certify that they will operate a location in a CDFI investment area, as defined in prevailing federal guidelines issued by the U.S. Treasury; or

4. business enterprises that are located in CDFI Investment Areas, as defined in prevailing federal guidelines issued by the U.S. Treasury.

*Very Small Business*—a business with fewer than 10 employees; may include independent contractors and sole proprietors

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1473 (June 2022).

## §505. Application Process

A. Any applicant/borrower(s) applying for either a loan, loan guarantee, line of credit guarantee, loan guaranty or loan participation will be required first to contact a financial lending institution (a bank or other commercial lending entity) that is willing to entertain, originate, process and service such a loan or line of credit with the prospect of a

guaranty or a participation, and the lender will then contact LEDC for qualification and shall submit a complete application to LEDC for review and approval. The financial institution shall also be responsible for obtaining assurances of eligibility from each borrower.

B. Businesses applying for consideration as a SEDI owned business will have to self-certify under conditions in Clauses i -iii to the extent allowed under the Louisiana Public Records Law, R.S. 44:1 et seq. Confidential information in the files of LEDC and its accounts acquired in the course of its duty will be used solely by and for LEDC.

C. Loan Purpose Requirements and Prohibitions. In addition to the application process provisions provided in the Section mentioned in the above Subsection A, in connection with each loan to be enrolled under this Chapter 3 program the financial institution lender shall also be responsible for obtaining and providing to LEDC with the lender's application an assurance from each borrower stating that the loan proceeds shall not be used for any impermissible purpose under the SSBCI program. And additionally, each financial institution lender must also obtain and provide to LEDC with its application under this Chapter 3 program an assurance from the borrower affirming:

1. The loan proceeds must be used for a business purpose. A business purpose includes, but is not limited to, start-up costs, working capital, business procurement, franchise fees, equipment, inventory, as well as the purchase, construction renovation or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. The definition of business purpose excludes activities that relate to acquiring or holding passive investments such as commercial real estate ownership, the purchase of securities; and lobbying activities as defined in Section 3 (7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended.

2. The loan proceeds will not be used to:

a. repay a delinquent federal or state income taxes unless the borrower has a payment plan in place with the relevant taxing authority; or

b. repay taxes held in trust or escrow, e.g. payroll or sales taxes; or

c. reimburse funds owed to any owner, including any equity injection or injection of capital for the business' continuance; or

d. purchase any portion of the ownership interest of any owner of the business.

3. The borrower is not:

a. an executive officer, director, or principal shareholder of the financial institution lender; or

b. a member of the immediate family of an executive officer, director, or principal shareholder of the financial institution lenders; or

c. a related interest of an such executive officer, director, principal shareholder, or member of the immediate family.

(For the purposes of these three borrower restrictions, the terms *executive officer*, *director*, *principal shareholder*, *immediate family*, and *related interest* refer to the same relationship to a financial institution lender as the relationship described in part 215 of title 12 of the Code of Federal Regulations, or any successor to such part.)

4. The borrower is not:

a. a business engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business; or

NOTE: Permissible borrowers include state-designated charitable, religious, or other non-profit or eleemosynary institutions, government-owned corporations, consumer and marketing cooperatives, and faith-based organizations provided the loan is for a *business purpose* as defined above.

b. a business that earns more than half of its annual net revenue from lending activities; unless the business is a non-bank or non-bank holding company certified as a community development financial institution; or

c. a business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants; or

d. a business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted. (Included in these activities is the production, servicing, or distribution of otherwise legal products that are to be used in connection with an illegal activity, such as selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution); this category of business includes direct and indirect marijuana businesses, as defined in SBA Standard Operating Procedures 50 10 6; or

e. a business engaged in gambling enterprises, unless the business earns less than 33 percent of its annual net revenue from lottery sales.

5. No principal of the borrowing entity has been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)). For the purposes of this certification, *principal* is defined as "if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds a 20 percent or more ownership interest in the partnership; and if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives or officers of the entity, and each natural person who is a direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity."

D. The financial institution lender must also provide to LEDC with its application, in connection with each loan to be enrolled under this program, an assurance affirming:

1. the loan has not been made in order to place under the protection of the approved state capital access program (CAP) prior debt that is not covered under the approved state CAP and that is or was owed by the borrower to the financial institution lender or to an affiliate of the financial institution lender;

2. the loan is not a refinancing of a loan previously made to that borrower by the financial institution lender or an affiliate of the financial institution lender unless under the following conditions:

a. a lender may refinance a borrower's existing loan, line of credit, extension of credit, or other debt originally made by an unaffiliated lender only if the following conditions are met:

i. the amount of the refinanced loan or other debt is at least 150 percent of the previous outstanding balance;

ii. the transaction results in a 30 percent reduction in the fee-adjusted APR contracted for the term of the new debt, to help ensure that SSBCI funding is used only for transactions that meaningfully benefit borrowers by providing access to sustainable products; and

iii. proceeds of the transaction are not used to finance an extraordinary dividend or other distribution.

b. a lender may use SSBCI funds to support a new extension of credit that repays the amount due on a matured loan or other debt that was previously used for an eligible business purpose when all the following conditions are met:

i. the amount of the new loan or other debt is at least 150 percent of the outstanding amount of the matured loan or other debt;

ii. the new credit supported with SSBCI funding is based on a new underwriting of the small business's ability to repay the loan and new approval by the lender;

iii. the prior loan or other debt has been paid as agreed and the borrower was not in default of any financial covenants under the loan or debt for at least the previous 36 months (or since origination, if shorter); and

iv. proceeds of the transaction are not used to finance an extraordinary dividend or other distribution.

3. No principal of the financial institution lender has been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)). For the purposes of this certification, *principal* is defined as if a sole proprietorship, the proprietor; if a partnership, each partner; if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity.

E. The following submission and review policies shall be followed:

1. a completed Louisiana Economic Development Corporation application form must be submitted to LEDC;

2. small and emerging businesses (SEBs) applying for assistance under that provision will have to submit a copy of the certification from the Louisiana Department of Economic Development's Small Business Services, along with the request for financial assistance;

3. businesses applying for consideration under the disabled person's business enterprise provision shall submit adequate information to support the disabled status;

4. the applicant/lender shall submit to LEDC its complete analysis and evaluation, proposed loan structure, and commitment letter to the borrower. LEDC staff may do its own analysis and evaluation of the application, independent of the lending institution's analysis and evaluation;

5. the applicant/lender shall submit to LEDC the same pertinent data that it submitted to the lending institution's loan committee, whatever pertinent data the lending institution can legally supply;

6. LEDC staff will review the application and analysis, and then make recommendations. The staff will work with the applicant/lender on terms of the loan, including interest rate, maturity, collateral, other loan terms, and any LEDC loan stipulations or requirements;

7. the LEDC's board screening committee or the board's other designated committee will review only the completed applications submitted by LEDC staff and may approve or disapprove applications within its authority as established by the LEDC board, or will make recommendations to the LEDC board;

8. the applicant/borrower(s) or their designated representative, and the loan officer or a representative of the lending institution are not required to attend the board screening committee or other designated committee meeting unless requested by LEDC or its staff to do so;

9. the applicant/borrower(s) or their designated representative, and the loan officer or a representative of the lending institution shall be required to attend the LEDC's board of directors meeting wherein the application will be considered by the board;

10. LEDC's board of directors, the board screening committee, or the board's other designated committee that has considered the application within its authority has the final approval authority for such applications.

11. the applicant/borrower or the lending institution will be notified within five business days by mail or e-mail of the outcome of the application process;

12. an LEDC commitment letter, including LEDC's terms, and any stipulations or requirements, will be mailed or e-mailed by LEDC staff to the lending institution within five business days of approval by the LEDC Board or its committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1474 (June 2022).

#### **§507. Eligibility/Ineligibility for Participation in This Program**

A. Funding requests for any business purpose may be considered, however, the following businesses and purposes shall be considered.

##### **1. Eligible:**

a. small business concerns authorized to do and doing business in Louisiana, that maintain an office in Louisiana; small business concerns organized as a sole proprietorship qualified to do and doing business in Louisiana, or either a for profit corporation, partnership, limited liability company, limited liability partnership, joint venture, cooperative, non-profit entity with an eligible business purpose as defined above, or other entity which is registered and authorized to conduct business in the State of Louisiana that maintain an office in Louisiana

b. certified small and emerging businesses (SEBs) certified by LED's small business services that maintain an office in Louisiana ;

c. disabled person's business enterprises authorized to do and doing business in Louisiana, that maintain an office in Louisiana.

##### **2. Ineligible:**

a. restaurants (except for regional or national franchises), including grills, cafes, fast food operations, motorized vehicle, trailer, curb-side, sidewalk or street vender food operations, and any other business or project established for the principal purpose of dispensing cooked food for consumption on or off the premises having been in operations less than two years;

b. bars, saloons, daiquiri shops, operations for the sale of alcoholic popsicles and other alcoholic food items, packaged liquor stores, including any other business or project established for the principal purpose of dispensing, packaging, or distributing alcoholic beverages;

c. any business or establishment which has gaming or gambling as its principal business;

d. any business or establishment which has consumer or commercial financing as its business;

e. funding for the acquisition, renovation, or alteration of a building or property for the principal purpose of real estate speculation, rental, or any other passive real estate investment purposes;

f. funding for the principal purpose of refinancing existing debt unless under the following conditions:

i. a lender may refinance a borrower's existing loan, line of credit, extension of credit, or other debt originally made by an unaffiliated lender only if the following conditions are met:

(a). the amount of the refinanced loan or other debt is at least 150 percent of the previous outstanding balance;

(b). the transaction results in a 30 percent reduction in the fee-adjusted APR contracted for the term of the new debt, to help ensure that funding is used only for transactions that meaningfully benefit borrowers by providing access to sustainable products; and

(c). proceeds of the transaction are not used to finance an extraordinary dividend or other distribution.

ii. a lender may use funds to support a new extension of credit that repays the amount due on a matured loan or other debt that was previously used for an eligible business purpose when all the following conditions are met:

(a). the amount of the new loan or other debt is at least 150 percent of the outstanding amount of the matured loan or other debt;

(b). the new credit supported with funding is based on a new underwriting of the small business's ability to repay the loan and new approval by the lender;

(c). the prior loan or other debt has been paid as agreed and the borrower was not in default of any financial covenants under the loan or debt for at least the previous 36 months (or since origination, if shorter); and

(d). proceeds of the transaction are not used to finance an extraordinary dividend or other distribution.

g. funding for the purpose of buying out any stockholder or equity holder by another stockholder or equity holder in a business;

h. funding for the purpose of establishing a park, theme park, amusement park, or camping facility;

- i. funding for the purpose of buying out any family member or reimbursing any family member;
- j. funding for the purpose of pyramid sales;
- k. funding activities related either directly or indirectly to cryptocurrency.

B. In addition to the eligibility and ineligibility provisions above, applicant/borrowers lines of credit guarantees and loan guarantees in connection with this program shall meet the following criteria.

1. The applicant/borrower(s) shall employ 500 employees or less at the time the loan is enrolled in this program;

2. This credit support shall not be extended to applicant/borrower(s) that have more than 750 employees;

3. Any loan supported in this Program shall not exceed a principal amount of \$ 5,000,000;

4. Any credit extended through this Program shall not exceed a principal amount of \$ 20,000,000;

5. SSBCI funds utilized in this Chapter 3 Program will be permitted only for new extensions of credit; that is, funds of the SSBCI Program shall not be used to support existing extensions of credit, including but not limited to prior loans, lines of credit or other borrowing, that were previously made available as part of a state small business credit enhancement program unless under the following conditions:

a. a lender may refinance a borrower's existing loan, line of credit, extension of credit, or other debt originally made by an unaffiliated lender only if the following conditions are met:

i. the amount of the refinanced loan or other debt is at least 150 percent of the previous outstanding balance;

ii. the transaction results in a 30 percent reduction in the fee-adjusted APR contracted for the term of the new debt, to help ensure that SSBCI funding is used only for transactions that meaningfully benefit borrowers by providing access to sustainable products; and

iii. proceeds of the transaction are not used to finance an extraordinary dividend or other distribution.

b. a lender may use SSBCI funds to support a new extension of credit that repays the amount due on a matured loan or other debt that was previously used for an eligible business purpose when all the following conditions are met:

i. the amount of the new loan or other debt is at least 150 percent of the outstanding amount of the matured loan or other debt;

ii. the new credit supported with SSBCI funding is based on a new underwriting of the small business's ability to repay the loan and new approval by the lender;

iii. the prior loan or other debt has been paid as agreed and the borrower was not in default of any financial covenants under the loan or debt for at least the previous 36 months (or since origination, if shorter); and

iv. proceeds of the transaction are not used to finance an extraordinary dividend or other distribution.

6. Small Business Administration (SBA) guaranteed loans shall not be purchased in loan participations through this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the

Louisiana Economic Development Corporation, LR 48:1476 (June 2022).

### **§509. General Loan Guaranty and Participation Provisions**

A. The Louisiana Economic Development Corporation will be guided by the following general principles in approving loan guaranties, line of credit guaranties, or loan participations.

1. The corporation shall confirm that the financial institution lender has sufficient commercial lending experience and financial and managerial capacity to participate in this program. The corporation may utilize, among other resources, the financial institution's most recent call report showing the percentage of commercial loans in its portfolio.

2. The corporation shall not knowingly approve any loan guarantee, line of credit guarantee, or loan participation if the applicant/borrower has presently pending or outstanding any claim or liability relating to failure or inability to pay promissory notes or other evidence of indebtedness, state or federal taxes, or a bankruptcy proceeding; nor shall the corporation approve any loan, line of credit, loan guarantee or participation if the applicant/borrower has presently pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit or any legal proceeding involving a criminal violation other than misdemeanor traffic violations. Further, the corporation shall not approve any loan guarantee, line of credit guarantee, or participation if the applicant/ borrower or his/her/its principle management has a criminal record showing convictions for any criminal violations other than misdemeanor traffic violations.

3. The terms or conditions imposed and made part of any loan guarantee, line of credit guarantee, or loan participation authorized by vote of the corporation board, its board screening committee or its other designated committee shall not be amended or altered by any member of the board or employee of the Department of Economic Development except by subsequent vote of approval by the board, its board screening committee or other designated committee at the next meeting of the board or committee in open session with full explanation for such action.

4. Each financial institution lender shall be required to have a meaningful amount of its own capital resources at risk in each small business loan included in this program. Such lenders shall bear at least 20 percent or more of the loss from a small business loan default.

5. The corporation shall not subordinate its position to other creditors.

#### **B. Interest Rates**

1. On all loans or lines of credit guarantees, the interest rate is for each individual loan, at the time of obligation, may not exceed the National Credit Union Administration's (NCUA) interest rate ceiling for loans made by federal credit unions as described in 12 U.S.C. § 1757(A)(vi)(I) and set by the NCUA board. . Further, on all loan or line of credit guarantees, the interest rate is to be negotiated between the borrower and the lender, but shall not exceed the lesser interest rate of either; the National Credit Union Administration's (NCUA) interest rate ceiling, that established by the Federal Credit Union Act (FCUA), that

established by the Office of Comptroller of the Currency (OCC), or applicable State legislation that may be enacted.

#### C. Equity Requirements

1. The borrower must infuse not less than 15 percent into the equity in an existing or expanding business, or for a start-up operation or acquisition loan request.

#### D. Limit on the Amount of LEDC's Guaranty

1. The corporation's loan guaranty shall be no greater than 80 percent of a loan not to exceed a guaranty amount of \$1,500,000.

#### E. Terms

1. All of the provisions contained in §109.F.1.a. - c. of Chapter 1 of the Small Business Loan Guaranty Program, with regard to term periods of various types of loan guaranties, shall also apply to this Chapter 3 Program.

#### F. LEDC Program Fees

1. LEDC will charge a guaranty fee not to exceed a maximum amount of 2 percent of the guaranteed loan amount, except that:

- a. the guaranty program fee will be automatically waived for SEDI and SEB small business types; or
- b. unless the board, the board screening committee or other designated committee waives the guaranty program fee.

2. LEDC will charge no application fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1477 (June 2022).

### **§511. General Guaranty Agreement Provisions**

#### A. Guaranty Agreement

1. The lending institution shall conduct all of the customer/borrower interaction, and shall be responsible for the proper administration and monitoring of the loan or line of credit, including monthly invoicing, collections, and loan workouts, and the proper liquidation of the collateral in the event of a default.

2. The loan or line of credit shall not be sold, assigned, participated out, or otherwise transferred without the prior written consent of the LEDC board.

3. If liquidation through foreclosure occurs, the lender will sell the collateral, handle the legal proceedings, and absorb all expenses associated with these activities.

4. There will be a reduction of the guaranty:

- a. in proportion to the principal reduction of the amortized portion of the loan or line of credit;
- b. if no principal reduction has occurred in any annual period of the loan or line of credit, a reduction in the guaranty amount will be made proportional to the remaining guaranty life.

5. The guaranty will cover the unpaid principal amount owed only.

6. Delinquency will be defined according to the lender's normal lending policy and all remedies will be outlined in the guaranty agreement. Notification of delinquency will be made to the corporation in writing by submitting a completed, signed and dated SBLGP banker loan status monthly report within five business days after the end of the month/reporting period as stated in the guaranty agreement.

#### B. Loan Participation Agreement

1. The lending institution shall conduct all of the customer/borrower interaction, and shall be responsible for the proper administration and monitoring of the loan, including monthly invoicing, collections, and loan workouts, and the proper liquidation of the collateral in the event of a default.

2. The lead lender will hold no less participation in the loan than that equal to LEDC's, but not to exceed its legal lending limit.

3. The lead lender may sell other participations with LEDC's consent.

4. Should liquidation through foreclosure occur, the lender will sell the collateral and handle the legal proceedings and absorb all expenses associated with these activities.

5. The lender is able to set its rate according to risk, and may blend its rate with the LEDC rate to yield a lower overall rate to a project.

6. Delinquency will be defined according to the lender's normal lending policy and all remedies will be outlined in the participation agreement. Notification of delinquency will be made to the corporation in writing by submitting a completed, signed and dated SBLGP banker loan status monthly report within five business days after the end of the month/reporting period, as stated in the loan participation agreement.

#### C. Borrower Agreement

1. At the discretion of LEDC, the borrower will agree to strengthen management skills by participation in a form of continuing education acceptable to LEDC.

2. The borrower shall provide initial proof as well as an annual report of job creation, including the number of jobs, job titles and salaries.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1478 (June 2022).

### **§513. Confidentiality**

A. Confidential information in the files of the corporation and its accounts acquired in the course of its duty is to be used solely for the corporation. The corporation is not obliged to give out any credit rating or confidential information regarding the applicant/borrower. (See Louisiana Attorney General's Opinion #82-860.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1478 (June 2022).

### **§515. Conflict of Interest**

A. No member of the corporation, employee thereof, or employee of the Department of Economic Development, or members of their immediate families shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with the corporation for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such corporation. If any contract or agreement shall be made in

violation of the provisions of this Section, the same shall be null and void, and no action shall be maintained thereon against the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1478 (June 2022).

**§517. Guidelines**

A. The Louisiana Economic Development Corporation (LEDC), or the Louisiana Department of Economic Development, also known as Louisiana Economic Development (LED), as the administrator of this program for LEDC, may make, create, or issue from time to time guidelines interpreting, construing, explaining and/or supplementing these rules; and may revise, supplement, or otherwise change or modify the guidelines at any time with or without notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1479 (June 2022).

Anne G. Villa  
Undersecretary

2206#028

**RULE**

**Department of Economic Development  
Office of Business Development  
and  
Louisiana Economic Development Corporation**

**SSBCI Micro Lending Program ARPA 2021  
(LAC 19:VII.Chapter 76)**

The Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., R.S. 36:104, 36:108 and 51:2312, has adopted rules for the Micro Lending Program for the State Small Business Credit Initiative (SSBCI) authorized by the American Rescue Plan Act (ARPA) of 2021, otherwise known as “SSBCI Micro Lending Program ARPA 2021”. This Rule is hereby adopted on the date of promulgation.

**Title 19**

**CORPORATION AND BUSINESS**

**Part VII. Louisiana Economic Development Corporation**

**Subpart 9. Micro Loan Program**

**Chapter 76. SSBCI Micro Lending Program ARPA 2021**

**§7601. Purpose**

A. The Louisiana Economic Development Corporation (LEDC) wishes to stimulate the flow of private capital, short term loans , lines of credit loans, and other financial assistance through a mission driven focus in creating a revolving loan fund for the sound financing of the

development, expansion, and retention of small business concerns in Louisiana as a means of helping to start or grow their business and of providing employment, income growth, and expanded economic opportunities, especially to Small Businesses owned by Socially and Economically Disadvantaged Individuals (SEDI) and to those Very Small Businesses (VSB). .

B. Through the American Rescue Plan Act of 2021, which reauthorized the State Small Business Initiative (SSBCI), the U.S. Congress has appropriated funds to be allocated and disbursed to the states that have created programs to increase the amount of capital made available by private lenders to small businesses, and the State of Louisiana has been approved to receive and disburse SSBCI funds within the SSBCI Program. The Louisiana Department of Economic Development, which will be working with and through LEDC, has been designated to provide services for the SSBCI, including the Micro Lending Program (MLP), which by a Program Participation Agreement previously entered into, between LEDC and the Lender to make additional capital available for the loan. The LEDC will utilize SSBCI funds to increase access to credit and capital funding to further assist small businesses statewide, to expand loan capabilities to a broader range of businesses statewide, to direct a greater concentration to those small businesses, and to reach, identify and promote small business growth in low and moderate income communities, in minority communities, in other underserved communities, and to small businesses owned by socially and economically disadvantaged individuals across our state. .

C. By partnering with Louisiana CDFIs and other qualifying lenders who share a similar mission driven focus as the purpose of this program, LEDC will provide funding to participating CDFIs, and other qualifying lenders having been approved as a participating lender, for the purpose of making direct loans up to \$100,000 to small businesses meeting the SSBCI criteria as outlined in the program participation agreement.

D. Interested small businesses will be referred to participating Lenders for loan qualification purposes. Participating Lenders will apply to LEDC for acceptance to enroll a loan or line of credit under the Program on behalf of their qualified small business borrowers. Participating Lenders are responsible for their own credit underwriting decisions and originating the loans. LEDC’s responsibility is: to ensure compliance with the Micro Lending Program requirements; ensure compliance with the SSBCI requirements as directed by Treasury, as well as participation in the program; and to report to the U.S. Treasury.

E. In considering acceptance of the loans presented to LEDC through Lenders having agreed to participate in the Micro Lending Program, the Corporation will consider sound business purpose loans and lines of credit, so long as SSBCI resources permit. The board of directors of the corporation recognizes that loan participations carry certain risks and are willing to undertake reasonable exposure.

F. LEDC will monitor the program, including the repayment progress of borrowers, as well as the servicing performance of participating lenders, in order to ensure successful outcomes in the form of program utilization and eventual securing of funds for these groups.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1479 (June 2022).

### §7603. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in prevailing federal guidelines issued by the U.S. Treasury, 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.

*Board*—Board of Directors of Louisiana Economic Development Corporation.

*Borrower*—also referred to herein as the *applicant/borrower* or *customer/borrower*; the business person or entity borrowing and accepting the loaned funds from the Lender.

*Corporation*—Louisiana Economic Development Corporation.

*CDFI—Community Development Financial Institution* - has the meaning given that term under section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994

*CDFI Investment Area*—defined in 12 C.F.R. § 1805.201(b)(3)(ii)—are generally low-income, high-poverty geographies that receive neither sufficient access to capital nor support for the needs of small businesses, including minority-owned businesses.

*Eligible Loan*—a loan or line of credit commitment made by the lender to the borrower which meets the established SSBCI criteria.

*Enrolled Loan*—a loan enrolled by the Lender to a Borrower pursuant to the terms of the Lender Participation Agreement whereby the eligible loan has been accepted in writing by LEDC.

*LED*—Louisiana Department of Economic Development.

*LEDC*—Louisiana Economic Development Corporation.

*Lender*—for purposes of this Program Chapter, also referred to herein as the *lender*; the Community Development Financial Institution or other qualifying lender sharing a similar mission driven focus as this program and who has been approved by LED as a participating MLP lender to originate the loan and provide the loan funds to the Borrower.

*Lender Insider*—means an executive officer, director, or principal shareholder of the lender, or a member of the immediate family of an executive officer, director or principal shareholder of the lender, or a related interest of such executive officer, director, principal shareholder or member of the immediate family. For the purposes of this provision, the terms *executive officer*, *director*, *principal shareholder*, *immediate family*, and *related interest* shall have the respective meaning ascribed thereto in Federal Reserve Act Sections 22(g) and (h), Federal Reserve Board Regulation O and applicable Office of the Comptroller of the Currency or Office of Thrift Supervision.

*Loan*—the temporary provision of money or funds for a business purpose, usually for a limited term and requiring the payment of interest along with the repayment of the loaned funds. As used herein, the word *loan* includes a line of credit or term loan originated by a participating CDFI, or other participating lender, of this chapter.

*Lender Loan Documents*—written documentation evidencing an Enrolled Loan from the Lender to the Borrower pursuant to the Micro Loan Program describe herein and includes, but is not limited to, a loan agreement, note, mortgage, security agreement and guaranty agreement.

*Maximum Enrolled Loan Amount*—the aggregate outstanding amount of \$500,000 for any enrolled loans or loans of a borrower or any common enterprise in which the borrower has an ownership interest.

*Micro Loans*—those loans ranging in size from \$1,000 to \$100,000.

*Micro Lending Program (MLP)*—an OSCP program approved by Treasury which is the subject of this Chapter

*Passive Real Estate Ownership*—ownership of real estate for the purpose of deriving income from speculation, trade or rental, except that such term shall not include:

a. the ownership of that portion of real estate being used or intended to be used for the operation of the business of the owner of the real estate; or

b. ownership of real estate for the purpose of construction or renovation, until the completion of the construction or renovation phase.

*Small Business Concerns*—for purposes of size; eligibility for this program will be limited to businesses with 100 employees or less.

*Socially and Economically Disadvantaged Individual (SEDI) Owned Business*—

a. business enterprises that certify that they are owned and controlled by individuals who have had their access to credit on reasonable terms diminished as compared to others in comparable economic circumstances, due to their:

i. membership of a group that has been subjected to racial or ethnic prejudice or cultural bias within American Society;

ii. gender;

iii. veteran status;

iv. limited English proficiency;

v. physical handicap;

vi. long-term residence in an environment isolated from the mainstream of American society;

vii. membership of a federally or state-recognized Indian Tribe;

viii. long-term residence in a rural community;

ix. residence in a U.S. Territory;

x. residence in a community undergoing economic transitions (including communities impacted by the shift towards a net-zero economy or deindustrialization); or

xi. membership of another *underserved community* as defined in Executive Order 13985;

b. business enterprises that certify that they are owned and controlled by individuals where residences are in CDFI investment Areas, as defined in 12 C.F.R. §1805.201(b)(3)(ii);

c. business enterprises that certify that they will operate a location in a CDFI Investment Area, as defined in 12 C.F.R. §1805.201(b)(3)(ii); or

d. business enterprises that are located in CDFI Investment Areas, as defined in 12 C.F.R. § 1805.201(b)(3)(ii).

*Very Small Business*—a business with fewer than 10 employees; may include independent contractors and sole proprietors

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1480 (June 2022).

### **§7605. Application Process**

A. Applicant is required to first contact a participating community development financial lending institution (CDFI), or other participating lender, under the Louisiana Economic Development (LED) SSBCI Micro Lending Program that is willing to entertain, originate, process and service such a loan or line of credit; and confirms the loan request is an SSBCI eligible loan before completing the program enrollment application process with LEDC. The participating Lender will then contact LEDC for qualification and shall submit a complete Micro Lending Program Enrollment Application to LEDC for its review and acceptance as an enrolled loan, or enrolled line of credit, under the Program. The Lender shall also submit to LEDC the Lender's assurances, certifications, representations and warranties, and shall be responsible for obtaining and submitting to LEDC assurances of eligibility, including certifications, representations and warranties from each borrower, all as required by the American Rescue Plan Act of 2021.

B. Information submitted to LEDC with the enrollment application representing the applicant's business plan, financial position, financial projections, personal financial statements and background checks will be kept confidential to the extent allowed under the Public Records Law, R.S. 44:1 et seq. Confidential information in the files of LEDC and its accounts acquired in the course of duty will be used solely by and for LEDC.

C. In order to enroll a loan under the SSBCI Micro Lending Program, the lender shall

1. file the loan for enrollment by delivering or causing to be delivered to LEDC a copy of the program enrollment application packet as may be specified by LEDC, bearing an execution signature of an authorized officer of the lender;

2. submit such additional documentation required for Lender to review and underwrite the loan request;

3. executed lender and borrower assurances, certifications and information reasonably required by the corporation and related to the loan to be enrolled. The loan shall be deemed enrolled in the SSBCI Micro Lending Program at such time as the program enrollment application is accepted, in writing, by LEDC.

D. Businesses applying for consideration as a SEDI owned business will have to self-certify under conditions in Paragraphs a-c as noted above in §7503 under SEDI-Owned Business definition.

E. The following micro lending program submission and review policies shall be followed.

1. A completed Louisiana Economic Development Corporation Micro Lending Program enrollment application form along with information identified by LEDC as appropriate must be submitted to LEDC prior to any loan closing.

2. The participating lender is expected to use its best efforts to provide small Louisiana businesses, SEDI, with maximum practicable opportunity to participate in the micro lending program.

3. The borrower's completed micro lending program enrollment application packet must be submitted by the Lender to LEDC and include:

4. Borrower's completed LED micro lending program enrollment application and related information and materials.

5. The participating lender shall submit to LEDC its complete analysis and evaluation, proposed loan structure, and commitment letter to the borrower. LEDC staff may do its own review and evaluation of the enrollment application packet. The participating lender shall submit to LEDC the same pertinent data that it submitted to the lending institution's loan committee, whatever pertinent data the lending institution can legally supply.

6. Businesses applying for consideration as a SEDI owned business will have to self-certify under conditions in Paragraphs a - c as noted above in §7503 under SEDI-owned business definition.

7. Lender and borrower signed assurances and certifications as required by Treasury at the time of application for enrollment.

8. LEDC staff will review the enrollment application for completeness and compliance requirements as required by treasury under the SSBCI program and then approve and accept as an enrolled loan or disapprove and reject the enrollment application, if the dollar amount of the loan is within its board approved authority, or make recommendations to the board committees and to the board for approval and acceptance as an enrolled loan or disapproval and rejection under the micro lending program.

9. The LEDC's board screening committee, the board's other designated committee, or the board itself, may review only the completed enrollment applications and related materials submitted by LEDC staff and may approve and accept as an enrolled loan or disapprove and deny applications for enrollment under the program within the committee's authority as established by the LEDC board, or board committees will make recommendation to the LEDC board for its decision.

10. The applicant/borrower or their designated representative(s), and the loan officer or a representative of the lender may be required to attend the LEDC's board of directors meeting wherein the program enrollment application will be considered by the board.

11. LEDC's board of directors, the board screening committee, or the board's other designated committee that has considered the enrollment application within its authority has for such enrollment applications; except for those loans which shall be within the staff's authority to



approve and accept for enrollment or disapprove, as established by the LEDC board, the staff shall the final approval of acceptance as an enrolled loan under the program or disapproval and denial authority, unless the board overrules the staff's decision.

12. The LEDC staff will report to the board monthly those loans accepted for enrollment under the program, as well as those loans not approved by the lender under the program.

13. Loans originated by participating community development financial institutions (CDFIs), or other participating lenders, under the micro lending program must qualify under the SSBCI treasury guidance. Lenders interested in participating under the program must first gain approval by LEDC. CDFIs, and other participating lenders, will reference their internal credit policies to underwrite the loan for acceptable terms and structure. The lender is responsible for all loan closing documentation.

14. LEDC staff will email the Lender within 3 business days of the loan closing written notice that the enrollment application has been approved and accepted as an enrolled loan under the micro lending program.

F. Loan Purpose Requirements and Prohibitions. In addition to the application process provisions provided in the Section mentioned in the above subparagraph A, in connection with each loan to be enrolled under this Chapter the lender shall also be responsible for obtaining and providing to LEDC with the lender's enrollment application an assurance from each borrower stating that the loan proceeds shall not be used for any impermissible purpose under the SSBCI Program. And additionally, each lender must also obtain and provide to LEDC with its enrollment application under this Chapter an assurance from the borrower affirming:

1. The loan proceeds must be used for a business purpose. A business purpose includes, but is not limited to, start-up costs, working capital, business procurement, franchise fees, equipment, inventory, as well as the purchase, construction renovation or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. The definition of *business purpose* excludes activities that relate to acquiring or holding passive investments such as commercial real estate ownership, the purchase of securities; and lobbying activities as defined in Section 3 (7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended.

2. The loan proceeds will not be used to:

- a. repay a delinquent federal or state income taxes unless the borrower has a payment plan in place with the relevant taxing authority; or
- b. repay taxes held in trust or escrow, e.g. payroll or sales taxes; or
- c. reimburse funds owed to any owner, including any equity injection or injection of capital for the business' continuance; or
- d. purchase any portion of the ownership interest of any owner of the business.

3. The borrower is not:

- a. an executive officer, director, or principal shareholder of the financial institution lender; or

- b. a member of the immediate family of an executive officer, director, or principal shareholder of the financial institution lenders; or

- c. a related interest of such executive officer, director, principal shareholder, or member of the immediate family.

NOTE: For the purposes of these three borrower restrictions, the terms *executive officer, director, principal shareholder, immediate family, and related interest* refer to the same relationship to a financial institution lender as the relationship described in part 215 of title 12 of the Code of Federal Regulations, or any successor to such part.)

4. The borrower is not:

- a. a business engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade, such as wildcatting for oil, investments in stock market and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business; (Note: Permissible borrowers include state-designated charitable, religious, or other non-profit or eleemosynary institutions, government-owned corporations, consumer and marketing cooperatives, and faith-based organizations provided the loan is for a *business purpose* as defined above.) or

- b. a business that earns more than half of its annual net revenue from lending activities; unless the business is a non-bank or non-bank holding company certified as a community development financial institution; or

- c. a business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants; or

- d. a business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted. (Included in these activities is the production, servicing, or distribution of otherwise legal products that are to be used in connection with an illegal activity, such as selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution); this category of business includes direct and indirect marijuana businesses, as defined in SBA Standard Operating Procedures 50 10 6; or

- e. a business engaged in gambling enterprises, unless the business earns less than 33 percent of its annual net revenue from lottery sales.

- f. The corporation shall not knowingly accept any enrollment applications under the Micro Lending Program if the applicant/borrower has presently pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit or any legal proceeding involving a criminal violation other than misdemeanor traffic violations. Nor should they accept any enrollment applications under the micro lending program if the applicant/borrower or his/her/its principle management has a criminal record showing convictions for any criminal violations other than misdemeanor traffic violations in which the applicant has not been reinstated into society.

5. No principal of the borrowing entity has been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and

Notification Act (42 U.S.C. 16911)). For the purposes of this certification, “principal” is defined as “if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds a 20 percent or more ownership interest in the partnership; and if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives or officers of the entity, and each natural person who is a direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity.”

G. The lender must also provide to LEDC with its enrollment application, in connection with each loan to be enrolled under this Chapter, an assurance affirming:

1. The loan has not been made in order to place under the protection of the approved state Capital Access Program (CAP) prior debt that is not covered under the approved state CAP and that is or was owed by the borrower to the lender or to an affiliate of the lender.

2. The loan is not a refinancing or a loan previously made to that borrower by the lender or an affiliate of the lender.

3. No principal of the lender has been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)). For the purposes of this certification, *principal* is defined as if a sole proprietorship, the proprietor; if a partnership, each partner; if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity.

4. The corporation shall not knowingly accept any enrollment applications under the Micro Lending Program if the applicant/borrower has presently pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit or any legal proceeding involving a criminal violation other than misdemeanor traffic violations. Nor should they accept enrollment applications under the Micro Lending Program if the applicant/borrower or his/her/its principle management has a criminal record showing convictions for any criminal violations other than misdemeanor traffic violations in which the applicant has not been reinstated into society.

5. The borrower business structure is a for-profit corporation, partnership, limited liability company, limited liability partnership, joint venture, cooperative, non-profit entity with an eligible business purpose as defined above or other entity which is registered and authorized to conduct business in the state of Louisiana that maintain an office in Louisiana. The borrower business structure is a sole proprietor qualified to do business in Louisiana that maintains an office in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1481 (June 2022).

### **§7607. Eligibility/ Ineligibility for Participation in This Program**

A. This Program is for loans (including lines of credit) for an eligible business purpose, having a principal amount of \$500,000 or less, to eligible borrowers doing business in Louisiana having 100 employees or less at the time the loan is enrolled in this program. An *eligible business purpose* includes but is not limited to: start-up costs; working capital; business procurement; franchise fees; and acquisition of equipment, inventory, or services used in the production, manufacturing, or delivery of a business’s goods or services, or the purchase, construction, renovation, or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. The definition of *eligible business purpose* excludes activities that relate to acquiring or holding passive investments such as commercial real estate ownership for investment or leasing; the purchase of securities; and lobbying activities as defined in Section 3 (7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended.

B. The loan should be a new extension of credit to the borrower, and shall not be used to support existing extensions of credit, including but not limited to prior loans, lines of credit, or other borrowings that were previously made available as a part of a state small business credit enhancement program; no portion of the loan shall be used for any guaranteed or unguaranteed portion of a Small Business Administration (SBA) guaranteed loan or any other federal loan without prior written consent of the treasury; and SBA guaranteed loans shall NOT be purchased through this program.

C. In connection with the business purpose for the requested loan the applicant/borrower(s) shall create or retain in this State at least one new permanent full-time jobs.

D. In addition to the eligibility and ineligibility provisions provided in the Section, the applicant/borrowers loans and lines of credit in connection with this Chapter shall meet the following criteria:

1. the applicant/borrower(s) shall employ 100 employees or less at the time the loan is enrolled in this Program. The borrower business structure is a for-profit corporation, partnership, limited liability company, limited liability partnership, joint venture, cooperative, non-profit entity with an eligible business purpose as defined above or other entity which is registered and authorized to conduct business in the state of Louisiana that maintain an office in Louisiana.

2. the borrower business structure is a sole proprietor qualified to do business in Louisiana that maintains an office in Louisiana. Small and emerging businesses (SEBs) certified by LED’s small business services that maintain an office in Louisiana.

3. small and emerging businesses (SEBs) certified by LED’s Small Business Services that maintain an office in Louisiana.

4. small businesses owned by socially and economically disadvantaged individuals (SEDI) that meet the SEDI definition above;

5. small business concerns as defined above for size purposes.

E. The small business is domiciled in Louisiana with preference given to socially and economically disadvantaged individuals as defined herein this Chapter.

F. Funding request for all but the following may be considered:

1. Restaurants having been in business less than two years, except for regional or national franchises;

2. bars, saloons, daiquiri shops, operations for the sale of alcoholic popsicles and other alcoholic food items, packaged liquor stores, including any other business or project established for the principal purpose of dispensing, packaging, or distributing alcoholic beverages;

3. any establishment which has gaming or gambling as its principal business;

4. any establishment which has consumer or commercial financing as its business;

5. funding for the acquisition, renovation, or alteration of a building or property for the principal purpose of real estate speculation;

6. direct or indirect activities related to cryptocurrency;

7. any business engaged in pyramid sales;

8. any business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted. (Included in these activities is the production, servicing, or distribution of products that are to be used in connection with any illegal activity, such as but not limited to selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution); this category of business includes direct and indirect marijuana businesses, as defined by SBA Standard Operating Procedures 50 10 6;

9. funding for the principal purpose of refinancing existing debt; a refinancing of a loan previously made to the borrower by the Lender or an affiliate of the lender; or a loan made in order to place under the micro lending program prior debt that is not covered under this program and that is or was owed by the borrower to the Lender or to an affiliate of the lender;

10. funding for the purpose of buying out any stockholder or equity holder by another stockholder or equity holder in a business; for the purpose of purchasing any portion of the ownership interest of any owner of the business; or for buying out any family member or reimbursing any family member;

11. funding for the purpose of reimbursing funds owed to any owner, including any equity injection or injection of capital for the business's continuance;

12. funding for paying any person to influence or attempt to influence any agency, elected official, officer or employee of a state or local Government in connection with lobbying activities, the making, award, extension, continuation, renewal, amendment, or modification of any State or Local Government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. §1352;

13. funding for paying any costs incurred in connection with:

a. any defense against any claim or appeal of the United States Government, any agency or instrumentality

thereof (including the U.S. Department of Treasury), against the State of Louisiana; or

b. any prosecution of any claim or appeal against the United States Government, any agency or instrumentality thereof (including the U.S. Department of Treasury), which the state of Louisiana instituted or in which the state of Louisiana has joined as a claimant;

14. funding to be used to pay any delinquent federal or state income taxes, as well as any taxes held in trust or escrow, such as payroll taxes or sales taxes.

15. funding for the purpose of buying out any stockholder or equity holder by another stockholder or equity holder in a business;

16. funding for the purpose of establishing a park, theme park, amusement park, or camping facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1483 (June 2022).

### §7609. General Loan Provisions

A. Those CDFIs, and other qualifying lenders, participating in the Micro Lending Program shall be guided by the following general principles in making loans.

1. The lender shall not knowingly approve any loans if the applicant has presently pending or outstanding any claim or liability relating to failure or inability to pay promissory notes or other evidence of indebtedness including state or federal taxes, or bankruptcy proceeding; nor shall the lender approve any loan if the applicant has presently pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit.

2. The terms or conditions imposed and made part of any enrolled loan authorized by vote of the corporation board shall not be amended or altered by any member of the board or employee of the Department of Economic Development except by subsequent vote of approval to accept the changes of said enrolled loan by the board, its board screening committee or other designated committees at the next meeting of the board or committee in in open session with full explanation for such action.

B. Loan amounts under this program are intended to be smaller in size and may range from \$1,000 to \$100,000.

#### C. Interest Rates

1. On all loans or lines of credits under this chapter, at the time of obligation, the interest rate is to be negotiated between the lender and borrower, but shall not exceed the National Credit Union Administration's (NCUA) interest rate ceiling for loans made by federal credit unions as described in 12 U.S.C. §1757(A)(vi)(I) and set by the NCUA board. Further, on all loans or lines of credits, the interest rate shall not exceed the lesser interest rate of either; the National Credit Union Administration (NCUA) interest rate ceiling, that established by the Federal Credit Union Act (FCUA), that established by the Office of the Comptroller of the Currency (OCC), or applicable state legislation that may be enacted.

#### D. Borrower's Collateral

1. The value of the borrower's collateral shall be determined according to the lender's normal lending criteria

and policy. Loans greater than \$50,000 shall require collateral.

2. Collateral position shall be negotiated but will be no less than a sole second position.

3. Unacceptable collateral includes:

a. stock in applicant company and/or related companies;

b. personal residence

E. Equity

1. Equity requirements shall be determined according to the lenders normal loan criteria and policy.

F. Terms

1. Terms may be negotiated with the lender but in no case shall the terms exceed five years.

GLEDC Fees

1. LEDC may charge a \$100 application fee, unless the Board, the Board Screening Committee, other designated committee, or LEDC staff waives the application fee.

2. LEDC will waive the application fee for SEDI, SEB and VSB business types.

3. LEDC may charge a program fee up to \$500 for loans less than \$25,000 or may charge a program fee up to 2 percent for loans greater than \$25,000.

H. Use of Funds

1. Purchase of fixed assets, including buildings that will be occupied by the applicant to the extent of at least 51 percent.

2. Purchase of equipment, machinery, or inventory.

3. Line of credit for accounts receivable or inventory.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1484 (June 2022).

### **§7611. General Agreement Provisions**

A. Program Participation Agreement

1. The lender shall market the micro lending program, identify eligible borrowers for the program, originate the loan, conduct all of the customer/borrower interaction, and shall be responsible for the proper administration and monitoring of the loan (or line of credit), including monthly invoicing, collections, and loan workouts, and the proper liquidation of the collateral in the event of a default.

2. The lender shall agree to underwrite each loan (including line of credit) using its normal underwriting criteria and will perform a credit analysis of the borrower for each loan, assuming full responsibility for credit and ongoing security of the loan and will follow prudent industry loan underwriting processes and will determine that the funds to be provided under the micro lending program will be instrumental in order for the Lender to make the loan.

3. The lender shall be responsible for the preparation of all loan (including line of credit) documents to be used in connection with such loans made and accepted under this program.

4. The lender is able to set its rate according to risk but shall not exceed that stated in the treasury SSBCI guidance under this program.

5. Delinquency will be defined according to the lender's normal lending policy and all remedies will be outlined. Notification of delinquency will be made to the

corporation in writing and verbally in a time satisfactory to the bank and the corporation on the monthly lender loan status report.

B. Reporting

1. Reporting will be required by all participating lenders under this program as required by treasury under the SSBCI program and as required by the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1485 (June 2022).

### **§7613. Confidentiality**

A. Confidential information in the files of the corporation and its accounts acquired in the course of duty is to be used solely for the corporation. The corporation is not obliged to give credit rating or confidential information regarding applicant. Also see Attorney General Opinion Number 82-860.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1485 (June 2022).

### **§7615. Conflict of Interest**

A. No member of the corporation, employee thereof, or employee of the Department of Economic Development, members of their immediate families shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with the corporation for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such corporation. If any contract or agreement shall be made in violation of the provisions of this Section the same shall be null and void and no action shall be maintained thereon against the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1485 (June 2022).

### **§7617. Guidelines**

A. The Louisiana Economic Development Corporation (LEDC), or the Louisiana Department of Economic Development, also known as Louisiana Economic Development (LED), as the administrator of this program for LEDC, may make, create, or issue from time to time guidelines interpreting, construing, explaining and/or supplementing these rules; and may revise, supplement, or otherwise change or modify the guidelines at any time with or without notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1485 (June 2022).

Anne G. Villa  
Undersecretary

2206#029

**RULE**

**Department of Economic Development  
Office of Business Development  
and  
Louisiana Economic Development Corporation**

SSBCI Seed Capital ARPA 2021  
(LAC 19:VII.Chapter 89)

The Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., R.S. 36:104, 36:108 and 51:2312, hereby amends Rules for the Seed Capital Program for the State Small Business Credit Initiative (SSBCI) authorized by the American Rescue Plan Act (ARPA) of 2021, otherwise known as “SSBCI Seed Capital ARPA 2021”. This Rule is hereby adopted on the day of promulgation.

**Title 19**

**CORPORATION AND BUSINESS**

**Part VII. Louisiana Economic Development Corporation**

**Subpart 11. Louisiana Seed Capital Program**

**Chapter 89. SSBCI Seed Capital ARPA 2021**

**§8901. Purpose**

A. The purpose of this program is to utilize federal SSBCI funds to strengthen state programs that support private financing to small businesses as a response to the economic effects of the COVID-19 pandemic, in accordance with prevailing federal guidelines issued by the U.S. Treasury.

B. The Louisiana Economic Development Corporation (LEDC) will utilize SSBCI funds from ARPA 2021 to make seed stage investments to create and grow start-up and early-stage businesses or for expansion of small businesses statewide, and to reach, identify and promote small business growth in low and moderate income communities, in minority communities, in other underserved communities, and to women- and minority-owned businesses.

C. This LEDC program and the SSBCI funding will be marketed through outreach activities to inform venture capital funds, local foundations, small businesses, trade associations, incubator associations, and economic development organizations of the program, and to generate increased small business activity, awareness of and access to additional sources of capital to start and expand existing business opportunities, as well as participation in the program. The marketing will also be used to find investment and seed investment opportunities located in the underserved markets that will be targeted with SSBCI funds.

D. The LEDC will also monitor these plans, including the progress of individual businesses receiving investments and the performance of participating venture capital organizations, to ensure successful outcomes in the form of program utilization and eventual securing of funds for these groups.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1486 (June 2022).

**§8903. Definitions**

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in prevailing federal guidelines issued by the U.S. Treasury, 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.

*Board*—Board of Directors of Louisiana Economic Development Corporation.

*Business Partner of an SSBCI Insider*—a person who owns 10 percent or more of any class of equity interest, on a fully diluted basis, in any private entity in which an SSBCI insider also owns 10 percent or more of any class of equity interest on a fully diluted basis.

*Direct Investment*—an investment in which financial investors take part with each other and act jointly by uniting or combining together to invest directly into individual companies or businesses

*Community Development Financial Institution (CDFI)*—has the meaning given that term under Section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994.

*Community Development Financial Institution (CDFI) Investment Area*—areas defined by CDFI which are generally low-income, high poverty geographies that receive neither sufficient access to capital nor support for the needs of small businesses, including minority-owned businesses.

*Corporation*—Louisiana Economic Development Corporation.

*Family Member of an SSBCI Insider*—such person’s spouse, domestic partner, parents, grandparents, children, grandchildren, brothers, sisters, stepbrothers, and stepsisters; and any other relatives who live in the same household as the SSBCI insider.

*Independent Non-Profit Entity*—any non-profit entity that is not state-sponsored.

*Owned and Controlled*—if privately owned, 51 percent is owned by such individuals; if publicly owned, 51 percent of the stock is owned by such individuals; and in the case of a mutual institution, a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of such individuals.

*Personal Financial Interest*—any financial interest derived from ownership or right to ownership of, or lending to or other investment in, a private, for-profit entity that may receive an SSBCI investment (including any financial interest derived from ownership or right to ownership of, or investment in, a venture capital fund).

*Seed Capital*—

a. a dollar amount of not less than \$25,000 of capital provided to an inventor or entrepreneur to prove a concept and to qualify for start-up capital, which may involve product development and market research, as well as

building a management team and developing a business plan, if the initial steps are successful;

b. research and development financing to finance product development for start-up as well as early-stage companies (which may include a company that may already be in business for three years or less);

c. start-up or early-stage financing to companies completing product development and initial marketing which companies may be in the process of organizing or they may already be in business for three years or less, but have sold their product commercially; or

d. first-stage or early-stage financing to companies that have expended their initial capital and require funds to initiate full-scale manufacturing and sales, for costs of inventory, equipment, expansion, modernization, and for working capital purposes.

*Socially and Economically Disadvantaged Individuals (SEDI)-Owned Business—*

a. business enterprises that certify that they are owned and controlled by individuals who have had their access to credit on reasonable terms diminished as compared to others in comparable economic circumstances, due to their:

i. membership of a group that has been subjected to racial or ethnic prejudice or cultural bias within American society;

ii. gender;

iii. veteran status;

iv. limited English proficiency;

v. physical handicap;

vi. long-term residence in an environment isolated from the mainstream of American society;

vii. membership of a federally or state-recognized Indian Tribe;

viii. long-term residence in a rural community;

ix. residence in a U.S. territory;

x. residence in a community undergoing economic transitions (including communities impacted by the shift towards a net-zero economy or deindustrialization); or

xi. membership of another *underserved community* as defined in U.S. Executive Order 13985;

b. business enterprises that certify that they are owned and controlled by individuals whose residences are in CDFI Investment Areas, as defined in prevailing federal guidelines issued by the U.S. Treasury;

c. business enterprises that certify that they will operate a location in a CDFI Investment Area, as defined in prevailing federal guidelines issued by the U.S. Treasury; or

d. business enterprises that are located in CDFI Investment Areas, as defined in prevailing federal guidelines issued by the U.S. Treasury.

*SSBCI Insider—*a person who, in the 12- month period preceding the date on which SSBCI support for a specific investment in a venture capital fund or company is closed or completed:

a. was:

i. a manager or staff member, whether by employment or contract, in the state's SSBCI venture capital program;

ii. a government official with direct oversight or jurisdiction over an SSBCI venture capital program, or such an official's immediate supervisor;

iii. a member of the board of directors or similar body for a state-sponsored non-profit entity who, through such membership, has authority to vote on decisions to invest SSBCI funds or has authority over the employment or compensation of staff managing processes related to the investment of SSBCI funds;

iv. a member of the board of directors or similar body for an independent non- profit or for-profit entity that operates an SSBCI venture capital program; or

v. an employee, volunteer, or contractor on an investment committee or similar body that recommends or approves SSBCI investments under the SSBCI venture capital program; or

b. exercised a controlling influence on state decisions regarding:

i. the allocation of SSBCI funds among approved state venture capital programs;

ii. eligibility criteria for the state's SSBCI venture capital programs; or

iii. the processes for approving investments of SSBCI funds under the state's SSBCI venture capital program.

*State-Sponsored Non-Profit Entity—*a non-profit entity created by state legislation to pursue policies of the state government and over which state officials exercise a controlling influence through budgetary decisions or other legislative action or direction.

*Venture Capital Fund—*also referred to herein as a *seed capital fund*, or the *applicant organization*; a fund that makes and manages a portfolio of investments in individual companies or businesses.

*Very Small Business (VSB)—*a business which employees 10 or less employees, including independent contractors and sole proprietors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1486 (June 2022).

#### **§8905. Eligibility for Seed Capital Fund to Participate in This Program**

A. LEDC will undertake a formal evaluation process and consider various factors when determining which applicants will be selected to participate in this program. Among the factors which may be taken into account in the evaluation process are the following.

B. The applicant organization may be organized either for profit or non-profit purposes.

C. The applicant organization must demonstrate that its management personnel have at least three years of experience in managing investments in individual, privately-held companies, utilizing funds provided by others to make such investments.

D. The applicant organization is encouraged to have a Louisiana-based production office.

E. The applicant organization must have raised a minimum of \$500,000 in investments or has a minimum of \$2 1/2 million under management, and have on hand cash sums sufficient to cover the general and administrative costs for the first and early years of its operations for participation in the SSBCI Venture Capital Program.

F. In addition, LEDC investments made in venture capital funds shall meet the following criteria:

1. the venture capital fund(s) shall target an average business-size of 500 employees or less at the time the individual business investment is made;
2. It is strongly encouraged for each venture capital fund(s) to make every effort to target and invest in SEDI-owned businesses and VSB;
3. such individual business investments shall not be extended to businesses with more than 750 employees;
4. any investment targeted in this program shall not exceed the amount of \$ 5,000,000; and
5. any investment transaction or investment round extended through this program shall not exceed the amount of \$ 20,000,000.

G. The board has the sole discretion to determine whether or not each particular applicant is eligible and meet the criteria for program participation, and in all such circumstances, the exercise of that discretion shall be deemed to be a final determination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1487 (June 2022).

### **§8907. Application Requirements for Investment**

A. Prior to a seed capital fund submitting a request to the Louisiana Economic Development Corporation (LEDC) for consideration for an investment, a prospective seed capital fund shall first submit an application for the applicant fund to be considered qualified or eligible to participate in this program. The application for the fund's qualification or eligibility to the LEDC shall consist of detailed information covering three main categories, including:

1. the experience and qualifications of the Fund's existing or proposed management team;
2. if applicable, the fund's fund raising abilities, activities and success; and
3. the business plan for the seed capital fund. The applicant can use its own format, as long as the basic information is provided. Moreover, the applicant should provide additional information which is viewed as relevant. The LEDC or its staff may request additional information beyond that which is specified below and what is provided by the applicant.

B. After its receipt and review by the LEDC staff, the completed application for an investment will then be submitted to the next scheduled LEDC board meeting for its consideration of final approval.

C. Experience and Qualifications. In or with its application, the applicant shall:

1. submit resumes, references, and private placement memoranda for all principal members of the management team that are identified. Louisiana Economic Development Corporation reserves the right to perform criminal

background checks on any or all of the members of the management team;

2. describe the responsibilities of each of the principal members of the management team that have been identified. If any are not full-time management team members, describe their other activities;

3. describe the responsibilities of any principal management position for which a person has not been identified;

4. specify any directors that have been identified, and submit their resumes;

5. specify any other key people that have been identified, including any advisors, consultants, attorneys and accountants, and submit resumes and/or descriptions of firms. Louisiana Economic Development Corporation reserves the right to perform criminal background checks on any or all of these key people.

D. Fund Raising. In or with its application, the applicant shall:

1. specify the amount of LEDC commitment sought;

2. provide evidence of the amount of private capital that has been raised, and specify the ratio of actual cash to commitments raised;

3. describe the basic legal structure of the seed capital fund;

4. if applicable, describe and discuss the applicant's fund raising strategy for the raising of any additional private capital;

5. if applicable, specify the principal investor sources that the applicant fund will be targeting;

6. if applicable, provide the applicant's basic proposal to its prospective private investors, and the expectations and objectives the applicant is specifying. This shall include, for example, representations regarding reasonably expected returns on private equity investment, indirect financial benefits, if any, and social purposes, if applicable;

7. list all specific investors and financing commitments already obtained, including documentation for each. This shall include evidence of the initial \$500,000 minimum capital required for the applicant fund's eligibility to participate in this program;

8. specify whether applicant anticipates receiving all of the LEDC equity investment at closing, or whether applicant plans a phase in. If a phase-in is planned, specify the proposed schedule. It is permissible to have different scenarios based on the actual amount of equity capital raised.

E. Business Plan. In its application, and with regard to the subjects mentioned below, the applicant shall:

1. targeted market:
  - a. describe and discuss the types of businesses that the seed capital fund will finance. Discuss the extent to which the seed capital fund intends to specialize in certain industries, or whether a more broad based approach is planned;
  - b. describe the size range of businesses that it is contemplated the seed capital fund will finance, with a general indication of where most of the focus is expected;
  - c. discuss the life cycle stage or stages of the companies which the seed capital fund will likely finance, with an indication of where most of the focus is contemplated;

d. discuss the geographic area in which the seed capital fund plans to focus. Specify the city or parish in which the seed capital fund's principal office is planned to be located, and discuss intentions, if any, to establish any additional offices;

e. provide any market analysis that the applicant deems relevant;

2. financing. Describe and discuss the financing instruments intended to be used by the seed capital fund. Discuss the anticipated mix of the various types of financing instruments. Discuss the anticipated size range of investments to be made, and information regarding pricing, term, and other conditions. Discuss risk/return expectations on projects. Discuss methods of exit from investments;

3. marketing strategy. Describe the seed capital fund's plans and approach to marketing its services, including the identification of potential applicants for financing assistance;

4. screening process and evaluation criteria. Discuss the anticipated number of business firms that will be reviewed for possible investment, in comparison with the number that will actually be invested in. Discuss the approach to screening business firms, and the evaluation criteria for deciding whether, and under what terms and conditions, to provide investment;

5. fee income. Discuss the potential for fee income, and any plans that the seed capital fund might have for generating fee income;

6. management assistance. Discuss the plans of the seed capital fund to provide management and/or technical assistance to companies for which the seed capital fund provides investment. Discuss the seed capital fund's plans for monitoring its investments, and enforcing provisions of investment agreements. Discuss how the seed capital fund plans to handle problem investments. Discuss the seed capital fund's plans to provide management assistance to companies that the seed capital fund is not investing in;

7. complementary relationships. Discuss the nature of complementary relationships that are anticipated with banks, commercial lenders, investment bankers, venture capitalist and other institutions. This discussion can be based on general types of institutions and/or can identify specific institutions where complementary relationships have already been discussed;

8. management structure. Describe the proposed or existing management structure for the seed capital fund, and anticipated compensation for principal members of the management team;

9. idle funds. Describe plans for the management of the idle funds of the seed capital fund;

10. tax and accounting issues. Discuss relevant tax and accounting issues for the seed capital fund;

11. financial projections:

a. provide a detailed operating budget for the first or for the next three years of the seed capital fund's operation. The first year shall be month by month. The second and third years may be presented on an annual basis;

b. provide performance projections, year by year, for a five year period. These projections should show cash flow, income and expense (including taxes), and balance sheet data. For these performance projections, operating expenses can be consolidated into one line item;

c. specify the assumptions used for the performance projections. It is permissible to submit several sets of performance projections based on differing assumptions. However, if applicant submits several sets of projections based on differing assumptions, specify which set of assumptions are applicant's primary assumptions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1488 (June 2022).

### **§8909. Application Process**

A. All applications under this program must be submitted to the Louisiana Economic Development Corporation, as directed by staff.

1. Application Requirements for Qualification or Eligibility to Participate in this Program and Investment Application.

a. The application for qualification or eligibility of the seed capital fund to participate in this program and its application for the investment project may be, but are not required to be, submitted simultaneously for consideration.

b. Once a seed capital fund is deemed qualified or eligible to participate in this program, the fund is not required to resubmit a qualification or an eligibility application for subsequent investment requests.

2. All applications received by LEDC will be reviewed by the LEDC staff; and the staff may request additional information beyond that which has been provided. After their receipt and review by the LEDC staff, the completed applications shall then be submitted to the next scheduled LEDC board meeting for its consideration of final approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1489 (June 2022).

### **§8911. Investments**

A. A qualified or eligible fund may receive an investment equal to \$1 of LEDC funds for each \$1 of funds privately raised by the applicant fund. The maximum total dollar amount of an LEDC investment in an eligible fund shall not exceed \$5,000,000. Subject to availability of SSBCI funding and associated allocation to this program.

B. The method of LEDC's investment into the qualified or eligible fund or investment will be equal to the method of investment of the other investors into that fund, i.e., committed capital for committed capital, cash investment for cash investment, or cash and commitment for cash and commitment.

C. A qualified or eligible fund may charge for services as allowed by the U.S. Treasury.

D. Investment funds may be used for out of state investments, after approval by LED.

E. Investment funds must make investment in accordance to U.S. Treasury guidelines.

F. Prior to the disbursement of funds, the secretary-treasurer of LEDC and any one of the following: either the chairman of the board, the president, or the president's designee, shall execute all necessary legal instruments after



certification that all appropriate legal requirements have been met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1489 (June 2022).

### **§8913. Reporting**

A. Upon closing of each investment, each venture capital fund that is the recipient of LEDC funds shall provide to LEDC the following information:

1. name of company, census tract, NAICS code, amount of investment, total amount of round of funding, and date of investment;
2. the number of jobs with corresponding salaries, new and retained;
3. narrative of business, use of funds, board presentation;
4. prior and post investment of private capital; and
5. assurances and certifications in accordance to U.S. Treasury guidelines.

B. Each year, on the anniversary date of the initial disbursement of funds, or on such date as may be authorized by LEDC, each venture capital fund that is the recipient of LEDC funds shall provide to LEDC the following information:

1. a list of all investors in the fund, including the amounts of each investment and the nature of each investment;
2. a statement of the financial condition of the fund including, but not limited to, a balance sheet, a profit and loss statement, and a statement showing changes in the fund's financial condition;
3. a current reconciliation of the fund's net worth; and
4. an annual audited financial statement prepared by a certified public accountant (prepared within 120 days of the end of the fund's fiscal year).

C. Investment funds must submit assurances and certifications in accordance to U.S. Treasury guidelines on each investment prior to closing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1490 (June 2022).

### **§8915. Conflict of Interest**

A. No member of the corporation, employee thereof, or employee of the Department of Economic Development, or members of their immediate families shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with the corporation for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such corporation. If any contract or agreement shall be made in violation of the provisions of this Section, the same shall be null and void, and no action shall be maintained thereon against the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1490 (June 2022).

Anne G. Villa  
Undersecretary

2206#033

## **RULE**

### **Department of Economic Development Office of Business Development and Louisiana Economic Development Corporation**

SSBCI Venture Capital ARPA 2021  
(LAC 19:VII.Chapter 29)

The Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., R.S. 36:104, 36:108 and 51:2312, hereby amends Rules for the Venture Capital Program for the State Small Business Credit Initiative (SSBCI) authorized by the American Rescue Plan Act (ARPA) of 2021, otherwise known as "SSBCI Venture Capital ARPA 2021". This Rule is hereby adopted on the day of promulgation.

#### **Title 19**

### **CORPORATION AND BUSINESS**

#### **Part VII. Louisiana Economic Development Corporation**

#### **Subpart 2. Louisiana Venture Capital Program**

#### **Chapter 29. SSBCI Venture Capital ARPA 2021**

#### **§2901. Purpose**

A. The purpose of this program is to utilize federal SSBCI funds to strengthen state programs that support private financing to small businesses as a response to the economic effects of the COVID-19 pandemic, in accordance with prevailing federal guidelines issued by the U.S. Treasury.

B. The Louisiana Economic Development Corporation (LEDC) will utilize SSBCI funds from ARPA 2021 to make investments to create and grow start-up and early-stage businesses or for expansion of small businesses statewide, and to reach, identify and promote small business growth in low and moderate income communities, in minority communities, in other underserved communities, and to women- and minority-owned businesses.

C. This LEDC program and the SSBCI funding will be marketed through outreach activities to inform venture capital funds, local foundations, small businesses, trade associations, incubator associations, and economic development organizations of the program, and to generate increased small business activity, awareness of and access to additional sources of capital to start and expand existing business opportunities, as well as participation in the program. The marketing will also be used to find investment

opportunities located in the underserved markets that will be targeted with SSBCI funds.

D. The LEDC will also monitor these plans, including the progress of individual businesses receiving investments and the performance of participating venture capital organizations, to ensure successful outcomes in the form of program utilization and eventual securing of funds for these groups.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1490 (June 2022).

### §2903. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in prevailing federal guidelines issued by the U.S. Treasury, 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.

*Board*—Board of Directors of Louisiana Economic Development Corporation.

*Business Partner of an SSBCI Insider*—a person who owns 10 percent or more of any class of equity interest, on a fully diluted basis, in any private entity in which an SSBCI insider also owns 10 percent or more of any class of equity interest on a fully diluted basis.

*Community Development Financial Institution (CDFI)*—has the meaning given that term under Section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994.

*Community Development Financial Institution (CDFI) Investment Area*—areas defined by CDFI which are generally low-income, high poverty geographies that receive neither sufficient access to capital nor support for the needs of small businesses, including minority-owned businesses.

*Corporation*—Louisiana Economic Development Corporation.

*Direct Investment*—an investment in which financial investors take part with each other and act jointly by uniting or combining together to invest directly into individual companies or businesses

*Family Member of an SSBCI Insider*—such person's spouse, domestic partner, parents, grandparents, children, grandchildren, brothers, sisters, stepbrothers, and stepsisters; and any other relatives who live in the same household as the SSBCI insider.

*Independent Non-Profit Entity*—any non-profit entity that is not state-sponsored.

*LED*—Louisiana Department of Economic Development.

*LEDC*—Louisiana Economic Development Corporation, as known as Corporation.

*Owned and Controlled*—if privately owned, 51 percent is owned by such individuals; if publicly owned, 51 percent of the stock is owned by such individuals; and in the case of a mutual institution, a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of such individuals.

*Personal Financial Interest*—any financial interest derived from ownership or right to ownership of, or lending to or other investment in, a private, for-profit entity that may receive an SSBCI investment (including any financial interest derived from ownership or right to ownership of, or investment in, a venture capital fund).

*Risk Investment*—an investment that may provide equity through the purchase of common stock, preferred stocks, partnership rights or any other equity investment. Additionally it may mean debt positions, which may act as equity or have equity features such as subordinated debt, debentures or other such instruments used in conjunction with features intended to yield significant capital appreciation.

*Socially and Economically Disadvantaged Individuals (SEDI) Owned Business*—for the purposes of this program:

a. business enterprises that certify that they are owned and controlled by individuals who have had their access to credit on reasonable terms diminished as compared to others in comparable economic circumstances, due to their:

i. membership of a group that has been subjected to racial or ethnic prejudice or cultural bias within American society;

ii. gender;

iii. veteran status;

iv. limited English proficiency;

v. physical handicap;

vi. long-term residence in an environment isolated from the mainstream of American society;

vii. membership of a federally or state-recognized Indian Tribe;

viii. long-term residence in a rural community;

ix. residence in a U.S. territory;

x. residence in a community undergoing economic transitions (including communities impacted by the shift towards a net-zero economy or deindustrialization); or

xi. membership of another underserved community as defined in U.S. Executive Order 13985;

b. business enterprises that certify that they are owned and controlled by individuals whose residences are in CDFI Investment Areas, as defined in prevailing federal guidelines issued by the U.S. Treasury;

c. business enterprises that certify that they will operate a location in a CDFI Investment Area, as defined in prevailing federal guidelines issued by the U.S. Treasury; or

d. business enterprises that are located in CDFI Investment Areas, as defined in prevailing federal guidelines issued by the U.S. Treasury.

*SSBCI Insider*—a person who, in the 12-month period preceding the date on which SSBCI support for a specific investment in a venture capital fund or company is closed or completed:

a. was:

i. a manager or staff member, whether by employment or contract, in the state's SSBCI venture capital program;

ii. a government official with direct oversight or jurisdiction over an SSBCI venture capital program, or such an official's immediate supervisor;

iii. a member of the board of directors or similar body for a state-sponsored non-profit entity who, through such membership, has authority to vote on decisions to invest SSBCI funds or has authority over the employment or compensation of staff managing processes related to the investment of SSBCI funds;

iv. a member of the board of directors or similar body for an independent non-profit or for-profit entity that operates an SSBCI venture capital program; or

v. an employee, volunteer, or contractor on an investment committee or similar body that recommends or approves SSBCI investments under the SSBCI venture capital program; or

b. exercised a controlling influence on state decisions regarding:

i. the allocation of SSBCI funds among approved state venture capital programs;

ii. eligibility criteria for the state's SSBCI venture capital programs; or

iii. the processes for approving investments of SSBCI funds under the state's SSBCI venture capital program.

*State-Sponsored Non-Profit Entity*—a non-profit entity created by state legislation to pursue policies of the state government and over which state officials exercise a controlling influence through budgetary decisions or other legislative action or direction.

*Valuation of Investment Fund*—the value of any monies invest or otherwise used as risk capital in businesses plus the unexpended monies available for investment or used as risk capital.

*Venture Capital Fund*—a fund that makes and manages a portfolio of investments in individual companies or businesses. also referred to herein as the applicant organization;

*Very Small Business (VSB)*—a business which employees 10 or less employees, including independent contractors and sole proprietors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1491 (June 2022).

### **§2905. Eligibility for Venture Capital Fund to Participate in This Program**

A. LEDC will undertake a formal evaluation process and consider various factors when determining which applicants will be selected to participate in this program. Among the factors which may be taken into account in the evaluation process are the following;

B. Eligible applicants are venture capital funds:

1. with a minimum of \$500,000 in investments or has a minimum of \$2 1/2 million under management;

2. already has on hand cash sums sufficient to cover the general and administrative costs for the first and early years of its operations for participation in the SSBCI Venture Capital Program;

3. has proven, experienced management recognized in the venture capital community. The management should have significant management experience in risk investments of the types and volumes contemplated by the applicant venture capital funds;

4. are encouraged to have a production office based in Louisiana with permanent employees employed by the fund capable of evaluating potential investment opportunities.

C. In addition to the eligibility provisions provided in the Section mentioned in the above Subsection A, LEDC investments made in venture capital funds and programs in connection with this program shall meet the following criteria:

1. the venture capital fund(s) shall target an average business-size of 500 employees or less at the time the individual business investment is made;

2. it is strongly encouraged for each venture capital fund(s) to make every effort to target and invest in SEDI-owned businesses and VSB;

3. such individual business investments shall not be extended to businesses with more than 750 employees;

4. any investment targeted in this program shall not exceed the amount of \$ 5,000,000; and

5. any investment transaction or investment round extended through this program shall not exceed the amount of \$20,000,000.

D. The board has the sole discretion to determine whether or not each particular applicant is eligible and meet the criteria for program participation, and in all such circumstances, the exercise of that discretion shall be deemed to be a final determination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1492 (June 2022).

### **§2907. Valuation of Investment Fund**

A. The amount of privately raised funds under management shall mean the value of any monies invested or otherwise used as risk capital in businesses plus the unexpended monies available for investment or used as risk capital. The value of an equity investment and/or risk capital investment shall be the amount of dollars actually invested. For the purpose of calculating private capital, only cash and commitments which are available for risk investments at the time of LEDC's investment, may be counted in the investment amount.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1492 (June 2022).

### **§2909. Application Requirements for Investment**

A. Prior to a venture capital fund submitting a request to the Louisiana Economic Development Corporation (LEDC) for consideration of an investment, a prospective fund shall first submit an application for the applicant fund to be considered qualified or eligible to participate in this program. The application for the fund's qualification or eligibility to the LEDC shall consist of detailed information covering three main categories, including:

1. the experience and qualifications of the fund's existing or proposed management team; and

2. the business plan for the venture capital fund. The applicant can use its own format, as long as the basic information is provided. Moreover, the applicant shall

provide additional information which is viewed as relevant. The LEDC or its staff may request additional information beyond that which is specified below and what is provided by the applicant.

B. After its receipt and review by the LEDC staff, the completed application for qualification will then be submitted to the next scheduled LEDC board meeting for its consideration of final approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1492 (June 2022).

### §2911. Application Procedure

A. The application shall contain, but not be limited to, an offering memorandum which includes, but is not limited to, the following:

1. name of fund, address (mailing and physical);
2. specify the amount of LEDC investment/commitment requested;
3. specify the minimum and maximum amounts of non-LEDC capital to be raised if LEDC makes the requested investment/commitment;
4. specify applicant's projected timetable, with milestones for completion of the fund raising;
5. specify whether applicant anticipates receiving all of the committed capital investment at closing, or whether applicant plans a phase in. If a phase-in is planned, specify the proposed schedule. It is permissible to have different scenarios based on the actual amount of capital raised;
6. *market*—identify the proposed market of the applicant:

a. describe and discuss the types of businesses that the fund will finance. Discuss the extent to which the fund intends to specialize in certain industries, or if special circumstances will be addressed;

b. describe the size range of businesses that it is contemplated the fund will finance, with a general indication of where most of the focus is expected;

c. discuss the life cycle stage or stages of the companies which the fund will likely finance, with an indication of where most of the focus is contemplated, e.g., start-up, expansion;

d. discuss the geographic area in which the fund plans to focus. Specify the city or parish in which the fund's principal office will be located, and discuss intentions, if any, to establish any additional offices;

e. describe the types of financing instruments intended to be utilized for investments, e.g., debentures, notes, preferred stock, royalties, etc.;

7. *management assistance*—discuss the plans of the fund to provide management and/or technical assistance to companies for which the fund provides financing. Discuss the fund's plans for monitoring its financing, and enforcing provisions of investment agreements. Discuss how the fund plans to handle problem loans and investments;

8. *idle funds*—describe plans for the management of the idle funds in the fund;

9. *realization of returns by investors*—discuss long-term plans and strategies for providing a tangible return to the investors in the fund;

10. *tax and accounting issues*—discuss relevant tax and accounting issues for the fund;

11. *management structure*—describe the proposed management structure for the fund;

12. describe the proposed responsibilities of each of the members of the management team. If any will not be full time, describe their other activities;

13. describe the responsibilities of any management position for which a person has not been identified;

14. specify any other key people including any advisors, consultants, attorneys and accountants, and submit resumes and/or descriptions of firms. LEDC reserves the right to perform general and criminal background checks on these key people.

B. All applications under this program must be submitted to the Louisiana Economic Development Corporation, as directed by staff.

C. All applications received by LEDC will be reviewed by the LEDC staff; and the staff may request additional information beyond that which has been provided. After their receipt and review by the LEDC staff, the completed applications shall then be submitted to the next scheduled LEDC board meeting for its consideration of final approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1493 (June 2022).

### §2913. Amount of Investment

A. A qualified or eligible fund led by a non-profit entity may receive an investment equal to \$1 of LEDC funds for each \$2 of funds privately raised by the applicant fund. The maximum total dollar amount of an LEDC investment in an eligible fund shall not exceed \$10,000,000.

B. Any other qualified or eligible fund may receive an investment equal to \$1 of LEDC funds for each \$4 of funds privately raised by the applicant fund. The maximum total dollar amount of an LEDC investment in an eligible fund shall not exceed \$10,000,000.

C. Subject to availability of SSBCI funding and associated allocation to this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1493 (June 2022).

### §2915. Investment Criteria

A. The criteria for investment may include but not be limited to the following.

1. The applicant will be required to make investments that will at least create jobs in, create wealth in, and shall have a positive economic impact to the economy of Louisiana.

2. The investment made by LEDC shall be made on no less than the same terms and conditions, and with the same expected return on investment, as other private investors.

B. A qualified or eligible fund may charge for services as allowed by the U.S. Treasury.

C. Investment funds may be used for out of state investments, after approval by LED.

D. Investment funds must make investments in accordance to U.S. Treasury guidelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1493 (June 2022).

### **§2917. Reporting**

A. Upon closing of each investment, each venture capital fund that is the recipient of LEDC funds shall provide to LEDC the following information:

1. name of company, census tract, NAICS code, amount of investment, total amount of round of funding, and date of investment
2. the number of jobs with corresponding salaries, new and retained;
3. narrative of business, use of funds, board presentation;
4. prior and post investment of private capital; and
5. assurances and certifications in accordance to U.S. Treasury guidelines.

B. Each year, on the anniversary date of the initial disbursement of funds, or on such date as may be authorized by LEDC, each venture capital fund that is the recipient of LEDC funds shall provide to LEDC the following information:

1. a list of all investors in the fund, including the amounts of each investment and the nature of each investment;
2. a statement of the financial condition of the fund including, but not limited to, a balance sheet, a profit and loss statement, and a statement showing changes in the fund's financial condition;
3. a current reconciliation of the fund's net worth; and
4. an annual audited financial statement prepared by a certified public accountant (prepared within 120 days of the end of the fund's fiscal year).

C. Investment funds must submit assurances and certifications in accordance to U.S. Treasury guidelines on each investment prior to closing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1494 (June 2022).

### **§2919. Conflict of Interest**

A. No member of the corporation, employee thereof, or employee of the Department of Economic Development, or members of their immediate families shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with the corporation for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such corporation. If any contract or agreement shall be made in violation of the provisions of this Section, the same shall be null and void, and no action shall be maintained thereon against the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1494 (June 2022).

Anne G. Villa  
Undersecretary

2206#034

## **RULE**

### **Department of Economic Development Office of Entertainment Industry Development**

#### **Motion Picture Production Tax Credit Program (LAC 61:I.Chapter 61)**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Economic Development has amended Rules for the Motion Picture Production Tax Credit Program (R.S. 47: 6007, et seq.) to better align the rules with current statutory provisions and administrative practices, as required by portions of Act 309 of the 2017 Regular Session of the Louisiana Legislature.

### **Title 61**

#### **REVENUE AND TAXATION**

##### **Part I. Taxes Collected and Administered by the Secretary of Revenue Chapter 61. Motion Picture Production Tax Credit Program**

#### **§6101. Purpose**

A. ...

B. This Chapter shall be administered to achieve the following:

1. to encourage development of a strong capital base within the state for the motion picture and related industries;
2. to achieve a self-supporting, independent, indigenous industry; and
3. to encourage development of state of the art motion picture production and post-production facilities:

a. in the short-term, to attract private investors in state-certified productions;

b. in the long-term, to encourage the development of a skilled state workforce trained in the film and video industry.

C. - C.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1125.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development and the Office of the Governor, Division of Administration, LR 36:52 (January 2010), repromulgated by the Department of Economic Development, Office of Business Development, LR 45:868 (July 2019), LR 48:1494 (June 2022).

#### **§6103. General Description**

A. For application received on or after July 1, 2017, state-certified productions may be eligible for up to a 40

percent tax credit on total qualified in-state expenditures, including resident and non-labor as follows:

1. Base Investment Credit

a. Base Rate. State-certified productions with a total base investment greater than \$300,000, or for Louisiana screenplay state-certified productions with a total base investment equal to or greater than \$50,000, a tax credit of 25 percent of the base investment may be allowed;

b. Louisiana Screenplay. State-certified productions with expenditures equal to or greater than \$50,000, but not greater than \$5,000,000, based upon a screenplay created by a Louisiana resident, may be eligible for an increased 10 percent credit of the base investment, for a total of 35 percent.

c. Out of Zone Filming. State-certified productions that have their production office and at least 60 percent of principal photography based and occurring outside of the New Orleans Metropolitan Statistical Area ( NOLA-MSA) may be eligible for an increased 5 percent credit of base investment, for a total of 30 percent or 40 percent total for a Louisiana screenplay shot out of the zone.

i. In NOLA-MSA zone: Orleans, Jefferson, Plaquemines, St. Bernard, St. Charles, St. James and St. Tammany Parishes, Out-of-zone: All other parishes including St. John the Baptist Parish.

2. Additional Payroll and Visual Effects (VFX) Credits

a. Louisiana Resident Payroll. Compensation for services paid directly to a Louisiana resident may be eligible for an additional 15 percent credit for qualified Louisiana resident payroll only.

i. Payments made to a loan-out company are not eligible for this additional credit.

b. VFX. If at least 50 percent of the VFX budget is expended for services performed in Louisiana by an approved Qualified Entertainment Company (QEC), or a minimum of \$1,000,000 in qualified expenditures are made in Louisiana, an additional 5 percent credit may be allowed on the qualified VFX spend only.

3. Tax credits shall be earned at the time expenditures are certified by LED. The maximum credit rate, including base investment increases and additional payroll credits is 40 percent of the base investment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1125.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development and the Office of the Governor, Division of Administration, LR 36:52 (January 2010), repromulgated by the Department of Economic Development, Office of Business Development, LR 45:868 (July 2019), LR 48:1494 (June 2022).

**§6105. Definitions**

A. - B. ...

\*\*\*

*Base Investment*—cash or cash equivalent investment made and used for production expenditures in the state for a state-certified production.

*Begin Construction*—Repealed.

\*\*\*

*Commissioner*—Repealed.

\*\*\*

*Division*—Repealed.

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*Expenditure*—actual payment of cash or cash equivalent, paid by or on behalf of a state certified production exchanged for goods or services, as evidenced by an invoice, receipt or other such document.

\*\*\*

*Investor*—any individual or entity that makes an investment in a state-certified production including but not limited to any individual or entity that is identified as a source of funds for a state certified production on its expenditure verification report, individual or entity identified as an irrevocable designee for receipt of tax credits.

*LDR*—Louisiana Department of Revenue

*Louisiana Publisher*—Repealed.

*Louisiana Resident*—a natural person who is required to file a Louisiana resident individual income tax return.

*Louisiana Screenplay*—a screenplay created by a Louisiana resident, as evidenced by documents such as certificate of authorship, a WGA registration certificate, the records of the United States Copyright Office, or other documentation approved by the office.

*Non-Applicable Production Expenditures*—the following expenses are not eligible to earn tax credits:

a. - h. ...

i. expenditure verification report deposit and fees;

j. For applications received on or after July 1, 2016, bond fees, insurance premiums, finance fees and loan interest fees shall not qualify for tax credits, except for fees paid to certain Louisiana companies, in which case the expenditures to be allocated only on a pro rata basis, allocating the fees based on the relative percentage of production activity occurring in Louisiana;

k. For applications received on or after July 1, 2017, catering and craft services shall not qualify for tax credits unless such expenditures are made to a source within the state.

\*\*\*

*Production Expenditures*—preproduction, production and postproduction expenditures directly incurred in this state that are directly used in a state-certified production, whether the production company directly contracts or subcontracts such work, including without limitation the following:

a. - l. ...

m. payments to a loan-out or personal services corporation for the services of an out-of-state hire are allowed as long as the services are performed in Louisiana on a state certified production and all withholding requirements are met.

\*\*\*

*Qualified Louisiana Production Company*—Repealed.

\*\*\*

*Source within the State*—a physical facility in Louisiana, operating with posted business hours and employing at least one full-time equivalent employee. Procurement companies that meet the requirements of La. R.S. 47:6007(B)(30) shall constitute a “source within the state”.

*State-Certified Infrastructure Project*—Repealed.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development and the Office of the Governor, Division of Administration, LR 36:53 (January 2010), amended by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 43:300 (February 2017), LR 48:1495 (June 2022).

### **§6107. Certification Procedures**

A. - A.1.b.i.(m).(iii). ...

ii. - ii.(j). Repealed.

1.c. - 2.f. ...

3. An application is not deemed to be complete until all information requested and required fees are received by LED. Required fees include both an application fee and an expenditure verification deposit fee.

B. Qualification. The office and the secretary, and in the case of infrastructure projects, the division, shall determine whether a production qualifies for certification, by meeting all requirements of R.S. 47:6007 and these regulations, and taking the following factors into consideration:

1. the impact of the production on the immediate and long-term objectives of R.S. 47:6007;

2. the impact of the production on the employment of Louisiana residents;

3. the impact of the production on the overall economy of the state.

C. - C.1.b.ii. ...

iii. - vii. Repealed.

C.2. - D.1.d. ...

2. When requesting final certification of credits, the motion picture production company applicant shall submit to the office the following:

a. a cost report, certified by a state licensed, independent certified public accountant and complying with the minimum standards as required by R.S. 47:6007(D)(2)(d). The cost report may be subject to additional audit by the department—or the Department of Revenue, at the applicant’s expense.

i. - ii. ...

iii. Reimbursement of Audit Costs. The department may undertake additional audit at the applicant’s expense, to be performed by a state certified public accountant also certified in financial forensics or also certified as a fraud examiner. Audit fees will be assessed at the department’s contracted fee;

b. additional information as may be requested.

3. - 3.a.i. ...

b. Project-Based Production Tax Credit—for Applications Submitted on or after July 1, 2017

i. After review and determination of qualification, the office and the secretary shall issue a final certification letter, in accordance with the provisional allocations and amounts set forth in the initial certification letter, or a written denial.

ii. In the event that less than the reserved amount of tax credits has been verified, any unused credits will be released and may be available for issuance by the office.

iii. In the event that more than the reserved amount of tax credits has been verified, the office shall

preliminarily issue tax credits in an amount not to exceed the total indicated in the initial certification letter, but may at its discretion, issue any excess credits in the same final certification letter or subsequently issue a supplemental tax credit for any excess expenditures, subject to availability of credits in any given fiscal year.

D.4 - E.2.c. ...

d. the written determination shall be the final agency decision of the department;

e. the applicant may appeal an adverse decision to the Nineteenth Judicial District Court, which shall be limited to a review of the administrative record.

3. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development and the Office of the Governor, Division of Administration, LR 36:55 (January 2010), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation, LR 37:514 (February 2011), amended by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 42:39 (January 2016), LR 48:1496 (June 2022).

### **§6109. Additional Program Provisions**

A. The following additional provisions shall apply to applications received on or after July 1, 2017:

1. LED total program issuance cap. The aggregate dollar amount of tax credits issued for all state-certified productions shall not exceed \$150,000,000 per fiscal year;

2. LDR taxpayer claims cap. Tax credit claims and transfers to the state (“buy-back”) shall be limited to an aggregate total of \$180,000,000 per fiscal year;

3. LED individual project issuance cap. The maximum amount of credits certified by LED for a single state-certified production shall be \$20,000,000, which may be structured over two or more years in the initial certification letter;

a. Except for state-certified productions for scripted episodic content that may be granted up to \$25,000,000 in credits per season.

4. LED individual salary cap. The maximum amount of qualifying payroll expenditures per individual shall be \$3,000,000. Payroll payments in excess of \$3,000,000 made directly or indirectly to an individual or loan-out shall be excluded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1125.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development and the Office of the Governor, Division of Administration, LR 36:56 (January 2010), repromulgated by the Department of Economic Development, Office of Business Development, LR 45:874 (July 2019), LR 48:1496 (June 2022).

### **§6111. Additional Program Provisions—Infrastructure**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1125.1.

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

of Entertainment Industry Development and the Office of the Governor, Division of Administration, LR 36:56 (January 2010), repromulgated by the Department of Economic Development, Office of Business Development, LR 45:874 (July 2019), repealed LR 48:1496 (June 2022).

**§6115. Louisiana Screenplay Credit**

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 43:301 (February 2017), repromulgated by the Department of Economic Development, Office of Business Development, LR 45:877 (July 2019), repealed LR 48:1497 (June 2022).

**§6117. Louisiana Music**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 42:1656 (October 2016), repromulgated by the Department of Economic Development, Office of Business Development, LR 45:877 (July 2019), repealed LR 48:1497 (June 2022).

**§6119. Louisiana Promotional Graphic**

A. For applications for state-certified productions initially certified received on or after July 1, 2017 at time of request for final certification, state certified productions shall be required to acknowledge the financial assistance of the state of Louisiana—either through the inclusion of a Louisiana promotional graphic meeting requirements set forth below, or that an alternative marketing opportunity has been approved in writing by LED.

1. - 2.ix. ...

3. A donation to a Louisiana nonprofit film grant program, as approved by LED.

B. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 42:1656 (October 2016), repromulgated by the Department of Economic Development, Office of Business Development, LR 45:878 (July 2019), LR 48:1497 (June 2022).

**§6121. Louisiana Filmmaker Credit**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 43:301 (February 2017), repromulgated by the Department of Economic Development, Office of Business Development, LR 45:878 (July 2019), repealed LR 48:1497 (June 2022).

Anne G. Villa  
Undersecretary

2206#032

**RULE**

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

Criteria (LAC 33:IX.1113)(WQ110)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Water Quality regulations, LAC 33:IX.1113.C.Table 1A (WQ110).

Numeric freshwater ammonia criteria were adopted into the Water Quality Standards, LAC 33:IX. Chapter 11, on November 20, 2020. After promulgation, the Louisiana Department of Environmental Quality (the Department) discovered additional information pertaining to the cost of the implementation of the criteria, which will potentially cost affected facilities, in the aggregate, between \$157,000,000 and \$1,000,000,000, to implement. This proposed rule rescinds the freshwater numeric ammonia criteria so that the department can reconsider the costs to directly affected persons, in the aggregate, to implement the freshwater ammonia criteria, together with the environmental and/or human health risks and benefits. All other portions of the previous Water Quality Standards Triennial Revisions remain unaffected by this proposed Rule.

Federal regulations (40 CFR§ 131.20) require the state to review and, as appropriate, modify and/or adopt water quality standards, at least once every three years. The state must either adopt or revise criteria for parameters for which the Environmental Protection Agency (EPA) has published new or updated Clean Water Act (CWA) section 304(a) criteria recommendations, or provide an explanation of the reasons for not adopting new or revised criteria when it submits the results of its triennial review to the EPA Regional Administrator. Additionally, federal regulations (40 CFR §130.3) require the state to review and revise water quality standards and, as appropriate, update their Water Quality Management plans to reflect such revisions. One required component of a Water Quality Management plan is a process for developing effluent limitations and schedules of compliance based on the adopted Water Quality Standards, including numeric criteria (40 CFR §130.5 and 130.6(c)(1); LAC 33:IX.1109.I).

Freshwater numeric ammonia criteria were adopted into LAC 33:IX.1113.C.Table 1A as part of the promulgation of the Water Quality Standards Triennial Revision on November 20, 2020. Public notice of the Triennial Revision was published in the Louisiana Register on December 20, 2019, which included a fiscal and economic impact statement, approved the legislative fiscal office, indicating that there were no estimated costs to directly affected persons or nongovernmental groups, as required by R.S. 49:953(A). The public notice also included certification that



the Triennial Revision would cost the state and affected persons less than one million dollars, in the aggregate, to implement, as required by R.S. 49:953(G) and R.S. 30:2019(D). However, upon review of additional information, the Department has discovered that implementation of the numeric ammonia criteria into Louisiana Pollutant Discharge Elimination System (LPDES) permits will cost affected persons well in excess of \$1,000,000 in the aggregate, to implement. Additionally, prior to implementing a numeric ammonia criteria, the Department must update the accompanying Water Quality Management Plan (Volume 3, Implementation of Louisiana's Water Quality Standards, and Version 8) to incorporate a process for developing ammonia effluent limitations and schedules of compliance, as required.

After adoption of the freshwater numeric ammonia criteria, draft LPDES effluent limit calculations resulted in draft permit limits for facilities in many areas of the state that would require advanced treatment to remove ammonia which would require costly modifications or retrofits of both publicly and privately owned treatment works and industrial facilities. Based on the Department's review, the potential total cost of ammonia-nitrogen removal to affected persons has been estimated between 157,000,000 and 1,000,000,000 (statewide), dependent upon the draft permit limits and the existing treatment technology. Although data is not available to estimate the total cost to industrial facilities statewide, the Department anticipates that certain industrial facilities will also be affected. The Department has received information from one chicken processing plant that the estimated cost to install treatment to achieve draft permit limits of 0.67 mg/L (monthly average) and 1.58 mg/L (daily maximum) is estimated between \$8,500,000 and \$11,000,000, with an additional annual operating cost of \$500,000 to \$1,000,000. Other similarly situated facilities would also have estimated costs exceeding one million dollars necessary to achieve limitations. The implementation of such limitations may require affected facilities to seek additional funding in the

form of federal or state grants, loans, and/or increases in user fees.

Without the freshwater numeric ammonia criteria, the Water Quality Standards Triennial Revision has no estimated costs to directly affected persons or nongovernmental groups, as stated in the fiscal and economic impact statement. Further, without the freshwater numeric ammonia criteria, the Water Quality Standards Triennial Revision costs the state and affected persons less than one million dollars, in the aggregate, to implement, as required by R.S. 49:953(G) and R.S. 30:2019 (D).

This rulemaking rescinds the freshwater numeric ammonia criteria so that the Department can reconsider the environmental and/or human health risks addressed by the freshwater ammonia criteria, the environmental and/or human health benefits produced by the freshwater numeric ammonia criteria, and the costs to the state and affected persons, in the aggregate, of implementing the freshwater ammonia criteria. The basis and rationale for this proposed Rule are to rescind the freshwater numeric ammonia criteria so that the Department can reconsider the costs to directly affected persons, in the aggregate, to implement the freshwater ammonia criteria, together with the environmental and/or human health risks and benefits. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This Rule is hereby adopted on the day of promulgation.

**Title 33**  
**ENVIRONMENTAL QUALITY**  
**Part IX. Water Quality**  
**Subpart 1. Water Pollution Control**  
**Chapter 11. Surface Water Quality Standards**  
**§1113. Criteria**

A. - C.6.f. ...

\* \* \*

Table 1A Numeric Criteria for Metals and Inorganics [In micrograms per liter (µg/L) or parts per billion (ppb)]				
Toxic Substance Chemical Abstracts Service (CAS) Registry Number	Aquatic Life Protection			Human Health Protection
	Freshwater	Marine Water	Brackish Water <sup>d</sup>	Drinking Water Supply <sup>e</sup>
Ammonia (in mg TAN/L) <sup>g</sup> 7664-41- 7.Repealed.				
* * *				

\* \* \*

<sup>g</sup> Reserved.

\* \* \*

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:745 (October 1984), amended LR 15:738 (September 1989), LR 17:264 (March 1991), LR 17:967 (October 1991), repromulgated LR 17:1083 (November 1991), amended LR 20:883 (August 1994), LR 24:688 (April 1998), amended by the Office of Environmental

Assessment, Environmental Planning Division, LR 25:2402 (December 1999), LR 26:2547 (November 2000), LR 27:289 (March 2001), LR 30:1474 (July 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:457 (March 2007), LR 33:829 (May 2007), LR 35:446 (March 2009), amended by the Office of the Secretary, Legal Division, LR 42:736 (May 2016), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1188 (September 2019), LR 46:1550 (November 2020), LR 48:1498 (June 2022).

Courtney J. Burdette  
General Counsel

2206#039

**RULE**

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

Fee Increase—Act No. 405 of the 2021  
Regular Legislative Session

(LAC 33:I.4707, LAC 33:III.223, LAC 33:VII:1501,  
1503, 1505, 10535, and LAC 33:XV.2599)(MM021)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Office of the Secretary, Air, Solid Waste, and Radiation Protection regulations, LAC 33:I.4707, LAC 33:III.223, LAC 33:VII:1501, 1503, 1505, 10535, and LAC 33:XV.2599 (MM021).

This Rule provides for the fee changes authorized in Act 405 of the 2021 Regular Legislative Session. Act 405 of the 2021 Regular Legislative Session authorizes certain fee increases, new fees, and other changes to the regulations pertaining to fees. The basis and rationale for this Rule are to implement the fee changes authorized in Act 405 of the 2021 Regular Legislative Session. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This Rule is hereby adopted on the day of promulgation.

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part I. Office of the Secretary**

**Subpart 3. Laboratory Accreditation**

**Chapter 47. Louisiana Environmental Laboratory  
Accreditation Program (LELAP) State  
Accreditation Requirements**

**§4707. Fees**

A. - C. ...

D. The following basic fee structure shall be used in determining all application and annual fees due to the department.

Accreditation application fee payable every scope amendment and every three-year renewal	\$726
Per major test category per matrix payable every year	\$363
Minor conventional category payable every year	\$290
Annual surveillance and evaluation applicable to minor conventional facilities and facilities applying for only one category of accreditation	\$363

Annual fee for dependent mobile laboratories, per mobile lab	\$363
Proficiency samples biannually	to be purchased by the laboratory
Bioassay/biomonitoring annually	to be purchased by the laboratory
Third-party audit	to be billed directly to the laboratory
The accreditation fees for in-state laboratories receiving national accreditation (NELAP)	shall be one and one-half times the regular fee as stated above
The accreditation fees for out-of-state laboratories receiving state accreditation	shall be one and one-half times the regular fee as stated above
The accreditation fees for out-of-state laboratories receiving national accreditation (NELAP)	shall be two times the regular fee as stated above
Interim accreditation application fees	shall be two times the regular fee as stated above

E. - H.3.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:920 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1436 (July 2000), LR 29:672 (May 2003), LR 29:2041 (October 2003), amended by the Office of the Secretary, Legal Division, LR 43:934 (May 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 48:1499 (June 2022).

**Part III. Air**

**Chapter 2. Rules and Regulations for the Fee System of the Air Quality Control Programs**

**§223. Fee Schedule Listing**

A. ...

\*\*\*

B. Table 2—Additional Fees

Table 2		
Additional Fees		
Fee Number	Fee Description	Amount
***		
2020	The Issuance of an Asbestos Disposal Verification Form (ADVF)—(at least 10 working days notification given)—Fee is nontransferable and nonrefundable.	\$73.00
2025	The Issuance of Asbestos Disposal Verification Forms (ADVF) for a single agency interest site for the period of one fiscal year—(at least 10 working days notification given)—Fee is nontransferable and nonrefundable.	\$5,000.00
2030	The Issuance of an Asbestos Disposal Verification Form (ADVF)—(less than 10 working days notification given)—Fee is nontransferable and nonrefundable.	\$109.00
***		
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)	\$16.61/ton

Table 2		
Additional Fees		
Fee Number	Fee Description	Amount
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)	\$16.61/ton
	An application approval fee for Stage II Vapor Recovery	\$146.00
2400	An annual facility inspection fee for Stage II Vapor Recovery	\$218.00
***		

NOTE: Explanatory Notes for Fee Schedule

Note 1. - Note 12. ...

Note 13. Fees will be determined by aggregating and rounding (e.g., parts of a ton less than 0.50 are invoiced as zero and parts of a ton equal to or greater than 0.50 are invoiced as one ton) actual annual emissions of each class of toxic air pollutants (as delineated in the tables in LAC 33:III.5112) for a facility and applying the appropriate fee schedule for that class. If a facility emits more than 4000 tons per year of any single toxic air pollutant, fees shall be assessed on only the first 4000 tons. In no case shall the fee for this category be less than \$250.

Note 14. Fees will not be assessed for emissions of a single criteria pollutant over and above 4,000 tons per year from a facility. Criteria fees will be assessed on actual annual emissions that occurred during the previous calendar year. The minimum fee for this category shall be \$250.

Note 14a. - Note 22. ...

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), LR 48:1499 (June 2022).

**Part VII. Solid Waste**

**Subpart 1. Solid Waste Regulations**

**Chapter 15. Solid Waste Fees**

**§1501. Standard Permit Application Review Fee**

A. Applicants for type I, I-A, II, and II-A standard permits shall pay a \$6,125 permit application review fee for

each facility. The fee shall accompany each permit application submitted.

B. Applicants for type III standard permits or beneficial-use plans shall pay a permit application review fee of \$1,325 for each facility. The fee shall accompany each permit application submitted.

C. Permit holders providing permit modifications for type I, I-A, II, and II-A facilities shall pay a \$2,650 permit-modification review fee. The fee shall accompany each modification submitted. Permit holders providing mandatory modifications in response to these regulations shall pay a \$825 permit-modification fee. The fee shall accompany each mandatory modification submitted. Permit modifications required by LAC 33:VII.805.A will not be subject to a permit modification fee.

D. Permit holders providing permit modifications for type III facilities or beneficial use facilities shall pay a \$813 modification review fee. The fee shall accompany each modification submitted.

E. - E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2154.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:688 (May 2003), LR 29:2051 (October 2003), repromulgated by the Office of the Secretary, Legal Affairs Division, LR 33:1108 (June 2007), amended LR 37:3258 (November 2011), amended by the Office of the Secretary, Legal Division, LR 43:946 (May 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 48: LR 48:1500 (June 2022).

**§1503. Closure Plan Review Fee**

A. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2154.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:688 (May 2003), LR 29:2051 (October 2003), repromulgated by the Office of the Secretary, Legal Affairs Division, LR 33:1108 (June 2007), amended by the Office of the Secretary, Legal Division, LR 43:947 (May 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 48: LR 48:1500 (June 2022).

**§1505. Annual Fee**

A. Transporters. All transporters of solid waste shall pay a fee of \$250 per year to the department. There will be only one fee regardless of the number of vehicles in the service of the transporter.

B. All holders of permits for solid waste processing and/or disposal facilities that have not completed closure, including post-closure activities, in accordance with an approved plan, shall be charged an annual monitoring and maintenance fee and an annual tonnage fee for each permit. Annual monitoring and maintenance fees shall be charged for each permitted waste type.

1. Annual monitoring and maintenance fees are as follows:

a. - c. ...

2. Annual tonnage fees will be based on the wet-weight tonnage, as reported in the previous year's disposer annual report, and are calculated as follows:

a. - f. ...

g. The maximum annual tonnage fee per facility for type I facilities (including facilities that handle both industrial and non-industrial solid wastes) is \$120,000. The maximum annual tonnage fee for type II facilities is \$30,000. Surface impoundments, as noted above, are assessed only the base fee.

C. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2154, and R.S. 49:316.1(A)(2)(a) and (c).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:18 (January 1996), LR 25:427 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:689 (May 2003), LR 29:2051 (October 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 32:2241 (December 2006), repromulgated LR 33:1108 (June 2007), amended LR 35:2180 (October 2009), amended by the Office of the Secretary, Legal Division, LR 43:947 (May 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 48:1500 (June 2022).

**Subpart 2. Recycling**

**Chapter 105. Waste Tires**

**§10535. Fees and Fund Disbursement**

A. Permit and Application Fees. Each applicant for the following permits or other authorization from the administrative authority shall submit with the application or request a non-refundable fee for the following categories in the amount specified.

1. Transporter Fees. The transporter authorization application fee is \$250. There will be only one fee regardless of the number of vehicles in the service of the transporter.

A.2. - E.8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 20:1001 (September 1994), amended LR 22:1213 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2781 (December 2000), LR 27:832 (June 2001), LR 27:2228 (December 2001), amended by the Office of Environmental Assessment, LR 31:1324 (June 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2504 (October 2005), LR 33:2160 (October 2007), amended by the Office of the Secretary, Legal Division, LR 42:268 (February 2016), LR 43:948 (May 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:661 (May 2019), LR 48:1501 (June 2022).

**Part XV. Radiation Protection**

**Chapter 25. Fee Schedule**

**§2599. Appendix A**

A. Appendix A—Radiation Protection Program Fee Schedule

Appendix A—Radiation Protection Program Fee Schedule	New/Renewal Application Fee	Annual Maintenance Fee
I. Radioactive Material Licensing		
A. - E.3. ...		
4. Commercial naturally occurring radioactive materials waste disposal	\$23,000	\$20,000

Appendix A—Radiation Protection Program Fee Schedule	New/Renewal Application Fee	Annual Maintenance Fee
F. - H.4. ...		
II. Electronic Product Registration		
1. - 8. ...		
III. General Licenses		
A. NORM (Operators reporting contamination by field will be invoiced for all wellheads in the field. Operators reporting contamination by wellhead will be invoiced only for contaminated units.)		
1. Contaminated wellheads per wellhead	\$125	\$125
2. Stripper wells-contaminated per wellhead	\$125	\$125
3. NORM locations (other than fields):		
a. gas plants, pipeyards, chemical plant, refinery	\$458	\$458
b. warehouses, pipeline, manufacturing plant, NORM equipment storage site, etc.	\$458	\$458
4. Interim container storage per NORM Waste Management Plan of an approved location		\$1,525
5. NORM location as otherwise defined in LAC 33:XV.1403 and not exempted by LAC 33:XV.1404, not included in III.A.1-4 of this Appendix	\$153	\$153
B. - C. ...		
IV. Reciprocal Recognition		
***		
V. Shielding Evaluation (per room)		
A. - F. ...		
VI. Device, Product, or Sealed Source Evaluation		
A. Device evaluation (each)	\$5,000	*
B. Sealed source design evaluation (each)	\$2,000	*
C. Update sheet	\$500	*
VII. Testing		
***		
VIII. Nuclear Electric Generating Station		
***		

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, LR 10:1014 (December 1984), amended by the Nuclear Energy Division, LR 11:530 (May 1985), LR 12:674 (October 1986), LR 13:569 (October 1987), LR 14:622 (September 1988), LR 15:737 (September 1989), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:719 (July 1992), repromulgated LR 18:955 (September 1992), amended LR 19:624 (May 1993), LR 21:792 (August 1995), repromulgated LR 21:944 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2607 (November 2000), LR 29:691 (May 2003), LR 29:2053 (October 2003), amended by the Office of the Secretary, Legal Division, LR 43:952 (May 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 48:1501 (June 2022).

Courtney J. Burdette  
General Counsel

2206#038

**RULE**

**Office of the Governor  
Capital Area Groundwater Conservation Commission**

Independent Remote Monitoring System and Pumpage Fees  
(LAC 56:V.707 and 1107)

The Board of Commissioners of the Capital Area Groundwater Conservation District has amended LAC 56:V.707A.3-3.a and 1107. This action is in accordance with Louisiana Revised Statutes 38:3076(A)(7)-(10), (13), (14), (17), (18) and 38:3079. This Rule is hereby adopted on the day of promulgation.

**Title 56**

**PUBLIC WORKS**

**Part V. Capital Area Ground Water Conservation Commission**

**Chapter 7. Rules and Regulations for Metering and/or Recording the Yield of Water Wells**

**§707. Measuring Well Yield**

A.1. - A.2. ...

3. The commission shall have the authority to install an independent remote monitoring system on well owner's property for the purpose of ensuring an accurate measurement of the total yield of each well and monitor the extent of chlorides in the aquifer to prevent waste of groundwater resources, and to prevent or alleviate damaging or potentially damaging subsidence of the land surface caused by withdrawal of groundwater within the district.

a. If there is a discrepancy or inconsistency between the owner's meter and the commission's meter, the owner may require the commission to hire an independent contractor to verify the accuracy of the commission's meter at the owner's expense.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3076(14) and 38:3079.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Capital Area Ground Water Conservation Commission, LR 3:307 (July 1977), repromulgated LR 33:2647 (December 2007), amended LR 48:1502 (June 2022).

**Chapter 11. Determination of and Payment of Accounts**

**§1107. Pumpage Fee**

A. The pumping charges for ground water users shall be \$65 per million gallons and is to be paid quarterly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3076(14) and 38:3079.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Capital Area Ground Water Conservation Commission, LR 1:291 (July 1975), amended LR 10:592 (August 1984) effective January 1, 1985, repromulgated LR 33:2649 (December 2007), amended LR 34:435 (March 2008), effective April 1, 2008, LR 39:486 (March 2013), LR 42:403 (March 2016), LR 45:1580 (November 2019), LR 48:15020 (June 2022).

Gary Beard  
Executive Director

2206#009

**RULE**

**Office of the Governor  
Capital Area Ground Water Conservation Commission**

Limitations and Prohibitions on Water Pumping  
(LAC 56:V.Chapter 13)

The Capital Area Ground Water Conservation Commission (also known as the Capital Area Groundwater Conservation District) has adopted LAC 56.V.1301-1305 as authorized by R.S. 38:3071 et seq. This Rule is being promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. This Rule is hereby adopted on the date of promulgation.

**Title 56**

**PUBLIC WORKS**

**Part V. Capital Area Ground Water Conservation Commission**

**Chapter 13. Limitations and Prohibitions on Pumping**

**§1301. Purpose**

A. The purpose of this Chapter is to specify any pumping limits and prohibitions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3071, et seq., R.S. 38:3076(A)(19) and 3078.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Capital Area Ground Water Conservation Commission, LR 48:1502 (June 2022).

**§1303. Prohibition of Pumping in Certain Sands**

A. Except for those wells already approved by the Board of Commissioners of the Capital Area Ground Water Conservation Commission that are currently producing in the 1,000-foot, 1,500-foot and 1,700-foot sands subject to the jurisdiction of the Capital Area Ground Water Conservation Commission, no water production or pumping shall be permitted to occur in the 1,000-foot, 1,500-foot and 1,700-foot sands of the area subject to the jurisdiction of the Capital Area Ground Water Conservation Commission, except for those wells devoted exclusively to public supply.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3071, et seq., R.S. 38:3076(A)(19) and 3078.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Capital Area Ground Water Conservation Commission, LR 48:1502 (June 2022).

**§1305. Annual Review of Pumping Limits**

A. Any pumping limits that are in place by the Capital Area Ground Water Conservation Commission shall be subject to annual review and re-adoption at the last commission meeting each calendar year.

B. Any pumping limits in place by the Capital Area Ground Water Conservation Commission shall be included in the Capital Area Ground Water Conservation Commission's policies and procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3071, et seq., R.S. 38:3076(A)(19) and 3078.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Capital Area Ground Water Conservation Commission, LR 48:1502 (June 2022).

Gary Beard  
Executive Director

2206#008

**RULE**

**Office of the Governor  
Commission on Law Enforcement and  
Administration of Criminal Justice**

General Subgrant Guidelines  
(LAC 22:III.101, 5101, and 5301)

In accordance with the provision of R.S. 15:1204, et seq., and R.S. 40:905 et seq., which is the Administrative Procedure Act, the Louisiana Commission on Law Enforcement hereby, has amended regulations relative to subgrant applications. This Rule is hereby adopted on the day of promulgation.

**Title 22**

**CORRECTIONS, CRIMINAL JUSTICE AND LAW  
ENFORCEMENT**

**Part III. Commission on Law Enforcement and  
Administration of Criminal Justice**

**Subpart 1. Privacy and Security Regulation**

**Chapter 1. Preface**

**§101. Preface**

A. - B. ...

C. A separate set of guidelines and implementation instructions was published to provide significant assistance in understanding and adapting the regulations to local needs and peculiarities. Questions concerning the regulations or guidelines may be addressed to the Louisiana Commission on Law Enforcement at its recognized business address.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 3:447 (November 1977), amended LR 4:503 (December 1978), amended LR 48:1503 (June 2022).

**Subpart 5. Grant Application or Subgrants  
Utilizing Federal, State or Self-Generated  
Funds**

**Chapter 51. Appeals Procedure**

**§5101. Appeals Procedure**

A. When an application for funding is rejected by the commission, or when an approved subgrant is discontinued, the applicant or subgrantee may appeal the decision of the commission by filing a notice of appeal with the Louisiana Commission on Law Enforcement at the recognized business address. The notice of appeal must be by certified mail and must be filed no later than 15 business days after receipt of the notice of denial by the applicant or subgrantee.

B. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 15:1071 (December 1989), amended LR 48:1503 (June 2022).

**Chapter 53. Drug Abuse Resistance Education  
(D.A.R.E.)**

**§5301. Introduction**

A. In response to the mounting concern about the use of drugs by youth, the Louisiana Commission on Law Enforcement makes Drug Abuse Resistance Education (D.A.R.E.) grants available to sheriffs' offices, marshal and constable offices, and police departments who can

demonstrate the capacity to offer the D.A.R.E. program in accordance with nationally recognized curriculum standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204.9.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 21:566 (June 1995), amended LR 48:1503 (June 2020).

Jim Craft  
Executive Director

2206#010

**RULE**

**Office of the Governor  
Division of Administration  
Office of Broadband Development and Connectivity**

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 has adopted 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.

Like railways in the 19th century and electricity in the 20th century, 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. In the 21st century, broadband internet access is a given for many Louisianians, who rely on broadband in every aspect of daily life.

The Coronavirus pandemic has forever changed the definition and location of "work." Unemployed Louisianians rely on broadband to search and apply for the next opportunity. Our state's families and children have been forced to rely upon broadband for virtual education. The older and sicker among us are increasingly reliant on broadband to schedule telehealth visits and see medical specialists. Across fields of rice in Acadia Parish, corn in Richland Parish, and sugarcane in Lafourche Parish, farmers around the state rely on broadband to take advantage of the latest innovations in agricultural technology to increase yields. Working remotely, searching for employment, attending virtual classes, scheduling a telehealth visit, and using the latest technologies in agriculture all depend, in part, on having access to broadband.

However, according to the Federal Communications Commission, over 10 percent of Louisianians do not have access to broadband through ADSL, cable, fiber, or fixed wireless. In our rural communities, the number of these unserved residents rises to nearly 33 percent. Tragically, a third of rural Louisianians are without access to high-speed broadband, threatening their health, limiting their educational opportunities, and constraining their economic competitiveness in the digital world.

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.

Therefore, the Louisiana Office of Broadband Development and Connectivity shall provide grants to private providers of broadband services to facilitate the deployment of broadband service to unserved areas of the state, defined as areas without deployed internet access service providing transmission speeds of at least 25 Mbps download and 3 Mbps upload (25:3 Mbps) through wireline or fixed wireless. The GUMBO grant program shall fund eligible projects through a competitive grant application process.

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

#### **Title 4**

### **ADMINISTRATION**

## **Part XXI. Granting Unserved Municipalities Broadband Opportunities (GUMBO)**

### **Chapter 1. Program Summary**

#### **§101. Background and Authorization**

A. This Part may be cited as the Louisiana GUMBO Broadband Grant Program Guide.

B. The Louisiana Office of Broadband Development and Connectivity, as authorized by R.S. 51:2370.1-2370.16, provides grants to private 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.

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).

#### **§103. Definitions**

*Broadband Service*—deployed internet access service with a minimum of 25 Mbps download and 3 Mbps upload transmission speeds (25:3 Mbps).

*Cooperative*—a corporation organized under Part I of Chapter 2 of Title 12 of the Louisiana Revised Statutes of 1950 or a corporation who becomes subject to those provisions pursuant to R.S. 12:401 et seq.

*Director*—the Executive Director of the Office of Broadband Development and Connectivity within the Division of Administration.

*Economically Distressed Parish*—an unserved area that is in need of expansion of business and industry and the creation of jobs, giving consideration to unemployment, per capita income, and the number of residents receiving public assistance within that unserved area.

*Eligible Grant Recipient*—a provider of broadband service, including a provider operated by a local government if the local government is compliant with the Local Government Fair Competition Act prior to July 1, 2021, with respect to providing such services, a cooperative, or any partnership thereof.

*Eligible Parishes*—any parish with unserved structures.

*Eligible Project*—a discrete and specific project located in an unserved area of an eligible parish seeking to provide broadband service to homes, households, businesses, educational facilities, healthcare facilities, and community anchor points not currently served. A project that is primarily engaged in middle-mile, backhaul, or similar work is not an eligible project. The inclusion of middle-mile, backhaul, or similar capacity is permissible in an eligible project, if the capacity does not otherwise exist and is necessary for the project's last-mile broadband connectivity to end-users. If a contiguous project area crosses from one 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.

*Household*—any individual or group of individuals who are living together at the same address as one economic unit. A household may include related and unrelated persons. An “economic unit” consists of all adult individuals contributing to and sharing in the income and expenses of a household. An adult is any person eighteen years or older. If an adult has no or minimal income, and lives with someone who provides financial support to him, both people shall be considered part of the same household. Children under the age of 18 living with their parents or guardians are considered to be part of the same household as their parents or guardians.

*In-Kind*—existing facilities, equipment, materials, and structures that a local government makes available in partnership with an internet service provider as a contribution to the proposed project, consistent with market rates. Examples include but are not limited to copper wire, coaxial cable, optical cable, loose tube cable, communication huts, conduits, vaults, patch panels, mounting hardware, poles, generators, batteries and cabinets, network nodes, network routers, network switches, microwave relays, microwave receivers, site routers, outdoor cabinets, towers, easements, rights-of-way, and buildings or structures owned by the local government that are made available for location or collocation purposes. This term may also include fees.

*Infrastructure*—existing facilities, equipment, materials, and structures that an internet service provider has installed either for its core business or public enterprise purposes. Examples include but are not limited to copper wire, coaxial cable, optical cable, loose tube cable, communication huts, conduits, vaults, patch panels, mounting hardware, poles, generators, batteries and cabinets, network nodes, network routers, network switches, microwave relays, microwave receivers, site routers, outdoor cabinets, towers, easements, rights-of-way, and buildings or structures owned by the entity that are made available for location or collocation purposes.

*Infrastructure Costs*—costs directly related to the construction of broadband infrastructure for the extension of broadband service for an eligible project, including installation, acquiring or updating easements, backhaul infrastructure, and testing costs. The term does not include overhead or administrative costs.

*Local Government*—a parish, municipality, or school board, or any instrumentality thereof.

*Office*—the Office of Broadband Development and Connectivity within the Division of Administration.

*Prospective Broadband Recipient*—a household, home, business, educational facility, healthcare facility, community anchor point, agricultural operation, or agricultural processing facility that is currently unserved and is identified in an application submitted.

*Shapefile*—a file format for storing, depicting, and analyzing geospatial data depicting broadband coverage, comprised of several component files, such as a Main file (.shp), an Index file (.sbx), and a dBASE table (.dbf).

*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 25:3 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(C).

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).

### **§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 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. The procurement method used by the office to solicit applications, identify and score product features, cost, and technical factors, and award on the basis of best values shall be as set forth in Chapters 3 and 4 of this Part.

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).

## **Chapter 2. Project Area Eligibility Requirements**

### **§201. Eligible and Ineligible Project Areas**

A. Eligible areas for the GUMBO grant program are areas without deployed internet access service providing transmission speeds of at least 25:3 Mbps with wireline or

fixed wireless, and which qualify as an unserved area as defined in this Part. These areas are the focus of broadband expansion under this grant program.

B.1. Ineligible areas for the program are areas that already have internet access service available to them at transmission speeds of at least 25:3 Mbps with wireline or fixed wireless. In addition, areas (census blocks) where a private provider has been designated to receive funding through Universal Service, Connect America Phase II, Rural Digital Opportunity Fund, or other federal or non-federal 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 broadband infrastructure in the area within 24 months from the expiration of 60 days following the closure of the grant application period.

2. In the initial grant application period, providers receiving Universal Service, Connect America Phase II, Rural Digital Opportunity Fund, or other federal or non-federal funds to deploy service, within the established timeline of within 24 months from the expiration of 60 days following the closure of the grant application period, may designate such areas as ineligible and subject to exclusion and reservation from the GUMBO grant program, for a period of 24 months, by submitting to the office, within 60 days of the closure of the application period, a listing of the census blocks, shapefile areas, individual addresses, or portions thereof, comprising the provider's future project areas.

3. In subsequent grant application periods, in order to designate areas as ineligible and subject to exclusion, providers shall submit to the office census blocks, shapefile areas, individual addresses, or portions thereof, not less than 60 days prior to the beginning date of the application period.

4. 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, in such circumstance, providers 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).

### **§203. Resources for Identification of Project Areas**

A. Applicants can apply for funding to serve census blocks, shapefile areas, individual addresses, or portions thereof, as set forth in Chapter 3: Applications of this Part.

B. Although the Office of Broadband Development and Connectivity cannot provide a listing of all prospective broadband recipients within the state that have broadband service of less than 25:3 Mbps available, the office advises 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](http://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).



### **Chapter 3. Applications**

#### **§301. Process Overview**

A. No funding shall be disbursed by the GUMBO grant program except pursuant to an application submitted in accordance with this Chapter.

B. Applications for the GUMBO grant program shall be submitted via the website of the office.

C. The online application process may provide for mandatory and optional materials to be submitted with each proposal.

D. Prior to the publication of an application by the Office pursuant to R.S. 51:2370.4(C), the Office shall undertake a preliminary evaluation of the application with due diligence to examine whether the application appears on its face to comply with applicable program requirements. Until such time as this preliminary evaluation is complete, the provisions of R.S. 51:2370.16(3), relative to public records, shall apply. Following the preliminary evaluation, applicant financials and proprietary or trade secret information, when designated as such by the applicant and approved by the office, at its sole discretion, shall be exempt from public disclosure.

E. Through the evaluation and scoring process, if an applicant or application or any associated project are deemed to be technically unviable for any reason, including, but not limited to, applicant ability, proposed technology solution, financial stability, or any combination thereof, the office shall, at its sole discretion, remove the application or project area from consideration for the grant program. Any applicant or application or any associated project deemed technically unviable in any GUMBO grant application period is eligible to reapply in any succeeding GUMBO grant application period.

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).

#### **§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 locality or region.

B. An applicant may submit an application with support from more than one unit of local government.

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 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 include one contiguous project area or multiple non-contiguous project areas in a single application. If designating more than one project area in a single application, each project area must be clearly noted and delineated, and the required technical data and budgetary information must be provided for each project area to allow for independent scoring of each project area. Any application that contains more than one project area and does not provide technical data and budgetary information specific to each project area, to allow for independent scoring of each project area subject to the scoring criteria listed in §405 of this Part, may 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 48:1506 (June 2022).

#### **§305. Application Requirements**

A. As set forth in greater detail in §§307-315 of this Chapter, each application shall include these components:

1. applicant information, statement of qualifications, and partnerships;
2. project area(s) and locations to be served;
3. technical report;
4. project budget(s), matching funds, costs, and proof of funding availability;
5. proposed services, marketing, adoption, and community support.

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).

#### **§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. the number of years the applicant has provided internet services;
  - 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 25:3 Mbps) is offered;

c. the number of completed internet service infrastructure projects funded, in part, through federal or state grant programs, prior to the date of application submittal;

d. whether the applicant has ever participated in an internet service infrastructure project funded, in part, through federal or state grant programs, and if so, for each project, the nature and impact of the project, the role of the applicant, the total cost of the project, and the dollar amount of federal or state grant funding;

e. the number of penalties paid by the applicant, a subsidiary or affiliate of the applicant, or the holding company of 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

f. the number of times 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.

g. an attestation that the applicant has not violated federal or state labor and employment law in the previous 10 years;

2. five years of financial statements, pro forma statements, or financial audits of the applicant to ensure financial and organizational strength regarding the ability of the applicant to successfully meet the terms of the grant requirements and the ability to meet the potential repayment of grant funds. If an applicant has been in business for less than five years, the applicant shall provide financial statements, pro forma statements, or financial audits for the number of years the applicant has been in business. Should an applicant declare that it does not have financial statements, pro forma statements, or financial audits, the office, at its sole discretion, shall decide what documents are necessary to fulfill the requirements of this section;

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 private 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. being allowed access and use of the partner's infrastructure, on special terms and conditions designed to facilitate the provision of broadband services in unserved areas, requiring a formalized agreement;

ii. utilizing a matching financial and/or in-kind contribution provided by one or more partners, requiring a formalized agreement; or

iii. a parish, municipality, or school board, or any instrumentality thereof, may qualify as a nonprofit for the purposes of the GUMBO grant program. Letters of support by a parish, municipality, or school board, or any instrumentality thereof, supporting an application may 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).

### **§309. Project Area(s) and Locations to be Served**

A. Every application shall include the following.

1. Mapping and Descriptions

a. Data relating to areas to be served is required in order to confirm that the project is serving eligible areas, to accurately score the application or project area, and track progress and completion of the project if awarded. Applicants shall submit data in any of the following ways, or in combination. 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.

b. Data 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 infrastructure cost per prospective broadband recipient must be provided, as well as the GUMBO cost per prospective broadband recipient. Data points should be tied to specific locations and be geo-coded for consideration as part of the application.

c. Areas projected to be served must be digitally submitted in a GIS shapefile, kml, CAD (.dwg), or MicroStation (.dgn) file format, and should be georeferenced to either the Louisiana North State Plane NAD83 (US Feet) coordinate system or the Louisiana South State Plane NAD83 (US Feet) coordinate system. The files can contain points representing locations or polygons outlining the specific areas to be served. CAD drawings must not contain external references. Service to any prospective broadband recipient should be referenced. The office reserves the right to request data and technical information in any format the office deems necessary.

d. Additionally, applicants may also submit applications for areas where transmission speeds are less than 25:3 Mbps, if data is available to support differences between advertised and transmission speeds.

e. Data Submission Requirements

i. Census Blocks—data shall be submitted as corresponding census block numbers encompassing the area(s) to be served through the proposed project.

ii. Shapefiles—data shall be submitted analyzing geospatial data depicting broadband coverage of the proposed project area.

iii. Address-Level Data—data shall be submitted as individual address points of locations where service will be made available through the grant build. All addresses must be geocoded to include latitudinal and longitudinal coordinates.

iv. Polygons—data shall be submitted as polygon geometry which contain the areas to be served, or with the expectation that the polygon submitted corresponds to

service being available to all locations within the polygon. The applicant must use the most recent data available from the state, parish, or local government to identify all locations within the project area.

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 and material to the required data listed above and should not be submitted as an alternative.

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, if applicable. This data must identify the areas that have less than 25:3 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 25:3 service.

2. Assessment of the Current Level of Broadband Access in the Proposed Deployment Area

a. The application requires an assessment of the current level of broadband access in the proposed deployment area. Within this section of the application, the applicant should describe what they believe to be the current level of service within the area and provide the data source or methodology used to capture this information. Raw data may be submitted as part of the assessment.

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(s) identified within the application are eligible, 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).

**§311. Technical Report**

A. Applicants must provide a narrative, technical report detailing the technology/technologies to be used in the proposed project to serve prospective broadband recipients at their premises. Applicants must indicate the technology that will serve a prospective broadband recipient as wired infrastructure or fixed wireless and provide aggregated totals for each solution for each project.

B. Reporting requirements for all deployments:

1. technical detail of the technology/technologies to be used in the proposed project and the broadband transmission speeds offered to prospective broadband recipients as a result of the project. If it would be impracticable, because of geography, topography, or excessive cost to design a broadband infrastructure project that would deliver 100:100 Mbps, the applicant must provide an explanation. Transmission speeds of 100:20 Mbps are the minimum allowable under this grant program;

2. if the applicant is claiming points for partnerships, the applicant must provide a brief narrative explaining how the partnership or affiliation will facilitate deployment and reduce cost per prospective broadband recipient. For applications or project areas where the nonprofit or not-for-profit partner provides only matching financial support, that information can be documented in the budget section within the relevant application or project area. The applicant must also provide evidence of a formalized agreement, when applicable, as required in §307 of this Part;

3. a general explanation of whether work will be performed in-house or through contractors, and whether the applicant or any subcontractors are certified by either the Hudson Initiative or Veterans Initiative (if any subcontractors are certified through the Hudson Initiative or the Veterans Initiative, a formalized agreement shall be provided);

4. a proposed construction timeline and duration of the deployment project period. The deployment project period is the time from award of the grant agreement to the time that service is available to the targeted prospective broadband recipients under the grant. The applicant shall describe deployment roll-out and include the number of end-users to be served in each phase, as well as an estimated timeline for each phase (10 percent, 35 percent, 60 percent, 85 percent, 100 percent). As it relates to the disbursement of grant funding, project completion shall be defined as a percentage of the total number of prospective broadband recipients proposed to be served by the project;

5. the average distance, in miles, between prospective broadband recipients to be served by the project; and

6. a business continuity and disaster recovery plan.

C. Reporting requirements for wired infrastructure deployment:

1. description of the general design of the project and deployment plan;

2. explanation of the existing networks and equipment to be used for the project;

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;

b. the total number of miles of project infrastructure deployment, and the number of miles of project infrastructure deployment accounted for by preexisting infrastructure;

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), pedestal (cable), or a remote exchange/DSLAM (DSL), the applicant must include:

a. number of prospective broadband recipients that will be served by that site infrastructure, including businesses; and

b. the distance from the specific site infrastructure such as a POP, pedestal, or DSLAM to the end user(s) and the expected broadband speed that will be effectively delivered;

4. detailed description of the design work needed for deployment, such as, but not limited to, pole work, acquiring or updating easements, and/or property acquisition.

D. Reporting requirements for fixed wireless deployment:

1. description of the general design of this project and deployment plan;

2. explanation of the existing networks and equipment to be used for this project;

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 total number of miles of project infrastructure deployment, and the number of miles of project infrastructure deployment accounted for by preexisting infrastructure;

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. description and specific location of the vertical asset;

b. owner of the vertical asset;

c. number of prospective broadband recipients that will be served by that site infrastructure, including businesses;

d. the distance from the vertical asset to the end user(s) and the expected broadband speed that will be effectively delivered;

4. detailed description of the design work needed for deployment, such as, but not limited to, acquiring access to existing vertical assets, acquiring or updating easements, and/or property acquisition;

5. description and specific type of the equipment used for deployment and the capable speed of the equipment;

6. explanation of the frequency/frequencies to be utilized for the deployment, whether the deployment will use licensed or unlicensed 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).

### **§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 20 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 20 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. Project funds (GUMBO grant funds and matching funds) shall be utilized for the deployment phase of the project, not the subsequent years of service. In addition, eligible project costs do not include recurring operating or maintenance costs, or sales and marketing of services.

#### **B. Total Project Cost**

1. Costs directly related to the construction of broadband infrastructure for the extension of broadband service, including installation, acquiring or updating easements, backhaul infrastructure, and testing costs are infrastructure costs and therefore considered eligible project costs. The term does not include overhead or administrative costs.

#### **NOTES:**

A project that is primarily engaged in middle-mile, backhaul infrastructure, or similar work is not an eligible project. The inclusion of middle-mile, backhaul, or similar capacity is permissible in an eligible project, if the capacity does not otherwise exist and is necessary for the project's last-mile broadband connectivity to end-users.

Applicants are encouraged to utilize vertical assets already in place or easily installed (poles, small monopoles, repeaters, etc.) as much as possible. Including new macro towers in a project may create lengthy construction timelines, especially around land purchase and environmental regulations.

C. Total Project Cost—per prospective broadband recipient

D. Infrastructure Cost—per prospective broadband recipient

E. GUMBO Cost—per prospective broadband recipient

#### **F. 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 federal or non-federal 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).

### **§315. Proposed Services, Marketing, Adoption, and Community Support**

#### **A. Every application shall include:**

1. a description of services to be provided, including the proposed upstream and downstream broadband speeds to be delivered and any applicable data caps. Any applicant proposing a data cap shall provide justification to the satisfaction of the office that the proposed cap is in the public interest and consistent with industry standards;

2. the proposed advertised speed to be marketed to end-users (broken out by prospective broadband recipient);

3. the prices of all broadband service packages and the associated broadband transmission speeds that will be offered to consumers as a result of the project;

4. a plan to encourage users to connect that incorporates, at a minimum, community education forums, multimedia advertising, and marketing programs;

5. 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;

6. any low-income household service offerings, digital equity or literacy support, or programs or partnerships to provide these services. The applicant should 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.

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).

## **Chapter 4. Scoring**

### **§401. Overview**

A. The GUMBO grant program is a competitive grant program. Applications, or project areas within applications, if applicable, 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, or project areas within applications, if applicable, shall be scored independently, and applications or project areas 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 or project area. This process shall continue until such time as an applicant has agreed, or all remaining applications or project areas 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.

C. As a means of breaking a tie for applications or project areas receiving the same score, the office shall give priority to the application or project area proposing the lowest GUMBO cost per prospective broadband recipient.

D. 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 contained therein, request additional information, or as necessary in response to an overlapping project area or protest. An applicant may initiate contact with the office for the purposes of amending an application or project area due to overlapping or a protest, or to withdraw an application or project area.

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).

### **§403. Overlapping Applications or Project Areas**

A. At the close of the application period, should one or more applications or project areas overlap one or more other applications or project areas, relative to one or more unserved census blocks, shapefile areas, individual addresses, or portions thereof, the impacted applicants, relative to overlapping applications or project areas, shall have the option and ability to resolve the overlapping unserved census blocks, shapefile areas, individual addresses, or portions thereof, through the applicants' own volition, discussion, and efforts. Applicants working to resolve an instance of overlapping applications or project areas, following the close of the application period, shall jointly notify the office of such efforts. An acceptable resolution and amended applications or project areas will be accepted by the office until 5 PM on the 30th day of the 60-day evaluation and protest period. Such an acceptable resolution between impacted applicants shall not result in the addition of partners to a previously submitted application or project area nor the expansion of an application's project area.

B. Following 5 PM on the 30th day of the 60-day evaluation and protest period, should one or more applications or project areas overlap one or more other applications or project areas, relative to one or more unserved census blocks, shapefile areas, individual addresses, or portions thereof, each application or project area shall be scored independently. The application or project area receiving the highest score shall proceed to grant funding consideration with its project area boundary intact. Any application or project area, regardless of the geographical size of the application or project area, overlapping a higher scored application or project area, shall be removed from grant funding consideration. A project area being removed from grant funding consideration shall not

impact scoring of other project areas within the same application, if applicable. All project areas shall be scored independently.

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).

**§405. Factors Subject to Scoring**

A. 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 25:3 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.

Years Providing Internet Service	Points
No prior service.	0
4 years or less	1
5 years to 9 years	2
10 years to 14 years	3
15 years to 19 years	4
20 years or longer	5

Households Provided Access	Points
None	0
4,999 or less	1
5,000 to 14,999	2
15,000 to 24,999	3
25,000 to 49,999	4
50,000 or more	5

Completed Internet Projects	Points
None	0
1 to 3 projects	1
4 to 6 projects	2
7 to 9 projects	3
10 to 14 projects	4
15 or more projects	5

Penalties Paid	Points
One or more	0
None	5

Defendant in Criminal or Civil Proceeding	Points
One or more	0
None	5

NOTE: If an applicant has not participated in an internet service infrastructure project funded, in part, through federal or state grant programs, the applicant shall not receive points in the “penalties paid” or “defendant in criminal or civil proceeding” scoring criteria.

B. Technical Ability. The office shall award points based upon the broadband transmission speeds (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 slowest transmission speeds offered. The office shall award points based upon the scalability of the project’s technology and infrastructure beyond the project’s current maximum speed offering for future increases in bandwidth. Should a project include a mix of wireline and fixed wireless technology solutions, broadband speed and scalability criteria shall be scored based upon the technology that serves a majority of a project’s prospective broadband recipients. The office shall reference the average distance, in miles, between prospective broadband recipients to be served by the project and shall award points to the five applications or project areas with the longest average distance between prospective broadband recipients. Points shall be awarded as follows.

Broadband Speeds (Mbps Down: Mbps Up)	Points
At least 100:20	1
100:100 and beyond	7

Scalability (Mbps Down: Mbps Up)	Points
At least 100:100	1
At least 300:300	3
At least 500:500	7
At least 1000:1000	10

Average Distance (in miles) Between Prospective Broadband Recipients	Points
Longest average distance	5
2 <sup>nd</sup> longest average distance	4
3 <sup>rd</sup> longest average distance	3
4 <sup>th</sup> longest average distance	2
5 <sup>th</sup> longest average distance	1
6 <sup>th</sup> longest average distance or shorter	0

C. Financial Wherewithal. The office shall reference both a project’s total cost per prospective broadband recipient and GUMBO cost per prospective broadband recipient. A project’s total cost per prospective broadband recipient shall be calculated by dividing a project’s total cost by the total number of prospective broadband recipients to be served by the project. A project’s GUMBO cost per prospective broadband recipient shall be calculated by dividing a project’s total GUMBO requested funding by the total number of prospective broadband recipients to be served by the project. In each criterion, the office shall

award points to the 10 applications or project areas with the lowest costs per prospective broadband recipient. The office shall also reference the number of bankruptcies filed (prior to the date of application submission). Points shall be awarded as follows.

Cost Per Prospective Broadband Recipient	Points
Lowest cost	10
2 <sup>nd</sup> lowest cost	9
3 <sup>rd</sup> lowest cost	8
4 <sup>th</sup> lowest cost	7
5 <sup>th</sup> lowest cost	6
6 <sup>th</sup> lowest cost	5
7 <sup>th</sup> lowest cost	4
8 <sup>th</sup> lowest cost	3
9 <sup>th</sup> lowest cost	2
10 <sup>th</sup> lowest cost	1
11 <sup>th</sup> lowest cost or higher	0

GUMBO Cost Per Prospective Broadband Recipient	Points
Lowest cost	20
2 <sup>nd</sup> lowest cost	18
3 <sup>rd</sup> lowest cost	16
4 <sup>th</sup> lowest cost	14
5 <sup>th</sup> lowest cost	12
6 <sup>th</sup> lowest cost	10
7 <sup>th</sup> lowest cost	8
8 <sup>th</sup> lowest cost	6
9 <sup>th</sup> lowest cost	4
10 <sup>th</sup> lowest cost	2
11 <sup>th</sup> lowest cost or higher	0

Bankruptcies	Points
1 or more.	0
No prior bankruptcies.	2

D. Matching Funds. The office shall calculate the provider's matching funds percentage of the total cost of the project and award points based on matching funds. Points shall be awarded as follows.

Provider Matching Funds (Percentage of Total Cost)	Points
20 percent	0
Each additional percentage point – beyond required 20 percent.	1
Each increment of 5 percentage points – beyond required 20 percent.	5 Bonus Points

NOTE: An applicant will receive 1 point for each percentage point of matching funds provided, beyond the required 20 percent. Additionally, an applicant will receive 5 bonus points for each increment of 5 percentage points of matching funds provided, beyond the required 20 percent. Points are awarded based upon the total percentage of matching funds provided, beyond the required 20 percent, irrespective of the number of providers contributing to a single project.

E. 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. Points shall be awarded as follows.

Local Government Letters of Support, Numbers	Points (max. 3 points)
1 local government	1
2 local government	2
3+ local governments	3

F. 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
500 to 1,999	2
2,000 to 4,999	3
5,000 to 9,999	4
10,000 or more	5

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.

G. 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 & Directly Served	Points
5 percent or less	1
6 percent to 10 percent	2
11 percent to 24 percent	3
25 percent to 49 percent	4
50 percent or more	5

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.

H. 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
6 to 10	2
11 to 15	3
15 to 19	4
20 or more	5

I. 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 percentage of total mileage of project infrastructure composed of preexisting infrastructure. The office will also refer to the project’s proposed estimated construction timeline, as measured from the award of the grant agreement, and award points in the following categories: construction start date and construction completion date. Construction completion date scoring will utilize two separate scoring criteria, one for wireline and one for fixed wireless. Should a project include a mix of wireline and fixed wireless technology solutions, the project completion date criterion shall be scored based upon the technology that serves a majority of a project’s prospective broadband recipients. Points shall be awarded as follows.

Percentage of Mileage of Preexisting Infrastructure	Points
None	0
9 percent or less	1
10 percent to 19 percent	2
20 percent to 29 percent	3
30 percent to 39 percent	4
40 percent or more	5

Construction Start Date	Points
12 months or longer	1
Within 8 to 11 months	2
Within 5 to 7 months	3
Within 2 to 4 months	4
Within 1 month	5

Wireline Construction Completion Date	Points
24 months or longer	1
Within 18 to 23 months	4
Within 13 to 17 months	6
Within 7 to 12 months	8
Within 6 months or less	10

Fixed Wireless Construction Completion Date	Points
24 months or longer	1
Within 18 to 23 months	2
Within 13 to 17 months	3
Within 7 to 12 months	4
Within 6 months or less	5

J. 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 offered to consumers by an applicant as the result of the proposed project. The office shall award points to the 10 applications or project areas with the lowest average price of all broadband service packages offered to consumers by an applicant as a result of the proposed project. Points shall be awarded as follows.

Consumer Price (Lowest Average Package Price)	Points
Lowest average price	10
2 <sup>nd</sup> lowest average price	9
3 <sup>rd</sup> lowest average price	8
4 <sup>th</sup> lowest average price	7
5 <sup>th</sup> lowest average price	6
6 <sup>th</sup> lowest average price	5
7 <sup>th</sup> lowest average price	4
8 <sup>th</sup> lowest average price	3
9 <sup>th</sup> lowest average price	2
10 <sup>th</sup> lowest average price	1
11 <sup>th</sup> lowest average price or higher	0

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.

K. 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 & Matching	Points
No in-kind contribution or funding match	0
Each percentage point of total project cost provided by in-kind contributions or funding matches.	1
Each increment of 5 percentage points of total project cost provided by in-kind contributions or funding matches	5 Bonus Points

NOTE: An applicant will receive 1 point for each percentage point of the total cost of a project provided by local government through in-kind contributions or matching funds. Additionally, an applicant will receive 5 bonus points for each increment of 5 percentage points of the total cost of a project provided by local government through in-kind contributions or matching funds. 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.

L. Small Business Entrepreneurship. 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 certified by the Hudson and/or the Veterans Initiative	10

M. Small Business Entrepreneurship Subcontracting. The office shall award points to projects in which the eligible grant recipient commits to a good faith subcontracting plan to contract with or employ 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.) to substantially participate in the performance of the project. Points shall be awarded as follows.

Certified Hudson / Vet Initiative Subcontractor(s)	Points (max. 20 points)
Each subcontractor certified by the Hudson and/or the Veterans Initiative	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. Experience (Years Providing Internet Service)	0 – 5
A-2. Experience (Households Provided Access)	0 – 5
A-3. Experience (Completed Internet Projects)	0 – 5
A-4. Experience (Penalties Paid)	0 – 5
A-5. Experience (Defendant in Criminal or Civil)	0 – 5
B-1. Technical Ability (Broadband Speeds)	1 – 7
B-2. Technical Ability (Scalability)	0 – 10
B-3. Technical Ability (Distance Between Broadband Recipients)	0 – 5
C-1. Financial Wherewithal (Cost Per Prospective Broadband Recipient)	0 – 10
C-2. Financial Wherewithal (GUMBO Cost Per Prospective Broadband Recipient)	0 – 20
C-3. Financial Wherewithal (Bankruptcy)	0 – 2
D. Provider Matching Funds	0 – 1 – 5+
E. Local Government Letters of Support	1 – 3
F. Number of Unserved Households in Parish	1 – 5
G. Percent of Total Unserved Households Now Served	1 – 5
H. Unserved Businesses Now Served	1 – 5
I-1. Leverage of Existing Infrastructure (Percentage of Mileage of Preexisting Infrastructure)	0 – 5
I-2. Leverage of Existing Infrastructure (Timing of Construction Start Date)	1 – 5
I-3. Leverage of Existing Infrastructure (Timing of Wireline Construction Completion)	1 – 10
Or	
I-4. Leverage of Existing Infrastructure (Timing of Wireless Construction Completion)	1 – 5
J. Consumer Price	0 – 10
K. Local Government Matching	0 – 1 – 5+
L. Certified Hudson/Vet Initiative Grant Recipient	0 – 10
M. Certified Hudson/Vet Initiative Subcontractor	0 – 20
<b>Total Possible Points:</b>	<b>7 – 167+</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 48:1511 (June 2022).

## Chapter 5. Protests

### §501. Protests

A. All GUMBO applications shall be publicly available on the office’s website for a period of at least 60 days prior to award. During the 60-day period, any interested party may submit comments to the director concerning any pending application.

B. 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.

C. A provider of broadband service may submit a protest of any application or project area on the grounds the proposed project covers an area where either broadband service exists, or construction of broadband infrastructure will begin within 24 months as described in §201 of this part 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.

D. 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 proposed project area;
4. number of serviceable locations within the proposed project area, including the speeds those serviceable locations are able to receive;
5. street level data of customers receiving service within the proposed project area;
6. point shapefiles that show each proposed 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 project area map submitted by the applicant, a map indicating where the protested serviceable locations are within the proposed project area;
9. heat maps indicating received signal strength indicator (RSSI) in the challenged area.

E. Upon the close of the application period, and throughout the succeeding 60-day protesting period, a blackout period shall be instituted. This blackout period shall remain in effect until the announcement of awards. During this blackout period, protesting parties shall not initiate contact with the office, except as provided by this section. 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.

F. Should a protest be validated, the office shall work with an applicant to amend an application or project area to reduce the number of unserved prospective broadband recipients and re-scope the application or project area. The office shall revise application or project area scores in accordance with amended applications. As a result of a

validated protest and a reduction in the number of unserved prospective broadband recipients, an applicant shall also have the option to withdraw its application or project area.

G. The protest period for protesting an award shall not exceed 7 days from the announcement of awards.

H. 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 48:1514 (June 2022).

## **Chapter 6. Awards**

### **§601. Protests**

A. The protest period for protesting an award shall not exceed 7 days from the announcement of awards.

B. The protest procedure for protesting an award shall follow the rules presented in Chapter 5 of this part.

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).

### **§603. Grant Agreement**

A. A grant recipient shall have 30 days, from award of the grant agreement, to negotiate and sign the agreement. If the grant agreement is not signed by the grant recipient within 30 days from award of the agreement, the office shall reserve the right to rescind the award and proceed to award 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 of the award of the grant 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 48:1515 (June 2022).

## **Chapter 7. Compliance**

### **§701. Speed and Cost Compliance**

A. The office shall require that grant recipients offer the proposed advertised minimum download and minimum upload speeds of at least 100:20 Mbps.

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.

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 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. Initially, grant recipients will be required to participate in the Federal Communications Commission's Emergency Broadband Benefit program. Once the FCC's EBB program has terminated, the grant recipient shall participate in any program so designated by the U.S. Department of the Treasury.

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).

### **§703. Reporting**

A. Grant recipients shall submit to the office a monthly 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. Monthly 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. 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).

### **§705. Disbursement and Reimbursement**

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 through the American Rescue Plan Act 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 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).

**§707. Failure to Perform**

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 the minimum advertised connection speed and cost at the advertised rate 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, or such other occurrence over which the grant recipient has no control.

G. 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).

**§709. Federal Oversight, Civil Rights Compliance, and Other Applicable Federal Law**

A. Grant recipients are subject to audit or review by the U.S. Department of the Treasury Inspector General and Government Accountability Office.

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).

Jay Dardenne  
Commissioner

2206#014

**RULE**

**Office of the Governor  
Division of Administration  
Tax Commission**

**Ad Valorem Taxation**

(LAC 61:V. 100, 111, 113, 117, 118, 121, 123, 203, 213, 301, 303, 304, 307, 703, 903, 907, 1103, 1307, 1503, 2501, 2503, 3101, 3102, 3103, 3105, 3106, 3107 and 3501)

In accordance with provisions of the Administrative Procedure Act (R.S. 49:950 et seq.), and in compliance with statutory law administered by this agency as set forth in R.S. 47:1837, the Tax Commission has adopted, amended and/or repealed Sections of the Louisiana Tax Commission real/personal property rules and regulations for use in the 2022 (2023 Orleans Parish) tax year. This Rule is hereby adopted on the day of promulgation.

**Title 61**

**REVENUE AND TAXATION**

**Part V. Ad Valorem Taxation**

**Chapter 1. Constitutional and Statutory Guides to Property Taxation**

**§100. Introduction**

A. The power of local and state governments to tax real and personal property is contained within the constitution of the state of Louisiana. The broad constitutional principles are clarified in the revised statutes of the state of Louisiana. These statutes are further clarified and made workable by rules and regulations passed in accordance with the statutes and the constitution by the Louisiana Tax Commission. This summary of certain provisions of the constitution and revised statutes is for convenience only and is not intended as an official interpretation. Actual provisions of law supersede this summary.

AUTHORITY NOTE: Promulgated in accordance with Louisiana Constitution of 1974, Article VII, Section 18.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 15:1097 (December 1989), amended LR 48:1516 (June 2022).

### **§111. Criteria for Determining Fair Market Value**

A. - B. ...

C. The fair market value of real and personal property shall be determined by the following generally recognized appraisal procedures: the market approach, the cost approach, and the income approach, or a combination of the three. The fair market value of property shall be determined based upon the individual characteristics of the property that affect the market value of the property. The assessor shall consider all three approaches to value and shall utilize all available data that is specific to the valuation of property used to determine the fair market value of property.

1. In utilizing the market approach, the assessor shall use an appraisal technique in which the market value estimate is predicated upon prices paid in actual market transactions. The assessor shall collect relevant comparable sales data, and shall consider such sales data when utilizing a market approach. The assessor shall estimate the value of property based on sales of comparable property in an arm's length transaction under usual and ordinary circumstances. Allocation of the purchase price by the purchaser among properties or assets purchased in a single sale or among elements of a single property may be indicative of fair market value of those properties or assets. Assessors shall reasonably and in good faith consider allocation of the purchase price in such sales.

2. In utilizing the cost approach, the assessor shall use a method in which the value of a property is derived by estimating the replacement or reproduction cost of the property; deducting therefrom the estimated physical, functional, and/or external depreciation, and then adding the market value of the land, if any. In utilizing the cost approach, the assessor shall legitimately consider and appropriately recognize functional and external obsolescence in the derived value. The assessor shall collect market data, including obsolescence, and shall consider such data when utilizing a cost approach.

3. In utilizing the income approach, the assessor shall use an appraisal technique in which the anticipated net income is capitalized to indicate the capital amount of the investment which produces the net income (R.S. 47:2323). The assessor shall collect market data and shall consider such market data when utilizing an income approach.

D. In determining which appraisal procedure to use for the final determination of fair market value, the assessor shall consider:

- a. the relevance of each approach to the property being valued.
- b. the amount and accuracy of the data used in each approach.
- c. the strengths and weaknesses of each approach.

E. When performing a valuation of any affordable rental housing property, the assessor shall not consider any of the following in determining fair market value:

1. income tax credits available to the property under section 42 of the Internal Revenue Code;
2. below-market interest rate on financing obtained under the Home Investment Partnership Program under the Cranston-Gonzales National Affordable Housing Act, or the

Federal Home Loan Bank Affordable Housing Program established pursuant to the Financial Institution Reform, Recovery, and Enforcement Act of 1989;

3. any other federal, state, or similar program intended to provide or finance affordable rental housing to persons of low or moderate income and requiring restricted occupancy and rental rates based on the income of the persons occupying such housing.

NOTE: Also see, Chapter 2, §213.G. thru G.3. and Chapter 3, §303.C.4. thru C.4.c.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 10:920 (November 1984), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 20:198 (February 1994), amended by the Office of the Governor, Division of Administration, Tax Commission, LR 43:648 (April 2017), LR 48:1517 (June 2022).

### **§113. Assessments: General Information**

A. Assessment Date. Assessments shall be made on the basis of the condition of things existing on the first day of January of each year.

B. Domicile. All property subject to taxation, including merchandise or stock in trade, shall be placed upon the assessment lists in the respective parishes or districts where situated. Personal property other than aircraft (§1501.A.4.), drilling rigs (§1101.B.), leased equipment (§2101.A.), watercraft (§701.A.), and public service property (R.S. 47:1855) acquires a situs at the domicile of the holder or owner, but tangible personal property used in business operations in any other taxing district is to be taxed where situated on January 1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1703(B) and R.S. 47:1952.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 10:921 (November 1984), LR 15:1097 (December 1989), LR 16:1063 (December 1990), amended by the Department of Revenue, Tax Commission, LR 34:677 (April 2008), amended by the Office of the Governor, Division of Administration, Tax Commission, LR 45:531 (April 2019), LR 48:1517 (June 2022).

### **§117. Personal Property Defined**

*Personal Property* or *Movable Property*—includes all things other than real estate which have any pecuniary value, all moneys, credits, investments in bonds, stocks, franchises, shares in joint stock companies or otherwise (R.S. 47:1702 and R.S. 47:2322).

1. Personal property shall mean tangible property that is capable of being moved or removed from real property without substantial damage to the property itself or the real property from which it is capable of being removed. Personal property shall include, but not necessarily be limited to, inventory, furniture, fixtures, machinery and equipment, and all process and manufacturing machinery and equipment, including the foundation therefore (R.S. 47:2322).

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1702 and R.S. 47:2322.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 10:921 (November 1984), LR 15:1097 (December 1989), LR 48:1517 (June 2022).

### **§118. Data Collection by the Assessor**

A. The assessor may use self-reporting forms, as approved and adopted by the Louisiana Tax Commission or its successors, to gather data necessary to determine fair market value. A self-reporting form shall be returned to the assessor by the first day of April, or 45 days after receipt, whichever is later.

B. By failing to file a report when it is due, a property owner loses the right to appeal the appraisal by the assessor (R.S. 47:2329). If the failure to file is intentional, a penalty of 10 percent of the tax due shall be imposed [R.S. 47:2330(A)]. If a taxpayer files a false report with the intent to defraud, a penalty of 10 percent of the tax due shall be imposed.

C. The assessor shall collect market sales, cost, and income data in determining fair market value.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:2324, R.S. 47:2329 and R.S. 47:2330.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 15:1097 (December 1989), amended LR 16:1063 (December 1990), amended by the Department of Revenue, Tax Commission, LR 34:677 (April 2008), LR 48:1518 (June 2022).

### **§121. Reappraisal**

A. Real property, as defined in R.S. 47:2322, shall be reappraised at least every four years in accordance with the uniform valuation date and quadrennial reappraisal cycle as determined by the Tax Commission.

B. Personal property, as defined in R.S. 47:2322, shall be reappraised every year.

C. Incorporeal real or immovable property, as defined in R.S. 47:2322 and R.S. 47:1702, shall be reappraised once every four years.

D. Taxable intangible public service properties, bank stocks, and credit assessments on premiums written in Louisiana by insurance companies and loan and finance companies, per R.S. 47:1709 or incorporeal personal or movable property, as defined in R.S. 47:1702, shall be reappraised every year.

E. Public service property, as defined in R.S. 47:1851, shall be reappraised every year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:2331.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 10:921 (November 1984), LR 15:1097 (December 1989), LR 16:1063 (December 1990), amended by the Department of Revenue, Tax Commission, LR 34:677 (April 2008), amended by the Office of the Governor, Division of Administration, Tax Commission, LR 43:649 (April 2017), LR 46:560 (April 2020), LR 48:1518 (June 2022).

### **§123. Statutes Pertaining to Specific Personal Property**

#### **A. Listing and Assessing of Notes and Indebtedness**

1. All credits, including open accounts, bills receivable, judgments and all promissory notes, not exempt, shall be assessed at the personal property ratio. Valuation shall be at an average of the capital employed in the business after deduction from accounts payable, bills payable and other liabilities of a similar character, not exempt. Liabilities

due from branches or subsidiaries shall not be deducted (R.S. 47:1962).

2. Indebtedness and all evidence of indebtedness shall be taxable only at the situs and domicile of the holder or owner thereof (R.S. 47:1952).

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1952 and R.S. 47:1962.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 10:921 (November 1984), LR 15:1097 (December 1989), amended by the Department of Revenue, Tax Commission, LR 24:479 (March 1998), LR 48:1518 (June 2022).

## **Chapter 2. Policies and Procedures for Assessment and Change Order Practices**

### **§203. Change Order Requests**

#### **A. General Provision**

1. A change order request may be made to correct an error in assessment if the change does not increase the taxpayer's tax liability or the taxpayer expressly consents to the change. A change to an assessment that increases the taxpayer's tax liability is governed by R.S. 47:1966.

2. Change order requests shall be submitted via the LTC website ([www.latax.state.la.us](http://www.latax.state.la.us)).

3. All change order requests shall comply with Louisiana Law and the Real/Personal Property Rules and Regulations of the LTC.

4. All change order requests shall require that the actual physical address of the property be identified. In the event that there is no actual physical street address, the assessor's office shall furnish the street/highway location and a brief location description.

5. Change order batches should not exceed a total of 50 change order requests, in order to facilitate speedy transmission.

6. Change order requests are subject to audit by the LTC.

7. All change order requests should be submitted to the LTC no later than noon on Thursday of each week in order to be considered on the next public meeting docket of the LTC.

8. All change order requests are subject to review by LTC staff for approval or denial by the commission at their regularly scheduled open meetings.

#### **B. Form of the Change Orders**

1. LTC website change order system requests shall comply with the Louisiana State Tax Commission electronic change order export specifications. These specifications can be found on the LTC website at [www.latax.state.la.us](http://www.latax.state.la.us).

a. Each parish assessors' office shall be identified by their federal information processing standards (FIPS) parish identification code.

b. All export data submitted to the LTC shall require utilization of the standard format currently posted on the LTC's website. Any parish that imports an individual parish change order data batch into the LTC's website must adhere to the LTC's format specifications.

c. Each parish will contact the LTC's change order supervisor to set up their individual parish login name and password. The chosen parish password should be

confidentially guarded to protect the integrity of each parish's change order system.

C. Required content of all Change Orders

1. All change orders shall include the following:

- a. enumerated reason for the change order as provided in all regulations of the LTC;
- b. specifications identified and described in the LTC Electronic Change Order Export Specifications download file; (See §201.3.b above)
- c. physical address of the property, including full numerical street address with applicable zip code. If vacant land, street/highway and brief location description must be provided.

D. Reasons for Change Orders

1. All Change Orders submitted shall delineate one of the following reasons:

- a. adjudicated to parish—date adjudicated;
- b. adjudicated to city of: (municipality)—date adjudicated;
- c. exempt non-profit organization application filed/exclusive use verified—category: acquisition date;
- d. homestead exemption—assessor's office error—acquisition date: occupancy date;
- e. homestead exemption—taxpayer application—acquisition date: occupancy date;
- f. special assessment level—land: improvement;
- g. improvement—cancel—dual to assessment no. (provide no.);
- h. improvement—cancel/not taxable—reason;
- i. improvement—decrease value, error in square feet and/or classification calculation;
- j. improvement—taxpayer appraisal—assessor concurs;
- k. industrial exemption—exempt roll; contract no. improvement—personal property;
- l. industrial exemption—expired—contract no.—expiration date;
- m. land—cancel—dual to assessment no. (provide no.);
- n. land—decrease value—reason;
- o. personal property—cancel—business closed prior to January 1<sup>st</sup> (August 1<sup>st</sup>—Orleans Parish);
- p. personal property—taxpayer provided additional information;
- q. personal property—assessor's office error—reason;
- r. public property—property donated or sold to a bona fide exempt public entity—donation or sale date;
- s. public property—leased or rented to non-public party—date of lease: term of lease;
- t. redemption—removed from adjudication roll. date redeemed;
- u. redemption—taxpayer redeemed from tax sale—date redeemed;
- v. use value—allow under category: no. of acres;
- w. use value—change classification category to: no. of acres;
- x. appeal;
- y. other—assessor shall state reason.

2. The LTC change order reasons list is subject to periodic revision, as may be deemed necessary.

E. When a parish assessor receives notice of a decision on an appeal, the assessor shall implement the ruling, including completing and submitting a change order request to the LTC, within a reasonable time, which shall not exceed 15 calendar days from the decision becoming final. A LTC decision is final when either:

1. the appeal period of 30 days has run without a petition for judicial review having been filed; or
2. after disposition of a petition for judicial review under R.S. 47:1998.

F. Whenever a change order request is approved by the LTC, the assessor's website and all lists maintained by the assessor shall be updated to reflect such approval.

AUTHORITY NOTE: Promulgated in accordance with the Louisiana Constitution of 1974, Article VII, Section 20. (A)(1); R.S. 47:1703, R.S. 47:1703A., R.S. 47:1703.1.B., R.S. 47:1835, R.S. 47:1837, R.S. 47:1952, R.S. 47:1966, R.S. 47:1990, and R.S. 47:1991.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Tax Commission, LR 31:700 (March 2005), LR 32:426 (March 2006), LR 48:1518 (June 2022).

**§213. Assessment Policies and Procedures**

A. All property within the State of Louisiana shall be assessed at a percentage of fair market value or use value, as the law provides, and either placed on the regular tax rolls, exempt rolls, or adjudicated tax rolls.

B. Assessors shall value property at fair market value and then assessed valuations shall be based upon the percentage classification requirements of the Louisiana Constitution, Article VII, Section 18(B).

C. All property shall be reappraised and valued in accordance with the constitution at intervals of not more than four years. This quadrennial cycle reappraisal date is determined by the Louisiana Tax Commission.

D. "Sales chasing" and "sales listing chasing" is expressly prohibited. "Sales chasing" is the procedure by which an individual property assessment is based solely upon the price the property sold for. "Sales listing chasing" is the procedure by which an individual property assessment is based solely upon the listed sales price of the property.

E. The assessors shall submit applicable reporting forms to all taxpayers located within their parish, whether taxable or exempt, to ensure equity and uniformity in the assessment and valuation of all properties utilizing proper reporting data. If a taxpayer fails to report or files a false report, the assessors should apply those penalties provided for in state law.

F. The assessor shall collect and consider publicly available information and data, as well as market sales, cost, and income data, in determining fair value, and shall consider such information in determining fair market value. Any publicly available information and data, including market sales, cost, and income data, is deemed to have been presented to the assessor prior to the deadline for filing a complaint with the Board of Review provided for in R.S. 47:1992. Such information includes, but is not limited to:

1. aerial or other photography;
2. any Louisiana public record, including those of the Clerks of Court or other political subdivisions, including but not limited to building permits, conveyance records, city directories, occupancy permits, or demolition permits, and of the Department of Natural Resources, including but not

limited to data from the Strategic Online Natural Resource Information System (SONRIS);

3. CAMA and/or mapping records;
4. public records;
5. legal news publications;
6. newspaper publications;
7. 911 Emergency Response System records;
8. occupational licenses;
9. occupancy permits;
10. physical inspections;
11. sales data, including but not limited to multiple listings reports (e.g. Multiple Listing Service and DeedFax);
12. utility records;
13. voter registrations;
14. cost data or cost guides and their related sources, including but not limited to N.A.D.A., Manufactured Housing Appraisal Guide and Marshall and Swift Cost Manual;
15. income data or income guides and their related sources, including but not limited to reports from the National Apartment Association, Trends reports, the HOST Almanac, and Multiple Listing Service.

G. The LTC recommends that the assessor preserve a copy of all documents and written communication submitted by a taxpayer and shall maintain an individual file for each assessment/taxpayer for at least four years and shall record the date each document was received. In addition to a copy of any documents, the LTC recommends that the assessor also maintain a log of all non-written communication from a taxpayer, including the date of the communication, a brief summary of the communication, and the name and contact information of the persons privy to the communication, which shall be maintained in the individual file for such assessment/taxpayer. Such documents, written communication, and log of non-written communication shall be confidential and not available to the public.

H. When performing a valuation of any affordable rental housing property, the assessor shall not consider any of the following in determining fair market value:

1. income tax credits available to the property under Section 42 of the Internal Revenue Code;
2. below-market interest rate on financing obtained under the Home Investment Partnership Program under the Cranston-Gonzales National Affordable Housing Act, or the Federal Home Loan Bank Affordable Housing Program established pursuant to the Financial Institution Reform, Recovery, and Enforcement Act of 1989;
3. any other federal, state, or similar program intended to provide or finance affordable rental housing to persons of low or moderate income and requiring restricted occupancy and rental rates based on the income of the persons occupying such housing.

I. The fair market value of real property determined by the commission in connection with a review of the correctness of an assessment under R.S. 47:1989 shall be utilized by the assessor for assessment purposes in the subsequent tax years until reappraisal in a future mandated reappraisal year, unless there has been a change in the physical condition of the property that would justify reappraisal or a change in value. Nothing in this

subparagraph shall be interpreted or applied to limit an assessor's ability or obligation to reduce an assessment due to a change in the condition of the property or under R.S. 47:1978 or R.S. 47:1978.1.

NOTE: Also see, Chapter 1, §111.D. thru D.3. and Chapter 3, §303.C.4. thru C.4.c.

AUTHORITY NOTE: Promulgated in accordance with the Louisiana Constitution of 1974, Article VII, Section 18, et seq., R.S. 47:1703, R.S. 47:1703.1, R.S. 47:1703.C., R.S. 47:1837, R.S. 47:1951, et seq., R.S. 47:1952, R.S. 47:1953, R.S. 47:1955, R.S. 47:1956, R.S. 47:1957, R.S. 47:1959, R.S. 47:1961, R.S. 47:1971, R.S. 47:1972, R.S. 47:2306, R.S. 47:2323, R.S. 47:2324; R.S. 47:2325, R.S. 47:2329, R.S. 47:2330, and R.S. 47:2331.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Tax Commission, LR 31:703 (March 2005), LR 34:678 (March 2008), amended by the Office of the Governor, Division of Administration, Tax Commission, LR 43:649 (April 2017), LR 46:560 (April 2020), LR 48:1519 (June 2022).

### **Chapter 3. Real and Personal Property**

#### **§301. Definitions**

*Composite Multiplier*—a factor obtained by multiplying the cost index for the base year times percent good.

*Depreciation*—loss in value of an object, relative to its replacement cost new, reproduction cost new, or original cost, whatever the cause of the loss in value. Depreciation is sometimes subdivided into three types: physical deterioration (wear and tear), functional obsolescence (suboptimal design in light of current technologies or tastes), and economic obsolescence (poor location or radically diminished demand for the product).

*Economic Life*—the normal useful life of the property as experienced by a particular business or industry.

*External (Economic) Obsolescence*—the loss of appraisal value (relative to the cost of replacing a property with property of equal utility) resulting from causes outside the property that suffers the loss. Usually locational in nature in the depreciation of real estate, it is more commonly marketwide in personal property, and is generally considered to be economically infeasible to cure.

*Effective Age of a Property*—its age compared with other properties performing like functions. It is the actual age less the age which has been taken off by face-lifting, structural reconstruction, removal of functional inadequacies, modernization of equipment, etc. It is an age which reflects a true remaining life for the property, taking into account the typical life expectancy of buildings or equipment of its class and usage. It is a matter of judgment, taking all factors into consideration.

*Extended Life Expectancy*—the increased life expectancy due to seasoning and proven ability to exist. Just as a person will have a total normal life expectancy at birth which increases as he grows older, so it is with structures and equipment.

*Fair Market Value*—the price for property which would be agreed upon between a willing and informed buyer and a willing and informed seller under usual and ordinary circumstances; it shall be the highest price estimated in terms of money which property will bring if exposed for sale on the open market with reasonable time allowed to find a purchaser who is buying with knowledge of all the uses and purposes to which the property is best adopted and for which it can be legally used.

*Functional Obsolescence*—loss in value due to lack of utility or desirability of part or all the property, inherent to the improvement or equipment. Thus a new structure or piece of equipment may suffer functional obsolescence.

*Inventory*—raw materials, work in process, finished goods or supplies.

*Non-Operating or Non-Utility Property*—property owned by a public service company used for purposes other than the normal operation of that public service company. See §2901 for further details.

*Obsolescence*—a decrease in the value of a property occasioned solely by shifts in demand from properties of this type to other types of property and/or to personal services. Some of the principal causes of obsolescence are:

1. changes in the esthetic arts;
2. changes in the industrial arts, such as new inventions and new processes;
3. legislative enactments;
4. change in consumer demand for products that results in inadequacy or overadequacy;
5. migration of markets that results in misplacement of the property.

*Percent Good*—equals 100 percent less the percentage of cost represented by depreciation. It is the present value of the structure or equipment at the time of appraisal, divided by its replacement cost.

*Physical Depreciation*—loss in value due to physical deterioration.

*Reconciliation*—the final step in the valuation process wherein consideration is given to the relative strengths and weaknesses of the three approaches to value, the nature of the property appraised, and the quantity and quality of available data in formation of an overall opinion of value (either a single point estimate or a range of value). Also termed “correlation” in some texts.

*Remaining Life*—the normal remaining life expectation. It is the length of time the structure or equipment may be expected to continue to perform its function economically.

*Rules and Regulations of the Tax Commission*—guidelines and procedures adopted which establish criteria to be applied uniformly in determining fair market value, use value and/or assessed value as stated in the Section applicable to a particular type or class of property.

*Taxpayer*—as used in the Tax Commission’s Rules and Regulations, the terms “taxpayer” and “property owner” are interchangeable and mean the individual(s) and/or entity(ies) who own the property and/or is responsible for payment of property taxes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837, R.S. 47:1853 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Louisiana Tax Commission, LR 3:77 (February 1977), amended by the Department of Revenue and Taxation, Tax Commission, LR 8:102

(February 1982), LR 10:16 (January 1984), LR 13:763 (December 1987), LR 16:1063 (December 1990), amended by the Department of Revenue, Tax Commission, LR 32:427 (March 2006), amended by the Office of the Governor, Division of Administration, Tax Commission LR 47:456 (April 2021), LR 48:1520 (June 2022).

### §303. Real Property

A. In making appraisals of any real property, including but not limited to residential, commercial and industrial land and improvements, the assessors shall follow the criteria and requirements in §111 of this Part.

B. The following procedure shall be used for assessing, listing and placing transferred property and property upon which improvements have been made after the date of the reappraisal as set by the Tax Commission.

1. Improvements shall be added to the rolls based upon the condition of things existing on January 1 of each year (except Orleans Parish). New improvements for Orleans Parish shall be added to the next year's tax roll, based upon the condition of things existing on August 1 of each year. The value of the improvements shall be in accordance with the uniform valuation date and quadrennial reappraisal cycle as determined by the Tax Commission.

C. - C.6. ...

D. All real property shall be reappraised based on a mandatory quadrennial reappraisal cycle, as set forth herein.

1. All real property shall be reappraised for the 2016 tax year in all parishes. Beginning in tax year 2016, all real property is to be valued as of January 1, 2015.

2. All real property shall be reappraised for the 2020 tax year in all parishes. Beginning in tax year 2020, all real property is to be valued as of January 1, 2019.

3. All real property shall be reappraised for the 2024 tax year in all parishes. Beginning in tax year 2024, all real property is to be valued as of January 1, 2023.

E. The annual ratio studies of the Tax Commission shall be performed in accordance with the uniform valuation date and quadrennial reappraisal cycle as determined by the Tax Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Louisiana Tax Commission, LR 7:44 (February 1981), amended by the Department of Revenue and Taxation, Tax Commission, LR 9:69 (February 1983), LR 12:36 (January 1986), LR 13:764 (December 1987), LR 16:1063 (December 1990), LR 17:611 (June 1991), LR 21:186 (February 1995), amended by the Department of Revenue, Tax Commission, LR 25:312 (February 1999), LR 26:506 (March 2000), LR 29:367 (March 2003), LR 30:487 (March 2004), LR 34:678 (April 2008), LR 35:492 (March 2009), LR 36:765 (April 2010), amended by the Division of Administration, Tax Commission, LR 38:799 (March 2012), LR 39:487 (March 2013), LR 42:745 (May 2016), LR 43:650 (April 2017), LR 44:577 (March 2018), LR 45:532 (April 2019), LR 46:560 (April 2020), LR 48:1521 (June 2022).



**§304. Electronic Change Order Specifications, Property Classifications Standards and Electronic Tax Roll Export Specifications**

- A. Electronic Change Order Specifications  
\* \* \*
- B. Property Classification Standards

Class Code	Class Description (TC-33)	Sub-Class Code	Sub-Class Description (Grand Recap)	Class Definition
<b>Real Estate</b>				
* * *				
		4530	Garages, Industrials, Lofts and Warehouses	Includes Industrial Buildings; Laboratories; Lofts; Computer Centers; Passenger Terminals; Broadcasting Facilities (Radio/TV Stations); Armories; Post Offices; Warehouses; Cold Storage Facilities; Creameries; Transit Warehouses; Mini-warehouses; Shipping docks; Loading Docks; Hangers; Maintenance, Storage and T-Hangers; Complete Auto Dealerships; Showrooms; Garages: Service and Repair, Storage (Municipal and Service Sheds) Industrials, Engineering/R&D (Laboratories, Manufacturing, Light/Heavy); Flex-mall Buildings; Mini-lube Garages; Parking Structures; Underground Parking Garages; Surface-level Parking Plots; Surface-level Parking Lots; Misc. Buildings: Bakery, Bottle & Cannery Plants; Control Towers, Laundry, Boiler, Recycling, Sound Stage and Telephone.
* * *				

C. Electronic Tax Roll Export Specifications  
\* \* \*

AUTHORITY NOTE: Promulgated in accordance with the Louisiana Constitution of 1974, Article VII, §18 and R.S. 47:1837.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Tax Commission, LR 31:703 (March 2005), LR 32:427 (March 2006), LR 36:765 (April 2010), amended by the Division of Administration, Tax Commission, LR 38:799 (March 2012), LR 39:487 (March 2013), LR 40:529 (March 2014), LR 41:672 (April 2015), LR 42:745 (May 2016), LR 43:651 (April 2017), LR 44:578 (March 2018), LR 45:532 (April 2019), LR 48:1522 (June 2022).

**§307. Personal Property Report Forms**

A. The appropriate self-reporting Personal Property Report Form, is to be forwarded each year, on or before February 15 in the year in which the property is to be appraised, to each person in whose name the property is assessed. Upon completion, the property owner shall return the form to the assessor by the first day of April of that year or 45 days after receipt, whichever is later. Prior to the deadline for filing a complaint with the Board of Review provided for in R.S. 47:1992, the property owner shall also submit to the assessor, or the designee contracted by the assessor, any and all additional documentation and information the property owner believes is relevant to the determination of fair market value of the reported property. It is the party seeking a fair market value reduction for its property based on obsolescence who has the burden of producing sufficient data and information to substantiate its claim. The assessor shall legitimately consider all evidence and information submitted or publicly available to the assessor, including the consideration of functional and/or economic obsolescence. The assessor shall promptly respond to a taxpayer's request for a reduction in value and/or obsolescence. Both assessors and taxpayers are expected and ordered to act in good faith on issues concerning personal

property renditions and requests for a fair market value reduction based on obsolescence. On appeal to the Tax Commission, the assessor shall be prepared to offer an articulated analysis for the assessor's determination of value, including the consideration of functional and/or economic obsolescence, and shall be prepared to offer an articulated analysis for the assessor's evaluation of the sufficiency of the taxpayer's documentation.

A.1. - B.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837, R.S. 47:2324 and R.S. 47:2326.

HISTORICAL NOTE: Promulgated by the Tax Commission, LR 2:358 (November 1976), amended by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), LR 13:764 (December 1987), LR 16:1063 (December 1990), LR 21:186 (February 1995), amended by the Department of Revenue, Tax Commission, LR 33:489 (March 2007), amended by the Office of the Governor, Division of Administration, Tax Commission, LR 45:533 (April 2019), LR 48:1522 (June 2022).

**Chapter 7. Watercraft**

**§703. Tables—Watercraft**

- A. Floating Equipment—Motor Vessels

Cost Index (Average)		Average Economic Life 12 Years		
Year	Index	Effective Age	Percent Good	Composite Multiplier
2021	0.939	1	94	.88
2020	1.021	2	87	.89
2019	1.026	3	80	.82
2018	1.063	4	73	.78
2017	1.100	5	66	.73
2016	1.122	6	58	.65
2015	1.113	7	50	.56
2014	1.123	8	43	.48

Table 703.A.1 Floating Equipment—Motor Vessels				
Cost Index (Average)		Average Economic Life 12 Years		
2013	1.138	9	36	.41
2012	1.147	10	29	.33
2011	1.180	11	24	.28
2010	1.217	12	22	.27
2009	1.208	13	20	.24

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B. Floating Equipment – Barges (Non-Motorized)

A. Table 703.B.1 B. Floating Equipment—Barges (Non-Motorized)				
Cost Index Average		Average Economic Life 20 Years		
Year	Index	Effective Age	Percent Good	Composite Multiplier
2021	0.939	1	97	.91
2020	1.021	2	93	.95
2019	1.026	3	90	.92
2018	1.063	4	86	.91
2017	1.100	5	82	.90
2016	1.122	6	78	.88
2015	1.113	7	74	.82
2014	1.123	8	70	.79
2013	1.138	9	65	.74
2012	1.147	10	60	.69
2011	1.180	11	55	.65
2010	1.217	12	50	.61
2009	1.208	13	45	.54
2008	1.242	14	40	.50
2007	1.291	15	35	.45
2006	1.362	16	31	.42
2005	1.425	17	27	.38
2004	1.532	18	24	.37
2003	1.585	19	22	.35
2002	1.612	20	21	.34
2001	1.622	21	20	.32

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AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 10:924 (November 1984), LR 12:36 (January 1986), LR 13:188 (March 1987), LR 13:764 (December 1987), LR 14:872 (December 1988), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:204 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:479 (March 1998), LR 25:312 (February 1999), LR 26:506 (March 2000), LR 27:425 (March 2001), LR 28:518 (March 2002), LR 29:368 (March 2003), LR 30:487 (March 2004), LR 31:715 (March 2005), LR 32:430 (March 2006), LR 33:490 (March 2007), LR 34:678 (April 2008), LR 35:492 (March 2009), LR 36:772 (April 2010), amended by the Division of Administration, Tax Commission, LR 37:1394 (May 2011), LR 38:802 (March 2012), LR 39:490 (March 2013), LR 40:530 (March 2014), LR 41:673 (April 2015), LR 42:746 (May 2016), LR 43:652 (April 2017), LR 44:579 (March 2018), LR 45:533 (April 2019), LR 46:560 (April 2020), LR 47:460 (April 2021), LR 48:1522 (June 2022).

**Chapter 9. Oil and Gas Properties**  
**§903. Instructions for Reporting Oil and Gas Properties**

A. A separate LAT-12 form is used for each lease or facility. An attachment in lieu of the form is permitted only if information is in the same sequence. The LAT-12 form may be reproduced and used as an attachment; however, all attachments must be properly identified and attached to the original.

1. Wells under the same assessment number are required to be listed in serial number order.

2. All additional supporting documentation (DMIR, DT1, etc.) is recommended to be listed in serial number order.

3. Any well on which economic consideration is being requested due to dual status is required to be listed by serial number next to the serial number of its sibling well.

B. For operations with more than one lease or facility in any one field (by ward), the following will be permitted:

1. Furnish an original LAT-12 showing parish, ward and field with notation that attachments are made. Only this form needs date and signature.

2. Furnish separate attachment(s) (as stated above) for each lease or facility.

3. Total each attachment, by property classes and summarize.

4. Summary of all attachments, by property classes, may be on an attachment or in the space provided on the original.

C. At the assessor's request, operators shall furnish a statement of lease operating expenses for the previous calendar year. This statement should correspond as closely as possible with the LAT 12 form(s) for each lease or facility (as stated above) and be in sufficient enough detail to indicate the extent and monthly timing of incurrence of various major categories of expense such as labor, power & fuel, salt water disposal, chemicals, materials & supplies, repair and maintenance, workovers, and district overhead.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2326.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 16:1063 (December 1990), LR 19:212 (February 1993), LR 22:117 (February 1996), LR 48:1523 (June 2022).

**§907. Valuation of Oil, Gas, and Other Wells**

A. The cost-new schedules below cover only that portion of the well subject to ad valorem taxation. Functional and/or economic obsolescence shall be considered in the analysis of fair market value as substantiated by the taxpayer in writing. Consistent with R.S. 47:1957, the assessor may request additional documentation.

**Instructions for Use of Tables 907.A-1,  
907.A-2 and 907.A-3 and  
Procedure for Arriving at Assessed Value**

1. Determine if well is located in Region 1 by reference to Table 907.B.1. See note for Region 2 or Region 3 (offshore state waters) wells.

2. Multiply the appropriate percent good factor based on age of the well as found in Table 907.B-2.
3. Use Oil cost-new to assess all active service wells for region where located.
4. See explanations in Section 901.E regarding the assessment of multiple completion wells.
5. For wells recompleted, use new perforation depth to determine fair market value.
6. Adjustments for Allowance of Economic Obsolescence
  - a. All wells producing 10 bbls oil or 100 mcf gas, or less, per day, as well as, all active service wells (i.e. injection, salt water disposal, water source, etc.) shall be allowed a 40 percent reduction. Taxpayer shall provide the assessor with proper documentation to claim this reduction. Once the 40 percent reduction has been applied and calculated, an additional 60 percent reduction shall be applied for any well producing 1 bbl of oil or 10 mcf of gas or less per day.
    - i. for wells producing 5 mcf or less of gas per day an additional reduction of 33 percent shall be applied;
    - ii. for wells producing 2 mcf or less of gas per day an additional reduction of 35 percent shall be applied.
  - b. All inactive (shut-in) wells shall be allowed a 90 percent reduction.
  - c. Deduct any additional obsolescence that has been appropriately documented by the taxpayer, as warranted, to reflect fair market value.
  - d. All oil and gas property assessments may be based on an individual cost basis.
  - e. Sales, properly documented, should be considered by the assessor as fair market value, provided the sale meets all tests relative to it being a valid sale.

1. Oil, Gas and Associated Wells; Region 1—North Louisiana

Table 907.A.1 Oil, Gas and Associated Wells; Region 1—North Louisiana				
Producing Depths	Cost—New By Depth, Per Foot		15% of Cost—New By Depth, Per Foot	
	\$ Oil	\$ Gas	\$ Oil	\$ Gas
0-1,249 ft.	45.56	152.54	6.83	22.88
1,250-2,499 ft.	41.13	112.16	6.17	16.82
2,500-3,749 ft.	32.33	74.29	4.85	11.14
3,750-4,999 ft.	44.73	74.02	6.71	11.10
5,000-7,499 ft.	52.59	72.25	7.89	10.84
7,500-9,999 ft.	115.28	97.38	17.29	14.61
10,000-12,499 ft.	336.14	118.13	50.42	17.72
12,500-14,999 ft.	546.68	178.38	82.00	26.76
15,000-17,499 ft.	699.69	203.40	104.95	30.51
17,500-Deeper ft.	N/A	568.96	N/A	85.34

2. Oil, Gas and Associated Wells; Region 2—South Louisiana

Table 907.A.2 Oil, Gas and Associated Wells; Region 2—South Louisiana				
Producing Depths	Cost—New By Depth, Per Foot		15% of Cost—New By Depth, Per Foot	
	\$ Oil	\$ Gas	\$ Oil	\$ Gas
0-1,249 ft.	163.31	151.55	24.50	22.73
1,250-2,499 ft.	120.98	251.88	18.15	37.78
2,500-3,749 ft.	118.13	200.82	17.72	30.12
3,750-4,999 ft.	104.13	160.64	15.62	24.10
5,000-7,499 ft.	142.25	182.48	21.34	27.37
7,500-9,999 ft.	194.06	191.06	29.11	28.66
10,000-12,499 ft.	264.61	249.75	39.69	37.46
12,500-14,999 ft.	347.13	323.10	52.07	48.47
15,000-17,499 ft.	562.28	432.59	84.34	64.89
17,500-19,999 ft.	686.51	612.74	102.98	91.91

Table 907.A.2 Oil, Gas and Associated Wells; Region 2—South Louisiana				
Producing Depths	Cost—New By Depth, Per Foot		15% of Cost—New By Depth, Per Foot	
	\$ Oil	\$ Gas	\$ Oil	\$ Gas
20,000-Deeper ft.	366.58	919.92	54.99	137.99

3. Oil, Gas and Associated Wells; Region 3—Offshore State Waters

Table 907.A.3 Oil, Gas and Associated Wells; Region 3—Offshore State Waters*				
Producing Depths	Cost—New By Depth, Per Foot		15% Of Cost—New By Depth, Per Foot	
	\$ Oil	\$ Gas	\$ Oil	\$ Gas
0 -1,249 ft.	N/A	N/A	N/A	N/A
1,250 -2,499 ft.	1,755.98	1,227.42	263.40	184.11
2,500 -3,749 ft.	902.95	943.32	135.44	141.50
3,750 -4,999 ft.	1,288.85	864.98	193.33	129.75
5,000 -7,499 ft.	641.40	801.16	96.21	120.17
7,500 -9,999 ft.	813.16	758.13	121.97	113.72
10,000 -12,499 ft.	920.58	768.47	138.09	115.27
12,500 -14,999 ft.	800.64	747.87	120.10	112.18
15,000 -17,499 ft.	551.83	775.99	82.77	116.40
17,500 -19,999 ft.	274.88	741.87	41.23	111.28
20,000 - Deeper ft.	N/A	1,166.13	N/A	174.92

B. The determination of whether a well is a Region 2 or Region 3 well is ascertained from its onshore/offshore status as designated on the Permit to Drill or Amended Permit to Drill form (Location of Wells Section), located at the Department of Natural Resources as of January 1 of each tax year. Each assessor is required to confirm the onshore/offshore status of wells located within their parish by referring to the Permit to Drill or Amended Permit to Drill form on file at the Department of Natural Resources.

1. Parishes Considered to be Located in Region I

Table 907.B.1 Parishes Considered to be Located in Region 1			
Bienville	DeSoto	Madison	Tensas
Bossier	East Carroll	Morehouse	Union
Caddo	Franklin	Natchitoches	Webster
Caldwell	Grant	Ouachita	West Carroll
Catahoula	Jackson	Red River	Winn
Claiborne	LaSalle	Richland	
Concordia	Lincoln	Sabine	

NOTE: All wells in parishes not listed above are located in Region 2 or Region 3.

2. Serial Number to Percent Good Conversion Chart

Table 907.B.2 Serial Number to Percent Good Conversion Chart			
Year	Beginning Serial Number	Ending Serial Number	20 Year Life Percent Good
2021	252613	Higher	97
2020	252171	252612	93
2019	251497	252170	90
2018	250707	251496	86
2017	249951	250706	82
2016	249476	249950	78
2015	248832	249475	74
2014	247423	248831	70
2013	245849	247422	65
2012	244268	245848	60
2011	242592	244267	55
2010	240636	242591	50

Year	Beginning Serial Number	Ending Serial Number	20 Year Life Percent Good
2009	239277	240635	45
2008	236927	239276	40
2007	234780	236926	35
2006	232639	234779	31
2005	230643	232638	27
2004	229010	230642	24
2003	227742	229009	22
2002	226717	227741	21
2001	Lower	226716	20 *
VAR.	900000	Higher	50

\*Reflects residual or floor rate.

NOTE: For any serial number categories not listed above, use year well completed to determine appropriate percent good. If spud date is later than year indicated by serial number; or, if serial number is unknown, use spud date to determine appropriate percent good.

C. - C.6. ...

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2326.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 12:36 (January 1986), LR 13:188 (March 1987), LR 13:764 (December 1987), LR 14:872 (December 1988), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:205 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:480 (March 1998), LR 25:313 (February 1999), LR 26:507 (March 2000), LR 27:425 (March 2001), LR 28:518 (March 2002), LR 29:368 (March 2003), LR 30:488 (March 2004), LR 31:717 (March 2005), LR 32:431 (March 2006), LR 33:492 (March 2007), LR 34:679 (April 2008), LR 35:495 (March 2009), LR 36:773 (April 2010), amended by the Division of Administration, Tax Commission, LR 37:1395 (May 2011), LR 38:803 (March 2012), LR 39:490 (March 2013), LR 40:531 (March 2014), LR 41:673 (April 2015), LR 42:746 (May 2016), LR 43:653 (April 2017), LR 44:580 (March 2018), LR 45:534 (April 2019), LR 46:561 (April 2020), LR 47:465 (April 2021), LR 48:1523 (June 2022).

**Chapter 11. Drilling Rigs and Related Equipment  
§1103. Drilling Rigs and Related Equipment Tables**

**A. Land Rigs**

Depth "0" to 7,000 Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
3,000	119,600	17,900
4,000	211,900	31,800
5,000	224,100	33,600
6,000	233,700	35,100
7,000	291,300	43,700
Depth 8,000 to 10,000 Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
8,000	424,300	63,600
9,000	640,800	96,100

Depth 11,000 to 15,000 Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
11,000	1,283,500	192,500
12,000	1,664,100	249,600
13,000	2,044,900	306,700
14,000	2,395,200	359,300
15,000	2,688,400	403,300
Depth 16,000 to 20,000 Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
16,000	2,905,200	435,800
17,000	3,038,200	455,700
18,000	3,095,000	464,300
19,000	3,102,600	465,400
20,000	3,111,200	466,700
Depth 21,000 + Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
21,000	3,069,600	460,400
25,000 +	2,949,000	442,400

1. - 2. ...

**B. Jack-Ups**

Type	Water Depth Rating	Fair Market Value	Assessment
IC	0-199 FT.	\$ 57,900,000	\$ 8,685,000
	200-299 FT.	115,700,000	17,355,000
	300 FT. and Deeper	231,000,000	34,650,000
IS	0-199 FT.	17,400,000	2,610,000
	200-299 FT.	28,900,000	4,335,000
	300 FT. and Deeper	34,700,000	5,205,000
MC	0-199 FT.	5,800,000	870,000
	200-299 FT.	11,600,000	1,740,000
	300 FT. and Deeper	46,200,000	6,930,000
MS	0-249 FT.	12,100,000	1,815,000
	250 FT. and Deeper	23,900,000	3,585,000

IC - Independent Leg Cantilever  
IS - Independent Leg Slot  
MC - Mat Cantilever  
MS - Mat Slot

**C. Semisubmersible Rigs**

Water Depth Rating	Fair Market Value	Assessment
	\$	\$
0- 800 FT.	52,900,000	7,935,000
801-1,800 FT.	94,700,000	14,205,000
1,801-2,500 FT.	173,500,000	26,025,000
2,501 FT. and Deeper	544,500,000	81,675,000

NOTE: The fair market values and assessed values indicated by these tables are based on the current market (sales) appraisal approach and not the cost approach.

1. - 3.b.i. ...

D. Well Service Rigs Land Only

Table 1103.D Well Service Rigs Land Only				
Class	Mast	Engine	Fair Market Value (RCNLD)	Assessment
I	71' X 125M# 71' X 150M# 72' X 125M# 72' X 150M# 75' X 150M#	C-7 50 SERIES 6V71	95,000	14,300
II	96' X 150M# 96' X 180M# 96' X 185M# 96' X 200M# 96' X 205M# 96' X 210M# 96' X 212M# 96' X 215M#	C-11 50 SERIES 8V71	135,000	20,300
III	96' X 240M# 96' X 250M# 96' X 260M# 102' X 215M#	C-11 50 SERIES 8V92	170,000	25,500
IV	102' X 224M# 102' X 250M# 103' X 225M# 103' X 250M# 104' X 250M# 105' X 225M# 105' X 250M#	C-15/C-13 60 SERIES 12V71	200,000	30,000
V	105' X 280M# 106' X 250M# 108' X 250M# 108' X 260M# 108' X 268M# 108' X 270M# 108' X 300M#	C-15/C-13 60 SERIES 12V71 12V92	230,000	34,500
VI	110' X 250M# 110' X 275M# 112' X 300M# 112' X 350M#	C-15 60 SERIES 12V71 (2) 8V92	265,000	39,800
VII	117' X 350M#	(2) C-18 (2) 60 SERIES (2) 8V92 (2) 12V71	310,000	46,500

D.1. - E.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 10:939 (November 1984), LR 12:36 (January 1986), LR 13:188 (March 1987), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 22:117 (February 1996), LR 23:205 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:487 (March 1998), LR 25:315 (February 1999), LR 26:508 (March 2000), LR 27:426 (March 2001), LR 28:519 (March 2002), LR 30:488 (March 2004), LR 31:718 (March 2005), LR 32:431 (March 2006), LR 33:493 (March 2007), LR 34:683 (April 2008), LR 35:497 (March 2009), LR 36:778 (April 2010), amended by the Division of Administration, Tax Commission, LR 37:1399 (May 2011), LR 38:808 (March 2012), LR 39:495 (March 2013), LR 40:536 (March 2014), LR 41:678 (April 2015), LR 42:748 (May 2016), LR 43:654 (April 2017), LR 44:581 (March 2018), LR 45:535 (April 2019), LR 46:562 (April 2020), LR 47:467 (April 2021), LR 48:1525 (June 2022).

Chapter 13. Pipelines

§1307. Pipeline Transportation Tables

A. Current Costs for Other Pipelines (Onshore)

Table 1307.A Current Costs for Other Pipelines (Onshore)		
Diameter (inches)	Cost per Mile	15% of Cost per Mile
2	\$ 190,560	\$ 28,580
4	225,040	33,760
6	265,760	39,860
8	313,840	47,080
10	370,620	55,590
12	437,680	65,650
14	516,870	77,530
16	610,380	91,560
18	720,820	108,120
20	851,230	127,680
22	1,005,250	150,790
24	1,187,120	178,070
26	1,401,910	210,290
28	1,655,550	248,330
30	1,955,080	293,260
32	2,308,810	346,320
34	2,726,540	408,980
36	3,219,840	482,980
38	3,802,400	570,360
40	4,490,360	673,550
42	5,302,790	795,420
44	6,199,580	929,940
46	7,136,380	1,070,460
48	8,296,540	1,244,480

NOTE: Excludes river and canal crossings

B. Current Costs for Other Pipelines (Offshore)

Table 1307.B Current Costs for Other Pipelines (Offshore)		
Diameter (inches)	Cost per Mile	15% of Cost per Mile
2	\$ 1,082,160	\$ 162,320
4	1,086,970	163,050
6	1,092,820	163,920
8	1,111,220	166,680
10	1,133,760	170,060
12	1,166,170	174,930
14	1,202,590	180,390
16	1,248,700	187,310
18	1,304,510	195,680
20	1,370,020	205,500
22	1,445,230	216,780
24	1,530,140	229,520
26	1,624,740	243,710
28	1,729,050	259,360
30	1,843,050	276,460
32	1,966,750	295,010
34	2,100,150	315,020
36	2,243,240	336,490
38	2,396,040	359,410
40	2,558,530	383,780
42	2,723,900	408,590
44	2,898,050	434,710
46	3,073,160	460,970
48	3,255,910	488,390

C. Pipeline Transportation Allowance for Physical Deterioration (Depreciation)

Table 1307.C Pipeline Transportation Allowance for Physical Deterioration (Depreciation)	
Actual Age (Yrs)	26.5 Year Life Percent Good
1	98
2	96
3	94
4	91
5	88
6	86
7	83
8	80
9	77
10	73
11	70
12	67
13	63
14	60
15	56
16	52
17	48
18	44
19	39
20	35
21	33
22	30
23	28
24	26
25	25
26	23
27 and older	20 *

\* Reflects residual or floor rate.

NOTE: See §1305.G (page PL-3) for method of recognizing economic obsolescence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 10:941 (November 1984), LR 12:36 (January 1986), LR 16:1063 (December 1990), amended by the Department of Revenue, Tax Commission, LR 24:489 (March 1998), LR 25:316 (February 1999), LR 26:509 (March 2000), LR 27:426 (March 2001), LR 31:719 (March 2005), LR 32:432 (March 2006), LR 33:494 (March 2007), LR 34:684 (April 2008), LR 35:499 (March 2009), LR 36:778 (April 2010), amended by the Division of Administration, Tax Commission, LR 37:1401 (May 2011), LR 38:809 (March 2012), LR 39:496 (March 2013), LR 40:537 (March 2014), LR 41:680 (April 2015), LR 42:748 (May 2016), LR 43:655 (April 2017), LR 44:582 (March 2018), LR 45:535 (April 2019), LR 46:563 (April 2020), LR 47:468 (April 2021), LR 48:1526 (June 2022).

**Chapter 15. Aircraft**

**§1503. Aircraft (Including Helicopters) Table**

A. Aircraft (Including Helicopters)

Table 1503 Aircraft (Including Helicopters)				
Cost Index (Average)		Average Economic Life (20 Years)		
Year	Index	Effective Age	Percent Good	Composite Multiplier
2021	0.939	1	97	.91
2020	1.021	2	93	.95
2019	1.026	3	90	.92
2018	1.063	4	86	.91
2017	1.100	5	82	.90

Table 1503 Aircraft (Including Helicopters)				
Cost Index (Average)		Average Economic Life (20 Years)		
Year	Index	Effective Age	Percent Good	Composite Multiplier
2016	1.122	6	78	.88
2015	1.113	7	74	.82
2014	1.123	8	70	.79
2013	1.138	9	65	.74
2012	1.147	10	60	.69
2011	1.180	11	55	.65
2010	1.217	12	50	.61
2009	1.208	13	45	.54
2008	1.242	14	40	.50
2007	1.291	15	35	.45
2006	1.362	16	31	.42
2005	1.425	17	27	.38
2004	1.532	18	24	.37
2003	1.585	19	22	.35
2002	1.612	20	21	.34
2001	1.622	21	20	.32

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

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**Chapter 25. General Business Assets**

**§2501. Guidelines for Ascertaining the Fair Market Value of Office Furniture and Equipment, Machinery and Equipment and Other Assets Used In General Business Activity**

A. - C. ...

D. The procedure for establishing the fair market value of business and industrial personal property with the cost approach to value (excluding oil and gas properties, drilling rigs, inventories and leased equipment), includes these steps:

1. classify the personal property according to the classifications listed in Table 2503.A, or a different economic life supported by reliable evidence;

2. the classification table will refer the assessor to the correct composite multiplier column in Table 2503.D. The composite multiplier is a composite of the cost index and the percent good, which shall be updated annually by the LTC in order to comply with uniform assessment of personal property in this chapter;

3. select the correct composite multiplier from this table, based on the actual age of the equipment. For example, the age 1 composite multiplier applies to personal

property purchased the year prior to the year it is being assessed (two years back for Orleans) and so on for the other ages;

4. multiply the composite multiplier times the acquisition cost by year of the equipment. The result is the reproduction cost new less physical depreciation (RCNLPD) of the equipment;

5. in the year in which the personal property has reached its minimum percent good, the applicable composite multiplier in use at that time is “frozen”. For the assessment years that follow, the RCNLD value does not change until the personal property is permanently taken out of service. An exception to this rule applies when the property has been reconditioned to extend its remaining economic life.

6. determine the amount of other forms of depreciation, when present:

- a. functional obsolescence as defined in §301;
- b. economic (external) obsolescence as defined in §301;

7. deduct functional and/or economic (external) obsolescence from RCNLPD. The result is the fair market value of the equipment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 10:943 (November 1984), LR 12:36 (January 1986), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), amended by the Department of Revenue, Tax Commission, LR 31:719 (March 2005), LR 33:495 (March 2007), LR 34:685 (April 2008), LR 35:500 (March 2009), amended by the Office of the Governor, Division of Administration, Tax Commission, LR 42:749 (May 2016), LR 47:469 (April 2021), LR 48:1527 (June 2022).

**§2503. Tables Ascertain Economic Lives, Percent Good and Composite Multipliers of Business and Industrial Personal Property**

A. ...

1. Suggested Guidelines for Ascertain Economic Lives of Business and Industrial Personal Property

Table 2503.A Business Activity/Type of Equipment	Average Economic Life in Years
Agricultural Machinery & Equipment	10
Feed Mill Equipment (Production Line)	20
* * *	* * *
Soft Drink Mfg. M & E (Batch)	20
Solar Farm	
Modules, Panels, and Transformers	30
Racking/Racks	20
Fencing	15
Other Solar Farm Personal Property	5
Storage Buildings (portable)	10
* * *	* * *
*If acquisition cost and age of service station equipment are not available, see Chapter 9, Table 907.B-2 for alternative assessment procedure.	

B. Cost Indices

Table 2503.B Cost Indices			
Year	Age	National Average 1926 = 100	January 1, 2021 = 100*
2021	1	1888.1	0.939
2020	2	1736.4	1.021
2019	3	1727.8	1.026
2018	4	1667.7	1.063
2017	5	1612.2	1.100
2016	6	1580.9	1.122
2015	7	1593.7	1.113
2014	8	1578.8	1.123
2013	9	1558.7	1.138
2012	10	1545.9	1.147
2011	11	1503.2	1.180
2010	12	1457.4	1.217
2009	13	1468.6	1.208
2008	14	1427.3	1.242
2007	15	1373.3	1.291
2006	16	1302.3	1.362
2005	17	1244.5	1.425
2004	18	1157.3	1.532
2003	19	1118.6	1.585
2002	20	1100.0	1.612
2001	21	1093.4	1.622
2000	22	1084.3	1.636
1999	23	1065.0	1.665
1998	24	1061.8	1.670
1997	25	1052.7	1.685
1996	26	1036.0	1.712
1995	27	1020.4	1.738
1994	28	985.0	1.800
1993	29	958.0	1.851
1992	30	939.8	1.887
1991	31	928.5	1.910

\*Reappraisal Date: January 1, 2021 – 1773.4 (Base Year)

C. ...

\* \* \*

D. Composite Multipliers 2022 (2023 Orleans Parish)

Table 2503.D Composite Multipliers 2022 (2023 Orleans Parish)										
Age	3 Yr	5 Yr	6 Yr	8 Yr	10 Yr	12 Yr	15 Yr	20 Yr	25 Yr	30 Yr
1	.66	.80	.82	.85	.86	.88	.89	.91	.92	.92
2	.50	.70	.75	.81	.86	.89	.92	.95	.97	.99
3	.35	.53	.58	.69	.78	.82	.87	.92	.95	.97
4	.17	.36	.44	.57	.71	.78	.84	.91	.96	.99
5		.25	.33	.47	.64	.73	.80	.90	.96	1.00
6		.20	.21	.37	.55	.65	.76	.88	.94	1.00
Age	3 Yr	5 Yr	6 Yr	8 Yr	10 Yr	12 Yr	15 Yr	20 Yr	25 Yr	30 Yr
7			.20	.29	.43	.56	.69	.82	.90	.96
8				.25	.34	.48	.62	.79	.88	.94
9				.23	.27	.41	.56	.74	.85	.93
10					.24	.33	.49	.69	.81	.91
11					.24	.28	.44	.65	.80	.90
12						.27	.38	.61	.78	.90

Table 2503.D										
Composite Multipliers 2022 (2023 Orleans Parish)										
13						.24	.31	.54	.72	.86
14							.29	.50	.70	.84
15							.27	.45	.67	.84
16							.27	.42	.65	.83
17								.38	.63	.83
18								.37	.60	.83
19								.35	.54	.81
20								.34	.48	.76
21								.32	.45	.71
22									.43	.65
23									.40	.62
24									.33	.57
25									.34	.52
26									.34	.50
27										.45
28										.41
29										.39
30										.38
31										.38

1. Data sources for tables are:
  - a. cost index—Marshall and Swift Publication Co.;
  - b. percent good—Marshall and Swift Publication Co.;
  - c. average economic life—various.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 9:69 (February 1983), LR 10:944 (November 1984), LR 12:36 (January 1986), LR 13:188 (March 1987), LR 13:764 (December 1987), LR 14:872 (December 1988), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:207 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:490 (March 1998), LR 25:317 (February 1999), LR 26:509 (March 2000), LR 27:427 (March 2001), LR 28:520 (March 2002), LR 29:370 (March 2003), LR 30:489 (March 2004), LR 31:719 (March 2005), LR 32:433 (March 2006), LR 33:496 (March 2007), LR 34:686 (April 2008), LR 35:500 (March 2009), LR 36:780 (April 2010), amended by the Division of Administration, Tax Commission, LR 37:1402 (May 2011), LR 38:810 (March 2012), LR 39:497 (March 2013), LR 40:538 (March 2014), LR 41:681 (April 2015), LR 42:750 (May 2016), LR 43:656 (April 2017), LR 44:584 (March 2018), LR 45:538 (April 2019), LR 46:564 (April 2020), LR 47:470 (April 2021), LR 48:1528 (June 2022).

**Chapter 31 Public Exposure of Assessments; Appeals §3101. Public Exposure of Assessments, Appeals to the Board of Review and Board of Review Hearings**

A. - A.1. ...

2. A property owner or authorized agent of the property owner may make a written request for notice of the current year's assessment of the property of which that person is the owner, however, such request shall be made no sooner than the first day of June of that year, and such request shall be received by the assessor of the parish or district in which the property is located no later than June fifteenth of that same year. The authorized agent of the property owner shall provide with the request for the assessment, written authorization from the property owner for that agent to act as the authorized agent of the property owner in the request of the notice of an assessment. The

property owner or the authorized agent of the property owner shall provide to the assessor at the time of the mailing of the notice, appropriate means for the return of the notice such as a self-addressed stamped envelope of sufficient size and adequate postage to hold the notice requested. The assessor, at no cost to him, shall deliver to the property owner or the authorized agent of the property owner through the means provided a written notice of the assessed value of the property no later than the close of business on the third day for inspection of the assessment lists.

3. Any property owner or agent who has requested notice of assessed value pursuant to Paragraph 2 of this Subchapter may also provide an email address to the assessor. If an email address is provided within the period specified in Paragraph 2 of this Subchapter, the assessor shall email written notice of the assessed value of the related property on the first day for the inspection of the assessment lists.

B.1. Each assessor shall publish the dates, time and place of the public exposure of the assessment lists of both real and personal property in a newspaper of general circulation in their respective parishes. Notice shall be published at least twice within a period of not sooner than 21 days nor later than seven days prior to the beginning of the 15 calendar day period of exposure. This notice shall include the following:

“PLEASE NOTE: You must submit all information concerning the value of your property to your assessor before the deadline for filing an appeal with the Board of Review. The failure to submit such information may prevent you from relying on that information should you protest your value.”

2. Each assessor shall notify the Louisiana Tax Commission of the public exposure dates at least 21 days prior to the public exposure period, which dates shall be published by the Louisiana Tax Commission on its website.

C. - H.3. ...

4. The Board of Review shall certify the assessment list to the Louisiana Tax Commission on or before October twentieth of each year. The Louisiana Tax Commission requests and recommends that the Board of Review maintain the certified list on its website or through other publicly available digital means.

I. The Board of Review, during its public hearing(s), shall have copies of the Louisiana Tax Commission appeal rules and regulations and Appeal Form 3102/3103.A available for any assessor and/or taxpayer desiring to further appeal to the Tax Commission.

J. The Board of Review shall provide each taxpayer with a written notice of their particular appeal determination with a copy submitted to the assessor and the Tax Commission on or before the certification of the assessment list to the Tax Commission. The notice of determination shall be sent simultaneously to the assessor and the taxpayer at the address shown on the appeal form by registered or certified mail. The Board of Review shall include an Appeal Form 3102/3103.A with the notice of determination.

K.1. The determination of the Board of Review shall be final unless appealed, in writing, to the Tax Commission within 30 calendar days of the earlier of:

- a. actual delivery of the Board of Review decision;
- or
- b. written transmission of the Board of Review notice of determination.



2. The Board of Review shall record and report the method of transmission and the date of written transmission to the Louisiana Tax Commission. Either the taxpayer, the parish assessor, and/or a bona fide representative of an affected tax-recipient body may appeal the Board of Review determination to the Tax Commission.

**Form 3101  
Exhibit A  
Appeal to Board of Review by Property Owner/Taxpayer  
For Real and Personal Property**

Name: \_\_\_\_\_ Parish/District: \_\_\_\_\_  
Taxpayer

Address: \_\_\_\_\_ City, State, Zip: \_\_\_\_\_

Ward: \_\_\_\_\_ Assessment/Tax Bill Number: \_\_\_\_\_ Appeal No. \_\_\_\_\_  
Board of Review

(Attach copy of complete appeal submitted to the Board of Review)  
Address or Legal Description of Property Being Appealed (Also, please identify building by place of business for convenience of appraisal)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I hereby request the review of the assessment of the above described property pursuant to L.R.S. 47:1992.

The assessor has determined Fair Market Value of this property at:

Land \$ \_\_\_\_\_ Improvement \$ \_\_\_\_\_ Personal Property\* \$ \_\_\_\_\_  
Total \$ \_\_\_\_\_

I am requesting that the Fair Market Value of this property be fixed at:

Land \$ \_\_\_\_\_ Improvement \$ \_\_\_\_\_ Personal Property\* \$ \_\_\_\_\_  
Total \$ \_\_\_\_\_

\* If you are not appealing personal property, leave this section blank.

Please notify me of the date, place and time of my appeal at the address shown below.

NOTE: If property owner/taxpayer disputes the Board of Review's decision, property owner/taxpayer may appeal to the La. Tax Commission by completing and submitting Appeal Form 3102/3103.A to the LTC within 10 business days after certified mail delivery to the appealing taxpayer or assessor of the BOR's written determination. For further information, call the LTC at (225) 219-0339.

\_\_\_\_\_  
Property Owner/Taxpayer

Address: \_\_\_\_\_

Telephone No. \_\_\_\_\_

Email Address: \_\_\_\_\_

PLEASE NOTE: You must submit all information concerning the value of your property to your assessor before the deadline for filing an appeal with the Board of Review. The failure to submit such information may prevent you from relying on that information should you protest your value.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1992, R.S. 47:2301 and R.S. 47:2321.

HISTORICAL NOTE: Promulgated by the Louisiana Tax Commission, LR 4:339 (September 1978), amended by the Department of Revenue and Taxation, Tax Commission, LR 13:188 (March 1987), LR 13:764 (December 1987), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 23:208 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:492 (March 1998), LR 25:319 (February 1999), LR 26:512 (March 2000), LR 32:435 (March 2006), LR 33:498 (March 2007),

LR 34:688 (April 2008), LR 35:501 (March 2009), LR 36:781 (April 2010), amended by the Division of Administration, Tax Commission, LR 37:1403 (May 2011), LR 38:811 (March 2012), LR 40:539 (March 2014), LR 41:682 (April 2015), LR 42:751 (May 2016), LR 43:657 (April 2017), LR 45:538 (April 2019), LR 48:1529 (June 2022).

**§3102. Appeals to the Louisiana Tax Commission  
(for appeals filed before January 1, 2022)**

NOTE: The following procedure and rules shall apply and govern all appeals filed with the Louisiana Tax Commission before January 1, 2022.

A. The Louisiana Constitution provides that the correctness of assessments made by an assessor will be subject to review first by the parish governing authority, then by the Louisiana Tax Commission, and finally by the courts, all in accordance with procedures established by law. La. Const. Article VII, Section 18(E).

B.1. An appeal to the Louisiana Tax Commission shall be filed with the commission within 30 calendar days after the Board of Review's written decision is properly sent. In order to institute a proceeding before the commission, the taxpayer, assessor, or bona fide representative of a tax recipient body shall file Form 3102/3103.A and, if applicable, Form 3102/3103.B. The applicant must include a copy of the Board of Review's written decision and notification letter with the Form 3102/3103.A. All appeals shall be deemed filed when deposited with the United States Postal Service and can be evidenced by proof of mailing by registered or certified mail. Appeals may also be filed electronically on the Tax Commission's website.

2. Appeals filed by a taxpayer shall be docketed and captioned as follows.

STATE OF LOUISIANA  
LOUISIANA TAX COMMISSION  
Taxpayer  
v.  
Assessor and Parish Board of Review  
DOCKET NO. \_\_\_\_\_

3. Appeals filed by an assessor shall be docketed and captioned as follows.

STATE OF LOUISIANA  
LOUISIANA TAX COMMISSION  
Assessor  
v.  
Taxpayer and Parish Board of Review  
DOCKET NO. \_\_\_\_\_

4. Appeals filed by a bona fide representative of a tax recipient body shall be docketed and captioned as follows.

STATE OF LOUISIANA  
LOUISIANA TAX COMMISSION  
Tax Recipient Body  
v.  
Assessor, Taxpayer, and Parish Board of Review  
DOCKET NO. \_\_\_\_\_

C.1. Except as otherwise provided, an original and seven copies of all filings, including pleadings and exhibits, shall be filed with the commission.

2. All pleadings are to be signed by the individual who files them, and shall include the capacity in which the individual is acting, the individual's mailing address, and telephone number.

3. The signing of the pleading will be construed to be the individual's statement that the individual is duly authorized to represent the taxpayer, that the allegations of the petition are true and correct to the best of the individual's information and belief and that the capacity in which the individual acts is properly stated.

4. All pleadings shall be accompanied by a certificate of service certifying that such pleadings have been served on all opposing parties or parties in interest in the case, and shall include the manner of service.

5. All pleadings shall reflect the caption set forth in Section B.

6. All filings to the Louisiana Tax Commission shall be on letter size paper.

7. Any filing that consists of 50 pages or less shall be filed in electronic/digital form only.

8. Any filing that consists of more than 50 pages shall be filed in electronic/digital form, along with the printed original and seven copies.

9. Motions and exceptions shall be in writing, shall be accompanied by an order or rule setting them from hearing and shall be served in accordance with these rules.

10. Motions, Rules and Exceptions may be heard by the commission by special setting, or referred to the merits of the case at the discretion of the commission.

11. The Tax Commission may issue discovery and filing deadlines through a case management scheduling order.

D.1. All parties shall receive notice of the scheduling of an appeal hearing at least 60 days prior to the scheduled hearing date. However, if an appeal hearing is continued or rescheduled, each party shall receive notice at least 30 days prior to the new hearing date.

2. In addition to the initial filing of Forms 3102/3103.A and 3102/3103.B, the taxpayer or assessor appealing the Board of Review decision may attach a pleading containing further information concerning the appeal.

3. Either party may request a continuance of a scheduled hearing. Such a request must be made in writing and filed and served on the opposing party at least 15 days prior to the scheduled hearing date, unless good cause can be shown why the fifteen-day requirement should be waived. Requests for continuance must contain the grounds on which the continuance is requested and state whether or not the opposing party objects to the request.

4. The applicant shall file and serve on the opposing party at least 45 days prior to the scheduled hearing date all documents and papers that may be offered into evidence at the hearing. The applicant must submit evidence that establishes the fair market value of their property or other grounds that would constitute reversal of the Board of Review's decision and/or modification of the original assessment.

5. The respondent shall file and serve on the opposing party at least 30 days prior to the scheduled hearing date all documents and papers that may be offered into evidence at the hearing.

6. Documents and papers offered into evidence for a hearing before the commission shall be marked as exhibits and bound. All exhibits, where it is helpful, to the consideration of such exhibits, shall be indexed, numbered, color coded, tabbed or otherwise so identified as to provide ready accessibility. Exhibits offered by a taxpayer shall be marked "Exhibit Taxpayer \_\_\_\_\_" and shall be consecutively numbered. The taxpayer shall at the time an exhibit is offered state whether the exhibit contains information not furnished to the assessor before the end of the period for public exposure of the assessment lists. Exhibits offered by the assessor shall be marked "Exhibit Assessor \_\_\_\_\_" and shall be consecutively numbered. Exhibits offered by the commission or its staff representative shall be marked "Exhibit Tax Commission \_\_\_\_\_" and shall be consecutively numbered. It is the Tax Commission's policy to accept all pre-filed exhibits into the record, however, either party may object to the submission of any of the opposing parties' exhibits. Such objection(s) must be made at the beginning of the appeal hearing. The Tax Commission reserves the right to take such objections under advisement and/or to defer the objections to the merits of the appeal. Absent a timely objection, all timely filed exhibits are deemed admitted.

7. Legal memorandum submitted by the parties will be made part of the record proceedings before the commission, but shall not be filed as exhibits offered into evidence for the hearing before the commission.

8. Any party, including the taxpayer, assessor, and/or Tax Commission, may request, in writing, that all parties disclose witnesses that may be called to testify at the appeal hearing. Such a request must be made not less than 20 days prior to the hearing and if such a request is made, all parties must disclose, in writing, all witnesses that may be called to testify as follows: the applicant must make such disclosure at least 15 days prior to the hearing and the respondent must make such disclosure at least eight days prior to the hearing. The admissibility of rebuttal witnesses will be evaluated by the commission on a case-by-case basis.

E. If a taxpayer appeals the Board of Review's decision on the basis that the assessor appraised his or her property on the sole basis of a sale or sales listing, evidence establishing that the property was reappraised at the value of, or based solely upon, the sale or sales listing shall constitute prima facie evidence of sales/listing chasing and shall create a rebuttal presumption against the assessment.

F. Upon written notice by the commission, through either the administrator or Counsel to the Commission, the parties and/or their attorneys or other representatives may be directed to meet and confer together by telephone or otherwise prior to the hearing, for the purpose of formulating issues and considering:

1. simplification of issues;
2. a limitation, where possible of the number of witnesses;
3. the time required for presentations;
4. stipulations as to admissibility of exhibits;
5. submission of proposed findings of fact;
6. such other matters as may aid in the simplification of the proceedings and the disposition of the matters in controversy.

G. Upon written notice by the commission, through either the administrator or counsel to the commission, the parties or their attorneys or other representative may be directed to file memoranda with the commission. The legal memorandum shall address in a concise manner the issues presented in the appeal to the commission together with a statement of any authority supporting the party's position.

H. Any party with leave of the commission or hearing officer may present prepared sworn deposition testimony of a witness either narrative or in question and answer form, which shall be incorporated into the record as if read by a witness. The opposing party will be allowed to cross-examine and/or submit any sworn testimony given by the witness in the deposition. Seven copies of the prepared deposition testimony shall be filed with the commission.

I. Any taxpayer or assessor may appear and be represented by an attorney at law authorized to practice law before the highest court of any state; a natural person may appear in his own behalf, through an immediate family member, an attorney, or Registered Tax Representative as herein defined below; or a corporation, partnership or association may appear and be represented to appear before the commission by a bona fide officer, partner, full time employee, or any other person duly authorized as provided for on "Exhibit B, Power of Attorney" (Form 3102/3103.B).

1. Registered tax representative is a person who represents another person at a proceeding before the Louisiana Tax Commission. The term does not include:

- a. the owner of the property or person liable for the taxes that is the subject of the appeal;
- b. an immediate family member of the owner of the property;
- c. a permanent full-time employee of the owner of the property or person liable for the taxes who is the subject of the appeal;
- d. representatives of local units of government appearing on behalf of the unit or as the authorized representative of another unit;
- e. a certified public accountant, when the certified public accountant is representing a client in a matter that relates only to personal property taxation; or
- f. an attorney who is a member in good standing of the Louisiana bar or any person who is a member in good standing of any other state bar and who has been granted leave by the board to appear pro hac vice.

2. To serve as a registered tax representative, a person must:

- a. be properly registered with the commission;
- b. be at least 18 years of age;
- c. have fully complied with all rules adopted by the commission regarding professional conduct and ethical considerations;
- d. have read and is familiar with all rules and regulations promulgated by the commission; and
- e. have a copy of a properly executed power of attorney from the taxpayer on the form prescribed by the commission on file before a hearing will be scheduled.

J. Every taxpayer or assessor, witness, attorney or other representative shall conduct himself in all proceedings with proper dignity, courtesy and respect. Disorderly conduct will not be tolerated. Attorneys shall observe and practice the

standards of ethical behavior prescribed for attorneys at law by the Louisiana Bar Association. Any taxpayer or assessor, witness, attorney or other representative may be excluded by the commission from any hearing for such period and upon such conditions as are just for violation of this rule.

K. All official hearings conducted in any proceeding shall be open to the public. All hearings shall be held in Baton Rouge, LA, unless the commission shall designate another place of hearing.

L. A continuance shall not be granted due to an unexcused absence of a taxpayer, assessor or any representative, attorney or witness, at the time and place set for a scheduled hearing before the commission, without consent of the taxpayer and/or assessor. If such consent is refused, the hearing shall proceed.

M. The hearing shall be conducted informally. It will be the responsibility of the taxpayer or assessor to retain the services of an official reporter for a scheduled hearing should either anticipate the need for a transcript. The Tax Commission shall be notified no later than three business days, prior to the scheduled hearing that an official reporter will be in attendance, and the commission shall be furnished a copy of the transcript, at no cost to the commission.

N. Witness testimony is permitted, and all witnesses shall be placed under oath at the onset of each hearing. However, the commission may limit the number of witnesses and limit the allotment of time for such testimony. The commission may permit live witness testimony via videoconference. All witnesses are subject to cross examination by any party.

O. Absent a timely objection, any evidence, which would be admissible under the Louisiana Rules of Evidence shall be deemed admissible by the commission. The Louisiana Rules of Evidence shall be applied liberally in any proceeding before the commission. Either party may object to evidence not previously disclosed by the opposing party. The commission may also exclude evidence, which is deemed by the commission to be incompetent, immaterial or unduly repetitious.

P. The commission shall take official notice without further identification of the contents of the original records and documents in possession of the commission when duly certified copies thereof are offered into evidence and made a part of the record. The Board of Review does not transmit a record or evidence to the Tax Commission. Any evidence or information that was submitted to the Board of Review must be filed by the parties, to be considered by the Tax Commission. The commission may receive other documentary evidence in the form of copies or excerpts or that which is incorporated by reference.

Q. Hearings may be conducted by a hearing officer selected and appointed by the commission. The hearing officer shall have the authority to administer oaths, may examine witnesses, and rule upon the admissibility of evidence and amendments to the pleadings. The hearing officer shall have the authority to recess any hearing from day to day.

R. The hearing officer shall have the responsibility and duty of assimilating testimony and evidence, compiling a written summary of the testimony and evidence, and presenting a proposed order to the commission.

S. At the close of evidence, each side will be allowed a reasonable amount of time to argue its case. This time will be allotted by the chairman or hearing officer.

T. The parties to an appeal shall be notified in writing, by registered or certified mail, of the final decision by the commission. The taxpayer or assessor shall have 30 days from entry of the decision to appeal to a court of competent jurisdiction. In addition to registered or certified mail, the parties to an appeal may also be notified by electronic mail.

U. The Tax Commission defines "entry" under R.S. 47:1998, as the mailing of the decision to the parties. Decisions by the Tax Commission are not entered or final until signed and placed in the mail to the parties.

V. Following the entry of a final decision, the commission may, at its discretion, grant the request of a taxpayer or assessor for a rehearing; provided the rehearing request is made in accordance with the Administrative Procedure Act.

W. Subpoenas for the attendance of witnesses or for the production of books, papers, accounts or documents for a hearing may be issued by the commission upon its own motion, or upon the written request of the taxpayer or assessor. No subpoena shall be issued until the party who wishes to subpoena the witness first deposits with the agency a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to R.S. 13:3661 and R.S. 13:3671. Any subpoena duces tecum shall allow no less than five days to assimilate and to deliver said documents subpoenaed by the subpoena recipient. The form of subpoena attached hereto as Form SUBP.T-2 (found on the Tax Commission's website under General Forms), or a reasonable variation thereof, shall be filled out and presented with the subpoena request. Service of the subpoena may be accomplished by any of the methods prescribed by the Louisiana Administrative Procedure Act.

X. The word "commission", as used herein, refers to the chairman and the members or its delegate appointed to conduct the hearing.

Y. A decision by the Tax Commission that determines the fair market value of real property shall be applied to subsequent tax years until reappraisal in a future mandated reappraisal year, unless there has been a change in the physical condition of the property that would justify reappraisal or a change in value. Nothing in this Subparagraph shall be interpreted or applied to limit an assessor's ability or obligation to reduce an assessment due to a change in the condition of the property or under R.S. 47:1978.1.

Z. Any notice, correspondence, order, directive, or similar communication issued by the commission may be by U.S. Mail and/or electronic mail.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837, R.S. 47:1989 and R.S. 47:1992.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Tax Commission, LR 48:1530 (June 2022).

**§3103. Appeals to the Louisiana Tax Commission  
(for appeals filed on or after January 1, 2022)**

NOTE: The following procedure and rules shall apply and govern all appeals filed with the Louisiana Tax Commission on or after January 1, 2022.

A. The Louisiana Constitution provides that the correctness of assessments made by an assessor will be subject to review first by the parish governing authority, then by the Louisiana Tax Commission, and finally by the courts, all in accordance with procedures established by law. La. Const. Article VII, Section 18(E).

B.1. An appeal to the commission shall be filed with the commission within 30 calendar days of the earlier of:

a. the Board of Review's written decision is properly sent to the taxpayer and assessor, or

b. actual delivery of the Board of Review's determination, whether electronic or otherwise. In order to institute a proceeding before the commission, the taxpayer, assessor, or bona fide representative of a tax recipient body shall file Form 3102/3103.A and, if applicable, Form 3102/3103.B. The applicant must include a copy of the Board of Review's written decision and notification letter with the Form 3102/3103.A. All appeals shall be deemed filed when deposited with the United States Postal Service and can be evidenced by proof of mailing by registered or certified mail. Appeals may also be filed electronically on the commission's website. The commission may summarily dismiss an appeal not timely filed with all required documents.

2. In addition to the Forms 3102/3103.A and 3102/3103.B, the applicant may attach any additional documents or pleadings containing further information concerning the appeal.

3. Appeals filed by a taxpayer shall be docketed and captioned as follows.

STATE OF LOUISIANA  
LOUISIANA TAX COMMISSION  
Taxpayer  
v.  
Assessor and Parish Board of Review  
DOCKET NO. \_\_\_\_\_

4. Appeals filed by an assessor shall be docketed and captioned as follows.

STATE OF LOUISIANA  
LOUISIANA TAX COMMISSION  
Assessor  
v.  
Taxpayer and Parish Board of Review  
DOCKET NO. \_\_\_\_\_

5. Appeals filed by a bona fide representative of a tax recipient body shall be docketed and captioned as follows.

STATE OF LOUISIANA  
LOUISIANA TAX COMMISSION

Tax Recipient Body

v.

Assessor, Taxpayer, and Parish Board of Review

DOCKET NO. \_\_\_\_\_

C.1. Except as otherwise provided, an original and seven copies of all filings, including pleadings and exhibits, shall be filed with the commission.

2. All pleadings are to be signed by the individual who files them, and shall include the capacity in which the individual is acting, the individual's mailing address, and telephone number.

3. The signing of the pleading will be construed to be the individual's statement that the individual is duly authorized to represent the property owner, that the allegations of the petition are true and correct to the best of the individual's information and belief and that the capacity in which the individual acts is properly stated.

4. All pleadings shall be accompanied by a Certificate of Service certifying that such pleadings have been served on all opposing parties or parties in interest in the case and shall include the manner of service.

5. All pleadings shall reflect the caption set forth in Section B of this Section.

6. All filings to the commission shall be on letter size paper.

7. Any filing that consists of 50 pages or less shall be filed in electronic/digital form only.

8. Any filing that consists of more than 50 pages shall be filed in electronic/digital form, along with the printed original and seven copies.

9. Motions and Exceptions shall be in writing, shall be accompanied by an order or rule setting them for hearing and shall be served in accordance with these rules.

10. The commission may issue discovery and filing deadlines through a case management scheduling order.

11. In computing a period of time allowed or prescribed in this Subchapter or by order of the commission, the date of the act, event, or default after which the period begins to run is not to be included. The last day of the period is to be included, unless it is a legal holiday, in which event the period runs until the end of the next day which is not a legal holiday.

12. At the discretion of the commission, Motions, Objections, Rules, and/or Exceptions may be heard by the commission by special setting, referred to the merits of the case, or summarily adjudicated.

13. Upon written notice by the commission, through either the administrator or Counsel to the Commission, the parties or their attorneys or other representative may be directed to file memoranda with the commission. The legal memorandum shall address in a concise manner the issues presented in the appeal to the commission together with a statement of any authority supporting the party's position.

D.1. Except as otherwise provided, the review of the correctness of an assessment is confined to review of evidence presented to the assessor prior to the deadline for filing a complaint with the Board of Review.

2. The taxpayer shall pre-file all documentary evidence with the commission in accordance with these rules, or any case management scheduling order adopted by the commission.

3. If a taxpayer pre-files evidence which the assessor contends was not presented prior to the deadline for filing a complaint with the Board of Review, then the assessor shall file a written objection into the record. If maintained, the assessor's written objection should include a complete copy of the individual file/log as recommended in Section 213.G. The failure by the assessor to timely file a written objection shall be deemed a waiver. Such waiver shall be deemed to be good reason and shall operate to permit consideration of all evidence timely pre-filed by the taxpayer.

4. If the assessor timely objects to the pre-filed evidence by a taxpayer, the taxpayer may

1. respond to the objection on the basis that the evidence is deemed to have been submitted pursuant to the commission's rules,

2. respond to the objection on the basis that the evidence was timely submitted to the assessor,

3. respond to the objection on the basis that there are good reason(s) for the failure to timely submit such evidence, and/or

4. respond to the objection on the basis that the evidence is otherwise admissible and permitted under these rules or R.S. 47:1989.

5. The commission may order that a hearing be held regarding the assessor's objection(s) to the taxpayer's pre-filed exhibits.

6. If the assessor's objection is overruled on the basis that there are good reason(s) for the failure to timely submit such evidence, the commission may order that the assessor consider the additional evidence. Within 15 days of the commission's order to consider additional evidence, the assessor may modify an assessment and shall notify the commission and taxpayer of such a modification.

7. In all real property appeals, the commission may independently appraise the property utilizing the criteria set forth in R.S. 47:2323.

8. A finding of "good reason" under La. R.S. 47:1989(C)(2)(a) may be impacted by any party's failure to comply with any of the commission's Rules and Regulations, including the requirements of Section 3101 and Section 307.A. "Good reason" under La. R.S. 47:1989(C)(2)(a) shall not include a taxpayer's intentional withholding of evidence. Nothing in these Rules should be interpreted or applied to limit a finding of "good reason" in other circumstances.

9. Publicly available information, data, reports, resources, and/or guides is deemed to have been "presented" to the assessor prior to the close of the deadline for filing a complaint with the Board of Review.

E.1. Any taxpayer or assessor may appear and be represented by an attorney at law authorized to practice law before the highest court of any state; a natural person may appear in his own behalf, through an immediate family member, an attorney, or Registered Tax Representative as herein defined below; or a corporation, partnership or association may appear and be represented to appear before

the commission by a bona fide officer, partner, full time employee, or any other person duly authorized as provided for on "Exhibit B, Power of Attorney" (Form 3102/3103.B).

2. Registered Tax Representative is a person who represents another person at a proceeding before the commission. The term does not include:

- a. the owner of the property or person liable for the taxes that is the subject of the appeal;
- b. an immediate family member of the owner of the property;
- c. a permanent full-time employee of the owner of the property or person liable for the taxes who is the subject of the appeal;
- d. representatives of local units of government appearing on behalf of the unit or as the authorized representative of another unit;
- e. a certified public accountant, when the certified public accountant is representing a client in a matter that relates only to personal property taxation; or
- f. an attorney who is a member in good standing of the Louisiana bar or any person who is a member in good standing of any other state bar and who has been granted leave by the board to appear pro hac vice.

3. To serve as a registered tax representative, a person must:

- a. be properly registered with the commission;
- b. be at least 18 years of age;
- c. have fully complied with all rules adopted by the commission regarding professional conduct and ethical considerations;
- d. have read and is familiar with all rules and regulations promulgated by the commission; and
- e. have a copy of a properly executed power of attorney from the taxpayer on the form prescribed by the commission on file before a hearing will be scheduled.

4. The commission may deny any attorney or tax representative from representing any parties before the commission for failure to comply with R.S. 47:1998(I), which provides, in part: "The Louisiana Tax Commission shall receive a copy of every filing in a suit under this Section[.]".

F. Every taxpayer or assessor, witness, attorney or other representative shall conduct himself in all proceedings with proper dignity, courtesy and respect. Disorderly conduct will not be tolerated. Attorneys shall observe and practice the standards of ethical behavior prescribed for attorneys at law by the Louisiana Bar Association. Any taxpayer or assessor, witness, attorney or other representative may be excluded by the commission from any hearing for such period and upon such conditions as are just for violation of this rule.

G.1. The commission shall conduct an evidentiary hearing to evaluate the correctness of the Board of Review's determination. However, if the Board of Review affirmed the original assessment/value, the commission shall evaluate the original assessment/value by the assessor. The commission will not accept or consider any evidence not permitted under R.S. 47:1989.

2. All parties shall receive notice of the scheduling of an appeal hearing at least 60 days prior to the scheduled hearing date. However, if an appeal hearing is continued or rescheduled, each party shall receive notice at least 30 days prior to the new hearing date.

3. All official hearings conducted in any proceeding shall be open to the public. All hearings shall be held in Baton Rouge, LA, unless the commission shall designate another place of hearing.

4. The hearing shall be conducted informally. It will be the responsibility of the taxpayer or assessor to retain the services of an official reporter for a scheduled hearing should either anticipate the need for a transcript. The commission shall be notified no later than three (3) business days prior to the scheduled hearing that an official reporter will be in attendance, and shall be furnished a copy of the transcript. By motion of any party, such a transcript may be made part of the commission's administrative record.

5. Any party may request a continuance of a scheduled hearing. Except as otherwise provided, a request for continuance must be made in writing and filed and served on the opposing parties at least 15 days prior to the scheduled hearing date, unless good cause can be shown why this deadline should be waived. Requests for continuance must contain the grounds on which the continuance is requested and state whether or not the opposing party objects to the request.

6. Except as otherwise provided in the commission's rules or by order of the commission, the applicant shall file and serve on the opposing party at least 45 days prior to the scheduled hearing date all documents and papers that may be offered into evidence at the hearing.

7. Except as otherwise provided in the commission's rules or by order of the commission, the respondent shall file written objections to any of the applicant's pre-filed exhibits at least 30 days prior to the scheduled hearing date. The failure to timely file a written objection may be deemed a waiver.

8. Except as otherwise provided in the commission's Rules or by order of the commission, the respondent shall file and serve on the opposing party at least 30 days prior to the scheduled hearing date all documents and papers that may be offered into evidence at the hearing.

9. Except as otherwise provided in the commission's Rules or by order of the commission, any party, including the taxpayer, assessor, and/or commission, may request, in writing, that all parties disclose witnesses that may be called to testify at the appeal hearing. Such a request must be made not less than 55 days prior to the hearing and if such a request is made, all parties must disclose, in writing, the actual identity of any witnesses that may be called to testify as follows: the applicant must make such disclosure at least 45 days prior to the hearing and the respondent must make such disclosure at least 30 days prior to the hearing. The admissibility of rebuttal witnesses will be evaluated by the commission on a case-by-case basis.

10. If a taxpayer appeals the Board of Review's decision on the basis that the assessor appraised the subject property on the sole basis of a sale or sales listing, evidence establishing that the property was reappraised at the value of, or based solely upon, the sale or sales listing shall constitute prima facie evidence of sales/listing chasing and shall create a rebuttal presumption against the assessment.

11. If a taxpayer appeals the Board of Review's decision on the basis that the assessor inequitably assessed the subject property as compared to similarly situated comparable properties, then the taxpayer must submit

evidence of such an inequity, and the assessor shall be prepared to respond to such evidence.

12. Notwithstanding §3103.D.1, or any other provision to the contrary, witness testimony is permitted, and all witnesses shall be placed under oath at the onset of each hearing. However, the commission may limit the number of witnesses and limit the allotment of time for such testimony. The commission may permit live witness testimony via videoconference. All witnesses are subject to cross examination by any party. Further, the commission will not accept or consider any evidence not permitted under La. R.S. 47:1989.

13. It is the commission's policy to accept all pre-filed exhibits into the record; however, either party may object to the submission of any of the opposing parties' exhibits. Absent a timely objection, any evidence shall be admitted into the record. The Louisiana Rules of Evidence shall be applied liberally in any proceeding before the commission. The commission may also exclude evidence, which is deemed by the commission to be incompetent, immaterial or unduly repetitious. The commission reserves the right to take any objection under advisement and/or to defer the objections to the merits of the appeal.

14. The commission shall take official notice without further identification of the contents of the original records and documents in possession of the commission when duly certified copies thereof are offered into evidence and made a part of the record. The Board of Review does not transmit a record or evidence to the commission. Any evidence or information that was submitted to the Board of Review must be filed by the parties to be considered by the commission. The commission may receive other documentary evidence in the form of copies or excerpts or that which is incorporated by reference.

15. Any party with leave of the commission or hearing officer may present prepared sworn deposition testimony of a witness either narrative or in question and answer form, which shall be incorporated into the record as if read by a witness. The opposing party will be allowed to cross-examine and/or submit any sworn testimony given by the witness in the deposition.

16. Subpoenas for the attendance of witnesses or for the production of books, papers, accounts or documents for a hearing may be issued by the commission upon its own motion, or upon the written request of any party. No subpoena shall be issued until the party who wishes to subpoena the witness first deposits with the agency a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to R.S. 13:3661 and R.S. 13:3671. Any subpoena duces tecum shall allow no less than five days to assimilate and to deliver said documents subpoenaed by the subpoena recipient. The form of subpoena attached hereto as Form SUBP.T-2 (found on the commission's website under General Forms), or a reasonable variation thereof, shall be filled out and presented with the subpoena request. Service of the subpoena may be accomplished by any of the methods prescribed by the Louisiana Administrative Procedure Act.

17. Hearings may be conducted by a hearing officer selected and appointed by the commission. The hearing

officer shall have the authority to administer oaths, may examine witnesses, and rule upon the admissibility of evidence and amendments to the pleadings. The hearing officer shall have the authority to recess any hearing from day to day. The hearing officer shall have the responsibility and duty of assimilating testimony and evidence, compiling a written summary of the testimony and evidence, and presenting a proposed order to the commission.

18. At the close of evidence, each side will be allowed a reasonable amount of time to argue its case. This time may be limited and/or allotted by the chairman or hearing officer.

19. The commission may take any matter under advisement and issue a decision/ruling without advance notice or any additional opportunity for hearing.

H.1. The commission may affirm the Board of Review decision, it may remand the matter for further consideration by the assessor, or it may reverse or modify the assessment because the assessment is any of the following:

- a. In violation of constitutional or statutory provisions.
- b. In excess of the authority of the assessor.
- c. Made upon an unlawful procedure.
- d. Affected by another error of law.
- e. Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.
- f. Not supported and sustainable by a preponderance of evidence as determined by the commission.

2. In determining whether the assessment is supported and sustainable by a preponderance of evidence, the commission shall make its own determination and conclusions of fact by a preponderance of evidence based upon its own evaluation of the evidence reviewed in its entirety including otherwise admissible first-hand witness testimony.

3. In determining whether the assessment is supported and sustainable by a preponderance of evidence, if the value indicated by the commission's review of the record is within 5 percent of the Board of Review's determination, there shall be a rebuttal presumption that the Board of Review's determination is correct.

I.1. Notwithstanding any other provision to the contrary, and except as otherwise instructed, the Appraisal Division shall perform a fee simple appraisal in connection with all real property appeals utilizing the criteria set forth in R.S. 47:2323 and the commission's Rules. The appraisal report shall be served on all parties at least sixty (60) days prior to the scheduled hearing and shall be entered into the record.

2. The commission may accept or reject all or any part of the appraisal prepared by the Appraisal Division in its evaluation of the appeal.

J. The parties to an appeal shall be notified in writing, by registered or certified mail, of the final decision by the commission. The parties shall have 30 days from entry of the decision to appeal to a court of competent jurisdiction. The parties to an appeal may also be notified by electronic mail.

K. The commission defines "entry" under R.S. 47:1998, as the mailing of the decision to the parties. Decisions by the commission are not entered or final until signed and placed in the mail to the parties<sup>[LC1]</sup>.

L. Following the entry of a final decision, the commission may, at its discretion, grant a rehearing. A request for rehearing by any party shall be made in accordance with the Louisiana Administrative Procedure Act.

M. The word "commission", as used herein, refers to the chairman and the members or its delegate appointed to conduct the hearing. The word "applicant", as used herein, refers to the party who filed a protest/appeal with the commission under R.S. 47:1989. The word "respondent", as used herein, refers to the interested parties who did not file a protest/appeal with the commission under R.S. 47:1989. In a protest by a taxpayer, the interested parties include the parish assessor and Board of Review. In a protest by an assessor the interested parties include the taxpayer and Board of Review. In a protest by a bona fide representative of an affected tax-recipient body, the interested parties include the taxpayer, parish assessor, and Board of Review.

N. The chairman of the commission is authorized to rule upon, decide, and/or adjudicate any motion or objection. Notice of rulings by the chairman shall be delivered to the parties by U.S. Mail and/or electronic mail. Any party may appeal a ruling by the chairman to the full commission within seven calendar days of notice. Such appeals may be heard by the commission by special setting or referred to the merits of the case at the discretion of the commission.

O. A decision by the commission that determines the fair market value of real property shall be applied to subsequent tax years until reappraisal in a future mandated reappraisal year, unless there has been a change in the physical condition of the property that would justify reappraisal or a change in value. Nothing in this Subparagraph shall be interpreted or applied to limit an assessor's ability or obligation to reduce an assessment due to a change in the condition of the property or under R.S. 47:1978.1.

P. Other than a final decision on the merits of an appeal, any ruling, notice, correspondence, order, directive, or similar communication issued by the commission may be by U.S. Mail and/or electronic mail.

**Form 3102/3103.A**                      La. Tax Commission  
**Exhibit A**                              P.O. Box 66788  
**Appeal to Louisiana Tax Commission**      Baton Rouge, LA 70896  
**by Property Owner/Taxpayer or Assessor**      (225) 219-0339  
**for Real and Personal Property**

Name: \_\_\_\_\_ Parish/District: \_\_\_\_\_  
Taxpayer

Address: \_\_\_\_\_ City, State, Zip: \_\_\_\_\_

Ward: \_\_\_\_\_ Assessment/Tax Bill Number: \_\_\_\_\_ Appeal No. \_\_\_\_\_  
Board of Review

Address or Legal Description of Property Being Appealed  
Also, please identify building by place of business for convenience

\_\_\_\_\_

I hereby appeal the decision of the Board of Review on the assessment of the above described property pursuant to La. R.S. 47:1992, R.S. 47:1989 and the rules of the Louisiana Tax Commission. I timely filed my appeal as required by law.

Date of the Board of Review Determination: \_\_\_\_\_

"You are required to include a copy of the Board of Review Determination with this Appeal Form."

The original Fair Market Value by the assessor was:

Land \$ \_\_\_\_\_ Improvement \$ \_\_\_\_\_

Personal Property \$ \_\_\_\_\_ Total \$ \_\_\_\_\_

The Fair Market Value determined by the Board of Review was:

Land \$ \_\_\_\_\_ Improvement \$ \_\_\_\_\_

Personal Property \$ \_\_\_\_\_ Total \$ \_\_\_\_\_

The Fair Market Value should be:

Land \$ \_\_\_\_\_ Improvement \$ \_\_\_\_\_

Personal Property \$ \_\_\_\_\_ Total \$ \_\_\_\_\_

\* If you are not appealing personal property leave this section blank.

NOTE: If you disagree with the Board of Review's determination, you must file an appeal. The appeal of the decision of the Board of Review by one party is not an appeal of that decision from the other party. To protect your rights, if you disagree with the determination of the Board of Review, you should file an appeal to the Louisiana Tax Commission challenging the Board of Review's determination regardless of whether or not the other party has appealed that decision.

Applicant: \_\_\_\_\_ (Property Owner/Taxpayer/Assessor)

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Email Address: \_\_\_\_\_

Date of Appeal: \_\_\_\_\_

Today's Date: \_\_\_\_\_

This form must be completed in its entirety. The failure to complete the form, in its entirety, or failure to attach a copy of the Board of Review Determination may result in summary dismissal at the discretion of the Tax Commission.

PLEASE NOTE: Any documents or other evidence submitted to the assessor and/or the Board of Review must be refiled/resubmitted to the Louisiana Tax Commission.

**Form 3102/3103.B**  
**Exhibit B**  
**Power of Attorney**

PLEASE TYPE OR PRINT

Taxpayer(s) must sign and date this form on Page 2.

**I. TAXPAYER:**

Your Name or Name of Entity: \_\_\_\_\_

Street Address, City, State, ZIP: \_\_\_\_\_

I/we appoint the following representative as my/our true and lawful agent and attorney-in-fact to represent me/us before the Louisiana Tax Commission. The representative is authorized to receive and inspect confidential information concerning me/our tax matters, and to perform any and all acts that I/we can perform with respect to my/our tax matters, unless noted below. Modes of communication for requesting and receiving information may include telephone, e-mail, or fax. The authority does not include the power to receive refund checks, the power to substitute another representative, the power to add additional representatives, or the power to execute a request for disclosure of tax information to a third party.

Representatives must sign and date this form on Page 3.



**II. AUTHORIZED REPRESENTATIVE:**

Name: \_\_\_\_\_  
Firm: \_\_\_\_\_  
Street Address \_\_\_\_\_  
City, State, ZIP: \_\_\_\_\_  
Telephone Number:( ) \_\_\_\_\_  
Fax Number:( ) \_\_\_\_\_  
Email Address: \_\_\_\_\_

**III. SCOPE OF AUTHORIZED APPOINTMENT:**

Acts Authorized. Mark only the boxes that apply. By marking the boxes, you authorize the representative to perform any and all acts on your behalf, including the authority to sign tax returns, with respect only to the indicated tax matters:

A. Duration:  
\_\_\_\_\_ Tax Year \_\_\_\_\_ (Days, Months, etc.) \_\_\_\_\_ Until Revoked.

- B. Agent Authority:
1. \_\_\_\_\_ General powers granted to represent taxpayer in all matters.
  2. \_\_\_\_\_ Specified powers as listed.  
(a.) \_\_\_\_\_ File notices of protest and present protests before the Louisiana Tax Commission.  
(b.) \_\_\_\_\_ Receive confidential information filed by taxpayer.  
(c.) \_\_\_\_\_ Negotiate and resolve disputed tax matters without further authorization.  
(d.) \_\_\_\_\_ Represent taxpayer during appeal process.

- C. Properties Authorized to Represent:
1. \_\_\_\_\_ All property.
  2. \_\_\_\_\_ The following property only (give assessment number and municipal address or legal description).  
\_\_\_\_\_  
\_\_\_\_\_

Additional properties should be contained on separate page

NOTICES AND COMMUNICATIONS: Original notices and other written communication will be sent only to you, the taxpayer. Your representative may request and receive information by telephone, e-mail, or fax. Upon request, the representative may be provided with a copy of a notice or communication sent to you. If you want the representative to request or receive a copy of notices and communications sent to you,  check this box.

REVOCATION OF PRIOR POWER(S) OF ATTORNEY: Except for Power(s) of Attorney and Declaration of Representative(s) filed on this Form, the filing of this Power of Attorney automatically revokes all earlier Power(s) of Attorney on file with the Louisiana Tax Commission for the same tax matters and years or periods covered by this document.

SIGNATURE OF TAXPAYER(S): If a tax matter concerns jointly owned property, all owners must sign if joint representation is requested. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer. I certify that I have the authority to execute this form on behalf of the taxpayer.

IF THIS POWER OF ATTORNEY IS NOT SIGNED AND DATED, IT WILL BE RETURNED.

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Date (mm/dd/yyyy)  
\_\_\_\_\_  
Spouse/Other Owner Signature

\_\_\_\_\_  
Date (mm/dd/yyyy)  
\_\_\_\_\_  
Signature of Duly Authorized Representative, if the taxpayer title is a corporation, partnership, executor, or administrator

\_\_\_\_\_  
Date (mm/dd/yyyy)

**IV. DECLARATION OF REPRESENTATIVE:**

Under penalties of perjury, I declare that:  
  
I am authorized to represent the taxpayer identified above and to represent that taxpayer as set forth in Part III specified herein;  
  
I have read and am familiar with all the rules and regulations promulgated by the commission;  
  
I have fully complied with all rules adopted by the commission regarding professional conduct and ethical considerations.

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Date (mm/dd/yyyy)

IF THIS DECLARATION OF REPRESENTATIVE IS NOT SIGNED AND DATED, THE POWER OF ATTORNEY WILL BE RETURNED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837, R.S. 47:1989 and R.S. 47:1992.  
HISTORICAL NOTE: Promulgated by the Louisiana Tax Commission, LR 4:339 (September 1978), amended by the Department of Revenue and Taxation, Tax Commission, LR 10:947 (November 1984), LR 15:1097 (December 1989), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), amended by the Department of Revenue, Tax Commission, LR 24:492 (March 1998), LR 25:319 (February 1999), LR 26:512 (March 2000), LR 28:521 (March 2002), LR 31:721 (March 2005), LR 32:436 (March 2006), LR 33:498 (March 2007), LR 34:688 (April 2008), LR 36:782 (April 2010), amended by the Office of the Governor, Division of Administration, Tax Commission, LR 38:811 (March 2012), LR 41:682 (April 2015), LR 42:752 (May 2016), LR 43:658 (April 2017), LR 45:539 (April 2019), LR 46:567 (April 2020), LR 48:1533 (June 2022).

**§3105. Practice and Procedure for Public Service Properties Hearings**

A. The Tax Commission or its designated representative, as provided by law, shall conduct hearings to consider the written protest of an applicant taxpayer. The appeal shall be filed within 30 days after receipt of the Public Service Section's Certificate of Value. In order to institute a proceeding before the commission, the taxpayer shall file Form 3105.A and, if applicable Form 3102/3103.B.

B.1. All filings to the Louisiana Tax Commission shall be filed, in proper form, consisting of an original and seven copies on letter size paper, with the Office of the Administrator. All appeals and filings shall be deemed filed when deposited with the United States Postal Service and can be evidenced by proof of mailing by registered or certified mail.

2. The Office of the Administrator shall be sent one "service copy" of all State Court, Federal Court, Appellate Court, and/or Supreme Court pleadings in which the LTC is named party in addition to Special Counsel for the LTC.

C. At the close of the time period for filing protests, the commission shall assign each case to the docket and notify the parties of the time and place of the hearing.

D. Thirty days prior to said hearings, the protesting taxpayer shall file a signed, pleading, specifying each

respect in which the initial determination is contested, setting forth the specific basis upon which the protest is filed, together with a statement of the relief sought and seven copies of all hearing exhibits to be presented; which shall be marked "Exhibit Taxpayer \_\_\_\_\_" and shall be consecutively numbered, indexed and bound. Legal memorandum submitted by the parties will be made part of the record of proceedings before the commission, but shall not be filed as exhibits to be offered into evidence for the hearing before the commission.

E. - S. ...

**Form 3105.A  
Exhibit A  
Appeal to Louisiana Tax Commission  
by Taxpayer  
For Public Service Property**

La. Tax Commission  
P.O. Box 66788  
Baton Rouge, LA 70896  
(225) 219-0339

Taxpayer Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Circle one Industry:

Airline Boat/Barge Co-op Electric Pipeline Railcar Railroad Telephone

The Fair Market Value as determined by the Public Service Section of the Louisiana Tax Commission is:

Total \$ \_\_\_\_\_

I am requesting that the Fair Market Value be fixed at:

Total \$ \_\_\_\_\_

I understand that property is assessed at a percentage of fair market value which means the price for the property which would be agreed upon between a willing and informed buyer and a willing and informed seller under usual and ordinary circumstances, the highest price the property would bring on the open market if exposed for sale for a reasonable time.

Applicant: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone No.: \_\_\_\_\_

Email Address: \_\_\_\_\_

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 47:1837 and R.S. 47:1856.

**HISTORICAL NOTE:** Promulgated by the Louisiana Tax Commission, LR 4:339 (September 1978), amended by the Department of Revenue and Taxation, Tax Commission, LR 10:947 (November 1984), LR 15:1097 (December 1989), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 23:209 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:493 (March 1998), LR 25:320 (February 1999), LR 26:513 (March 2000), LR 30:492 (March 2004), LR 31:723 (March 2005), LR 32:438 (March 2006), LR 33:499 (March 2007), LR 34:689 (April 2008), LR 36:782 (April 2010), amended by the Office of the Governor, Division of Administration, Tax Commission, LR 38:812 (March 2012), LR 41:683 (April 2015), LR 43:661 (April 2017), LR 45:541 (April 2019), LR 48:1538 (June 2022).

**§3106. Practice and Procedure for the Appeal of Bank Assessments**

A. The Tax Commission or its designated representative, as provided by law, shall conduct hearings to consider the written protest of an applicant taxpayer. The appeal shall be filed within 30 days of the dated Certificate of Value to the taxpayer. In order to institute a proceeding before the

commission, the taxpayer shall file Form 3106.A and, if applicable Form 3102/3103.B.

B. All filings to the Louisiana Tax Commission shall be filed with the Office of the Administrator. They shall be deemed filed only when actually received, in proper form. All filings shall be in the form of an original and seven copies on letter size paper.

1. The Office of the Administrator shall be sent one "service copy" of all State Court, Federal Court, Appellate Court, and/or Supreme Court pleadings in which the LTC is named party in addition to Special Counsel for the LTC.

C. At the close of the time period for filing protests, the commission shall assign each case to the docket and notify the parties of the time and place of the hearing.

D. Thirty days prior to said hearings, the protesting taxpayer shall file a signed, pleading, specifying each respect in which the initial determination is contested, setting forth the specific basis upon which the protest is filed, together with a statement of the relief sought and seven copies of all hearing exhibits to be presented; which shall be marked "Exhibit Taxpayer \_\_\_\_\_" and shall be consecutively numbered, indexed and bound. Legal memorandum submitted by the parties will be made part of the record of proceedings before the commission, but shall not be filed as exhibits to be offered into evidence for the hearing before the commission.

E. - T. ...

**Form 3106.A  
Appeal to Louisiana Tax Commission  
by Taxpayer  
for Bank Stock Assessments**

LA Tax Commission  
P.O. Box 66788  
Baton Rouge, LA 70896  
(225) 219-0339

Name: \_\_\_\_\_ Parish/District: \_\_\_\_\_

Taxpayer

Address: \_\_\_\_\_ City, State, Zip: \_\_\_\_\_

Address or Legal Description of Property Being Appealed

The Fair Market Value of the Administrative Section of the Louisiana Tax Commission is: \$ \_\_\_\_\_

I am requesting that the Fair Market Value be fixed at: \$ \_\_\_\_\_

Applicant:

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone No.: \_\_\_\_\_

Date: \_\_\_\_\_

Email Address: \_\_\_\_\_

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 47:1837.

**HISTORICAL NOTE:** Promulgated by the Department of Revenue, Tax Commission, LR 33:499 (March 2007), LR 34:690 (April 2008), LR 36:782 (April 2010), amended by the Division of Administration, Tax Commission, LR 38:812 (March 2012), LR 41:683 (April 2015), LR 43:661 (April 2017), LR 45:541 (April 2019), LR 48:1539 (June 2022).

**§3107. Practice and Procedure for Appeal of Insurance Credit Assessments**

A. The Tax Commission or its designated representative, as provided by law, shall conduct hearings to consider the written protest of an applicant taxpayer. The appeal shall be filed within 30 days of the dated certificate of value to the taxpayer. In order to institute a proceeding before the

commission, the taxpayer shall file Form 3107.A and, if applicable Form 3102/3103.B.

B. All filings to the Louisiana Tax Commission shall be filed with the Office of the Administrator. They shall be deemed filed only when actually received, in proper form. All filings shall be in the form of an original and seven copies on letter size paper.

1. The Office of the Administrator shall be sent one "service copy" of all state court, federal court, appellate court, and/or Supreme Court pleadings in which the LTC is named party in addition to Special Counsel for the LTC.

C. At the close of the time period for filing protests, the commission shall assign each case to the docket and notify the parties of the time and place of the hearing.

D. Thirty days prior to said hearings, the protesting taxpayer shall file a signed, pleading, specifying each respect in which the initial determination is contested, setting forth the specific basis upon which the protest is filed, together with a statement of the relief sought and seven copies of all hearing exhibits to be presented; which shall be marked "Exhibit Taxpayer \_\_\_\_\_" and shall be consecutively numbered, indexed and bound. Legal memorandum submitted by the parties will be made part of the record of proceedings before the commission, but shall not be filed as exhibits to be offered into evidence for the hearing before the commission.

E. - T. ...

**Form 3107.A  
Appeal To Louisiana Tax Commission  
by Taxpayer  
for Insurance Assessments**

LA Tax Commission  
P.O. Box 66788  
Baton Rouge, LA 70896  
(225) 219-0339

Name: \_\_\_\_\_ Parish/District: \_\_\_\_\_

Taxpayer

Address: \_\_\_\_\_ City, State, Zip: \_\_\_\_\_

Address or Legal Description of Property Being Appealed

\_\_\_\_\_

The Fair Market Value of the Administrative Section of the Louisiana Tax Commission is: \$ \_\_\_\_\_

I am requesting that the Fair Market Value be fixed at: \$ \_\_\_\_\_

Appellant:

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone No.: \_\_\_\_\_

Date: \_\_\_\_\_

Email Address: \_\_\_\_\_

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Tax Commission, LR 33:501 (March 2007), amended LR 34:690 (April 2008), LR 36:782 (April 2010), amended by the Office of the Governor, Division of Administration, Tax Commission, LR 38:812 (March 2012), LR 41:683 (April 2015), LR 43:661 (April 2017), LR 45:541 (April 2019), LR 48:1539 (June 2022).

**Chapter 35. Miscellaneous**

**§3501. Service Fees—Tax Commission**

A. The Tax Commission is hereby authorized on an interim basis for the period beginning on July 1, 2021, and

ending on June 30, 2026, to levy and collect the following fees in connection with services performed by the commission:

1. A fee for the assessment of public service properties, at the rate of four hundredths of one percent of the assessed value of such properties, to be paid by each public service property which pays ad valorem taxes.

2. A fee for the assessment of insurance companies, at the rate of three hundredths of one percent of the assessed value of such properties, to be paid by each insurance company which pays ad valorem taxes.

3. A fee for the assessment of financial institutions, at the rate of three hundredths of one percent of the assessed value of such properties, to be paid by each bank stock and loan and finance company which pays ad valorem taxes.

B. - D.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1835 and R.S. 47:1838.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 19:212 (February 1993), amended LR 20:198 (February 1994), amended by the Department of Revenue, Tax Commission, LR 24:494 (March 1998), LR 25:320 (February 1999), LR 26:513 (March 2000), LR 28:521 (March 2002), LR 30:493 (March 2004), LR 31:724 (March 2005), LR 32:439 (March 2006), LR 33:502 (March 2007), LR 35:501 (March 2009), amended by the Office of the Governor, Division of Administration, Tax Commission, LR 37:1403 (May 2011), LR 41:683 (April 2015), LR 43:662 (April 2017), LR 44:585 (March 2018), LR 45:542 (April 2019), LR 48:1540 (June 2022).

Lawrence E. Chehardy  
Chairman

2112#022

**RULE**

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

Abortion Facilities  
Licensing Standards  
(LAC 48:I.4401 and 4431)

The Department of Health, Bureau of Health Services Financing has amended LAC 48:I.4401 and §4431 as authorized by R.S. 36:254 and R.S. 40:2175.1 et seq. 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 3. Licensing and Certification**

**Chapter 44. Abortion Facilities**

**Subchapter A. General Provisions**

**§4401. Definitions**

*Abortion or Induced Abortion*—the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child.

Such use, prescription, or means is not an abortion if done with the intent to:

1. save the life or preserve the health of an unborn child;
2. remove a dead unborn child or induce delivery of the uterine contents in case of a positive diagnosis, certified in writing in the woman's medical record along with the results of an obstetric ultrasound test, that the pregnancy has ended or is in the unavoidable and untreatable process of ending due to spontaneous miscarriage, also known in medical terminology as spontaneous abortion, missed abortion, inevitable abortion, incomplete abortion, or septic abortion; or
3. remove an ectopic pregnancy.

\*\*\*

*Certified Registered Nurse Anesthetist (CRNA)*—a licensed health care practitioner who is acting within the scope of practice of his/her respective licensing board(s) and/or certifications.

\*\*\*

*CRNA*—Repealed.

\*\*\*

*Genetic Abnormality*—any defect, disease, or disorder that is inherited genetically. The term includes, without limitation, any physical disfigurement, scoliosis, dwarfism, Down syndrome, albinism, amelia, and any other type of physical, mental, or intellectual disability, abnormality, or disease

\*\*\*

*Physician Assistant (PA)*—a licensed health care practitioner who is acting within the scope of practice of his/her respective licensing board(s) and/or certifications.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:685 (April 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 48:1540 (June 2022).

### **Subchapter C. Pre-Operative, Intra-Operative, and Post-Operative Procedures**

#### **§4431. Screening and Pre-Operative Services**

A. - E.1. ...

##### **2. Requirements**

a. Except as provided in Subparagraph b below, at least 72 hours prior to the pregnant woman having any part of an abortion performed or induced, and prior to the administration of any anesthesia or medication in preparation for the abortion on the pregnant woman, the physician who is to perform the abortion or a qualified person who is the physician's agent shall comply with all of the following requirements:

i. perform an obstetric ultrasound on the pregnant woman, offer to simultaneously display the screen which depicts the active ultrasound images so that the pregnant woman may view them and make audible the fetal heartbeat, if present, in a quality consistent with current medical practice. Nothing in this Section shall be construed to prevent the pregnant woman from not listening to the sounds detected by the fetal heart monitor, or from not viewing the images displayed on the ultrasound screen;

ii. provide a simultaneous and objectively accurate oral explanation of what the ultrasound is depicting,

in a manner understandable to a layperson, which shall include the presence and location of the unborn child within the uterus and the number of unborn children depicted, the dimensions of the unborn child, and the presence of cardiac activity if present and viewable, along with the opportunity for the pregnant woman to ask questions;

iii. offer the pregnant woman the option of requesting an ultrasound photograph or print of her unborn child of a quality consistent with current standard medical practice that accurately portrays, to the extent feasible, the body of the unborn child including limbs, if present and viewable;

iv. from a form that shall be produced and made available by the department, staff will orally read the statement on the form to the pregnant woman in the ultrasound examination room prior to beginning the ultrasound examination, and obtain from the pregnant woman a copy of a completed, signed, and dated form; and

v. retain copies of the election form and certification prescribed above. The certification shall be placed in the medical file of the woman and shall be kept by the outpatient abortion facility for a period of not less than seven years. If the woman is a minor, the certification shall be placed in the medical file of the minor and kept for at least seven years or for five years after the minor reaches the age of majority, whichever is greater. The woman's medical files shall be kept confidential as provided by law.

b. If the pregnant woman certifies in writing that she currently lives 150 miles or more from the nearest licensed outpatient abortion facility that is willing and able to perform the abortion at the particular woman's stage of pregnancy, then the physician who is to perform the abortion or a qualified person who is the physician's agent shall comply with all of the requirements of §4431.E.2.a at least 24 hours prior to the woman having any part of an abortion performed or induced.

c. - e. Repealed.

E.3. - F. ...

#### **G. Information and Informed Consent**

1. Oral and Written Information Provided by Physician or Referring Physician

a. Except as provided in Paragraph b below, at least 72 hours before the abortion the physician who is to perform the abortion or the referring physician shall provide informed consent to the pregnant woman seeking an abortion, pursuant to all laws, rules and regulations regarding informed consent. The informed consent shall be communicated both orally and in-person, and in writing, and shall be provided in a private room. Documentation of all such informed consent provided shall be maintained in the patient's medical record.

b. If the woman certifies in writing that she currently lives 150 miles or more from the nearest licensed outpatient abortion facility that is willing and able to perform the abortion at the particular woman's stage of pregnancy, then the physician who is to perform the abortion or the referring physician shall comply with all of the requirements of §4431.G.1 at least 24 hours prior to the abortion.

1.c. - 2.a. ...

3. Oral Information Provided by Physician, Referring Physician, or Qualified Person

a. Except as provided in Subparagraph b below, at least 72 hours before a scheduled abortion the physician who is to perform the abortion, the referring physician, or a qualified person shall inform the pregnant woman seeking an abortion, orally and in-person that:

i. - iv. ...

b. If the woman certifies in writing that she currently lives 150 miles or more from the nearest licensed outpatient abortion facility that is willing and able to perform the abortion at the particular woman's stage of pregnancy, then the physician who is to perform the abortion the referring physician, or a qualified person shall comply with all of the requirements of §4431.G.3 at least 24 hours prior to the abortion.

#### 4. Provision of Printed Materials

a. At least 72 hours before the abortion, the pregnant woman seeking an abortion shall be given a copy of the printed materials, pursuant to any applicable state laws, rules, and regulations, by the physician who is to perform the abortion, the referring physician, or a qualified person. These printed materials shall include any printed materials necessary for a voluntary and informed consent, pursuant to R.S. 40:1061.17. However, if the pregnant woman certifies in writing that she currently lives 150 miles or more from the nearest licensed outpatient abortion facility that is willing and able to perform the abortion at the particular woman's stage of pregnancy, she shall be given a copy of the printed materials at least 24 hours prior to an elective abortion procedure by the physician who is to perform the abortion or a qualified person as defined in R.S. 40:1061.17(B)(4)(c).

i. - NOTE Repealed.

b. At least 72 hours before the abortion, the pregnant woman or minor female considering an abortion shall be given a copy of the department's *Point of Rescue* pamphlet and any other materials described in R.S. 40:1061.16 by the physician who is to perform the abortion or a qualified person as defined in R.S. 40:1061.17(B)(4)(c), except in the case of medical emergency defined by applicable state laws. However, if the pregnant woman or minor female considering an abortion certifies in writing that she currently lives 150 miles or more from the nearest licensed outpatient abortion facility that is willing and able to perform the abortion at the particular woman's stage of pregnancy, she shall be given a copy of these printed materials at least 72 hours prior to an elective abortion procedure by the physician who is to perform the abortion or a qualified person as defined in R.S. 40:1061.17(B)(4)(c), except in the case of medical emergency defined by applicable state laws.

i. The physician or qualified person shall provide to the woman, or minor female seeking an abortion, such printed materials individually and in a private room for the purpose of ensuring that she has an adequate opportunity to ask questions and discuss her individual circumstances.

ii. The physician or qualified person shall obtain the signature of the woman or minor female seeking an abortion on a form certifying that the printed materials were given to the woman or minor female.

iii. In the case of a minor female considering an abortion, if a parent accompanies the minor female to the appointment, the physician or qualified person shall provide

to the parent copies of the same materials given to the female.

iv. The signed certification form shall be kept within the medical record of the woman or minor female for a period of at least seven years.

c. At least 72 hours before the abortion, the pregnant woman seeking an abortion shall be given a copy of a printed informational document including resources, programs and services for pregnant women who have a diagnosis of fetal genetic abnormality and resources, programs and services for infants and children born with disabilities. However, if the pregnant woman certifies in writing that she currently lives 150 miles or more from the nearest licensed outpatient abortion facility that is willing and able to perform the abortion at the particular woman's stage of pregnancy, she shall be given a copy of these printed materials at least 24 hours prior to an elective abortion procedure by the physician who is to perform abortion or a qualified person as defined in R.S. 40:1061.17(B)(4)(c).

d. If the pregnant woman seeking an abortion is unable to read the materials, the materials shall be read to her. If the pregnant woman seeking an abortion asks questions concerning any of the information or materials, answers shall be provided to her in her own language.

NOTE: The provisions of this Section requiring a physician or qualified person to provide required printed materials to a woman considering an abortion shall become effective 30 days after the department publishes a notice of the availability of such materials.

#### 5. Certification and Reporting

a. Prior to the abortion, the outpatient abortion facility shall ensure the pregnant woman seeking an abortion has certified, in writing on a form provided by the department that the information and materials required were provided at least 72 hours prior to the abortion, or at least 24 hours prior to the abortion in the case of a woman who has given prior certification in writing that she currently lives 150 miles or more from the nearest licensed outpatient abortion facility that is willing and able to perform the abortion at the particular woman's stage of pregnancy. This form shall be maintained in the woman's medical record.

b. ...

c. The pregnant woman seeking an abortion is not required to pay any amount for the abortion procedures until the 72-hour period has expired, or until expiration of the 24-hour period applicable in the case of a woman who has given prior certification in writing that she currently lives 150 miles or more from the nearest licensed outpatient abortion facility that is willing and able to perform the abortion at the particular woman's stage of pregnancy.

6. - 7.b. ...

#### 8. Disposition of Fetal Remains

a. Each physician who performs or induces an abortion which does not result in a live birth shall ensure that the remains of the fetus are disposed of by interment or cremation, in accordance with the provisions of R.S. 8:651 et seq. and the provisions of LAC 51:XXVI.

b. Prior to an abortion, the physician shall orally and in writing inform the pregnant woman seeking an abortion in the licensed abortion facility that the pregnant woman has the following options:

i. the option to make arrangements for the disposition and/or disposal of fetal remains by interment or cremation, in accordance with the provisions of R.S. 8:651 et seq.; or

ii. the option to have the outpatient abortion facility/physician make the arrangements for the disposition and/or disposal of fetal remains by interment or cremation, in accordance with the provisions of R.S. 8:651 et seq.

c. The pregnant woman shall sign a consent form attesting that she has been informed of these options; if the pregnant woman wants to make arrangements for the disposition of fetal remains, she will indicate so on the form; if no such indication is made on the form by the pregnant woman, the outpatient abortion facility/physician shall make the arrangements for the disposition and/or disposal of fetal remains by interment or cremation, in accordance with the provisions of R.S. 8:651 et seq.

d. the requirements of §4431.G.8 regarding dispositions of fetal remains, shall not apply to abortions induced by the administration of medications when the evacuation of any human remains occurs at a later time and not in the presence of the inducing physician or at the facility in which the physician administered the inducing medications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:700 (April 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 48:1541 (June 2022).

Dr. Courtney N. Phillips  
Secretary

2206#044

## RULE

### 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  
(LAC 50:XXI.11105, 11301, 11303,  
11501, 11529, 12101, and 12301)

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities have amended LAC 50:XXI.11105, §11301, §11303, §11501, §11529, §12101, and §12301 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. This Rule is hereby adopted on the day of promulgation.

## Title 50

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

#### Subpart 9. Children's Choice Waiver

#### Chapter 111. General Provisions

#### §11105. Money Follows the Person Rebalancing Demonstration

A. - A.1. ...

B. Individuals must meet the following criteria for participation in the MFP Rebalancing demonstration.

1. Individuals with a developmental disability must:

a. ...

b. occupy a licensed, approved and enrolled Medicaid nursing facility bed for at least 60 days or have been hospitalized in an acute care hospital for 60 days with referral for nursing facility placement; and

B.1.c. - E. ...

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 for Citizens with Developmental Disabilities, LR 35:1892 (September 2009), amended by Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:2524 (December 2017), amended by the Department of Health, Bureau of Health Services Financing, and the Office for the Citizens with Developmental Disabilities, LR 48:1543 (June 2022).

#### Chapter 113. Service

#### §11301. Service Cap

A. - D. ...

E. Children's choice services are capped at \$20,200 per individual per plan of care year.

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 26:2793 (December 2000), amended LR 28:1787 (August 2002), repromulgated for LAC, LR 28:1983 (September 2002), amended by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2440 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:2157 (July 2011), LR 39:507 (March 2013), LR 39:2498 (September 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:1543 (June 2022).

#### §11303. Service Definitions

A. - D.6. ...

7. Excluded are those adaptations or improvements to the home or vehicle, which are of general utility, and are not of direct medical or remedial benefit to the participant, such as carpeting, roof repair, central air conditioning, whole home generators, a fence, etc.

D.8. - E.2. ...

3. For purposes of this service only, *family* is defined as persons who live with or provide care to a participant in the children's choice waiver and may include a parent,

spouse, stepparent, grandparent, child, sibling, relative, foster family, legal guardian, or in-law.

E.4. - F.1.b. ...

2. Family members who provide family support services must meet the same standards of service, training requirements, and documentation requirements as caregivers who are unrelated to the participant. Service hours shall be capped at 40 hours per week, Sunday to Saturday, for services delivered by family members living in the home.

a. - b. Repealed.

3. Legally responsible individuals (such as a parent or spouse) and legal guardians may provide family support services for their own child, provided that the care is extraordinary in comparison to that of a child of the same age without a disability and the care is in the best interest of the child. Legally responsible individuals and legal guardians may not provide family support services delivered through self-direction.

G. - N.4.a. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 26:2793 (December 2000), repromulgated for LAC, LR 28:1983 (September 2002), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1871 (September 2007), 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 39:2498 (September 2013), LR 40:67 (January 2014), LR 41:126 (January 2015), amended by Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:2525 (December 2017), LR 48:1543 (June 2022).

## **Chapter 115. Provider Participation Requirements**

### **Subchapter A. Provider Qualifications**

#### **§11501. Support Coordination Providers and Service Providers**

A. - B. ...

1. Family members who provide family support services must meet the same standards of service, training requirements, and documentation requirements as caregivers who are unrelated to the participant.

a. - b. Repealed.

2. Legally responsible individuals (such as a parent or spouse) and legal guardians who provide family support services for their own child must meet the same standards of service, training requirements, and documentation requirements as caregivers who are unrelated to the participant. Monitoring shall be conducted to ensure proper documentation and that the services are delivered in accordance with the child's plan of care. Payments to legally responsible individuals, legal guardians and family members living in the home shall be audited on a semi-annual basis to ensure payment for services rendered.

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 26:2793 (December 2000), repromulgated for LAC, LR 28:1984 (September 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:2501 (September 2013), amended by the

Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:1544 (June 2022).

#### **§11529. Professional Services Providers**

A. - G. ...

H. Providers of professional services must maintain adequate documentation to support service delivery and compliance with the approved plan of care and provide said documentation upon the LDH's request.

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 for Citizens with Developmental Disabilities, LR 39:2501 (September 2013), amended LR 41:128 (January 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:1544 (June 2022).

## **Chapter 121. Reimbursement Methodology**

### **§12101. Unit of Reimbursement**

A. - B.1. ...

a. Up to two participants may choose to share family support services if they share a common provider of this service. Family support services may share a direct support worker (DSW) across two waivers: the Residential Options Waiver (community living supports) and/or New Opportunities Waiver (individual and family supports). However, sharing a DSW at the same time across all three waivers is not allowed.

1.b. - 3. ...

4. - 4.a. Repealed.

5. - 5.d.i. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health 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).

## **Chapter 123. Self-Direction Initiative**

### **§12301. Self-Direction Service Delivery Option**

A. ...

B. Participant Responsibilities. Waiver participants choosing the self-directed service delivery option must understand the rights, risks and responsibilities of managing their own care and individual budget. If the participant is under 18 years of age or is unable to make decisions independently, the participant must have an authorized representative who understands the rights, risks and responsibilities of managing his/her care and supports within the participant's individual budget. The employer must be at least 18 years of age. Responsibilities of the participant or authorized representative include:

1. - 3.b. ...

4. all services rendered shall be prior approved and in accordance with the plan of care;

5. all services must be documented in service notes, which describes the services rendered and progress towards the participant's personal outcomes plan of care; and

6. authorized representatives may be the employer of the self-directed option, but may not also be the employee.

C. - C.2.d.iv. ...

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, Office for Citizens with Developmental Disabilities, LR 39:2504 (September 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:2527 (December 2017), LR 48:1544 (June 2022).

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

2206#045

## RULE

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

#### Home and Community-Based Services Waivers New Opportunities Waiver—Dental Services (LAC 50:XXI.Chapters 137-143)

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities has amended LAC 50:XXI.Chapters 137–143 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 XXI. Home and Community-Based Services Waivers

#### Subpart 11. New Opportunities Waiver

#### Chapter 137. General Provisions

#### §13701. Introduction

A. The New Opportunities Waiver (NOW), hereafter referred to as the NOW, is designed to enhance the home and community-based services and supports available to individuals with developmental disabilities, who would otherwise require an intermediate care facility for persons with developmental disabilities (ICF-IDD) level of care. The mission of the NOW is to utilize the principle of self-determination and supplement the family and/or community supports while supporting the dignity, quality of life and security in the everyday life of an individual, and maintaining that individual in the community. Services provided in the NOW are community-based, and are designed to allow an individual experience that mirrors the

experiences of individuals without disabilities. These services are not to be restrictive, but liberating, by empowering individuals to experience life in the most fulfilling manner as defined by the individual while still assuring health and safety. In keeping with the principles of self-determination, NOW includes a self-direction service delivery option. This allows for greater flexibility in hiring, training, and general service delivery issues.

B. All NOW services are accessed through the case management agency of the beneficiary's choice. All services must be prior authorized and delivered in accordance with the approved comprehensive plan of care (CPOC). The CPOC shall be developed using a person-centered process coordinated by the beneficiary's case manager.

C. ...

D. In order for the NOW provider to bill for services, the beneficiary and the direct service provider, professional or other practitioner rendering service, must be present at the time the service is rendered unless otherwise allowed in rule. The service must be documented in service notes describing the service rendered and progress towards the beneficiary's personal outcomes and CPOC.

E. - E.3.av....

F. The average beneficiary expenditures for all waiver services shall not exceed the average Medicaid expenditures for ICF-IDD services.

G. 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 Community Supports and Services, LR 30:1201 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1647 (August 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:68 (January 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 44:50 (January 2018), LR 45:42 (January 2019), LR 46:1680 (December 2020), LR 48:1545 (June 2022).

#### §13702. Settings for Home and Community-Based Services

A. NOW beneficiaries are expected to be integrated in and have full access to the greater community while receiving services, to the same extent as individuals without disabilities. Providers shall meet the requirements of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services' (CMS) home and community-based setting requirements for Home and Community-Based Services (HCBS) Waivers as delineated in LAC 50:XXI.901.

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 44:51 (January 2018), LR 48:1545 (June 2022).

#### §13703. Beneficiary Qualifications and Admissions Criteria

A. In order to qualify for the New Opportunities Waiver (NOW), an individual must be three years of age or older and meet all of the following criteria:

1. - 3. ...



4. meet the requirements for an ICF-IDD level of care which requires active treatment of a developmental disability under the supervision of a qualified developmental disability professional;

5. - 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 Community Supports and Services, LR 30:1201 (June 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:96 (January 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:2528 (December 2017), LR 45:43 (January 2019), LR 48:1545 (June 2022).

#### **§13704. Needs-Based Assessment**

A. A uniform needs-based assessment in conjunction with person-centered planning is utilized in the service planning process for the individuals receiving or participating in an OCDD waiver. The results of this assessment activity shall be utilized to determine which OCDD waiver will be offered to the individual during the initial plan of care process.

1. The beneficiary or his/her representative may request a reconsideration and present supporting documentation if he/she disagrees with the specific OCDD waiver offered as a result of the needs based assessment and person-centered planning process. If the beneficiary disagrees with the reconsideration decision, he/she may request a fair hearing through the formal appeals process.

B. - C.4.e. ....

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 Service Financing and the Office for Citizens with Developmental Disabilities, LR 36:65 (January 2010), amended LR 40:69 (January 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:2528 (December 2017), LR 48:1546 (June 2022).

#### **§13705. Denial of Admission or Discharge Criteria**

A. Individuals shall be denied admission to or discharged from the NOW if one of the following criteria is met:

1. ...

2. the individual does not meet the requirement for an ICF-IDD level of care;

3. - 4. ...

5. the beneficiary is admitted to an ICF-IDD facility or nursing facility with the intent to stay and not to return to waiver services. The waiver beneficiary may return to waiver services when documentation is received from the treating physician that the admission is temporary and shall not exceed 90 days. The beneficiary will be discharged from the waiver on the ninety-first day if the beneficiary is still in the ICF-IDD or nursing facility;

6. the health and welfare of the beneficiary cannot be assured through the provision of NOW services within the beneficiary's approved comprehensive plan of care;

7. ...

8. continuity of services is interrupted as a result of the individual not receiving a NOW service during a period of 30 or more consecutive days. This does not include

interruptions in NOW services because of hospitalization, temporary admission to rehabilitation or nursing facilities, or non-routine lapses in services where the family agrees to provide all needed or paid natural supports. There must be documentation from the treating physician that this interruption will not exceed 90 days in the case of the admission to a rehabilitation or nursing facility. During this 90-day period, the Office for Citizens with Developmental Disabilities (OCDD) will not authorize payment for NOW services; and/or

9. there is no justification, based on a uniform needs-based assessment and a person-centered planning discussion, that the NOW is the only OCDD waiver that will meet the beneficiary's needs.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1202 (June 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities LR 40:69 (January 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 44:51 (January 2018), LR 45:43 (January 2019), LR 48:1546 (June 2022).

#### **§13706. Resource Allocation**

A. ...

1. The beneficiary or his/her representative may request a reconsideration and present supporting documentation if he/she disagrees with the amount of assigned IFS service units. If the beneficiary disagrees with the reconsideration decision, he/she may request a fair hearing through the formal appeals process.

2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Service Financing and the Office for Citizens with Developmental Disabilities, LR 43:2528 (December 2017), LR 48:1546 (June 2022).

#### **§13707. Programmatic Allocation of Waiver Opportunities**

A. The intellectual/developmental disabilities request for services registry, hereafter referred to as "the registry," is the list that documents and maintains the person's name and protected request date for waiver services. A person's protected request date for any OCDD waiver is the date of the first face-to-face interview in which he/she applied for waiver services and is determined eligible for developmental disabilities services by the entry unit. The order of entry into an OCDD waiver is needs based from the registry arranged by an urgency of need assessment and date of application for developmentally disabled (DD) waiver services.

B. Funded OCDD waiver opportunities shall be offered based on the following priority groups:

1. individuals living at a publicly operated ICF-IDD or who lived at a publicly operated ICF-IDD when it was transitioned to a private ICF-IDD through a cooperative endeavor agreement (CEA facility), or their alternates. Alternates are defined as individuals living in a private ICF-IDD who will give up the private ICF-IDD bed to an individual living at a publicly operated ICF-IDD when it transitioned to a private ICF-IDD through a cooperative endeavor agreement (CEA Facility). Individuals requesting

to transition from a publicly operated ICF-IDD are awarded a slot when one is requested, and their health and safety can be assured in an OCDD waiver. This also applies to individuals who were residing in a publicly operated facility at the time the facility was privatized and became a CEA facility. The funded waiver opportunity will be reserved for a period not to exceed 120 days; however, this 120-day period may be extended as needed;

2. individuals on the registry who have a current unmet need as defined by a screening for urgency of need (SUN) score of (three) urgent or (four) emergent and the earliest registry date shall be notified in writing when a funded OCDD waiver opportunity is available.

C. The Office for Citizens with Developmental Disabilities has the responsibility to monitor the utilization of NOW opportunities. At the discretion of the OCDD, specifically allocated waiver opportunities may be reallocated, to better meet the needs of citizens with developmental disabilities in the state of Louisiana.

1. - 2. Repealed.

D. Funded waiver opportunities will only be allocated to individuals who successfully complete the financial and medical eligibility process required for waiver certification.

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, Office for Citizens with Developmental Disabilities, LR 31:2900 (November 2005), amended LR 33:2440 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:3526 (December 2011), LR 40:70 (January 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:2529 (December 2017), LR 48:1546 (June 2022).

## **Chapter 139. Covered Services**

### **§13901. Individual and Family Support Services**

A. Individual family support (IFS) services are direct support and assistance services, provided in the beneficiary's home or in the community, that allow the beneficiary to achieve and/or maintain increased independence, productivity, enhanced family functioning and inclusion in the community to the same degree as individuals without disabilities. IFS services are also used to provide relief to the primary caregiver. Transportation is included in the reimbursement for these services. Reimbursement for these services includes the development of a service plan for the provision of these services, based on the approved COPC.

1. Individual and family support day (IFS-D) services will be authorized during waking hours for up to 16 hours when natural supports are unavailable in order to provide continuity of services to the beneficiary. Waking hours are the period of time when the beneficiary is awake and not limited to traditional daytime hours as outlined in the CPOC.

a. ...

2. Individual family support-night (IFS-N) service is direct support and assistance provided during the beneficiary's sleeping "night" hours. Night hours are considered to be the period of time when the beneficiary is asleep and there is a reduced frequency and intensity of required assistance. IFS-N services are not limited to

traditional nighttime hours and are outlined in the CPOC. The IFS-N worker must be immediately available and in the same residence as the beneficiary to be able to respond to the beneficiary's immediate needs. Documentation of the level of support needed, based on the frequency and intensity of needs, shall be included in the CPOC with supporting documentation in the provider's services plan. Supporting documentation shall outline the beneficiary's safety, communication, and response methodology planned for and agreed to by the beneficiary and/or his/her authorized representative identified in his/her circle of support. The IFS-N worker is expected to remain awake and alert unless otherwise authorized under the procedures noted below.

a. Beneficiaries who are able during sleeping hours to notify direct support workers of his/her need for assistance may choose the option of IFS-N services where staff is not required to remain awake.

b. The beneficiary's support team shall assess the beneficiary's ability to awaken staff. If it is determined that the beneficiary is able to awaken staff and requests that the IFS-N worker be allowed to sleep, the CPOC shall reflect the beneficiary's request.

c. Support teams should consider the use of technological devices that would enable the beneficiary to notify/awaken IFS-N staff. (Examples of devices include wireless pagers, alerting devices such as a buzzer, a bell or a monitoring system.) If the method of awakening the IFS-N worker utilizes technological device(s), the service provider will document competency in use of devices by both the beneficiary and IFS-N staff prior to implementation. The support coordinator will require a demonstration of effectiveness of this service no less than quarterly.

d. A review shall include review of log notes indicating instances when IFS-N staff was awakened to attend to the beneficiary. Also included in the review is acknowledgement by the beneficiary that IFS-N staff responded to his/her need for assistance timely and appropriately. Instances when staff did not respond appropriately will immediately be brought to the support team for discontinuation of allowance of the staff to sleep. The service will continue to be provided by awake and alert staff.

e. ...

B. IFS services may be shared by up to three waiver beneficiaries who may or may not live together and who have a common direct service provider agency. Waiver beneficiaries may share IFS services staff when agreed to by the beneficiaries and health and welfare can be assured for each beneficiary. The decision to share staff must be reflected on the CPOC and based on an individual-by-individual determination and choice. Reimbursement rates are adjusted accordingly. Shared IFS services, hereafter referred to as shared support services, may be either day or night services. In addition, IFS direct support may be shared across the Children's Choice Waiver or the Residential Options Waiver at the same time.

C. IFS (day or night) services include:

1. - 5. ...

6. accompanying the beneficiary to the hospital and remaining until admission or a responsible representative arrives, whichever occurs first. IFS services may resume at the time of discharge.

D. Exclusions. The following exclusions apply to IFS services.

1. IFS-D services and IFS-N services will not be authorized or provided to the beneficiary while the beneficiary is in a center-based respite facility.

2. IFS-D and IFS-N services will not be authorized or provided to the beneficiary while the beneficiary is receiving monitored in-home caregiving services.

3. Beneficiaries receiving adult companion care services are not eligible to receive individual family support services.

#### E. Staffing Criteria and Limitations

1. Family members who provide IFS services must meet the same standards as providers or direct care staff who are unrelated to the beneficiary. Service hours shall be capped at 40 hours per week, Sunday to Saturday, for services delivered by family members living in the home.

2. Legally responsible individuals (such as a parent or spouse) and legal guardians may provide individual and family support services for a beneficiary provided that the care is extraordinary in comparison to that of a beneficiary of the same age without a disability and the care is in the best interest of the beneficiary.

3. Repealed.

#### F. - 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 30:1202 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:2063 (November 2006), LR 33:1647 (August 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:71 (January 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 44:51 (January 2018), LR 48:1547 (June 2022).

### **§13902 Individual and Family Support Supplemental Payments**

#### A. - B.2.b.ii. ...

C. The supplemental payment is not allowed for waiver beneficiaries who do not receive individual and family support (IFS) services.

D. The supplemental payment may not be approved for waiver beneficiaries receiving IFS hours in addition to 12 or more hours of skilled nursing per day.

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 46:1681 (December 2020), LR 48:1548 (June 2022).

### **§13903. Center-Based Respite Care**

A. Center-based respite (CBR) care is temporary, short-term care provided to a beneficiary with developmental disabilities who requires support and/or supervision in his/her day-to-day life due to the absence or relief of the primary caregiver. While receiving center-based respite care, the beneficiary's routine is maintained in order to attend school, work or other community activities/outings. The respite center is responsible for providing transportation for

community outings, as that is included as part of its reimbursement.

#### B. Exclusions

1. Individual family support services (both day and night) may not be provided and will not be reimbursed while the beneficiary is in a center-based respite facility.

2. Monitored in home caregiving, adult companion care, and supported independent living services cannot be reimbursed while the beneficiary is in a center-based respite facility.

3. The cost of room and board cannot be claimed except when provided as part of respite care furnished in a facility approved by the state that is not a private residence.

C. Service Limits. CBR services shall not exceed 720 hours per beneficiary, per CPOC year.

1. Beneficiaries may request approval of hours in excess of 720 hours. The request must be submitted to the OCDD central office with proper justification and documentation for prior approval.

#### 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 and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1203 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1648 (August 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:72 (January 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 44:51 (January 2018), LR 48:1548 (June 2022).

### **§13905. Community Life Engagement Development**

A. Community life engagement development (CLE) facilitates the development of opportunities to assist beneficiaries in becoming involved in the community through the creation of natural supports. The purpose of CLE is to encourage and foster the development of meaningful relationships in the community reflecting the beneficiary's choices and values. Objectives outlined in the comprehensive plan of care will afford opportunities to increase community inclusion, participation in leisure/recreational activities, and encourage participation in volunteer and civic activities. Reimbursement for this service includes the development of a service plan. To utilize this service, the beneficiary may or may not be present as identified in the approved CLE service plan. CLE services may be performed by a shared supports worker for up to three waiver beneficiaries who have a common direct service provider agency. Rates shall be adjusted accordingly.

B. Transportation costs are included in the reimbursement for CLE services.

C. Service Limitations. Services shall not exceed 60 hours per beneficiary per CPOC year which includes the combination of shared and non-shared community integration development.

#### 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 and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1203 (June 2004), amended by the Department of Health and Hospitals, Office of the

Secretary, Office for Citizens with Developmental Disabilities, LR 33:1648 (August 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:72 (January 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 44:52 (January 2018), LR 48:1548 (June 2022).

### **§13907. Supported Independent Living**

A. Supported independent living (SIL) assists the beneficiary to acquire, improve or maintain those social and adaptive skills necessary to enable a beneficiary to reside in the community and to participate as independently as possible. SIL services include assistance and/or training in the performance of tasks such as personal grooming, housekeeping and money management. Payment for this service includes oversight and administration and the development of service plans for the enhancement of socialization with age-appropriate activities that provide enrichment and may promote wellness. The service plan should include initial, introduction, and exploration for positive outcomes for the beneficiary for community integration and development. These services also assist the beneficiary in obtaining financial aid, housing, advocacy and self-advocacy training as appropriate, emergency support, trained staff and assisting the beneficiary in accessing other programs for which he/she qualifies. SIL beneficiaries must be 18 years or older.

B. Place of Service. Services are provided in the beneficiary's residence and/or in the community. The beneficiary's residence includes his/her apartment or house, provided that he/she does not live in the residence of any legally responsible relative. An exception will be considered when the beneficiary lives in the residence of a spouse or disabled parent, or a parent aged 70 years or older. Family members who are not legally responsible relatives can be SIL workers provided they meet the same qualifications as any other SIL worker. A legally responsible relative is defined as a parent of a minor child, foster parent, curator, tutor, legal guardian, or the beneficiary's spouse.

#### C. Exclusions

1. ...
2. SIL shall not include the cost of:
  - a. - b. ...
  - c. home maintenance, or upkeep, improvement, modifications, or adaption to a home, or to meet the requirements of the applicable life safety code;
  - 2.d. - 3....
4. Beneficiaries receiving adult companion care services are not eligible to receive supported independent living services.
5. Monitored in-home-caregiving services cannot be provided at the same time or on the same day as supported independent living.

D. Service Limit. SIL services are limited to one service per day, per CPOC year, except when the beneficiary is in center-based respite. When a beneficiary living in an SIL setting is admitted to a center-based respite facility, the SIL provider shall not bill the SIL per diem beginning with the date of admission to the center-based respite facility and through the date of discharge from the center-based respite facility.

#### E. ...

#### F. Provider Responsibilities

1. Minimum direct services by the SIL agency include two documented contacts per week and one documented face-to-face contact per month by the SIL provider agency in addition to the approved direct support hours. These required contacts must be completed by the SIL agency supervisor so designated by the provider agency due to the experience and expertise relating to the beneficiary's needs or a licensed/certified professional qualified in the state of Louisiana who meets requirements as defined by 42 CFR §483.430 or any subsequent regulation.

#### 2. - 3. ...

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 30:1204 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1648 (August 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:73 (January 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 44:52 (January 2018), LR 48:1549 (June 2022).

### **§13909. Substitute Family Care**

A. Substitute family care (SFC) provides for day programming, transportation, independent living training, community integration, homemaker, chore, attendant care and companion services, and medication oversight (to the extent permitted under state law) to beneficiaries residing in a substitute family care home that meets all licensing requirements for the substitute family care module. The service is a stand-alone family living arrangement for beneficiaries aged 18 years and older. The SFC house parents assume the direct responsibility for the beneficiary's physical, social, and emotional well-being and growth, including family ties. Only two SFC beneficiaries may reside in a single SFC setting at the same time. There shall be no more than three persons living in a substitute family care setting who are unrelated to the SFC provider. Immediate family members (mother, father, brother and/or sister) cannot be substitute family care parents. Reimbursement for this service includes the development of a service plan based on the approved CPOC. Beneficiaries living in an SFC home may receive IFS services.

#### B. ...

#### C. Exclusions

1. Beneficiaries receiving adult companion care services are not eligible to receive substitute family care services.

2. Payments may not be made for room and board, items of comfort or convenience, or the cost of facility maintenance, upkeep, or improvement.

3. Payments may not be made directly or indirectly to members of the beneficiary's immediate family.

#### 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 and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1204 (June 2004), amended by the Department of Health and Hospitals, Bureau of

Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:73 (January 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 44:52 (January 2018), LR 48:1549 (June 2022).

#### **§13911. Day Habilitation**

A. Day habilitation is provided in a community-based setting and provides the beneficiary assistance with social and adaptive skills necessary to enable the beneficiary to participate as independently as possible in the community. These services focus on socialization with meaningful age-appropriate activities which provide enrichment and promote wellness, as indicated in the beneficiary's CPOC. Day habilitation services are provided in a variety of community settings, (i.e. local recreation department, garden clubs, libraries, etc.) other than the person's residence, except for virtual habilitation services, and are not limited to a fixed-site facility.

1. Day habilitation services must be directed by a person-centered service plan and provide the beneficiary choice in how they spend their day. The activities should assist the beneficiary to gain their desired community living experience, including the acquisition, retention or improvement in self-help, socialization and adaptive skills, and/or to provide the individual an opportunity to contribute to and be a part of his or her community.

2. Day habilitation services shall be coordinated with any therapy, prevocational service, or supported employment models that the beneficiary may be receiving. The beneficiary does not receive payment for the activities in which he/she are engaged. The beneficiary must be 18 years of age or older in order to receive day habilitation services.

3. Career planning activities may be a component of the beneficiary's plan and may be used to develop learning opportunities and career options consistent with the person's skills and interests.

B. Day Habilitation may be delivered in a combination of these three service types:

1. onsite day habilitation;
2. community life engagement;
3. virtual day habilitation.

C. Day Habilitation is provided on a regularly scheduled basis and may be scheduled on a plan of care for one or more days per week and may be prior authorized for up to 8,320 units of service in a plan of care year. A standard unit of service is a 15-minute increment.

D. Licensing Requirements. Providers must be licensed by the Department of Health and as a home and community-based services provider and must meet the module specific requirements for the service being provided.

#### **E. Service Limitations**

1. Beneficiaries receiving day habilitation services may also receive prevocational or supported employment services, but these services cannot be provided the same time period.

2. All virtual day habilitation services must be approved by the local governing entity or the OCDD state office.

3. Community life engagement cannot be delivered at the same time as any other service.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1204 (June 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:73 (January 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 44:53 (January 2018), LR 48:1550 (June 2022).

#### **§13913. Supported Employment**

A. Supported employment is competitive work in an integrated work setting, or employment in an integrated work setting in which the beneficiaries are working toward competitive work that is consistent with the strengths, resources, priorities, interests, and informed choice of beneficiaries for whom competitive employment has not traditionally occurred. The beneficiary must be eligible and assessed to need the service in order to receive supported employment services. The outcome of this service is sustained paid employment and work experience leading to further career development and individual integrated community-based employment for which an individual is compensated at or above minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities.

B. ...

C. Supported employment is conducted in a variety of settings, particularly work sites in which persons without disabilities are employed. Supported employment cannot be provided at worksites that are facility based, or other similar types of vocational services furnished in specialized facilities that are not part of the general workplace. Supported employment includes activities needed by waiver beneficiaries to sustain paid work, including supervision and training and is based on an individualized service plan. Supported employment may include assistance and prompting with:

1. - 8. ...

D. Supported Employment Models. Reimbursement for supported employment includes an individualized service plan for each model.

1. Individual supported employment one-to-one services include all aspects of the supported employment, process including assessments, development, placement, job retention, and stabilization that are necessary to get an individual to work in an individual competitive job in the community.

2. Follow-along support services provide ongoing supports to individuals and their employers who need the support to maintain their job in integrated work settings in the general workforce. The amount of support is determined for each individual based on the individual's ability to be independent in the job. Follow-along services may be delivered virtually.

3. Group employment is an employment setting in which a group of two to eight beneficiaries work to complete jobs in a variety of locations in the community under the supervision of an employment specialist in a manner that promotes integration into the workplace and interaction between beneficiaries and people without disabilities in those workplaces that are in the community.

#### E. Service Exclusions

1. Supported employment services shall not be used in conjunction or simultaneously with any other waiver service, except substitute family care, supported independent living, and skilled nursing services. Virtual follow-along supported employment services cannot be utilized at the same time as any other service.

2. When supported employment services are provided at a work site in which persons without disabilities are employed, payment will be made only for the adaptations, supervision and training required by beneficiaries receiving waiver services as a result of his/her disabilities, and will not include payment for the supervisory activities rendered as a normal part of the business setting.

3. Supported employment services are not available to beneficiaries who are eligible to participate in programs funded under section 110 of the Rehabilitation Act of 1973 or sections 602(16) and (17) of the Individuals with Disabilities Education Act [20 U.S.C. 1401(26) and (29)], as amended, and those covered under the Medicaid State Plan, if applicable.

#### F. Service Limits

1. Individual supported employment one-to-one services shall not exceed 2,880 one-quarter hour units (15 minute increments) per CPOC year.

2. Both individual and virtual supported employment follow-along services shall not exceed 960 one-quarter hour units (15 minute increments) per CPOC year.

3. Group supported employment services shall not exceed 8,320 one-quarter hour units of service per CPOC year, without additional documentation and approval.

4. All virtual supported employment services must be approved by the local governing entity or the OCDD state office.

#### 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 30:1205 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1649 (August 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:74 (January 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 44:53 (January 2018), LR 48:1550 (June 2022).

#### **§13915. Transportation for Day Habilitation and Supported Employment Models**

A. Transportation provided for the beneficiary to the site of the day habilitation or supported employment model, or between the day habilitation and supported employment model site (if the beneficiary receives services in more than one place) is reimbursable when day habilitation or supported employment model has been provided. Reimbursement may be made for a one-way trip. There is a maximum fee per day that can be charged for transportation regardless of the number of trips per day.

1. Transportation is included in the group supported employment service rate when traveling between job sites.

2. Transportation is a separate billable service if criteria is met. One rate covers regular transportation, and a separate rate covers wheelchair transportation.

3. Transportation may be provided to and/or from the beneficiary's residence or a location agreed upon by the beneficiary or authorized representative to the onsite location or community location and a separate return trip.

B. Licensing Requirements. Providers must be licensed by the Department of Health as a home and community-based services provider and meet the module specific requirements for the service being provided. The provider must have insurance coverage on any vehicles used in transporting a beneficiary that meets current home and community-based services providers licensing standards.

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 30:1205 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:2064 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:74 (January 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 44:54 (January 2018), LR 48:1551 (June 2022).

#### **§13917. Prevocational Services**

A. Prevocational services are individualized, person centered services that assist the beneficiary in establishing their path to obtain individualized community employment. This service is time limited and targeted for people who have an interest in becoming employed in an individual job in the community but may need additional skills, information and experiences to determine their employment goal and to become successfully employed. Beneficiaries receiving prevocational services may choose to leave this service at any time or pursue employment opportunities at any time.

1. - 2. Repealed.

B. Prevocational services may be delivered in a combination of these three service types:

1. onsite prevocational services;
2. community career planning;
3. virtual prevocational services.

C. Prevocational services are to be provided in a variety of locations in the community and are not to be limited to a fixed site facility. Activities associated with prevocational services should focus on preparing the beneficiary for integrated individual employment in the community. These services are operated through a provider agency that is licensed by the appropriate state licensing agency. Beneficiaries receiving prevocational services must participate in activities designed to establish an employment related goal as part their CPOC. Prevocational services are designed to help create a path to integrated community-based employment for which a beneficiary is compensated at or above minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities.

1. Repealed.

D. Prevocational services are provided on a regularly scheduled basis and may be scheduled on a comprehensive plan of care for one or more days per week and may be prior authorized for up to 8,320 units of service in a plan year with appropriate documentation. A standard unit is one-quarter hour (15 minute increment).

E. Exclusions. The following service exclusions apply to prevocational services.

1. Prevocational services are not available to beneficiaries who are eligible to participate in programs funded under section 110 of the Rehabilitation Act of 1973 or sections 602(16) and (17) of the Individuals with Disabilities Education Act, [20 U.S.C. 1401(26) and (29)], as amended, and covered under the Medicaid State Plan, if applicable.

2. Prevocational services cannot be provided or billed during the same hours on the same day as other services.

3. All virtual prevocational services must be approved by the local governing entity or the OCDD state office.

4. Transportation is billed as a separate service.

#### F. Service Limits

1. Prevocational services cannot exceed 8,320 one-quarter hour units of service per CPOC year.

2. On-site prevocational and community career planning services are time limited and individually based with employment at the individual's highest level of work in the most integrated setting in the community while following applicable federal wage guidelines. Beneficiaries may choose to leave this service at any time or seek employment at any time.

3. Through permission from the local governing entity, a person may complete this service more than once.

G. Licensing Requirements. Providers must be licensed by the Department of Health as a home and community-based services provider and must meet the module specific requirements for the service being provided.

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 30:1205 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1649 (August 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:75 (January 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 44:55 (January 2018), LR 48:1551 (June 2022).

### **§13919. Environmental Accessibility Adaptations**

A. Environmental accessibility adaptations are physical adaptations to the home or a vehicle that are necessary to ensure the health, welfare, and safety of the beneficiary or that enable him/her to function with greater independence in the home and/or community. Without these services, the beneficiary would require additional supports or institutionalization.

B. Such adaptations may include:

1. - 3. ...

4. installation of specialized electric and plumbing systems which are necessary to accommodate the medical equipment and supplies for the welfare of the beneficiary; or

5. adaptations to the vehicle, which may include a lift or other adaptations, to make the vehicle accessible to the beneficiary or for the beneficiary to drive.

C. ...

1. Any service covered under the Medicaid state plan shall not be authorized by NOW. The environmental accessibility adaptation(s) must be delivered, installed, operational and accepted by the beneficiary/authorized

representative in the CPOC year for which it was approved. The environmental accessibility adaptation(s) must be billed and reimbursed according to the Medicaid billing guidelines established by LDH policy. A written itemized detailed bid, including drawings with the dimensions of the existing and proposed floor plans relating to the modification, must be obtained and submitted for prior authorization. Modifications may be applied to rental or leased property with the written approval of the landlord and approval of the human services authority or district. Reimbursement shall not be paid until receipt of written documentation that the job has been completed to the satisfaction of the beneficiary.

2. Upon completion of the work and prior to payment, the provider shall give the beneficiary a certificate of warranty for all labor and installation and all warranty certificates from manufacturers.

3. Excluded are those adaptations or improvements to the residence that are of general utility or maintenance and are not of direct medical or remedial benefit to the beneficiary, including, but not limited to:

a. air conditioning or heating;

b. flooring;

c. roofing, installation or repairs;

d. smoke and carbon monoxide detectors, sprinklers, fire extinguishers, or hose; or

e. furniture or appliances; or

f. whole home generators.

4. ...

5. Home modification funds are not intended to cover basic construction cost. For example, funds may be used to cover the difference between constructing a bathroom and building an accessible or modified bathroom, but in any situation funds must be used to pay for a specific approved adaptation.

6. ...

D. Service Limits. There is a cap of \$7,000 per three-year period for a beneficiary for environmental accessibility adaptations. On a case-by-case basis, with supporting documentation and based on need, a beneficiary may be able to exceed this cap with the prior approval of OCDD central office.

E. - E.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1206 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1649 (August 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:75 (January 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 44:55 (January 2018), LR 48:1552 (June 2022).

### **§13921. Specialized Medical Equipment and Supplies**

A. Specialized medical equipment and supplies (SMES) are devices, controls, or appliances which enable the beneficiary to:

1. - 3. ...

B. The service includes medically necessary durable and nondurable medical equipment not covered under the Medicaid state plan. NOW does not cover non-medically necessary items. All items shall meet applicable standards of

manufacture, design and installation. Routine maintenance or repair of specialized medical equipment is funded under this service.

C. All alternate funding sources that are available to the beneficiary shall be pursued before a request for the purchase or lease of specialized equipment and supplies will be considered.

D. Exclusion. Excluded are specialized equipment and supplies that are of general utility or maintenance, but are not of direct medical or remedial benefit to the beneficiary. Excluded also are those durable and non-durable items that are available under the Medicaid State Plan.

E. Service Limitations. There is a cap of \$1,000 per three year period for a beneficiary for specialized equipment and supplies. On a case-by-case basis, with supporting documentation and based on need, a beneficiary may be able to exceed this cap with the prior approval of OCDD central office.

F. ...

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 30:1207 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1649 (August 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:75 (January 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 44:56 (January 2018), LR 48:1552 (June 2022).

### **§13923. Personal Emergency Response Systems**

A. Personal emergency response systems (PERS) is a rented electronic device connected to the person's phone and programmed to signal a response center which enables a beneficiary to secure help in an emergency.

B. Beneficiary Qualifications. Personal emergency response systems (PERS) services are available to those persons who:

1. - 3. ...

C. Coverage of the PERS is limited to the rental of the electronic device. PERS services shall include the cost of maintenance and training the beneficiary to use the equipment.

D. ...

E. Provider Qualifications. The provider must be an enrolled Medicaid provider of the PERS. The provider shall install and support PERS equipment in compliance with all applicable federal, state, parish and local laws and meet manufacturer's specifications, response requirements, maintenance records and beneficiary education.

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 30:1207 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1650 (August 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:76 (January 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:1553 (June 2022).

### **§13925. Professional Services**

A. Professional services are services designed to increase the beneficiary's independence, participation and productivity in the home, work and community. Beneficiaries, up to the age of 21, who participate in NOW must access these services through the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program. Professional services may only be furnished and reimbursed through NOW when the services are not covered under the Medicaid State Plan. Professional services must be delivered with the beneficiary present and be provided based on the approved CPOC and an individualized service plan. Service intensity, frequency and duration will be determined by individual need. Professional services may be utilized to:

1. - 2. ...

3. provide training or therapy to a beneficiary and/or his/her natural and formal supports necessary to either develop critical skills that may be self-managed by the beneficiary or maintained according to the beneficiary's needs;

4. ...

5. provide necessary information to the beneficiary, family, caregivers and/or team to assist in the implementation of plans according to the approved CPOC.

B. Professional services are limited to the following services.

1. Psychological services are direct services performed by a licensed psychologist, as specified by state law and licensure. These services are for the treatment of a behavioral or mental condition that addresses personal outcomes and goals desired by the beneficiary and his/her team. Services must be reasonable and necessary to preserve and improve or maintain adaptive behaviors or decrease maladaptive behaviors of a person with developmental disabilities. Service intensity, frequency, and duration will be determined by individual need.

2. - 3. ...

C. Service Limits. There shall be a \$2,250 cap per beneficiary per CPOC year for the combined range of professional services in the same day but not at the same time. Additional services may be prior authorized if the beneficiary reaches the cap before the expiration of the comprehensive plan of care and the beneficiary's health and safety are at risk. One or more professional services may be utilized in the same day, but not at the same time.

D. - E.5. ...

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 30:1207 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1650 (August 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:76 (January 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 44:56 (January 2018), LR 48:1553 (June 2022).

### **§13927. Skilled Nursing Services**

A. Skilled nursing services are medically necessary nursing services ordered by a physician and provided by a licensed registered nurse, nurse practitioner, or a licensed



practical nurse working under the supervision of a registered nurse. Skilled nursing services shall be provided by a licensed, enrolled home health agency and require an individual nursing service plan. These services must be included in the beneficiary's approved CPOC. All available Medicaid State Plan skilled nursing services must be exhausted before accessing this service. Beneficiaries, up to the age of 21, must access these services as outlined on the CPOC through the Home Health Program in the Medicaid State Plan pursuant to the EPSDT benefit.

B. When there is more than one beneficiary in the home receiving skilled nursing services, services may be shared and payment must be coordinated with the service authorization system and each beneficiary approved CPOC. Nursing consultations are offered on an individual basis only.

C. ...

D. Monitored in-home caregiving services cannot be provided at the same time or on the same day as skilled nursing services.

E. All requests for over 12 hours of skilled nursing per day must be reviewed and approved by the LDH medical director and medical evaluation team.

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 30:1208 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1651 (August 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:77 (January 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 44:56 (January 2018), LR 46:1681 (December 2020), LR 48:1553 (June 2022).

### **§13929. One-Time Transitional Expenses**

A. One-time transitional expenses are those allowable one-time, set-up expenses incurred by beneficiaries who are being transitioned from an ICF-DD to his/her own home or apartment of their choice in the community of their choice. *Own home* shall mean the beneficiary's own place of residence and does not include any family members' home or substitute family care homes. The beneficiaries must be allowed choice in the items purchased.

B. Allowable transitional expenses include:

1. the purchase of essential furnishings, such as:

- a. bedroom and living room furniture;
- b. dining table and chairs;
- c. window blinds;
- d. eating utensils; and
- e. ...

2. - 3. ...

4. non-refundable security deposits required to obtain a lease on an apartment or home and set-up fees for utilities.

C. Service Limits. Set-up expenses are capped at \$3,000 over a beneficiary's lifetime.

D. - E. ...

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 30:1208 (June 2004),

amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1651 (August 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:77 (January 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 44:56 (January 2018), LR 48:1554 (June 2022).

### **§13931. Adult Companion Care**

A. Adult companion care services assist the beneficiary to achieve and/or maintain the outcomes of increased independence, productivity and inclusion in the community. These services are designed for an individual who lives independently and can manage his/her own household with limited supports. The companion is a principal care provider chosen by the beneficiary, who provides services in the beneficiary's home. The companion must be at least 18 years of age and lives with the beneficiary as a roommate. Adult companion care services are furnished through a licensed provider organization as outlined in the beneficiary's CPOC. This service includes:

1. providing assistance with all of the activities of daily living as indicated in the beneficiary's CPOC;

2. - 3. ...

B. Adult companion care services are arranged by provider organizations that are subject to licensure. The setting is the beneficiary's home which should have been freely chosen by the beneficiary from among non-disability specific settings and not owned or controlled by the provider. The companion is an employee or contractor of the provider organization and is responsible for providing limited, daily direct services to the beneficiary.

1. ...

2. Services may not be provided by a family member who is a legally responsible individual, such as the beneficiary's spouse, or a legal guardian.

C. Provider Responsibilities

1. The provider organization shall develop a written agreement as part of the beneficiary CPOC which defines all of the shared responsibilities between the companion and the beneficiary. The written agreement shall include, but is not limited to:

a. - c. ...

2. Repealed.

3. The provider organization is responsible for performing the following functions which are included in the daily rate:

a. ...

b. making an initial home visit to the beneficiary home, as well as periodic home visits as required by the department;

c. contacting the companion a minimum of once per week or as specified in the beneficiary's comprehensive plan of care; and

d. ...

4. The provider shall facilitate a signed written agreement between the companion and the beneficiary which assures that:

a. ...

b. inclusion of any other expenses must be negotiated between the beneficiary and the companion. These negotiations must be facilitated by the provider and

the resulting agreement must be included in the written agreement and in the beneficiary's CPOC.

#### D. Companion Responsibilities

1. - 1.c....

2. The companion is an employee of the provider agency and is paid a flat daily rate to provide adult companion care services as included in the approved CPOC.

3. The companion is responsible for meeting all financial obligations as agreed upon in the agreement between the provider agency, the beneficiary, and the companion.

#### E. Service Limits

1. Adult companion care services may be authorized for up to 365 days per year as documented in the beneficiary's CPOC.

#### F. Service Exclusions

1. Adult companion care services cannot be provided or billed for at the same time as center-based respite care services.

2. Beneficiaries receiving adult companion care services are not eligible for receiving the following services:

- a. - b. ...
- c. substitute family care;
- d. skilled nursing; or
- e. monitored in-home caregiving (MIHC).

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, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:77 (January 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 44:57 (January 2018), repromulgated LR 44:282 (February 2018), LR 48:1554 (June 2022).

### §13935. Housing Stabilization Transition Service

A. Housing stabilization transition service enables beneficiaries who are transitioning into a permanent supportive housing unit, including those transitioning from institutions, to secure their own housing. The service is provided while the beneficiary is in an institution and preparing to exit the institution using the waiver. The setting for the permanent supportive housing must be integrated in the greater community, and support full access to the greater community by the beneficiary. The service includes the following components:

1. conducting a housing assessment to identify the beneficiary's preferences related to housing (i.e., type, location, living alone or with someone else, accommodations needed, and other important preferences), and his/her needs for support to maintain housing, including:

a. access to housing of the beneficiary's choice, including non-disability specific settings;

b. - h. ...

2. assisting the beneficiary to view and secure housing as needed. This may include arranging or providing transportation. The beneficiary shall be assisted in securing supporting documents/records, completing/submitting applications, securing deposits, and locating furnishings;

3. developing an individualized housing support plan based upon the housing assessment that:

a. ...

b. establishes the beneficiary's approach to meeting the goal; and

A.3.c. - B. ...

C. Beneficiaries may not exceed 165 combined units of this service and the housing stabilization service.

1. ...

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 for Citizens with Developmental Disabilities, LR 40:78 (January 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 44:57 (January 2018), LR 48:1555 (June 2022).

### §13937. Housing Stabilization Service

A. Housing stabilization service enables waiver beneficiaries to maintain their own housing as set forth in the beneficiary's approved CPOC. Services must be provided in the home or a community setting. This service includes the following components:

1. conducting a housing assessment to identify the beneficiary's preferences related to housing (i.e., type, location, living alone or with someone else, accommodations needed, and other important preferences), and his/her needs for support to maintain housing, including:

a. - h. ...

2. assisting the beneficiary to view and secure housing as needed. This may include arranging or providing transportation. The beneficiary shall be assisted in securing supporting documents/records, completing/submitting applications, securing deposits, and locating furnishings;

3. developing an individualized housing stabilization service provider plan based upon the housing assessment that includes short and long-term measurable goals for each issue, establishes the beneficiary's approach to meeting the goal, and identifies where other provider(s) or services may be required to meet the goal. This includes updating the housing support plan annually or as needed due to changes in the beneficiary's situation or status;

4. participating in the development of the CPOC, incorporating elements of the housing stabilization service provider plan. This includes participation in plan of care renewals and updates as needed;

5. providing supports and interventions according to the individualized stabilization service provider plan. If additional supports or services are identified as needed outside the scope of housing stabilization service, the needs must be communicated to the support coordinator;

6. providing ongoing communication with the landlord or property manager regarding the beneficiary's disability, accommodations needed, and components of emergency procedures involving the landlord or property manager; and

7. if at any time the beneficiary's housing is placed at risk (e.g., eviction, loss of roommate or income), housing stabilization service will provide supports to retain housing or locate and secure housing to continue community-based supports, including locating new housing, sources of income, etc.

B. This service is only available upon referral from the support coordinator and the service is not duplicative of

other waiver services including support coordination. It is only available to persons who are residing in a state of Louisiana permanent supportive housing unit or who are linked for a state of Louisiana permanent supportive housing unit.

C. Beneficiaries may not exceed 165 combined units of this service and the housing stabilization transition service.

1. ...

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 for Citizens with Developmental Disabilities, LR 40:79 (January 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 44:57 (January 2018), LR 48:1555 (June 2022).

### **§13939. Monitored In-Home Caregiving Services**

A. Monitored in-home caregiving (MIHC) services are provided by a principal caregiver to a beneficiary who lives in a private unlicensed residence.

1. The goal of this service is to provide a community-based option that provides continuous care, supports, and professional oversight.

2. This goal is achieved by promoting a cooperative relationship between a beneficiary, a principal caregiver, the professional staff of a monitored in-home caregiver agency provider, and the beneficiary's support coordinator.

B. The principal caregiver is responsible for supporting the beneficiary to maximize the highest level of independence possible by providing necessary care and supports that may include:

1. supervision or assistance in performing activities of daily living;

2. supervision or assistance in performing instrumental activities of daily living;

3. protective supervision provided solely to assure the health and welfare of a beneficiary;

4. supervision or assistance with health related tasks, meaning any health related procedures governed under the Nurse Practice Act, in accordance with applicable laws governing the delegation of medical tasks/medication administration.

5. supervision or assistance while escorting/accompanying the individual outside of the home to perform tasks, including instrumental activities of daily living, health maintenance, or other needs as identified in the plan of care, and to provide the same supervision or assistance as would be rendered in the home; and

6. extension of therapy services to maximize independence when the caregiver has been instructed in the performance of the activities by a licensed therapist or registered nurse.

C. Service Exclusions and Restrictions

1. Beneficiaries electing monitored in-home caregiving are not eligible to receive the following New Opportunities Waiver services during the period of time that the beneficiary is receiving monitored in-home caregiving services:

- a. individual family support;
- b. center-based respite;
- c. supported independent living;
- d. adult companion care; or

e. skilled nursing care;

D. Monitored in-home caregiving providers must be agency providers who employ professional nursing staff, including a registered nurse and a care manager, and other professionals to train and support principal caregivers to perform the direct care activities performed in the home.

1. The agency provider must assess and approve the home in which services will be provided, and enter into contractual agreements with caregivers whom that agency has approved and trained.

2. The agency provider will pay per diem stipends to caregivers. The per diem for monitored in-home caregiving services does not include payments for room and board.

3. The agency provider must capture daily notes electronically and use the information collected to monitor beneficiary health and caregiver performance.

4. The agency provider must take such notes available to support coordinators and the state, upon request.

E. The MIHC provider must use secure, web-based information collection from principal caregivers for the purposes of monitoring beneficiary health and caregiver performance. All protected health information must be transferred, stored, and otherwise utilized in compliance with applicable federal and state privacy laws. Providers must sign, maintain on file, and comply with the LDH HIPAA business associate addendum.

F. The department shall reimburse for monitored in-home caregiving services based on a two-tiered model which is designed to address the beneficiary's acuity. Reimbursement will not be made for room and board of the principal caregiver, and federal financial participation is not available for room and board.

G. Provider Qualifications

1. MIHC providers must be licensed according to the home and community based service provider licensing requirements contained in the R.S. 40:2120.2-2121.9 and their implementing regulations.

2. MIHC providers must enroll as a Medicaid monitored in-home caregiving provider.

3. MIHC providers must comply with LDH rules and regulations.

4. The principal caregiver must:

- a. be at least 18 years of age;
- b. live in the home with the beneficiary; and
- c. be available 24 hours a day, 7 days a week.

H. The assessment performed by the monitored in-home caregiving provider shall be reimbursed when the service has been approved by the plan of care.

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 48:1556 (June 2022).

### **§13941. Dental Services**

A. Dental services are available to adult beneficiaries over the age of 21 as of component of the NOW. Covered dental services include:

1. adult diagnostic services;
2. preventative services;
3. restorative services;
4. endodontics;
5. periodontics;

6. prosthodontics;
  7. oral and maxillofacial surgery;
  8. orthodontics;
  9. emergency care; and
  10. adjunctive general services.
- B. Dental Service Exclusions
1. NOW dental services are not available to children (up to 21 years of age). Children access dental services through the EPSDT benefit.
  2. Non-covered services include but are not limited to the following:
    - a. services that are not medically necessary to the beneficiary's dental health;
    - b. dental care for cosmetic reasons;
    - c. experimental procedures;
    - d. plaque control;
    - e. any periapical radiographic images, occlusal radiographic images, complete series, or panoramic radiographic images taken annually or routinely at the time of a dental examination for screening purposes;
    - f. routine post-operative services – these services are covered as part of the fee for the initial treatment provided;
    - g. treatment of incipient or non-carious lesions (other than covered sealants and fluoride);
    - h. services that are eligible for reimbursement by insurance or covered under any other insurance or medical health plan;
    - i. dental expenses related to any dental services:
      - i. started after the beneficiary's coverage ended,
      - or
      - ii. received before the beneficiary became eligible for these service; and
    - j. administration of in-office pre-medication.

C. Providers are enrolled through the LA Dental Benefit Program, which is responsible for maintaining provider lists.

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 48:1556 (June 2022).

#### **Chapter 141. Self-Direction Initiative**

##### **§14101. Self-Direction Service Delivery Option**

A. The self-direction initiative is a voluntary, self-determination option which allows the beneficiary to coordinate the delivery of NOW services, as designated by OCDD, through an individual direct support professional rather than through a licensed, enrolled provider agency. Selection of this option requires that the beneficiary utilize a payment mechanism approved by the department to manage the required fiscal functions that are usually handled by a provider agency.

B. Beneficiary Responsibilities. Waiver beneficiaries choosing the self-directed service delivery option must understand the rights, risks and responsibilities of managing his/her own care and individual budget. If the beneficiary is unable to make decisions independently, he/she must have an authorized representative who understands the rights, risks and responsibilities of managing his/her care and supports within his/her individual budget. Responsibilities of the beneficiary or authorized representative include:

1. - 2. ...

3. participation in the development and management of the approved personal purchasing plan:

a. this annual budget is determined by the recommended service hours listed in the beneficiary's CPOC to meet his/her needs;

b. the beneficiary's individual budget includes a potential amount of dollars within which the beneficiary or his/her authorized representative exercises decision-making responsibility concerning the selection of services and service providers.

C. ...

1. Voluntary Termination. The waiver beneficiary may choose at any time to withdraw from the self-direction service delivery option and return to the traditional provider agency management of services.

2. Involuntary Termination. The department may terminate the self-direction service delivery option for a beneficiary and require him/her to receive provider-managed services under the following circumstances:

a. the health or welfare of the beneficiary is compromised by continued participation in the self-direction service delivery option;

b. the beneficiary is no longer able to direct his/her own care and there is no responsible representative to direct the care;

c. there is misuse of public funds by the beneficiary or the authorized representative; or

d. over three consecutive payment cycles, the beneficiary or authorized representative:

C.2.d.i. - D. ...

E. All services must be documented in service notes, which describes the services rendered and progress towards the beneficiary's personal outcomes and his/her comprehensive plan of care.

F. Service Limits

1. Authorized representatives, legally responsible individuals, and legal guardians may be the employers in the self-directed option but may not also be the employees.

2. Legally responsible individuals may only be paid for services when the care is extraordinary care in comparison to that of a beneficiary of the same age without a disability and the care is in the best interest of the beneficiary.

3. Family members who are employed in the self-directed option must meet the same standards as direct support staff that are not related to the beneficiary.

4. Family members who live in the home with the beneficiary cannot exceed a total of 40 hours per week when employed in the self-directed option.

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 of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1651 (August 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:79 (January 2014), 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 48:1557 (June 2022).

**Chapter 142. Provider Participation Requirements**  
**§14202. Incident Reporting, Tracking and Follow-Up**

A. The direct service provider is responsible for responding to, reviewing, and remediating incidents that occur to the beneficiaries they support. Direct service providers must comply with any other rules promulgated by the LDH regarding incident reporting and response.

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 44:58 (January 2018), amended LR 48:1558 (June 2022).

**Chapter 143. Reimbursement**  
**§14301. Unit of Reimbursement**

A. Reimbursement for services shall be a prospective flat rate for each approved unit of service provided to the beneficiary. One-quarter hour (15 minutes) is the standard unit of service and reimbursement shall not be made for less than 15 minutes (one-quarter hour) of service. This covers both service provision and administrative costs for the following services:

1. ...
2. community integration development:
  - a. up to three beneficiaries may choose to share community integration development if they share a common provider of this service;
  - 2.b. - 4....
5. individual and family support-day and night:
  - a. up to three beneficiaries may choose to share individualized and family support services if they share a common provider;
  - 5.b. - 6....
7. skilled nursing services:
  - a. up to three beneficiaries may choose to share skilled nursing services if they share a common provider;
  - b. - c. ...
8. supported employment;
9. - 10. ...

B. The following services are to be paid at cost, based on the need of the beneficiary and when the service has been prior authorized and on the CPOC:

1. - 3. ...
- C. The following services are paid through a per diem:
1. - 2. ...
  3. adult companion care;
  4. individual and family support supplemental payments; and
  5. monitored in-home caregiving services.
- D. - F.4.a. ...

G. Payments to legally responsible individuals, legal guardians, and family members living in the home shall be audited on a semi-annual basis to ensure payment for services rendered.

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).

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

2206#046

**RULE**

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

Home and Community-Based Services Waivers  
Residential Options Waiver—Dental Services  
(LAC 50:XXI.Chapters 161-169)

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities have amended LAC 50:XXI.Chapters 161-169 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 XXI. Home and Community-Based**  
**Services Waivers**  
**Subpart 13. Residential Options Waiver**  
**Chapter 161. General Provisions**

**§16101. Introduction**

A. The Residential Options Waiver (ROW), a 1915(c) home and community-based services (HCBS) waiver, is designed to assist beneficiaries in leading healthy, independent and productive lives to the fullest extent possible and promote the full exercise of their rights as citizens of the state of Louisiana. The ROW is person-centered incorporating the beneficiary's support needs and preferences with a goal of integrating the beneficiary into their community. The ROW provides opportunities for eligible individuals with developmental disabilities to receive HCBS services that allow them to transition to and/or remain in the community. These individuals would otherwise require an intermediate care facility for individuals with intellectual disabilities (ICF/IID) level of care.

B. The Residential Options Waiver services are provided with the goal of promoting independence through strengthening the beneficiary's capacity for self-care, self-sufficiency and community integration utilizing a wide array of services, supports and residential options. The ROW is person-centered incorporating the beneficiary's support

needs and preferences, while supporting the dignity, quality of life, and security with the goal of integrating the participant into the community.

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 33:2441 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2154 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 45:1764 (December 2019), LR 47:1507 (October 2021), LR 48:1558 (June 2022).

### **§16103. Program Description**

A. ...

B. The ROW offers an alternative to institutional care with the objectives to:

1. promote independence for beneficiaries through the provision of services meeting the highest standards of quality and national best practices, while ensuring health and safety through a comprehensive system of beneficiary safeguards;

2. ...

3. offer access to services which would protect the health and safety of the beneficiary.

C. ROW services are accessed through a single point of entry in the human services district or authority. All waiver beneficiaries choose their support coordination and direct service provider agencies through the freedom of choice process.

1. The plan of care (POC) shall be developed using a person-centered process coordinated by the beneficiary's support coordinator. The initial POC is developed during this person-centered planning process and approved by the human services district or authority. Annual reassessments may be approved by the support coordination agency supervisor as allowed by Office for Citizens with Developmental Disabilities (OCDD) policy.

D. ...

E. The total expenditures available for each waiver beneficiary is established through an assessment of individual support needs and may not exceed the approved ICF/IID Inventory for Client and Agency Planning (ICAP) rate/ROW budget level established for that individual except as approved by the OCDD assistant secretary, deputy assistant secretary, or his/her designee to prevent institutionalization. ROW acuity/budget cap level(s) are based upon each beneficiary's ICAP assessment tool results and may change as the beneficiary's needs change.

1. When the department determines that it is necessary to adjust the ICF/IID ICAP rate, each waiver beneficiary's annual service budget may be adjusted to ensure that the beneficiary's total available expenditures do not exceed the approved ICAP rate. A reassessment of the beneficiary's ICAP level will be conducted to determine the most appropriate support level.

2. The average beneficiary's expenditures for all waiver services shall not exceed the average Medicaid expenditures for ICF/IID services.

3. Beneficiaries may exceed assigned ROW acuity/budget cap level(s) to access defined additional support needs to prevent institutionalization on a case by case basis according to policy and as approved by the OCDD assistant secretary or his/her designee.

4. If it is determined that the ROW can no longer meet the beneficiary's health and safety needs and/or support the beneficiary, the case management agency will conduct person centered discovery activities.

5. ...

F. No reimbursement for ROW services shall be made for a beneficiary who is admitted to an inpatient setting.

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 33:2441 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2154 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 45:1764 (December 2019), LR 47:1507 (October 2021), LR 48:1559 (June 2022).

### **§16104. Settings for Home and Community Based Services**

A. ROW beneficiaries are expected to be integrated in and have full access to the greater community while receiving services, to the same extent as individuals without disabilities. Providers shall meet the requirements of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) home and community-based setting requirements for home and community-based services (HCBS) waivers as delineated in LAC 50:XXI.901 or any superseding 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 45:1764 (December 2019), amended LR 47:1508 (October 2021), LR 48:1559 (June 2022).

### **§16105. Beneficiary Qualifications**

A. - A.9. ...

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 33:2441 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2155 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:2530 (December 2017), LR 45:1764 (December 2019), LR 47:1508 (October 2021), repromulgated LR 48:1559 (June 2022).

### **§16106. Money Follows the Person Rebalancing Demonstration**

A. - A.1. ...

B. Individuals must meet the following criteria for participation in the MFP Rebalancing Demonstration.

1. Individuals with a developmental disability must:

a. occupy a licensed, approved Medicaid enrolled nursing facility, hospital or ICF/IID bed for at least 60 days; and

b. ...

2. The beneficiary or his/her responsible representative must provide informed consent for both transition and participation in the demonstration.

C. - D. ...

E. MFP beneficiaries cannot participate in ROW shared living services which serve more than four persons in a single 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, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2155 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 47:1508 (October 2021), LR 48:1559 (June 2022).

### **§16109. Admission Denial or Discharge Criteria**

A. - A.8. ...

B. Beneficiaries shall be discharged from the ROW if any of the following conditions are determined:

1. - 6. ...

7. the health and welfare of the beneficiary cannot be assured through the provision of ROW services in accordance with the beneficiary's approved POC;

8. the beneficiary fails to cooperate in the eligibility renewal process or the implementation of the approved POC, or the responsibilities of the ROW beneficiary;

9. continuity of stay for consideration of Medicaid eligibility under the special income criteria is interrupted as a result of the beneficiary not receiving ROW services during a period of 30 consecutive days;

a. continuity of stay is not considered to be interrupted if the beneficiary is admitted to a hospital, nursing facility, or ICF/IID.

b. the beneficiary shall be discharged from the ROW if the treating physician documents that the institutional stay will exceed 90 days; or

10. continuity of services is interrupted as a result of the beneficiary not receiving ROW services during a period of 30 consecutive days.

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 33:2443 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2156 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 45:1765 (December 2019), LR 47:1509 (October 2021), LR 48:1560 (June 2022).

### **Chapter 163. Covered Services**

#### **§16301. Assistive Technology and Specialized Medical Equipment and Supplies**

A. Assistive technology and specialized medical equipment and supplies (AT/SMES) service includes providing specialized devices, controls, or appliances which enable a beneficiary to increase his/her ability to perform

activities of daily living, ensure safety, and/or to perceive, control, and communicate within his/her environment.

1. - 1.c. ...

d. items that will increase, maintain, or improve ability of the beneficiary to function more independently in the home and/or community; and

e. ...

2. This service also includes medically necessary durable and non-durable equipment not available under the Medicaid State Plan and repairs to such items and equipment necessary to increase/maintain the independence and well-being of the beneficiary.

2.a. - 3. ...

B. AT/SMES services provided through the ROW include the following services:

1. the evaluation of assistive technology needs of a beneficiary including a functional evaluation of the impact of the provision of appropriate assistive technology and appropriate services to the beneficiary in the customary environment of the beneficiary;

2. - 3. ...

4. training or technical assistance on the use and maintenance of the equipment or device for the beneficiary or, where appropriate, his/her family members, legal guardian or responsible representative;

5. training or technical assistance, on the use for the beneficiary, or where appropriate, family members, guardians, advocates, authorized representatives of the beneficiary, professionals, or others;

6. - 7.a. ...

8. services consisting of purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices for beneficiaries.

C. Approval of AT/SMES services through ROW is contingent upon the denial of a prior authorization request for the item as a Medicaid State Plan service and demonstration of the direct medical, rehabilitative, or remedial benefit of the item to the beneficiary.

C.1. - D. ...

E. Service Exclusions

1. Assistive technology devices and specialized equipment and supplies that are of general utility or maintenance and items that are not of direct medical or remedial benefit to the beneficiary are excluded from coverage.

2. - 3. ...

F. Provider Participation Requirements. Providers of AT/SMES services must meet the following participation requirements. The provider must:

1. - 2.b. ...

3. Upon completion of the work and prior to payment, the provider shall give the beneficiary a certificate of warranty for all labor and installation and all warranty certificates.

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 33:2443 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2156 (October 2015), amended by the

Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 47:1509 (October 2021), LR 48:1560 (June 2022).

### **§16303. Community Living Supports**

A. Community living supports (CLS) are provided to a beneficiary in his/her own home and in the community to achieve and/or to maintain the outcomes of increased independence, productivity, and enhanced family functioning, to provide relief of the caregiver, and to provide for inclusion in the community. Community living supports may be a self-directed service.

B. Community living supports focus on the achievement of one or more goals as indicated in the beneficiary's approved plan of care by incorporating teaching and support strategies. Supports provided are related to the acquisition, improvement, and maintenance of independence, autonomy and adaptive skills. These skills include:

1. - 4. ...

C. Place of Service. CLS services are furnished to adults and children who live in a home that is leased or owned by the beneficiary or his/her family. Services may be provided in the home or community, with the place of residence as the primary setting.

D. Community living supports may be shared by up to three beneficiaries who may or may not live together, and who have a common direct service provider agency. In order for CLS services to be shared, the following conditions must be met.

1. An agreement must be reached among all of the involved beneficiaries, or their legal guardians, regarding the provisions of shared CLS services. If the person has a legal guardian, their approval must also be obtained. In addition, CLS direct support staff may be shared across the Children's Choice or New Opportunities Waiver at the same time.

2. The health and welfare must be assured for each beneficiary.

3. Each beneficiary's plan of care must reflect shared services and include the shared rate for the service indicated.

4. - 5. ...

#### **E. Service Exclusions**

1. ...

2. Payment does not include room and board or the maintenance, upkeep, and improvement of the provider's or family's residence.

3. Community living supports may not be provided in a licensed respite care facility.

4. Community living supports services are not available to beneficiaries receiving any of the following services:

- a. shared living;
- b. host home; or
- c. companion care.

5. Community living supports may not be billed at the same time on the same day as:

- a. day habitation;
- b. prevocational services;
- c. supported employment;
- d. respite care services-out of home;
- e. transportation-community access;
- f. monitored in-home caregiving (MIHC); or
- g. adult day health care.

6. - 9.d. Repealed.

F. ...

1. Family members who provide CLS services must meet the same standards as providers who are unrelated to the beneficiary. Service hours shall be capped at 40 hours per week, Sunday to Saturday, for services delivered by family members living in the home.

2. Legally responsible individuals (such as a parent or spouse) and legal guardians may provide community living supports services for a beneficiary provided that the care is extraordinary in comparison to that of a beneficiary of the same age without a disability and the care is in the best interest of the beneficiary.

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 33:2443 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2157 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 45:1765 (December 2019), LR 47:1510 (October 2021), LR 48:1561 (June 2022).

### **§16305. Companion Care**

A. Companion care services provide supports to assist the beneficiary in achieving and/or maintaining increased independence, productivity and community inclusion as identified in the beneficiary's plan of care. These services are designed for individuals who live independently and can manage their own household with limited supports. The companion provides personal care and supportive services to a beneficiary who resides as a roommate with his/her caregiver. This service includes:

1. providing assistance with all of the activities of daily living as indicated in the beneficiary's POC; and

2. ...

B. Companion care services can be arranged by licensed providers who hire companions. The beneficiary must be able to self-direct services to companion. The companion is a principal care provider who is at least 18 years of age, who lives with the beneficiary as a roommate, and provides services in the beneficiary's home. The companion is a contracted employee of the provider agency and is paid as such by the provider.

#### **C. Provider Responsibilities**

1. The provider organization shall develop a written agreement that defines all of the shared responsibilities between the companion and the beneficiary. This agreement becomes a part of the beneficiary's plan of care. The written agreement shall include, but is not limited to:

a. - c. ...

2. Revisions to this agreement must be facilitated by the provider and approved as part of the plan of care following the same process as would any revision to a plan of care. Revisions can be initiated by the beneficiary, the companion, the provider, or a member of the beneficiary's support team.

3. The provider is responsible for performing the following functions which are included in the daily rate:

a. ...



b. conducting an initial inspection of the beneficiary's home with on-going periodic inspections of a frequency determined by the provider;

c. making contact with the companion at a minimum of once per week, or more often as specified in the beneficiary's plan of care; and

d. ...

4. The provider shall facilitate a signed written agreement between the companion and the beneficiary.

D. Responsibilities of the companion include:

1. - 4. ...

5. participating in and following the beneficiary's plan of care and any support plans;

6. ...

7. being available in accordance with a pre-arranged time schedule as outlined in the beneficiary's plan of care;

8. ...

9. being available 24 hours a day (by phone contact) to the beneficiary to provide supports on short notice as a need arises.

E. - E.1. ...

F. Service Exclusions

1. - 1.e. ...

2. Companion care services are not available to beneficiaries under the age of 18.

3. Legally responsible individuals and legal guardians may provide companion care services for a relative who beneficiary provided that the care is extraordinary in comparison to that of a beneficiary of the same age without a disability and the care is in the best interest of the beneficiary.

a. - c. Repealed.

4. Payment does not include room and board or maintenance, upkeep, and improvement of the beneficiaries or provider's property.

F.5. - 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 for Citizens with Developmental Disabilities, LR 33:2444 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2158 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 45:1765 (December 2019), LR 47:1511 (October 2021), LR 48:1561 (June 2022).

### §16307. Day Habilitation Services

A. Day habilitation is services that assist the beneficiary to gain desired community living experience, including the acquisition, retention, or improvement in self-help, socialization, and adaptive skills, and/or to provide the beneficiary an opportunity to contribute to his or her community. These services shall be coordinated with any physical, occupational, or speech therapies identified in the individualized plan of care. Day habilitation services may include assistance with personal care or with activities of daily living, but such assistance should not be the primary activity. Day habilitation services may serve to reinforce skills or lessons taught in other settings. Volunteer activities may be a part of this service and should follow the state guidelines for volunteering.

1. - 3. Repealed.

B. Day habilitation may be delivered in a combination of these three service types:

1. onsite day habilitation;

2. community life engagement; and

3. virtual day habilitation.

a. - d. Repealed.

C. Day habilitation services are provided on a regularly scheduled basis for one or more days per week in a variety of community settings that are separate from the beneficiary's private residence, with the exception of virtual day habilitation. Day habilitation services should not be limited to a fixed site facility. Activities and environments are designed to foster personal choice in developing the beneficiary's meaningful day including community activities alongside people who do not receive home and community-based services.

1. - 2. Repealed.

D. The day habilitation provider is responsible for all transportation between day habilitation sites and while providing community life engagement services in the community.

1. Transportation can only be billed on the day that an in-person day habilitation service is provided.

2. Transportation is not a part of the service for virtual day habilitation.

E. Beneficiaries receiving day habilitation services may also receive prevocational and/or individual supported employment services on the same day, but these services cannot be provided during the same time period or total more than five hours per day combined.

1. - 3.g. Repealed.

F. Service Exclusions

1. Time spent in transportation between the beneficiary's residence/location and the day habilitation site is not to be included in the total number of day habilitation service hours per day, except when the transportation is for the purpose of travel training.

a. Travel training for the purpose of teaching the beneficiary to use transportation services may be included in determining the total number of service hours provided per day. Travel training must be included in the beneficiary's plan of care.

2. Transportation-community access will not be used to transport ROW beneficiaries to any day habilitation services.

3. Day habilitation services cannot be billed for at the same time on the same day as:

a. community living supports;

b. professional services, except when there are direct contacts needed in the development of a support plan;

c. respite—out of home;

d. adult day health care;

e. monitored in-home caregiving (MIHC);

f. prevocational services; or

g. supported employment.

4. Day habilitation services shall be furnished on a regularly scheduled basis for up to eight hours per day, one or more days per week.

a. Services are based on a 15 minute unit of service and on time spent at the service site by the beneficiary. Any

time less than 15 minutes of service is not billable or payable. No rounding up of units is allowed.

b. Services are based on the person centered plan and the beneficiary's ROW budget.

5. All virtual day habilitation services must be approved by the local governing entity or the OCDD state office.

6. Day habilitation may not provide for the payment of services that are vocational in nature – for example, the primary purpose of producing goods or performing services.

G. Provider Qualifications. Providers must be licensed by the Department of Health as a home and community-based services provider and meet the module requirements for adult day care in LAC 48:I.Chapter 50.

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 33:2445 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2158 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 45:1765 (December 2019), LR 47:1512 (October 2021), LR 48:1562 (June 2022).

#### §16309. Dental Services

A. Dental services are available to adult beneficiaries over the age of 21 as of component of the ROW. Covered dental services include:

1. adult diagnostic services;
2. preventative services;
3. restorative services;
4. endodontics;
5. periodontics;
6. prosthodontics;
7. oral and maxillofacial surgery;
8. orthodontics;
9. emergency care; and
10. adjunctive general services.

#### B. Dental Service Exclusions

1. ROW dental services are not available to children (up to 21 years of age). Children access dental services through the EPSDT benefit.

2. services must first be exhausted prior to accessing ROW dental services. Non-covered services include but are not limited to the following:

- a. services that are not medically necessary to the beneficiary's dental health;
- b. dental care for cosmetic reasons;
- c. experimental procedures;
- d. plaque control;
- e. any periapical radiographic images, occlusal radiographic images, complete series, or panoramic radiographic images taken annually or routinely at the time of a dental examination for screening purposes;
- f. routine post-operative services – these services are covered as part of the fee for the initial treatment provided;
- g. treatment of incipient or non-carious lesions (other than covered sealants and fluoride);

h. services that are eligible for reimbursement by insurance or covered under any other insurance or medical health plan;

i. dental expenses related to any dental services:

i. started after the beneficiary's coverage ended, or

ii. received before the beneficiary became eligible for these services; and

j. administration of in-office pre-medication.

C. Provider Qualifications. Providers are enrolled through the LA Dental Benefit Program, which is responsible for maintaining provider lists.

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 33:2445 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2159 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 47:1512 (October 2021), LR 48:1563 (June 2022).

#### §16311. Environmental Accessibility Adaptations

A. Environmental accessibility adaptations are physical adaptations to the beneficiary's home or vehicle which are necessary to ensure health, welfare, and safety of the beneficiary, or which enable the beneficiary to function with greater independence, without which the beneficiary would require additional supports or institutionalization. Environmental adaptations must be specified in the beneficiary's plan of care.

1. Reimbursement shall not be paid until receipt of written documentation that the job has been completed to the satisfaction of the beneficiary.

B. Environmental adaptation services to the home and vehicle include the following:

1. ...
2. training the beneficiary and the provider in the use and maintenance of the environmental adaptation(s);
3. - 4. ...

C. Home adaptations which pertain to modifications that are made to a beneficiary's primary residence. Such adaptations to the home may include bathroom modifications, ramps, or other adaptations to make the home accessible to the beneficiary.

1. ...

2. The service may include the installation of ramps and grab-bars, widening of doorways, modification of bathroom facilities, or installation of specialized electric and plumbing systems which are necessary to accommodate the medical equipment and supplies which are necessary for the welfare of the beneficiary.

D. - F.3.a. ...

4. Home modifications may not include modifications to the home which are of general utility and not of direct medical or remedial benefit to the beneficiary, including, but not limited to:

4.a. - 5. ...

G. Vehicle adaptations pertain to modifications to a vehicle that is the waiver beneficiary's primary means of

transportation in order to accommodate his/her special needs.

1. Such adaptations to the vehicle may include a lift, or other adaptations, to make the vehicle accessible to the participant or for the beneficiary to drive.

G.2. - H.1.b. ...

2. Vehicle modification funds may not be used for modifications which are of general utility and are not of direct medical or remedial benefit to the beneficiary.

H.3. - I.3. ...

4. Upon completion of the work and prior to payment, the provider shall give the beneficiary a certificate of warranty for all labor and installation and all warranty certificates from manufacturers.

J. - J.4. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2446 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2159 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 47:1513 (October 2021), LR 48:1563 (June 2022).

### §16313. Host Home

A. Host home services are personal care and supportive services provided to a beneficiary who lives in a private home with a family who is not the beneficiary's parent, legal representative, or spouse. Host home families are a stand-alone family living arrangement in which the principle caregiver in the host home assumes the direct responsibility for the beneficiary's physical, social, and emotional well-being and growth in a family environment. Host home services are to take into account compatibility with the host home family members, including age, support needs, and privacy needs.

B. - B.4. ...

NOTE: Natural supports are also encouraged and supported when possible. Supports are to be consistent with the beneficiary's skill level, goals, and interests.

C. Host home provider agencies oversee and monitor the host home contractor to ensure the availability, quality, and continuity of host home services. Host home provider agencies are responsible for the following functions:

1. ...

2. making an initial inspection and periodic inspections of the host home and upon any significant changes in the host family unit or significant events which may impact the beneficiary;

3. having 24-hour responsibility over host home services to the beneficiary, which includes back-up staffing for scheduled and unscheduled absences of the host home family for up to 360 hours (15 days) as authorized by the beneficiary's plan of care; and

4. providing relief staffing in the beneficiary's home or in another host home family's home.

D. Host home contractors are responsible for:

1. attending the beneficiary's plan of care meeting and participating, including providing information needed in the development of the plan;

2. following all aspects of the beneficiary's plan of care and any support plans;

3. maintaining the beneficiary's documentation;

4. assisting the beneficiary in attending appointments (i.e., medical, therapy, etc.) and undergoing any specialized training deemed necessary by the provider agency, or required by the department, to provide supports in the host home setting;

5. following all requirements for staff as in any other waiver service including immediately reporting to the department and applicable authorities any major issues or concerns related to the beneficiary's safety and well-being; and

D.6. - E. ...

1. If the beneficiary is a child, the host home family is to provide the supports required to meet the needs of a child as any family would for a minor child.

2. ...

3. A host home family can provide compensated supports for up to two beneficiaries, regardless of the funding source

F. Host home contractors serving adults are required to be available for daily supervision, support needs or emergencies as outlined in the adult beneficiary's POC based on medical, health and behavioral needs, age, capabilities and any special needs.

1. ...

G. Host home contractors who are engaged in employment outside the home must adjust these duties to allow the flexibility needed to meet their responsibilities to the beneficiary.

H. Host Home Capacity. Regardless of the funding source, a host home contractor may not provide services for more than two beneficiaries in the home.

I. - I.3. ...

4. Payment will not be made for services provided by a relative who is a:

a. - c. ...

d. spouse of the beneficiary.

5. - 6. ...

7. Environmental adaptations are not available to beneficiaries receiving host home services since the beneficiary's place of residence is owned or leased by the host home family.

J. - J.3. ...

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

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### §16317. Nursing Services

A. ...

1. Nursing services must be included in the beneficiary's plan of care and must have the following:

a. - g. ...

2. The beneficiary's nurse must submit updates every 60 days and include any changes to the beneficiary's needs and/or physician's orders.

B. Consultations include assessments, health related training/education for the beneficiary and the beneficiary's caregivers, and healthcare needs related to prevention and primary care activities.

1. - 2. ...

3. Health related training and education service is the only nursing procedure which can be provided to more than one beneficiary simultaneously.

C. - C.1. ...

D. Service Requirements

1. Nursing services are secondary to EPSDT services for beneficiaries under the age of 21 years. Beneficiaries under the age of 21 have access to nursing services (home health and extended care) under the Medicaid State Plan.

2. Adults have access only to home health nursing services under the Medicaid State Plan. Beneficiaries must access and exhaust all available Medicaid State Plan services prior to accessing ROW nursing services.

E. - F.4.b. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2449 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2161 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 47:1515 (October 2021), LR 48:1564 (June 2022).

#### **§16319. One Time Transitional Services**

A. One-time transitional services are non-reoccurring set-up expenses to assist a beneficiary who is moving from an institutional setting to his or her own home. The beneficiary's support coordinator assists in accessing funds and making arrangements in preparation for moving into the residence.

B. - B.5. ...

C. Service Limits

1. There is a one-time, lifetime maximum services cap of \$3,000 per beneficiary.

C.2. - D.1.b. ...

2. One-time transitional services are not available to beneficiaries who are receiving host home services.

3. One-time transitional services are not available to beneficiaries who are moving into a family member's home.

E. ...

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 33:2449 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2162 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 45:1766 (December 2019), LR 47:1516 (October 2021), LR 48:1565 (June 2022).

#### **§16321. Personal Emergency Response System (PERS)**

A. Personal emergency response system (PERS) service is an electronic device connected to the beneficiary's phone that enables him or her to secure help in an emergency. The service also includes an option in which the beneficiary would wear a portable help button. The device is

programmed to emit a signal to the PERS response center where trained professionals respond to the beneficiary's emergency situation.

B. Beneficiary Qualifications. PERS service is most appropriate for beneficiaries who:

1. - 2. ...

C. Coverage of the PERS is limited to the rental of the electronic device. PERS services shall include the cost of maintenance and training the beneficiary to use the equipment.

D. Service Exclusions

1. ...

2. PERS services are not available to beneficiaries who receive 24-hour direct care supports.

E. Provider Qualifications

1. - 2. ...

3. Providers must meet manufacturer's specifications, response requirements, maintenance records, and enrollee education.

4. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2249 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2162 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 47:1516 (October 2021), LR 48:1565 (June 2022).

#### **§16323. Prevocational Services**

A. Prevocational services are individualized, person centered services that assist beneficiaries in establishing their path to obtain individualized community employment. This service is time limited and targeted for people who have an interest in becoming employed in individual jobs in the community but who may need additional skills, information, and experiences to determine their employment goal and to become successfully employed. Beneficiaries receiving prevocational services may choose to leave this service at any time or pursue employment opportunities at any time.

B. Prevocational services may be delivered in a combination of these three service types:

1. onsite prevocational services;
  2. community career planning; and
  3. virtual prevocational services.
4. - 4.c. Repealed.

C. Prevocational services are to be provided in a variety of locations in the community and are not to be limited to a fixed site facility. Activities associated with prevocational services should focus on preparing the beneficiary for integrated individual employment in the community. These services are operated through a provider agency that is licensed by the appropriate state licensing agency.

1. - 2. Repealed.

D. Beneficiaries receiving prevocational services must participate in activities designed to establish an employment goal. Prevocational services are designed to help create a path to integrated community-based employment for which a beneficiary is compensated at or above minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by

individuals without disabilities. Prevocational services may include assistance with personal care or with activities of daily living.

1. - 3. Repealed.

E. The prevocational provider is responsible for all transportation between prevocational sites. Transportation may be provided between the beneficiary's residence, or other location as agreed upon by the beneficiary or authorized representative, and the prevocational site. The beneficiary's transportation needs shall be documented in the plan of care.

F. Service Limitations

1. Service limits shall be based on the person centered plan and the beneficiary's ROW budget. Services are delivered in a 15-minute unit of service for up to eight hours per day, one or more days per week. The 15-minute unit of service must be spent at the service site by the beneficiary.

a. - b. ...

2. Prevocational services are not available to individuals who are eligible to participate in programs funded under section 110 of the Rehabilitation Act of 1973 or sections 602(16) and (17) of the Individuals with Disabilities Education Act [20 U.S.C. 1401(26) and (29)] as amended, and those covered under the state plan, if applicable.

3. Prevocational services cannot be billed for at the same time on the same day as other ROW services.

a. - g. ...

4. Prevocational services may otherwise be billed at the same time on the same day as professional services when there are direct contacts needed in the development of a support plan.

a. - c. Repealed.

5. Transportation is only provided on the day that a prevocational service is provided. Transportation is part of the service except for virtual prevocational services.

a. Time spent in transportation between the beneficiary's residence/location and the prevocational site is not to be included in the total number of prevocational service hours per day, except when the transportation is for the purpose of travel training. Travel training must be included in the beneficiary's plan of care.

b. During travel training, providers must not also bill for the transportation component as this is included in the rate for the number of service hours provided.

c. Transportation-community access services shall not be used for transportation to or from any prevocational services.

G. Restrictions

1. Beneficiaries receiving prevocational services may also receive day habilitation and/or individualized supported employment services, but these services cannot be provided during the same time period or total more than five hours per day combined.

2. All virtual prevocational services must be approved by the local governing entity or the OCDD state office.

3. Repealed.

H. Provider Qualifications. Providers must be licensed by the Department of Health as a home and community-based services provider and meet the module requirements for adult day care in. LAC 48:I.Chapter 50.

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 33:2450 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2162 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 45:1766 (December 2019), LR 47:1516 (October 2021), LR 48:1565 (June 2022).

### §16325. Professional Services

A. Professional services are direct services to beneficiaries based on the beneficiary's need, which assist the beneficiary, unpaid caregivers, and/or paid caregivers in carrying out the beneficiary's approved plan and which are necessary to improve the beneficiary's independence and inclusion in his/her community. The beneficiary must be present in order for the professional to bill for services. Professional services include nutritional services, speech therapy, occupational therapy, physical therapy, social work, and psychological services. All services are to be included in the beneficiary's plan of care. The specific service provided to a beneficiary must be within the professional's area of specialty and licensing.

B. - B.6. ...

C. Professional services can include:

1. ...

2. providing training to the beneficiary, family, and caregivers with the goal of increased skill acquisition and proficiency;

3. - 4. ...

5. providing information to the beneficiary, family, and caregivers, along with other support team members, to assist in planning, developing, and implementing a beneficiary's plan of care;

6. - 7.a....

8. providing therapy to the beneficiary necessary to the development of critical skills; and

9. assistance in increasing independence, participation, and productivity in the beneficiary home, work, and/or community environments.

\*\*\*

D. Service Exclusions

1. Private insurance must be billed and exhausted prior to accessing waiver funds. Professional services may only be furnished and reimbursed through ROW when the services are medically necessary, or have habilitative or remedial benefit to the beneficiary.

D.2. - E.4.b. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2450 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2163 (October 2015), by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, amended LR 47:1518 (October 2021), LR 48:1566 (June 2022).

### §16327. Respite Care Services—Out of Home

A. Respite care services—out of home are provided on a short-term basis to beneficiaries who are unable to care for themselves due to the absence of, or need for, relief of

caregivers who normally provide care and support. Services are provided by a center-based respite provider.

1. A licensed respite care facility shall insure that community activities are available to the beneficiary in accordance with his approved POC, including transportation to and from these activities.

2. While receiving respite care services, the beneficiary's routine is maintained in order to attend school, school activities or other community activities. Community activities and transportation to and from these activities in which the beneficiary typically engages in are to be available while receiving respite services-out of home.

a. These activities should be included in the beneficiary's approved plan of care. This will provide the beneficiary the opportunity to continue to participate in typical routine activities.

b. ...

#### B. Service Limits

1. Respite care services are limited to 720 hours per beneficiary, per POC year.

2. - 3. ...

#### C. Service Exclusions

1. ...

2. Respite care services-out of home is not a billable waiver service to beneficiary receiving the following services:

C.2.a. - 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 and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2451 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2164 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 45:1767 (December 2019), LR 47:1519 (October 2021), LR 48:1566 (June 2022).

### §16329. Shared Living Services

A. Shared living services are provided to a beneficiary in his/her home and community to achieve, improve, and/or maintain social and adaptive skills necessary to enable the beneficiary to reside in the community and to participate as independently as possible. Services are chosen by the beneficiary and developed in accordance with his/her goals and wishes with regard to compatibility, interests, age and privacy in the shared living setting.

1. A shared living services provider delivers supports which include:

a. ...

b. assistance with activities of daily living included in the beneficiary's POC;

c. - f. ...

g. other responsibilities as required in each beneficiary's POC.

2. Shared living services focus on the beneficiary's preferences and goals.

3. Supports provided are related to the acquisition, improvement, and maintenance in level of independence, autonomy, and adaptive skills and are to be included in each beneficiary's plan of care. This includes:

a. - c. ...

4. The overall goal is to provide the beneficiary the ability to successfully reside with others in the community while sharing supports.

5. Shared living services take into account the compatibility of the beneficiaries sharing services, which includes individual interests, age of the beneficiaries, and the privacy needs of each beneficiary.

a. Each beneficiary's essential personal rights of privacy, dignity and respect, and freedom from coercion are protected.

6. The shared living setting is selected by each beneficiary among all available alternatives and is identified in each beneficiary's plan of care.

a. Each beneficiary has the ability to determine whether or with whom he or she shares a room.

b. Each beneficiary has the freedom of choice regarding daily living experiences, which include meals, visitors, and activities.

c. Each beneficiary is not limited in opportunities to pursue community activities.

7. Shared living services may be shared by up to four beneficiaries who have a common shared living provider agency.

8. Shared living services must be agreed to by each beneficiary and the health and welfare must be able to be assured for each beneficiary.

a. ...

b. Each beneficiary's plan of care must reflect the shared living services and include the shared rate for the service indicated.

9. The shared living service setting is integrated in, and facilitates each beneficiary's full access to, the greater community, which includes providing beneficiaries with the same opportunities as individuals without disabilities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community.

B. - B.3. ...

4. All shared living service beneficiaries are required to have an individualized back-up staffing plan and an individualized emergency evacuation plan which are to be submitted with their plan of care.

5. - 6. ...

7. Shared living service providers are responsible for providing 24-hour staff availability along with other identified responsibilities as indicated in each beneficiary's individualized plan of care. This includes responsibility for each beneficiary's routine daily schedule, for ensuring the health and welfare of each beneficiary while in his or her place of residence and in the community, and for any other waiver services provided by the shared living services provider.

8. Shared living services may be provided in a residence that is owned or leased by the provider or that is owned or leased by the beneficiary. Services may not be provided in a residence that is owned or leased by any legally responsible relative of the beneficiary. If shared living services are provided in a residence that is owned or leased by the provider, any modification of the conditions must be supported by specific assessed needs and documented in the beneficiary's plan of care. The provider is

responsible for the cost of, and implementation of, the modification when the residence is owned or leased by the provider.

9. In a provider-owned or controlled residential setting, the following additional conditions must be met. Any modifications of the conditions must be supported by a specific assessed need and documented in the plan of care:

a. the unit or room is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the beneficiary receiving services, and the beneficiary has, at a minimum, the same responsibilities and protections from eviction that the tenants have under the landlord/tenant laws of the state, parish, city, or other designated entity;

b. each beneficiary has privacy in their sleeping or living unit, which requires the following:

i. ...

ii. beneficiaries share units only at the beneficiary's choice; and

iii. beneficiaries have the freedom to furnish and decorate their sleeping or living units;

c. beneficiaries have the freedom and support to control their own schedules and activities, and have access to food at any time;

d. beneficiaries are able to have visitors of their choosing at any time; and

e. the setting is physically accessible to the beneficiary.

#### C. Shared Living Options

1. ...

a. The number of beneficiaries for the shared living conversion option shall not exceed the licensed and Medicaid-funded bed capacity of the ICF/IID on October 1, 2009, or up to six individuals, whichever is less.

b. The ICF/IID used for the shared living conversion option must meet the department's operational, programming and quality assurances of health and safety for all beneficiaries.

c. The provider of shared living services is responsible for the overall assurances of health and safety for all beneficiaries.

d. The provider of shared living conversion option may provide nursing services and professional services to beneficiaries utilizing this residential services option.

2. - 2.a. ...

b. The shared living waiver home must be either a home owned or leased by the waiver beneficiaries or a home owned or leased and operated by a licensed shared living provider.

c. ...

d. The shared living provider is responsible for the overall assurances of health and safety for all beneficiaries.

3. ICF/IID providers who convert an ICF/IID to a shared living home via the shared living conversion model must be approved by OCDD and licensed by HSS prior to providing services in this setting, and prior to accepting any ROW beneficiary or applicant for residential or any other developmental disability service(s).

4. - 5. ...

#### D. Service Exclusions and Limitations

1. Payment does not include room and board or maintenance, upkeep or improvements of the beneficiary's or the provider's property.

2. ...

3. Beneficiaries may receive one-time transitional services only if the beneficiary owns or leases the home and the service provider is not the owner or landlord of the home.

4. MFP beneficiaries cannot participate in ROW shared living services which serve more than four persons in a single residence.

5. Transportation-community access services cannot be billed or provided for beneficiaries receiving shared living services, as this is a component of shared living services.

6. The following services are not available to beneficiaries receiving shared living services:

a. - g. ...

7. Shared living services are not available to beneficiary 17 years of age and under.

8. - 9. ...

10. Payment will not be made for services provided by a relative who is a:

a. - c. ...

d. spouse of the beneficiary.

11. The shared living staff may not live in the beneficiary's place of residence.

E. ...

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 33:2452 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2164 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 45:1767 (December 2019), LR 47:1519 (October 2021), LR 48:1567 (June 2022).

#### §16333. Support Coordination

A. Support coordination services are provided to all beneficiaries to provide assistance in gaining access to needed waiver services and Medicaid State Plan services, as well as needed medical, social, education, and other services, regardless of the funding source for the services. Support coordination services include assistance with the selection of service providers, development/revision of the plan of care, and monitoring of services.

1. Support coordinators shall be responsible for ongoing monitoring of the provision of services included in the beneficiary's approved POC.

2. Support coordinators shall also participate in the evaluation and re-evaluation of the beneficiary's POC.

3. Support coordination services includes on-going support and assistance to the beneficiary.

B. When beneficiaries choose to self-direct their waiver services, the support shall provide information, assistance, and management of the service being self-directed.

C. Service Limits

1. Support coordination shall not exceed 12 units. A calendar month is a unit. Virtual visits are permitted; however, the initial and annual plan of care meeting and at least one other meeting per year must be conducted face-to-face. When a relative living in the home or a legally responsible individual or legal guardian provides a paid ROW service, all support coordination visits must be conducted face-to-face, with no option for virtual visits.

C.2. - 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 and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2453 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2165 (October 2015), by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, amended LR 47:1521 (October 2021), LR 48:1568 (June 2022).

**§16335. Supported Employment**

A. Supported employment services consist of intensive, ongoing supports and services necessary for a beneficiary to achieve the desired outcome of employment in a community setting where a majority of the persons employed are without disabilities. Beneficiaries utilizing these services may need long-term supports for the life of their employment due to the nature of their disability, and natural supports may not meet this need.

1. - 2. Repealed.

B. Supported employment services provide supports in the following areas:

- 1. individual job placement, group employment, or self-employment;
- 2. job assessment, discovery, and development; and
  - a. - d. Repealed.
- 3. initial job support and job retention.
- 4. Repealed.

C. When supported employment services are provided at a work site where a majority of the persons employed are without disabilities, payment is made only for the adaptations, supervision and training required by individuals receiving waiver services as a result of their disabilities, but payment will not be made for the supervisory activities rendered as a normal part of the business setting.

D. The provider is responsible for all transportation to all work sites related to the provision of services in group employment. Transportation to and from the service site is offered and billable as a component of the supported employment service.

1. ...

2. Time spent in transportation to and from the program shall not be included in the total number of supported employment services hours provided per day.

E. These services are also available to those beneficiaries who are self-employed. Funds for self-employment may not be used to defray any expenses associated with setting up or operating a business.

F. - F.2. ...

G. Service Limits. Beneficiaries may receive more than one type of vocational or habilitation service per day as long as the billing criteria is followed and as long as the

requirements for the minimum time spent on site are adhered to. The required minimum number of service hours per day, per beneficiary are as follows.

1. Individual supported employment services—one hour (four units). One-on-one services shall be billed in quarterly hour units and shall be based on the person centered plan and the beneficiary’s ROW budget.

2. Services that assist a beneficiary to develop and operate a micro-enterprise—one hour (four units). One-on-one services shall be billed in quarterly hour units and shall be based on the person centered plan and the beneficiary’s ROW budget.

3. Group employment services shall be billed in quarterly hour units of service up to eight hours per day and shall be based on the person centered plan and the beneficiary’s ROW budget.

4. Individual job follow-along services may be delivered virtually.

H. Service Exclusions and Restrictions. Beneficiaries receiving individual supported employment services may also receive prevocational, day habilitation, or group supported employment services. However, these services cannot be provided during the same service hours on the same day.

1. ...

2. Supportive employment cannot be billed for the same time as any other ROW services.

a. - e. Repealed.

3. Any time less than the minimum 15 minute unit of service is provided for any model is not billable or payable. No rounding up of service units is allowed.

4. ...

a. Travel training for the purpose of teaching the beneficiary how to use transportation services may be included in determining the total service numbers hours provided per day, but only for the period of time specified in the POC.

b. ...

5. All virtual supported employment services must be approved by the local governing entity or the OCDD state office.

a. - c. Repealed.

6. Supported employment services are not available to individuals who are eligible to participate in services that are available from programs funded under section 110 of the Rehabilitation Act of 1973 or sections 602(16) or (17) of the Individuals with Disabilities Education Act [20 U.S.C. 1401 (26) and (29)] and those covered under the state plan, if applicable.

7. - 8. Repealed.

I. Provider Qualifications. The provider must possess a valid certificate of compliance as a community rehabilitation provider (CRP) from an approved program or the certification and training as required.

1. - 2. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2453 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2166 (October 2015), amended by the



Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 45:1767 (December 2019), LR 47:1521 (October 2021), LR 48:1569 (June 2022).

### **§16337. Transportation-Community Access**

A. Transportation-community access services are provided to assist the beneficiary in becoming involved in his or her community. The service encourages and fosters the developmental of meaningful relationships in the community which reflects the beneficiary's choice and values. This service provides the beneficiary with a means of access to community activities and resources. The goal is to increase the beneficiary's independence, productivity, and community inclusion and to support self-directed employees benefits as outlined in the beneficiary's POC.

1. Transportation-community access services are to be included in the beneficiary's plan of care.

2. The beneficiary must be present for the service to be billed.

3. Prior to accessing transportation-community access services, the beneficiary is to utilize free transportation provided by family, friends, and community agencies.

4. When appropriate, the beneficiary should access public transportation or the most cost-effective method of transportation prior to accessing transportation-community access services.

B. - C.1.c. ...

2. Transportation-community access services are not available to beneficiaries receiving the following services:

a. - c. ...

3. Transportation-community access will not be used to transport beneficiaries to day habilitation, pre-vocational, or supported employment services.

4. ...

D. Provider Qualifications. Friends and family members who furnish transportation-community access services to waiver beneficiaries must be enrolled as Medicaid non-emergency medical transportation (NEMT) family and friends providers with the Department of Health (Bureau of Health Services Financing).

1. - 3.a. ...

4. NEMT (family and friends transportation) providers may provide for up to three identified waiver beneficiaries.

E. Vehicle Requirements. All vehicles utilized by for profit and non-profit transportation services providers for transporting waiver beneficiaries must comply with all of the applicable state laws and regulations and are subject to inspection by the department or its designee.

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 33:2454 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2166 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 45:1768 (December 2019), LR 47:1523 (October 2021), LR 48:1570 (June 2022).

### **§16339. Housing Stabilization Transition Services**

A. Housing stabilization transition services enable beneficiaries who are transitioning into a permanent supportive housing unit, including those transitioning from institutions, to secure their own housing. This service is provided while the beneficiary is in an institution and preparing to exit the institution using the waiver. The service includes the following components:

1. conducting a housing assessment to identify the beneficiary's preferences related to housing (i.e., type, location, living alone or with someone else, accommodations needed, and other important preferences), and his/her needs for support to maintain housing, including:

a. - h. ...

2. assisting a beneficiary to view and secure housing, as needed. This may include the following:

a. - e. ...

3. developing an individualized housing support plan, based upon the housing assessment, that:

a. ...

b. establishes the beneficiary's approach to meeting the goal; and

3.c. - 5. ...

B. This service is only available to beneficiaries upon referral from the support coordinator, and is not duplicative of other waiver services, including support coordination.

1. beneficiaries must be residing in a state of Louisiana permanent supportive housing unit; or

2. beneficiaries must be linked for the state of Louisiana permanent supportive housing selection process.

C. Beneficiaries are limited to receiving no more than 165 combined units of this service and the housing stabilization transition service. This limit on combined units can only be exceeded with written approval from OCDD.

D. - D.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2169 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 47:1523 (October 2021), LR 48:1570 (June 2022).

### **§16341. Housing Stabilization Services**

A. Housing stabilization services enable waiver beneficiaries to maintain their own housing as set forth in the approved plan of care. Services must be provided in the home or a community setting. Housing stabilization services include the following components:

1. conducting a housing assessment identifying the beneficiary's preferences related to housing (type, location, living alone or with someone else, accommodations needed, and other important preferences), and needs for support to maintain housing, including:

a. - h. ...

2. assisting a beneficiary to view and secure housing, as needed and may include the following:

a. - e. ...

3. developing an individualized housing stabilization service provider plan, based upon the housing assessment, that:

a. ...

b. establishes the beneficiary's approach to meeting the goal; and

3.c. - 5. ...

6. providing ongoing communication with the landlord or property manager regarding:

a. the beneficiary's disability;

b. - c. ...

7. if at any time the beneficiary's housing is placed at risk (i.e., eviction, loss of roommate or income), housing stabilization services will provide supports to retain housing or locate and secure housing to continue community-based supports, including locating new housing, sources of income, etc.

B. ...

1. beneficiaries must be residing in a state of Louisiana permanent supportive housing unit; or

2. beneficiaries must be linked for the state of Louisiana permanent supportive housing selection process.

C. Beneficiaries are limited to receiving no more than 165 combined units of this service and the housing stabilization transition service. This limit on combined units can only be exceeded with written approval from OCDD.

D. - D.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2170 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 47:1524 (October 2021), LR 48:1570 (June 2022).

### **§16343. Adult Day Health Care Services**

A. Adult day health care (ADHC) services shall be furnished as specified in the POC and at an ADHC facility in a non-institutional, community-based setting encompassing both health/medical, and social services needed to ensure the optimal functioning of the beneficiary.

B. ADHC services include those core service requirements identified in the ADHC licensing standards (LAC 48:I.4243), in addition to the following:

1. ...

2. transportation between the beneficiary's place of residence and the ADHC (if the beneficiary is accompanied by the ADHC staff) in accordance with licensing standards;

3. - 9. ...

C. The number of people included in the service per day depends on the licensed capacity and attendance at each facility. The average capacity per facility is 49 beneficiaries.

D. Nurses shall be involved in the beneficiary's service delivery as specified in the plan of care (POC) or as needed. Each beneficiary has a plan of care from which the ADHC shall develop an individualized service plan based on the beneficiary's POC. If the individualized service plan calls for certain health and nursing services, the nurse on staff shall ensure that the services are delivered while the beneficiary is at the ADHC facility.

E. - G.4. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 42:62 (January 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 45:1768 (December 2019), LR 47:1524 (October 2021), LR 48:1571 (June 2022).

### **§16345. Monitored In-Home Caregiving Services**

A. Monitored in-home caregiving (MIHC) services are provided to a beneficiary living in a private home with a principal caregiver. The principal caregiver shall be contracted by the licensed HCBS provider having a MIHC service module. The principal caregiver shall reside with the beneficiary. Professional staff employed by the HCBS provider shall provide oversight, support and monitoring of the principal caregiver, service delivery, and beneficiary outcomes through on-site visits, training, and daily web-based electronic information exchange.

1. ...

2. This goal is achieved by promoting a cooperative relationship between a beneficiary, a principal caregiver, the professional staff of a monitored in-home caregiver agency provider, and the beneficiary support coordinator.

B. The principal caregiver is responsible for supporting the beneficiary to maximize the highest level of independence possible by providing necessary care and supports that may include:

1. - 2. ...

3. protective supervision provided solely to assure the health and welfare of a beneficiary;

4. - 6. ...

#### **C. Service Exclusions and Restrictions**

1. Beneficiaries electing monitored in-home caregiving are not eligible to receive the following Residential Options Waiver services during the period of time that the beneficiaries are receiving monitored in-home caregiving services:

a. - c. ...

d. shared living supports; and

e. adult day health care services.

f. Repealed.

D. - D.2....

3. The agency provider must capture daily notes electronically and use the information collected to monitor beneficiary health and caregiver performance.

4. ...

E. The MIHC provider must use secure, web-based information collection from principal caregivers for the purposes of monitoring beneficiary health and caregiver performance. All protected health information must be transferred, stored, and otherwise utilized in compliance with applicable federal and state privacy laws. Providers must sign, maintain on file, and comply with the LDH HIPAA business associate addendum.

F. The department shall reimburse for monitored in-home caregiving services based on a two-tiered model which is designed to address the beneficiary's acuity.

G. - G.3. ...

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 45:1768 (December 2019), amended LR 47:1525 (October 2021), LR 48:1571 (June 2022).

## **Chapter 165. Self-Direction Initiative**

### **§16501. Self-Direction Service Option**

A. Self-direction is a service delivery option which allows beneficiaries (or their authorized representative) to exercise employer authority in the delivery of their authorized self-directed services (community living supports).

1. Beneficiaries are informed of all available services and service delivery options, including self-direction, at the time of the initial assessment, annually, or as requested by beneficiaries or their authorized representative. Beneficiaries, who are interested in self-direction, need only notify their support coordinator, who will facilitate the enrollment process.

2. A contracted fiscal/employer agent is responsible for processing the beneficiary's employer-related payroll, withholding and depositing the required employment-related taxes, and sending payroll reports to the beneficiary or his/her authorized representative.

3. Support coordinators assist beneficiaries by providing the following activities:

- a. the development of the beneficiary's plan of care;
- b. organizing the unique resources the beneficiary needs;
- c. training beneficiaries on their employer responsibilities;
- d. - g. ...
- h. ensuring beneficiary's needs are being met through services.

B. Beneficiary Eligibility. Selection of the self-direction option is strictly voluntary. To be eligible to participate in the self-direction service option, waiver beneficiaries must:

1. - 3. ...

NOTE: If the waiver beneficiary is unable to make decisions independently, the beneficiary must have a willing decision maker (an authorized representative as listed on the beneficiary's plan of care) who understands the rights, risks, and responsibilities of managing the care and supports of the beneficiary within the plan of care.

C. Beneficiary Responsibilities. Responsibilities of the waiver beneficiary or his or her authorized representative include the following:

1. Beneficiaries must adhere to the health and welfare safeguards identified by the support team, including the following:

- a. ...
- b. compliance with the requirement that employees under this option must have criminal background checks prior to working with waiver beneficiaries.

2. Waiver beneficiary's participation in the development and management of the approved personal purchasing plan.

a. This annual budget is determined by the recommended service hours listed in the beneficiary's POC to meet his needs.

b. The beneficiary's individual budget includes a potential amount of dollars within which the beneficiary, or his/her authorized representative, exercises decision-making

responsibility concerning the selection of services and service providers.

3. Beneficiaries are informed of the self-direction option at the time of the initial assessment, annually, or as requested by beneficiaries or their authorized representative. If the beneficiary is interested, the support coordinator will provide more information on the principles of self-determination, the services that can be self-directed, the roles and responsibilities of each service option, the benefits and risks of each service option, and the process for enrolling in self-direction.

4. Prior to enrolling in self-direction, the beneficiary or his/her authorized representative is trained by the support coordinator on the process for completing the following duties:

4.a. - 5. ...

6. Beneficiaries who choose self-direction verify that they have received the required training by signing the service agreement form.

7. Authorized representatives may be the employer in the self-directed option but may not also be the employee.

D. ...

1. Voluntary Termination. The waiver beneficiary may choose at any time to withdraw from the self-direction service option and return to the traditional provider agency management of services.

a. ...

b. Should the request for voluntary withdrawal occur, the beneficiary will receive counseling and assistance from his or her support coordinator immediately upon identification of issues or concerns in any of the above situations.

2. Involuntary Termination. The department may terminate the self-direction service option for a beneficiary and require him or her to receive provider-managed services under the following circumstances:

a. the beneficiary does not receive self-directed services for 90 days or more;

b. the health, safety, or welfare of the beneficiary is compromised by continued participation in the self-direction service option;

c. the beneficiary is no longer able to direct his own care and there is no responsible representative to direct the care;

d. there is misuse of public funds by the beneficiary or the authorized representative;

e. over three payment cycles in the period of a year, the beneficiary or authorized representative:

i. permits employees to work over the hours approved in the beneficiary's plan of care or allowed by the participant's program;

ii. - v. ...

f. the beneficiary or the authorized representative consistently violates Medicaid program rules or guidelines of the self-direction option.

3. When action is taken to terminate a beneficiary from self-direction involuntarily, the support coordinator immediately assists the beneficiary in accessing needed and appropriate services through the ROW and other available programs, ensuring that no lapse in necessary services occurs for which the beneficiary is eligible. There is no denial of services, only the transition to a different payment

option. The beneficiary and support coordinator are provided with a written notice explaining the reason for the action and citing the policy reference.

E. Employees of beneficiaries in the self-direction service option are not employees of the fiscal agent or the department.

1. - 1.c. ...

F. Relief coverage for scheduled or unscheduled absences, which are not classified as respite care services, can be covered by other participant-directed providers and the terms can be part of the agreement between the beneficiary and the primary companion care provider.

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 33:2455 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2167 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 47:1525 (October 2021), LR 48:1572 (June 2022).

## **Chapter 167. Provider Participation**

### **§16701. General Provisions**

A. - B. ...

C. In order for a provider to bill for services, the waiver beneficiary and the direct service worker or professional services practitioner rendering service must be present at the time the service is rendered.

1. Exception. The following services may be provided when the beneficiary is not present:

a. - c. ...

2. All services must be documented in service notes which describe the services rendered and progress towards the beneficiary's personal outcomes and his POC.

D. - E. ...

F. Some ROW services may be provided by a member of the beneficiary's family, provided that the family member meets all the requirements of a non-family direct support worker and provision of care by a family member is in the best interest of the beneficiary.

1. Payment for services rendered are approved by prior and post authorization as outlined in the POC.

2. Payments to legally responsible individuals, legal guardians, and family members living in the home shall be audited on a semi-annual basis to ensure payment for services rendered.

3. - 4. Repealed.

G. - G.3.a. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2455 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2168 (October 2015), LR 42:63 (January 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 47:1527 (October 2021), LR 48:1573 (June 2022).

### **§16703. Staffing Restrictions and Requirements**

A. Legally responsible individuals may only be paid for services when the care is extraordinary in comparison to that

of a beneficiary of the same age without a disability and the care is in the best interest of the beneficiary.

1. - 4. Repealed.

B. In order to receive payment, relatives must meet the criteria for the provision of the service and the same provider qualifications specified for the service as other providers not related to the beneficiary.

1. Relatives must also comply with the following requirements:

a. become an employee of the beneficiary's agency of choice and meet the same standards as direct support staff who are not related to the individual;

b. ...

c. if the self-direction option is selected, relatives must:

i. become an employee of the self-direction beneficiary; and

1.c.ii. - 2.e. ...

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 for Citizens with Developmental Disabilities, LR 41:2168 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 47:1527 (October 2021), LR 48:1573 (June 2022).

## **Chapter 169. Reimbursement**

### **§16901. Unit of Reimbursement**

A. Reimbursement for the following services shall be a prospective flat rate for each approved unit of service provided to the waiver beneficiary. One quarter hour (15 minutes) is the standard unit of service and reimbursement shall not be made for less than one quarter hour of service. This covers both the service provision and administrative costs for these services:

1. - 4. ...

a. up to three beneficiaries may share CLS services if they share a common provider of this service;

4.b. - 9....

\* \* \*

B. The following services are reimbursed at the cost of adaptation device, equipment or supply item:

1. ...

a. Upon completion of the environmental accessibility adaptations and prior to submission of a claim for reimbursement, the provider shall give the beneficiary a certificate of warranty for all labor and installation work and supply the beneficiary with all manufacturers' warranty certificates.

B.2. - G. ...

H. Dental Services. Dental services are reimbursed according to the LA Dental Benefit Program.

I. - 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 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 39:1049 (April 2013), LR 41:2168, 2170 (October 2015), LR 42:63 (January 2016), 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 43:2530 (December 2017), LR 45:1769 (December 2019), LR 47:1527 (October 2021), LR 48:1573 (June 2022).

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

2206#047

## RULE

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

Home and Community-Based Services Waivers  
Supports Waiver—Dental Services  
(LAC 50:XXI.Chapters 53-61)

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities have amended LAC 50:XXI.Chapters 53-61 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 XXI. Home and Community-Based Services Waivers

##### Subpart 5. Supports Waiver

#### Chapter 53. General Provisions

##### §5301. Purpose

A. The mission of this waiver is to create options and provide meaningful opportunities that enhance the lives of men and women with developmental disabilities through vocational and community inclusion. The goals of the supports waiver are as follows:

1. promote independence for beneficiaries with a developmental disability who are aged 18 years or older while ensuring health and safety through a system of beneficiary safeguards;

2. - 3. ...

B. Allocation of Waiver Opportunities. The Office for Citizens with Developmental Disabilities (OCDD) maintains the intellectual/developmental disabilities request for services registry, hereafter referred to as “the registry,” which identifies persons with intellectual and/or developmental disabilities who are found eligible for developmental disabilities services using standardized tools, and who request waiver services.

1. Services are accessed through a single point of entry in the local governing entity (LGE). When criteria are met, individuals’ names are placed on the registry and a screening of urgency of need (SUN) is completed.

2. Individuals determined to have current unmet needs as defined as a SUN score of urgent [three] or emergent [four] are offered a waiver opportunity.

3. The registry is arranged by the urgency of need and date of application for developmentally disabled (DD) waiver services.

a. - b. Repealed.

4. OCDD waiver opportunities shall be offered based on the following priority groups:

a. Individuals living at publicly operated intermediate care facilities for the developmentally disabled (ICF/DDs) or who lived at a publically operated ICF/DD when it was transitioned to a private ICF/DD through a cooperative endeavor agreement (CEA facility), or their alternates. Alternates are defined as individuals living in a private ICF/DD who will give up the private ICF/DD bed to an individual living at a publicly operated ICF/DD or to an individual who was living in a publicly operated ICF/DD when it was transitioned to a private ICF/DD through a cooperative endeavor agreement. Individuals requesting to transition from a publicly operated ICF/DD are awarded a slot when one is requested, and their health and safety can be assured in an OCDD waiver. This also applies to individuals who were residing in a publicly operated facility at the time the facility was privatized and became a CEA facility.

b. Individuals on the registry who have a current unmet need as defined by a SUN score of urgent [three] or emergent [four] and the earliest registry date shall be notified in writing when a funded OCDD waiver opportunity is available and a waiver offer is available.

C. - D. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1604 (September 2006), amended LR 40:2583 (December 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:2531 (December 2017), LR 48:1574 (June 2022).

##### §5303. Settings for Home and Community-Based Services

A. Supports Waiver beneficiaries are expected to be integrated in and have full access to the greater community while receiving services, to the same extent as individuals without disabilities. Providers shall meet the requirements of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services’ (CMS) home and community-based setting requirements for home and community-based services (HCBS) waivers as delineated in LAC 50:XXI.901.

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 48:1574 (June 2022).

#### Chapter 55. Target Population

##### §5501. Participant Qualifications and Admissions Criteria

A. In order to qualify for the supports waiver, a beneficiary must be 18 years of age or older, offered a

waiver opportunity (slot), and meet all of the following criteria:

1. ...
2. be on the registry, unless otherwise specified through programmatic allocation in §5501;
3. - 4. ...
5. have assurance that the health and welfare of the beneficiary can be maintained in the community with the provision of supports waiver services;
6. have justification, as documentation in the approved plan of care, that supports waiver services are appropriate, cost effective and represent the least restrictive environment for the beneficiary;
7. - 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, Office for Citizens with Developmental Disabilities, LR 32:1604 (September 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:2583 (December 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:2532 (December 2017), LR 48:1574 (June 2022).

#### **§5503. Denial of Admission or Discharge Criteria**

A. Beneficiaries shall be denied admission to, or discharged from, the supports waiver if one of the following criteria is met:

1. the beneficiary does not meet the financial eligibility requirements for the Medicaid Program;
2. the beneficiary does not meet the requirement for an ICF/DD level of care;
3. the beneficiary is incarcerated or placed under the jurisdiction of penal authorities, courts or state juvenile authorities;
4. the beneficiary resides in another state or has a change of residence to another state;
5. the beneficiary is admitted to an ICF/DD facility or nursing facility with the intent to stay and not to return to waiver services:
  - a. the waiver beneficiary may return to waiver services when documentation is received from the treating physician that the admission is temporary and shall not exceed 90 days;
  - b. the beneficiary will be discharged from the waiver on the ninety-first day if the participant is still in the ICF/DD or nursing facility;
6. the health and welfare of the beneficiary cannot be assured through the provision of supports waiver services within the beneficiary's approved plan of care;
7. the beneficiary fails to cooperate in the eligibility determination/re-determination process and in the development or implementation of the approved plan of care; and/or
8. continuity of services is interrupted as a result of the beneficiary not receiving a supports waiver service during a period of 30 or more consecutive days. This does not include interruptions in supports waiver services because of hospitalization, institutionalization (such as ICFs/DD or nursing facilities), or non-routine lapses in services where the family agrees to provide all needed or paid natural

supports. There must be documentation from the treating physician that this interruption will not exceed 90 days. During this 90-day period, the OCDD will not authorize payment for supports waiver services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:2584 (December 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:1575 (June 2022).

#### **§5505. Needs-Based Assessment**

A. The Office for Citizens with Developmental Disabilities (OCDD) has developed a framework for all activities related to planning for individualized supports and services. Discovery activities include:

1. a review of the beneficiary's records relevant to service planning (i.e. school, vocational, medical, and psychological records);
2. completing person-centered tools and worksheets, which may include a personal outcomes assessment, which assists the planning team in determining what is important to the beneficiary and his/her satisfaction or dissatisfaction with different life domain areas;
3. completion and review of the needs-based assessment within 30 days of a person being linked to a waiver opportunity and support coordination agency; and
4. review and/or completion of any additional interviews, observations, or other needed professional assessments (i.e. occupational therapist, physical therapist, or speech therapist assessments).

B. A needs-based assessment is completed within the discovery process for all applicants aged 21 years and over who have received an OCDD waiver offer in order to identify the individual's service needs. The needs-based assessment instrument(s) is designed to evaluate the practical support requirements of individuals with developmental disabilities in daily living, medical areas, and behavioral areas as well as to identify living arrangements, existing relationships, and preferences and the levels of satisfaction in various life areas.

B.1. - C.4.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, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:2532 (December 2017), LR 48:1575 (June 2022).

### **Chapter 57. Covered Services**

#### **§5701. Supported Employment Services**

A. Supported employment services consists of intensive, ongoing supports and services necessary for a beneficiary to achieve the desired outcome of employment in a community setting where a majority of the persons employed are without disabilities. Beneficiaries utilizing these services may need long-term supports for the life of their employment due the nature of their disability, and natural supports may not meet this need.

B. Supported employment services provide supports in the following areas:

1. - 2. ...
3. initial job support and job retention, which may include assistance in personal care with activities of daily

living in the supported employment setting and follow-along.

C. When supported employment services are provided at a work site where a majority of the persons employed are without disabilities, payment is only made for the adaptations, supervision and training required by beneficiaries receiving the service as a result of their disabilities. It does not include payment for the supervisory activities rendered as a normal part of the business setting.

D. ...

E. These services are also available to those beneficiaries who are self-employed. Funds for self-employment may not be used to defray any expenses associated with setting up or operating a business.

F. Supported employment services may be furnished by a coworker or other job-site personnel under the following circumstances:

1. ...

2. these beneficiaries meet the pertinent qualifications for the providers of service.

G. Service Limitations

1. - 2 ...

3. Services for individual initial job support, job retention and follow-along shall not exceed 960 units of service in a plan of care year. Individual job follow-along services may be delivered virtually.

4. ...

H. Restrictions

1. Beneficiaries receiving individual supported employment services may also receive prevocational or day habilitation services. However, these services cannot be provided during the same service hours and cannot total more than five hours of services in the same day. Beneficiaries receiving group supported employment services may also receive prevocational or day habilitation services; however, these services cannot be provided in the same service day.

2. All virtual supported employment services must be approved by the LGE or the OCDD state office.

I. Choice of this service and staff ratio needed to support the beneficiary must be documented on the plan of care.

J. Supported employment services are not available to individuals who are eligible to participate in services that are available from programs funded under section 110 of the Rehabilitation Act of 1973 or sections 602 (16) or (17) of the Individuals with Disabilities Education Act [20 U.S.C. 1401 (26 and 29)], as amended, and those covered under the state plan, if applicable.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1605 (September 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:2585 (December 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:2532 (December 2017), LR 48: LR 48:1575 (June 2022).

### §5703. Day Habilitation

A. Day habilitation is services that assist the beneficiary to gain desired community living experience, including the acquisition, retention or improvement in self-help, socialization and adaptive skills, and/or to provide the beneficiary an opportunity to contribute to his or her community. These services may be coordinated with any physical, occupational, or speech therapies identified in the individualized plan of care. Volunteer activities may be a part of this service and should follow the state guidelines for volunteering.

B. Day habilitation may be delivered in a combination of these three service types:

1. onsite day habilitation;
2. community life engagement; and
3. virtual day habilitation.

C. Day habilitation services are provided on a regularly scheduled basis for one or more days per week in a variety of community settings that are separate from the beneficiary's private residence, with the exception of virtual day habilitation. Day habilitation services should not be limited to a fixed site facility. Activities and environments are designed to foster personal choice in developing the beneficiary's meaningful day, including community activities alongside people who do not receive HCBS.

D. Day habilitation services may include assistance in personal care with activities of daily living.

E. All transportation costs are included in the reimbursement for day habilitation services. The beneficiary must be present to receive this service. If a beneficiary needs transportation, the provider must physically provide, arrange for, or pay for appropriate transport to and from a central location that is convenient for the beneficiary and agreed upon by the team. The beneficiary's transportation needs and this central location shall be documented in the plan of care.

F. Service Limitations. Services shall not exceed 4,800 units of service in a plan of care year.

G. Restrictions

1. Beneficiaries receiving day habilitation services may also receive prevocational or individual supported employment services, but these services cannot be provided during the same time of the day and cannot total more than five hours combined. Group supported employment services cannot be provided on the same day but can be utilized on a different service day.

2. All virtual day habilitation services must be approved by the LGE or the OCDD state office.

H. Choice of service, which includes the staff ratio, must be documented on the plan of care.

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 32:1605 (September 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:2585 (December 2014), amended by Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:1576 (June 2022).

## §5705. Prevocational Services

A. Prevocational services are individualized, person centered services that assist the beneficiaries in establishing their path to obtain individualized community employment. This service is time limited and targeted for people who have an interest in becoming employed in individual jobs in the community but who may need additional skills, information, and experiences to determine their employment goal and to become successfully employed. Beneficiaries receiving prevocational services may choose to leave this service at any time or pursue employment opportunities at any time. Career planning must be a major component of prevocational services and should include activities focused on beneficiaries becoming employed to their highest ability.

B. Prevocational services may be delivered in a combination of these three service types:

1. onsite prevocational;
2. community career planning; and
3. virtual prevocational.

C. Prevocational services are to be provided in a variety of locations in the community and are not to be limited to a fixed site facility. Activities associated with prevocational services should focus on preparing the beneficiary for integrated individual employment in the community. These services are operated through a provider agency that is licensed by the appropriate state licensing agency. Services are furnished on a regularly scheduled basis for one or more days per week.

D. Beneficiaries receiving prevocational services must participate in activities designed to establish an employment goal. Prevocational services are designed to help create a path to integrated community-based employment for which a beneficiary is compensated at or above minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities.

E. Prevocational services may include assistance in personal care with activities of daily living. Choice of this service and staff ratio needed to support the beneficiary must be documented on the plan of care.

F. All transportation costs are included in the reimbursement for prevocational services. The beneficiary must be present to receive this service. If a beneficiary needs transportation, the provider must physically provide, arrange, or pay for appropriate transport to and from a central location that is convenient for the beneficiary and agreed upon by the team. The beneficiary's transportation needs and this central location shall be documented in the plan of care.

G. Service Limitations. Services shall not exceed 4,800 units of service in a plan of care year.

### H. Restrictions

1. Beneficiaries receiving prevocational services may also receive day habilitation or individualized supported employment services, but these services cannot be provided during the same time of the day and cannot total more than five hours combined in the same service day. Group supported employment services cannot be provided on the same day but can be utilized on a different service day.

2. All virtual prevocational services must be approved by the LGE or the OCDD state office.

I. Prevocational services are not available to individuals who are eligible to participate in programs funded under section 110 of the Rehabilitation Act of 1973 or sections 602 (16) or (17) of the Individuals with Disabilities Education Act [20 U.S.C. 1401 (26 and 29)], as amended, and those covered under the state plan, if applicable.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1605 (September 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:2585 (December 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:1577 (June 2022).

## §5707. Respite

A. Respite care is a service provided on a short-term basis to a beneficiary who is unable to care for himself/herself because of the absence or need for relief of those unpaid persons normally providing care for the beneficiary.

B. Respite may be provided in a licensed respite care facility determined appropriate by the beneficiary, responsible party, in the beneficiary's home or private place of residence.

C. - 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 and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1606 (September 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:2586 (December 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:1577 (June 2022).

## §5709. Habilitation

A. Habilitation offers services designed to assist the beneficiary in acquiring, retaining and improving the self-help, socialization and adaptive skills necessary to reside successfully in home and community settings.

B. Habilitation is provided in the home or community, includes necessary transportation and included on the plan of care as determined appropriate.

C. Habilitation services may include, but are not limited to:

1. ...

2. travel training activities in the community that promote community independence, to include but not limited to, place of individual employment, church or other community activity. This does not include group supported employment, day habilitation, or prevocational sites.

D. - E. ...

F. Beneficiaries receiving habilitation may use this service in conjunction with other supports waiver services, as long as other services are not provided during the same period in a day.

NOTE: Beneficiaries who are age 18 through 21 may receive these services as outlined on their plan of care through the Early Periodic Screening, Diagnosis and Treatment (EPSDT) Program, if applicable.



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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1606 (September 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:2586 (December 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:1577 (June 2022).

### **§5713. Personal Emergency Response System**

A. A personal emergency response system (PERS) is an electronic device connected to the beneficiary's phone which enables a beneficiary to secure help in the community. The system is programmed to signal a response center staffed by trained professionals once a "help" button is activated.

B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1607 (September 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:2587 (December 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:1578 (June 2022).

### **§5715. Support Coordination**

A. Support coordination is a service that will assist beneficiaries in gaining access to all of their necessary services, as well as medical, social, educational and other services, regardless of the funding source for the services. Support coordinators shall be responsible for on-going monitoring of the provision of services included in the beneficiary's approved plan of care.

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 34:662 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, Office for Citizens with Developmental Disabilities, LR 40:2587 (December 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:1578 (June 2022).

### **§5717. Housing Stabilization Transition Services**

A. Housing stabilization transition services enable beneficiaries who are transitioning into a permanent supportive housing unit, including those transitioning from institutions, to secure their own housing. The service is provided while the beneficiary is in an institution and preparing to exit the institution using the waiver. The service includes the following components:

1. conducting a housing assessment to identify the beneficiary's preferences related to housing (i.e., type, location, living alone or with someone else, accommodations needed, and other important preferences), and his/her needs for support to maintain housing, including:

a. - h. ...

2. assisting the beneficiary to view and secure housing as needed, which may include arranging and providing transportation;

3. assisting the beneficiary to secure supporting documents/records, completing/submitted applications, securing deposits, and locating furnishings;

4. developing an individualized housing support plan based upon the housing assessment that:

a. ...

b. establishes the beneficiary's approach to meeting the goal; and

A.4.c. - B. ...

C. Beneficiaries may not exceed 165 combined units of this service and the housing stabilization service.

1. ...

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 for Citizens with Developmental Disabilities, LR 40:81 (January 2014) amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:1578 (June 2022).

### **§5719. Housing Stabilization Services**

A. Housing stabilization services enable waiver beneficiaries to maintain their own housing as set forth in a beneficiary's approved plan of care. Services must be provided in the home or a community setting. This service includes the following components:

1. conducting a housing assessment to identify the beneficiary's preferences related to housing (i.e., type, location, living alone or with someone else, accommodations needed, and other important preferences), and his/her needs for support to maintain housing, including:

1.a. - 2. ...

3. developing an individualized housing stabilization service provider plan based upon the housing assessment that includes short- and long-term measurable goals for each issue, establishes the beneficiary's approach to meeting the goal, and identifies where other provider(s) or services may be required to meet the goal;

4. - 4.a....

5. providing ongoing communication with the landlord or property manager regarding the beneficiary's disability, accommodations needed, and components of emergency procedures involving the landlord or property manager;

6. updating the housing support plan annually or as needed due to changes in the beneficiary's situation or status; and

7. if at any time the beneficiary's housing is placed at risk (e.g., eviction, loss of roommate or income), providing supports to retain housing or locate and secure housing to continue community-based supports, including locating new housing, sources of income, etc.

B. ...

C. Beneficiaries may not exceed 165 combined units of this service and the housing stabilization transition service.

1. ...

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 for Citizens with Developmental Disabilities, LR 40:81 (January 2014), amended LR 40:2587 (December 2014), amended by the Department of Health, Bureau of Health Services Financing

and the Office for Citizens with Developmental Disabilities, LR 48:1578 (June 2022).

#### **§5721. Dental Services**

A. Dental services are available to adult beneficiaries over the age of 21. Covered dental services include:

1. adult diagnostic services;
2. preventative services;
3. restorative services;
4. endodontics;
5. periodontics;
6. prosthodontics;
7. oral and maxillofacial surgery;
8. orthodontics;
9. emergency care; and
10. adjunctive general services.

#### **B. Dental Service Exclusions**

1. Dental services are not available to beneficiaries who are 18 to 21 years of age as this group accesses dental services through the EPSDT benefit.

2. Non-covered services include but are not limited to the following:

- a. services that are not medically necessary to the beneficiary's dental health;
  - b. dental care for cosmetic reasons;
  - c. experimental procedures;
  - d. plaque control;
  - e. any periapical radiographic images, occlusal radiographic images, complete series, or panoramic radiographic images taken annually or routinely at the time of a dental examination for screening purposes;
  - f. routine post-operative services – these services are covered as part of the fee for initial treatment provided;
  - g. treatment of incipient or non-carious lesions (other than covered sealants and fluoride);
  - h. services that are eligible for reimbursement by insurance or covered under any other insurance or medical health plan;
  - i. dental expenses related to any dental services:
    - i. started after the beneficiary's coverage ended;
- or
- ii. received before the beneficiary became eligible for these services; and
  - j. administration of in-office pre-medication.

C. Provider Qualifications. Providers are enrolled through the LA Dental Benefit Program, which is responsible for maintaining provider lists.

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 48:1579 (June 2022).

### **Chapter 59. Provider Participation**

#### **§5901. General Provisions**

A. ...

B. If transportation is provided as part of a service, the provider must have insurance coverage on any vehicles used in transporting a beneficiary that meets current home and community-based services providers licensing standards.

C. In addition to meeting the requirements cited in this 5901 A. and B., providers must meet the following requirements for the provision of designated services.

1. ...

2. Supported Employment Services. The provider must possess a valid certificate of compliance as a community rehabilitation provider (CRP) from an approved program or the certification and training as required per OCDD.

3. - 6. ...

7. Dental Services. Providers of this service are managed through the LA Dental Benefit Program and must have a current, valid license from the State Board of Dentistry.

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), LR 34:662 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, Office for Citizens with Developmental Disabilities, LR 40:2587 (December 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:2532 (December 2017), LR 48:1579 (June 2022).

#### **§5903. Electronic Visit Verification**

A. ...

B. Reimbursement shall only be made to providers with use of the EVV system. The services that require use of the EVV system include the following: center-based respite, day habilitation, prevocational services and supported employment services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:1288 (July 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:1579 (June 2022).

### **Chapter 61. Reimbursement**

#### **§6101. Unit of Reimbursement**

A. ...

B. Supported Employment Services. Reimbursement shall be a prospective flat rate for each approved unit of service provided to the beneficiary. A standard unit of service in both individual and group job assessment, discovery and development is one-quarter hour (15 minutes). A standard unit of service in individual initial job support, job retention and follow-along is one-quarter hour (15 minutes). A standard unit of service in group initial job support, job retention and follow-along is one hour or more per day.

C. Day Habilitation. Reimbursement shall be a prospective flat rate for each approved unit of service provided to the beneficiary. A standard unit of service is one-quarter hour (15 minutes).

D. Prevocational Services. Reimbursement shall be a prospective flat rate for each approved unit of service provided to the beneficiary. A standard unit of service is one-quarter hour (15 minutes).

E. Respite, housing stabilization transition services and housing stabilization services shall be reimbursed at a prospective flat rate for each approved unit of service provided to the beneficiary. One-quarter hour (15 minutes) is the standard unit of service.

F. Habilitation. Reimbursement shall be a prospective flat rate for each approved unit of service provided to the beneficiary. One-quarter hour (15 minutes) is the standard unit of service.

G. - I. ...

J. Dental Services. Dental services are reimbursed according to the LA Dental Benefit Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, 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), LR 48:1579 (June 2022).

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

2206#048

## RULE

### Department of Health Bureau of Health Services Financing

Hospital Licensing Standards  
(LAC 48:I.9336 and 9391)

The Department of Health, Bureau of Health Services Financing has adopted LAC 48.I.9336 and amended §9391 as authorized by R.S. 36:254, R.S. 29:760 and R.S. 40:1061.9. 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 3. Licensing and Certification

#### Chapter 93. Hospitals

#### Subchapter B. Hospital Organization and Services

#### §9336. Visitation by Members of the Clergy during a Declared Public Health Emergency

A. For purposes of this Section, a public health emergency (PHE) is a declaration made pursuant to the Louisiana Health Emergency Powers Act, R.S. 29:760 et seq.

B. A licensed hospital shall comply with any federal law, regulation, requirement, order, or guideline that is more

restrictive than this Section regarding visitation in hospitals during a declared PHE issued by any federal government agency.

C. For purposes of this Section, clergy shall be defined as follows:

1. a minister, priest, preacher, rabbi, imam, Christian Science practitioner; or

2. other similar functionary of a religious organization; or

3. an individual reasonably believed so to be by the person consulting him.

D. The provisions of this Section regarding visitation by members of the clergy shall apply to all hospitals licensed by the Department of Health, except for a licensed hospital that is designated as a forensic facility.

E. Subject to compliance with the requirements of this Section, each hospital shall allow members of the clergy to visit patients of the hospital during a declared PHE when a patient, or his legal or designated representative, requests a visit with a member of the clergy, subject to the following conditions and requirements:

1. each hospital shall have a written policy and procedure addressing visitation by members of the clergy. A copy of the written policy and procedure shall be available, without cost, to the patient and his legal or designated representative, upon request. The hospital shall provide a link to an electronic copy of the policy and procedure to a member of the clergy, upon request;

2. a hospital's policy and procedure regarding clergy visitation may adopt reasonable time, place, and manner restrictions, provided that such restrictions are implemented by the hospital, in consultation with appropriate medical personnel, for the purpose of mitigating the possibility of transmission of any infectious agent or infectious disease or for the purpose of addressing the medical condition or clinical considerations of an individual patient;

3. a hospital's policy and procedure on clergy visitation shall, at a minimum, require the following:

a. that the hospital give special consideration and priority for clergy visitation to patients receiving end-of-life care;

b. that a clergy member will be screened for infectious agents or infectious diseases, utilizing at least the current screening or testing methods and protocols recommended by the Centers for Disease Control and Prevention, as applicable;

c. that a clergy member not be allowed to visit a hospital patient if such clergy member has obvious signs or symptoms of an infectious agent or infectious disease, or if such clergy member tests positive for an infectious agent or infectious disease;

d. that a clergy member not be allowed to visit a hospital patient if the clergy member refuses to comply with the provisions of the hospital's policy and procedure or refuses to comply with the hospital's reasonable time, place, and manner restrictions;

e. that a clergy member be required to wear personal protective equipment as determined appropriate by

the hospital, considering the patient's medical condition or clinical considerations. At the hospital's discretion, personal protective equipment may be made available by the hospital to clergy members;

f. that a hospital's policy and procedure include provisions for compliance with a state health officer (SHO) order limiting visitation during a declared PHE; and

g. that a hospital's policy and procedure include provisions for compliance with any federal law, regulations, requirements, orders, or guidelines regarding visitation in hospitals during a declared public health emergency issued by any federal government agency that are more restrictive than this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 29:760.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 48:1580 (June 2022).

### **§9391. Registers and Reports**

A. - A.8. ...

B. All hospitals licensed by the Department of Health that provide emergency treatment, due to complications following an abortion as defined in R.S. 40:1061.9 shall:

1. ensure proper electronic coding and tracking of post-abortion complications;

2. submit to the department, on a form provided by the department, a report on patients who present for post-abortion complication emergency treatment. The report shall:

- a. be confidential;
- b. be exempt from disclosure pursuant to the Public Records Law, R.S. 44:1 et seq.;
- c. not contain the name or address of the patient;
- d. include the following:
  - i. the date of the abortion;
  - ii. the name and address of the facility where the abortion was performed or induced;
  - iii. the nature of the abortion complication diagnosed or treated;
  - iv. the name and address of the facility where the post-abortion care was performed; and

3. ensure that a staff member of the hospital attempts to obtain the information required in this section from any patient prior to the patient's discharge from the hospital.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:1061.9.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 21:177 (February 1995), amended LR 29:2416 (November 2003), amended by the Department of Health, Bureau of Health Services Financing, LR 48:1581 (June 2022).

Dr. Courtney N. Phillips  
Secretary

2206#049

## **RULE**

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

Intermediate Care Facilities for  
Persons with Intellectual Disabilities  
Reimbursement Methodology—Direct Care Floor  
(LAC 50:VII.32901)

The Department of Health, Bureau of Health Services Financing has amended the LAC 50:VII.32901 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 VII. Long Term Care**

#### **Subpart 3. Intermediate Care Facilities for Persons with Intellectual Disabilities**

#### **Chapter 329. Reimbursement Methodology**

#### **Subchapter A. Non-State Facilities**

#### **§32901. Cost Reports**

A. - B.2. ...

C. Direct Care Floor

1. ...

2. For providers receiving pervasive plus supplements in accordance with §32903.H or other client specific adjustments to the rate in accordance with §32903.I, the facility wide direct care floor is established at 94 percent of the per diem direct care payment and at 100 percent of any rate supplements or add-on payments received by the provider, including the pervasive plus supplement, the complex care add-on payment and other client specific adjustments to the rate. The direct care floor will be applied to the cost reporting year in which the facility receives a pervasive plus supplement and/or a client specific rate adjustment. In no case, however, shall a facility receiving a pervasive plus supplement and/or client specific rate adjustment have total facility payments reduced to less than a safe harbor percentage of 104 percent of the total facility cost as a result of imposition of the direct care floor, except as noted in §32901.C.4.a.

3. For providers receiving complex care add-on payment in accordance with §32915, but not receiving pervasive plus supplements in accordance with §32903.H or other client specific adjustments to the rate in accordance with §32903.I, the facility wide direct care floor is established at 85 percent of the per diem direct care payment and at 100 percent of the complex care add-on payment. The direct care floor will be applied to the cost reporting year in which the facility receives a complex care add-on payment.

In no case shall a facility receiving a complex care add-on payment have total facility payments reduced to less than a safe harbor percentage of 104 percent of the total facility cost as a result of imposition of the direct care floor, except as noted in §32901.C.4.a.

4. For facilities for which the direct care floor applies, if the direct care cost the facility incurred on a per diem basis is less than the appropriate facility direct care floor, the facility shall remit to the bureau the difference between these two amounts times the number of facility Medicaid days paid during the cost reporting period. This remittance shall be payable to the bureau upon submission of the cost report.

a. For dates of service on or after July 1, 2022, if a provider receiving complex care or pervasive plus add-on payments in accordance with §32915 or §32903.H, respectively, has facility payments reduced as a result of imposition of the direct care floor, the department may, at its discretion, levy a non-refundable administrative penalty separate from any other reduction in facility payments. The administrative penalty is not subject to any facility specific safe harbor percentage specified in §32901.C, and is calculated solely on the final reduced payment amount for the cost report period in question. Under LAC 50.I.4147 of the Surveillance and Utilization Review Subsystem (SURS) Rule, the department may impose sanctions for noncompliance with Medicaid laws, regulations, rules, and policies. Facilities who have payments reduced as a result of imposition of the direct care floor that have consecutive subsequent years of reduced payments shall have the following safe harbor and administrative penalty impacts:

Consecutive Cost Report Period with Reduced Payments	Administrative Penalty Levied on Reduced Payments	Safe Harbor Percentages
1st Year	0 percent	104 percent
2nd Year	0 percent	102 percent
3rd Year	5 percent	100 percent
4th Year and Onwards	10 percent	100 percent

b. At its discretion, LDH may terminate provider participation in the complex care or pervasive plus add-on payment programs as a result of imposition of the direct care floor.

5. Upon completion of desk reviews or audits, facilities will be notified by the bureau of any changes in amounts due based on audit or desk review adjustments.

a. Direct care floor recoupment and/or administrative penalty assessed as a result of a facility not meeting the required direct care per diem floor is considered effective 30 days from the issuance of the original notice of determination. Should an informal reconsideration be requested, the recoupment and/or penalty will be considered effective 30 days from the issuance of the results of an informal hearing. The filing of a timely and adequate notice of an administrative appeal does not suspend or delay the imposition of a recoupment(s) and/or penalty.

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 31:1592 (July 2005), repromulgated LR 31:2252 (September 2005), amended LR 33:461 (March 2007),

amended by the Department of Health, Bureau of Health Services Financing, LR 44:1446 (August 2018), LR 46:28 (January 2020), LR 47:1124 (August 2021), LR 48:1581 (June 2022).

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

2206#050

## RULE

### Department of Health Bureau of Health Services Financing

#### Pharmacy Benefits Management Program Over-the-Counter At-Home COVID-19 Tests (LAC 50:XXIX.107)

The Department of Health, Bureau of Health Services Financing has amended LAC 50:XXIX.107 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq. This Rule is hereby adopted on the day of promulgation.

#### Title 50

#### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XXIX. Pharmacy

#### Chapter 1. General Provisions

#### §107. Prior Authorization

A. - C.3. ...

D. Drugs Excluded from Coverage. As provided by §1927(d)(2) of the Social Security Act, the following drugs are excluded from program coverage:

1. - 4.o. ...

5. select nonprescription drugs except OTC antihistamines and antihistamine/decongestant combinations and polyethylene glycol 3350 (Miralax®) and OTC at-home COVID-19 FDA-authorized tests;

E. - E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and the 1995-96 General Appropriations Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1053 (June 2006), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1180 (June 2017), LR 43:1553 (August 2017), amended LR 45:665 (May 2019), LR 46:33 (January 2020), LR 48:1582 (June 2022).

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

2206#051

## RULE

### Department of Health Office of Public Health

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

Editor's Note: Section 501 is being repromulgated to correct manifest typographical errors. The original Rule may be viewed in its entirety on pages 1290-1291 of the May 20, 2022 *Louisiana Register*.

Under the authority of R.S. 40:4 and 40:5, and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the state health officer, acting through the Louisiana Department of Health, Office of Public Health (LDH/OPH), has recodified parts of Chapter 5 of Title 49, Public Health—Food, Drugs and Cosmetics, and amended those rules to comply with the requirements of Act 336 of the 2021 Regular Legislature.

This Rule amends §501 and §§517-525 of Chapter 5 of Title 49, Public Health—Food, Drugs and Cosmetics, §§527-529 are recodified with new requirement language and the original §§529-531 are relocated to §§531-533. Changes to §501 amend existing definitions and add new definitions. Changes to §§517-533 reflect changes to the name of hemp-derived products regulated by the department as well as changes to the statutory requirements. This Rule is hereby adopted on the day of promulgation.

#### 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. Unless otherwise specifically provided herein, the following words and terms used in this Chapter of Title 49, and all other Chapters of Title 49 which are adopted or may be adopted, are defined for the purposes thereof as follows.

*Cannabidiol*—Repealed.

*CBD*—Repealed.

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*Certificate of Consumable Hemp Product Registration (FD-8a)*—certificate issued by the department attesting that consumable hemp products produced or distributed by the holder's company have been registered as required.

\*\*\*

*Certificate of IHDCP Registration (FD-8a)*—Repealed.

\*\*\*

*Consumable Hemp Product*—any product derived from industrial hemp that contains any naturally-occurring cannabinoid, including cannabidiol, and is intended for consumption or topical use. This special class of products includes, but is not limited to, the following: food, animal foods or feed, hemp flower, and pet products. No consumable hemp product may contain a total THC concentration in excess of one percent on a dry-weight basis.

*Consumable Hemp Products Database*—repository of information on products and firms that are registered with

the Food and Drug/Milk and Dairy Unit of LDH/OPH that fall into the category of consumable hemp products.

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*Industrial Hemp*—the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a total delta-9 THC concentration of not more than 0.3 percent on a dry weight basis.

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*THC*—a combination of tetrahydrocannabinol and tetrahydrocannabinolic acid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1482(J), 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 by the Department of Health, Office of Public Health, LR 47:479 (April 2021), amended by the Department of Health, Office of Public Health, LR 48:1290 (May 2022), repromulgated LR 48:1583 (June 2022).

Dr. Courtney N. Phillips  
Secretary

2206#061

## RULE

### Department of Insurance Office of the Commissioner

#### Regulation 121—Term and Universal Life Insurance Reserve Financing (LAC 37:XIII.Chapter 183)

The Department of Insurance, pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., has amended Regulation 121—Term and Universal Life Insurance Reserve Financing. The purpose of Regulation 121 is to implement the National Association of Insurance Commissioners (NAIC) *Term and Universal Life Insurance Reserve Financing Model Regulation (#787)* which sets forth rules and procedural requirements to establish uniform, national standards governing reserve financing arrangements pertaining to life insurance policies containing guaranteed nonlevel gross premiums or guaranteed nonlevel benefits and universal life insurance policies with secondary guarantees and to ensure that, with respect to each such financing arrangement, funds consisting of primary security and other security, are held by or on behalf of ceding insurers in the forms and amounts required. This Rule is hereby adopted upon promulgation.

#### Title 37

### INSURANCE

#### Part XIII. Regulations

### Chapter 183. Regulation Number 121—Term and Universal Life Insurance Reserve Financing

#### §18301. Purpose

A. The purpose of this regulation is to set forth rules and procedural requirements to establish uniform, national standards governing reserve financing arrangements

pertaining to life insurance policies containing guaranteed nonlevel gross premiums, guaranteed nonlevel benefits and universal life insurance policies with secondary guarantees and to ensure that, with respect to each such financing arrangement, funds consisting of primary security and other security, as defined in §18305, are held by or on behalf of ceding insurers in the forms and amounts required herein. In general, reinsurance ceded for reserve financing purposes has one or more of the following characteristics: some or all of the assets used to secure the reinsurance treaty or to capitalize the reinsurer

1. are issued by the ceding insurer or its affiliates; or
2. are not unconditionally available to satisfy the general account obligations of the ceding insurer; or
3. create a reimbursement, indemnification, or other similar obligation on the part of the ceding insurer or any of its affiliates (other than a payment obligation under a derivative contract acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty).

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:651, 22:652, 22:661, 22:753, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 48:1583 (June 2022).

### §18303. Applicability

A. This regulation shall apply to reinsurance treaties that cede liabilities pertaining to covered policies, as that term is defined in §18305, issued by any life insurance company domiciled in this state. This regulation and Regulation 56 shall both apply to such reinsurance treaties, provided that in the event of a direct conflict between the provisions of this regulation and Regulation 56, the provisions of this regulation shall apply, but only to the extent of the conflict.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:651, 22:661, 22:753, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 48:1584 (June 2022).

### §18305. Definitions

A. Strictly for the purposes of Regulation 121, the following terms are defined as follows.

*Actuarial Method*—the methodology used to determine the required level of primary security, as described in §18309.A.

*Commissioner*—the Louisiana Commissioner of Insurance.

*Covered Policies*—subject to the exemptions described in §18307, covered policies, other than grandfathered policies, of the following policy types:

- a. life insurance policies with guaranteed nonlevel gross premiums and/or guaranteed nonlevel benefits, except for flexible premium universal life insurance policies; or
- b. flexible premium universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period.

*Grandfathered Policies*—policies of the types described in the definition of covered policies that were:

- a. issued prior to January 1, 2015; and
- b. ceded, as of December 31, 2014, as part of a reinsurance treaty that would not have met one of the exemptions set forth in §18307 had that section then been in effect.

*Noncovered Policies*—any policy that does not meet the definition of covered policies, including grandfathered policies.

*Other Security*—any security acceptable to the commissioner other than security meeting the definition of primary security.

*Primary Security*—includes the following forms of security:

- a. cash meeting the requirements of R.S. 22:652
- b. securities listed by the Securities Valuation Office meeting the requirements of R.S. 22:652, but excluding any synthetic letter of credit, contingent note, credit-linked note, or other similar security that operates in a manner similar to a letter of credit, and excluding any securities issued by the ceding insurer or any of its affiliates; and
- c. for security held in connection with funds-withheld and modified coinsurance reinsurance treaties:
  - i. commercial loans in good standing of CM3 quality and higher;
  - ii. policy loans; and
  - iii. derivatives acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty.

*Required Level of Primary Security*—the dollar amount determined by applying the actuarial method to the risks ceded with respect to covered policies, but not more than the total reserve ceded.

*Valuation Manual*—the valuation manual adopted by the NAIC as described in R.S. 22:753(C)(2)(a), with all amendments adopted by the NAIC that are effective for the financial statement date on which credit for reinsurance is claimed.

*VM-20*—"Requirements for Principle-Based Reserves for Life Products," including all relevant definitions, from the valuation manual.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:651, 22:652, 22:661, 22:753, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 48:1584 (June 2022).

### §18307. Exemptions

A. This regulation does not apply to the situations described in Paragraphs 1-7.

1. Reinsurance of:
  - a. policies that satisfy the criteria for exemption set forth in §10911.F and §10911.G of Regulation 85 and that are issued before the later of:
    - i. September 1, 2022; and
    - ii. the date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than January 1, 2020;
  - b. portions of policies that satisfy the criteria for exemption set forth in §10911.E of Regulation 85 and that are issued before the later of:
    - i. September 1, 2022; and
    - ii. the date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than January 1, 2020;

c. any universal life policy that meets all of the following requirements:

i. secondary guarantee period, if any, is five years or less;

ii. specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the Commissioners Standard Ordinary (CSO) valuation tables and valuation interest rate applicable to the issue year of the policy; and

iii. the initial surrender charge is not less than 100 percent of the first year annualized specified premium for the secondary guarantee period;

d. credit life insurance;

e. any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts; or

f. any group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one year.

2. Reinsurance ceded to an assuming insurer that meets the applicable requirements of R.S.22:651(D); or

3. Reinsurance ceded to an assuming insurer that meets the applicable requirements of R.S.22:651(B) or (C), and that, in addition:

a. prepares statutory financial statements in compliance with the NAIC Accounting Practices and Procedures Manual, without any departures from NAIC statutory accounting practices and procedures pertaining to the admissibility or valuation of assets or liabilities that increase the assuming insurer's reported surplus and are material enough that they need to be disclosed in the financial statement of the assuming insurer pursuant to Statement of Statutory Accounting Principles No. 1 (SSAP 1); and

b. is not in a company action level event, regulatory action level event, authorized control level event, or mandatory control level event as those terms are defined in R.S. 22:613 through 22:616 when its risk-based capital (RBC) is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the NAIC from time to time, without deviation; or

4. reinsurance ceded to an assuming insurer that meets the applicable requirements of R.S.22:651(B) or (C), and that, in addition:

a. is not an affiliate, as that term is defined in R.S. 22:691.2(1), of:

i. the insurer ceding the business to the assuming insurer; or

ii. any insurer that directly or indirectly ceded the business to that ceding insurer;

b. prepares statutory financial statements in compliance with the NAIC Accounting Practices and Procedures Manual;

c. is both:

i. licensed or accredited in at least 10 states (including its state of domicile), and

ii. not licensed in any state as a captive, special purpose vehicle, special purpose financial captive, special

purpose life reinsurance company, limited purpose subsidiary, or any other similar licensing regime; and

d. is not, or would not be, below 500 percent of the *authorized control level RBC* as that term is defined in R.S. 22:611(8)(a) when its RBC is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the NAIC from time to time, without deviation, and without recognition of any departures from NAIC statutory accounting practices and procedures pertaining to the admission or valuation of assets or liabilities that increase the assuming insurer's reported surplus; or

5. reinsurance ceded to an assuming insurer that meets the requirements of R.S. 22:661(B)(4); or

6. reinsurance not otherwise exempt under Subsections A through E if the commissioner, after consulting with the NAIC Financial Analysis Working Group (FAWG) or other group of regulators designated by the NAIC, as applicable, determines under all the facts and circumstances that all of the following apply:

a. the risks are clearly outside of the intent and purpose of this regulation, as described in §18301 above;

b. the risks are included within the scope of this regulation only as a technicality; and

c. the application of this regulation to those risks is not necessary to provide appropriate protection to policyholders. The commissioner shall publicly disclose any decision made pursuant to §18307.F to exempt a reinsurance treaty from this regulation, as well as the general basis therefor (including a summary description of the treaty); or

7. meets the conditions set forth in R.S. 22:651(F) in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:651, 22:652, 22:661, 22:753, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 48:1584 (June 2022).

### §18309. The Actuarial Method

A. The actuarial method to establish the required level of primary security for each reinsurance treaty subject to this regulation shall be VM-20, applied on a treaty-by-treaty basis, including all relevant definitions, from the valuation manual as then in effect, applied as follows.

1. For covered policies described in covered policies (a) in §18305, the actuarial method is the greater of the deterministic reserve or the net premium reserve (NPR) regardless of whether the criteria for exemption testing can be met. However, if the covered policies do not meet the requirements of the stochastic reserve exclusion test in the valuation manual, then the actuarial method is the greatest of the deterministic reserve, the stochastic reserve, or the NPR. In addition, if such covered policies are reinsured in a reinsurance treaty that also contains covered policies described in covered policies (b) in §18305, the ceding insurer may elect to instead use Paragraph 2 below as the actuarial method for the entire reinsurance agreement. Whether Paragraph 1 or 2 are used, the actuarial method must comply with any requirements or restrictions that the valuation manual imposes when aggregating these policy types for purposes of principle-based reserve calculations.

2. For covered policies described in covered policies (b) in §18305, the actuarial method is the greatest of the



deterministic reserve, the stochastic reserve, or the NPR regardless of whether the criteria for exemption testing can be met.

3. Except as provided in Paragraph 4 below, the actuarial method is to be applied on a gross basis to all risks with respect to the covered policies as originally issued or assumed by the ceding insurer.

4. If the reinsurance treaty cedes less than 100 percent of the risk with respect to the covered policies then the required level of primary security may be reduced as follows.

a. If a reinsurance treaty cedes only a quota share of some or all of the risks pertaining to the covered policies, the required level of primary security, as well as any adjustment under Subparagraph (c) below, may be reduced to a pro rata portion in accordance with the percentage of the risk ceded;

b. If the reinsurance treaty in a nonexempt arrangement cedes only the risks pertaining to a secondary guarantee, the required level of primary security may be reduced by an amount determined by applying the actuarial method on a gross basis to all risks, other than risks related to the secondary guarantee, pertaining to the covered policies, except that for covered policies for which the ceding insurer did not elect to apply the provisions of VM-20 to establish statutory reserves, the required level of primary security may be reduced by the statutory reserve retained by the ceding insurer on those covered policies, where the retained reserve of those covered policies should be reflective of any reduction pursuant to the cession of mortality risk on a yearly renewable term basis in an exempt arrangement;

c. If a portion of the covered policy risk is ceded to another reinsurer on a yearly renewable term basis in an exempt arrangement, the required level of primary security may be reduced by the amount resulting by applying the actuarial method including the reinsurance section of VM-20 to the portion of the covered policy risks ceded in the exempt arrangement, except that for covered policies issued prior to January 1, 2017, this adjustment is not to exceed  $[c_x/2 * \text{number of reinsurance premiums per year}]$  where  $c_x$  is calculated using the same mortality table used in calculating the net premium reserve; and

d. For any other treaty ceding a portion of risk to a different reinsurer, including but not limited to stop loss, excess of loss, and other nonproportional reinsurance treaties, there will be no reduction in the required level of primary security.

NOTE: It is possible for any combination of Subparagraphs a, b, c, and d above to apply. Such adjustments to the required level of primary security will be done in the sequence that accurately reflects the portion of the risk ceded via the treaty. The ceding insurer should document the rationale and steps taken to accomplish the adjustments to the required level of primary security due to the cession of less than 100 percent of the risk.

The adjustments for other reinsurance will be made only with respect to reinsurance treaties entered into directly by the ceding insurer. The ceding insurer will make no adjustment as a result of a retrocession treaty entered into by the assuming insurers.

5. In no event will the required level of primary security resulting from application of the actuarial method exceed the amount of statutory reserves ceded.

6. If the ceding insurer cedes risks with respect to covered policies, including any riders, in more than one reinsurance treaty subject to this regulation, in no event will the aggregate required level of primary security for those reinsurance treaties be less than the required level of primary security calculated using the actuarial method as if all risks ceded in those treaties were ceded in a single treaty subject to this regulation.

7. If a reinsurance treaty subject to this regulation cedes risk on both covered and noncovered policies, credit for the ceded reserves shall be determined as follows:

a. The actuarial method shall be used to determine the required level of primary security for the covered policies, and §18311 shall be used to determine the reinsurance credit for the covered policy reserves; and

b. Credit for the noncovered policy reserves shall be granted only to the extent that security, in addition to the security held to satisfy the requirements of Subparagraph a, is held by or on behalf of the ceding insurer in accordance with R.S. 22:651 and R.S. 22:652. Any primary security used to meet the requirements of this Subparagraph may not be used to satisfy the required level of primary security for the covered policies.

B. For the purposes of both calculating the required level of primary security pursuant to the actuarial method and determining the amount of primary security and other security, as applicable, held by or on behalf of the ceding insurer, the following shall apply:

1. for assets, including any such assets held in trust, that would be admitted under the NAIC Accounting Practices and Procedures Manual if they were held by the ceding insurer, the valuations are to be determined according to statutory accounting procedures as if such assets were held in the ceding insurer's general account and without taking into consideration the effect of any prescribed or permitted practices; and

2. for all other assets, the valuations are to be those that were assigned to the assets for the purpose of determining the amount of reserve credit taken. In addition, the asset spread tables and asset default cost tables required by VM-20 shall be included in the actuarial method if adopted by the NAIC Life Actuarial (A) Task Force no later than the December 31st on or immediately preceding the valuation date for which the required level of primary security is being calculated. The tables of asset spreads and asset default costs shall be incorporated into the actuarial method in the manner specified in VM-20.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:651, 22:652, 22:661, 22:753, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 48:1585 (June 2022).

#### **§18311. Requirements Applicable to Covered Policies to Obtain Credit for Reinsurance; Opportunity for Remediation**

A. Subject to the exemptions described in §18307 and the provisions of Subsection B, credit for reinsurance shall

be allowed with respect to ceded liabilities pertaining to covered policies pursuant to R.S. 22:651 and R.S. 22:652 if, and only if, in addition to all other requirements imposed by law or regulation, the following requirements are met on a treaty-by-treaty basis:

1. the ceding insurer's statutory policy reserves with respect to the covered policies are established in full and in accordance with the applicable requirements of R.S. 22:753 and related regulations and actuarial guidelines, and credit claimed for any reinsurance treaty subject to this regulation does not exceed the proportionate share of those reserves ceded under the contract; and

2. the ceding insurer determines the required level of primary security with respect to each reinsurance treaty subject to this regulation and provides support for its calculation as determined to be acceptable to the commissioner; and

3. funds consisting of primary security, in an amount at least equal to the required level of primary security, are held by or on behalf of the ceding insurer, as security under the reinsurance treaty within the meaning of R.S. 22:652, on a funds withheld, trust, or modified coinsurance basis;

4. funds consisting of other security, in an amount at least equal to any portion of the statutory reserves as to which primary security is not held pursuant to Paragraph 3 above, are held by or on behalf of the ceding insurer as security under the reinsurance treaty within the meaning of R.S. 22:652; and

5. any trust used to satisfy the requirements of §18311 shall comply with all of the conditions and qualifications of §3517 of Regulation 56, except that:

a. funds consisting of primary security or other security held in trust, shall for the purposes identified in §18309.B, be valued according to the valuation rules set forth in §18309.B, as applicable; and

b. there are no affiliate investment limitations with respect to any security held in such trust if such security is not needed to satisfy the requirements of Subsection A.3; and

c. the reinsurance treaty must prohibit withdrawals or substitutions of trust assets that would leave the fair market value of the primary security within the trust (when aggregated with primary security outside the trust that is held by or on behalf of the ceding insurer in the manner required by Subsection A.3) below 102 percent of the level required by Subsection A.3 at the time of the withdrawal or substitution; and

d. the determination of reserve credit under §3517.E of Regulation 56 shall be determined according to the valuation rules set forth in §18309.B, as applicable; and

6. the reinsurance treaty has been approved by the commissioner.

B. Requirements at Inception Date and on an On-Going Basis; Remediation

1. The requirements of Subsection A must be satisfied as of the date that risks under covered policies are ceded if such date is on or after September 1, 2022, and on an

ongoing basis thereafter. Under no circumstances shall a ceding insurer take or consent to any action or series of actions that would result in a deficiency under Subsection A.3 or A.4 with respect to any reinsurance treaty under which covered policies have been ceded, and in the event that a ceding insurer becomes aware at any time that such a deficiency exists, it shall use its best efforts to arrange for the deficiency to be eliminated as expeditiously as possible.

2. Prior to the due date of each quarterly or annual statement, each life insurance company that has ceded reinsurance within the scope of §18303 shall perform an analysis, on a treaty-by-treaty basis, to determine, as to each reinsurance treaty under which covered policies have been ceded, whether as of the end of the immediately preceding calendar quarter (the valuation date) the requirements of Subsection A.3 or A.4 were satisfied. The ceding insurer shall establish a liability equal to the excess of the credit for reinsurance taken over the amount of primary security actually held pursuant to Subsection A.3, unless either:

a. the requirements of Subsection A.3 or A.4 were fully satisfied as of the valuation date as to such reinsurance treaty; or

b. any deficiency has been eliminated before the due date of the quarterly or annual statement to which the valuation date relates through the addition of primary security and/or other security, as the case may be, in such amount and in such form as would have caused the requirements of Subsection A.3 or A.4 to be fully satisfied as of the valuation date.

3. Nothing in Subsection B.2 shall be construed to allow a ceding company to maintain any deficiency under subdivision Subsection A.3 or A.4 for any period of time longer than is reasonably necessary to eliminate it.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:651, 22:652, 22:661, 22:753, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 48:1586 (June 2022).

### **§18313. Severability**

A. If any provision of this regulation is held invalid, the remainder shall not be affected.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:651, 22:652, 22:661, 22:753, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 48:1587 (June 2022).

### **§18315. Prohibition against Avoidance**

A. No insurer that has covered policies to which this regulation applies, as set forth in §18303, shall take any action or series of actions, or enter into any transaction, arrangement, or series of transactions or arrangements if the purpose of such action, transaction, arrangement, or series thereof is to avoid the requirements of this regulation, or to circumvent its purpose and intent, as set forth in §18301.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:651, 22:652, 22:661, 22:753, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 48:1587 (June 2022).

**§18317. Effective Date**

A. This regulation shall become effective September 1, 2022 and shall pertain to all covered policies in force as of and after that date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:651, 22:652, 22:661, 22:753, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 48:1588 (June 2022).

James J. Donelon  
Commissioner

2206#016

**RULE**

**Department of Natural Resources  
Office of Conservation**

**Guidance Manual for Environmental Boreholes  
and Monitoring Systems (LAC 56:I.303 and 503)**

The Department of Natural Resources, Office of Conservation has amended LAC 56 I.303.B and LAC 56:I.503.B 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. These amendments include reference to the use of the *Guidance Manual for Environmental Boreholes and Monitoring Systems* in the water well registration and plugging and abandonment regulations of Title 56. This Rule is hereby adopted on the day of promulgation.

**Title 56**

**PUBLIC WORKS**

**Part I. Water Wells**

**Chapter 3. Water Well Construction**

**§303. Purpose**

A. ...

B. All work related to environmental boreholes and monitoring systems shall conform to the requirements of this chapter. A resource available to drillers as reference material of common industry practices for installation of environmental boreholes and monitoring systems is the *Guidance Manual for Environmental Boreholes and Monitoring Systems*, dated November 2021, available online at: <http://www.dnr.louisiana.gov/guidance-manual>.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:309.8.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:952 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 48:1588 (June 2022).

**Chapter 5. Plugging and Sealing of Abandoned  
Water Well Holes**

**§503. Purpose**

A. ...

B. All work related to environmental boreholes and monitoring systems shall conform to the requirements of this chapter. A resource available to drillers as reference material of common industry practices for installation of environmental boreholes and monitoring systems is the

*Guidance Manual for Environmental Boreholes and Monitoring Systems*, dated November 2021, available online at: <http://www.dnr.louisiana.gov/guidance-manual>.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2091-R.S. 38:3097.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:960 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 48:1588 (June 2022).

Richard P. Ieyoub  
Commissioner

2206#022

**RULE**

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

**Menhaden Season  
(LAC 76:VII.307)**

The Wildlife and Fisheries Commission does hereby amend a Rule (LAC 76:VII.307) by modifying the allowable distance from the inside-outside line (described in R.S. 56:495) that the commercial menhaden fishery is allowed to operate statewide by restricting the fishery to operate within waters beyond 1/4 statute mile from the inside-outside line as described in this Rule. Further restrictions are proposed with no operations allowed within waters 1 statute mile seaward of the inside-outside line from the eastern shore of Belle Pass to the eastern shore of Caminada Pass (off of Elmer’s Island), within waters 3 statute miles seaward of the inside-outside line from the eastern shore of Caminada Pass to the eastern shore of Barataria Pass (off of Grand Isle), and within waters 1 statute mile seaward of the inside-outside line from the eastern shore of Barataria Pass to the eastern shore of Pass Abel (off of West Grand Terre Island). This Rule is being amended as a result of user conflicts between private recreational and charter boat anglers and the commercial menhaden fishery in the proposed areas where commercial menhaden fishing is being restricted. Authority for amendment of this rule is included in the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 56:6(25)(a), R.S. 56:313, R.S. 56:315, and R.S. 56:326.3 to the Wildlife and Fisheries Commission. This Rule is hereby adopted on the date of promulgation.

**Title 76**

**WILDLIFE AND FISHERIES**

**Part VII. Fish and Other Aquatic Life**

**Chapter 3. Saltwater Sport and Commercial Fishery**

**§307. Menhaden Season**

A. - B. ...

C. The menhaden season shall apply to all waters 1/4 statute mile seaward of the inside-outside line described in R.S. 56:495, except as noted in Subsection D, including waters in the Federal Exclusive Economic Zone (EEZ), and in Chandeleur and Breton Sounds as described in Subsection E below. All other inside waters and passes are permanently closed to menhaden fishing.

#### D. Coastal Buffer Restrictions

1. Restrictions off Elmer's Island, Louisiana. The menhaden season shall apply to waters beginning 1 statute mile seaward of the inside-outside line from the eastern shore of Belle Pass, Louisiana to the eastern shore of Caminada Pass, Louisiana.

2. Restrictions off Grand Isle, Louisiana. The menhaden season shall apply to waters beginning 3 statute miles seaward of the inside-outside line from the eastern shore of Caminada Pass, Louisiana to the eastern shore of Barataria Pass, Louisiana.

3. Restrictions off West Grand Terre Island, Louisiana. The menhaden season shall apply to waters beginning 1 statute mile seaward of the inside-outside line from the eastern shore of Barataria Pass, Louisiana to the eastern shore of Pass Abel, Louisiana.

E. For purposes of the menhaden season, Breton and Chandeleur Sounds are described as that portion of the statutorily described inside waters as shown on a map by Raymond C. Impastato, P.L.S., dated July 20, 1992, and more particularly described as follows.

1. Beginning at the most northerly point on the south side of Taylor Pass, Latitude 29 degrees 23 minutes 00 seconds N, Longitude 89 degrees 20 minutes 06 seconds W which is on the inside-outside shrimp line as described in R.S. 56:495; thence westerly to Deep Water Point, Latitude 29 degrees 23 minutes 36 seconds N, Longitude 89 degrees 22 minutes 54 seconds W; thence westerly to Coquille Point, Latitude 29 degrees 23 minutes 36 seconds N, Longitude 89 degrees 24 minutes 12 seconds W; thence westerly to Raccoon Point, Latitude 29 degrees 24 minutes 06 seconds N, Longitude 89 degrees 28 minutes 10 seconds W; thence northerly to the most northerly point of Sable Island, Latitude 29 degrees 24 minutes 54 seconds N, Longitude 89 degrees 28 minutes 27 seconds W; thence northwesterly to California Point, Latitude 29 degrees 27 minutes 33 seconds N, Longitude 89 degrees 31 minutes 18 seconds W; thence northerly to Telegraph Point, Latitude 29 degrees 30 minutes 57 seconds N, Longitude 89 degrees 30 minutes 57 seconds W; thence northerly to Mozambique Point, Latitude 29 degrees 37 minutes 20 seconds N, Longitude 89 degrees 29 minutes 11 seconds W; thence northeasterly to Grace Point (red light no. 62 on the M.R.G.O.), Latitude 29 degrees 40 minutes 40 seconds N, Longitude 89 degrees 23 minutes 10 seconds W; thence northerly to Deadman Point, Latitude 29 degrees 44 minutes 06 seconds N, Longitude 89 degrees 21 minutes 05 seconds W; thence easterly to Point Lydia, Latitude 29 degrees 45 minutes 27 seconds N, Longitude 89 degrees 16 minutes 12 seconds W; thence northerly to Point Comfort, Latitude 29 degrees 49 minutes 32 seconds N, Longitude 89 degrees 14 minutes 18 seconds W; thence northerly to the most easterly point on Mitchell Island, Latitude 29 degrees 53 minutes 42 seconds N, Longitude 89 degrees 11 minutes 50 seconds W; thence northerly to the most easterly point on Martin Island, Latitude 29 degrees 57 minutes 30 seconds N, Longitude 89 degrees 11 minutes 05 seconds W; thence northerly to the most easterly point on Brush Island, Latitude 30 degrees 02 minutes 42 seconds N, Longitude 89 degrees 10 minutes 06 seconds W; thence northerly to Door Point, Latitude 30 degrees 03 minutes 45

seconds N, Longitude 89 degrees 10 minutes 08 seconds W; thence northerly to the most easterly point on Isle Au Pitre, Latitude 30 degrees 09 minutes 27 seconds N, Longitude 89 degrees 11 minutes 02 seconds W; thence north (grid) a distance of 19214.60 feet to a point on the Louisiana-Mississippi Lateral Boundary, Latitude 30 degrees 12 minutes 37.1781 seconds N, Longitude 89 degrees 10 minutes 57.8925 seconds W; thence S60 degrees 20 minutes 06 seconds E (grid) along the Louisiana-Mississippi Lateral Boundary a distance of 31555.38 feet, Latitude 30 degrees 09 minutes 57.4068 seconds N, Longitude 89 degrees 05 minutes 48.9240 seconds W; thence S82 degrees 53 minutes 53 seconds E (grid) continuing along the Louisiana-Mississippi Lateral Boundary a distance of 72649.38 feet, Latitude 30 degrees 08 minutes 14.1260 seconds N, Longitude 89 degrees 52 minutes 10.3224 seconds W; thence south (grid) a distance of 32521.58 feet to the Chandeleur Light, Latitude 30 degrees 02 minutes 52 seconds N, Longitude 88 degrees 52 minutes 18 seconds W, which is on the inside-outside shrimp line as described in R.S. 56:495; thence southeasterly along the inside-outside shrimp line as described in R.S. 56:495 to the point of beginning.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:313, R.S. 56:6(25)(a), R.S. 56:315, and R.S. 56:326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 5:329 (October 1979), amended LR 14:547 (August 1988), LR 19:58 (January 1993), LR 19:1179 (September 1993), amended LR 48:1588 (June 2022).

Jack Montoucet  
Secretary

2206#017

#### RULE

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

Responsibilities, Duties, and Regulations  
Access and Permits  
(LAC 76:III.Chapter 1 and Chapter 3)

The Wildlife and Fisheries Commission amends the Particular Game and Fish Preserves Rules and Regulations to include a newly legislatively established wildlife management area (WMA) access permit and require self-clearing permits. Also, this will define prohibited activities on these properties and will amend regulations for Isles Dernieres Barrier Islands and Queen Bess Island Wildlife Refuges. The Department manages approximately 1.6 million acres of public land in Louisiana. This action establishes and defines what user permits and licenses are needed to access and utilize Department owned, managed and administered lands in Louisiana, establishes rules for prohibited devices for these same lands, establishes/amends regulations for Isles Dernieres Barrier Islands and Queen Bess Island Wildlife Refuges and ensures that the Administrative Code is consistent with Louisiana Statute. This Rule is hereby adopted on the day of promulgation.

**Title 76**  
**WILDLIFE AND FISHERIES**

**Part III. Game and Fish Preserves and Sanctuaries**  
**Chapter 1. Responsibilities, Duties and Regulations**

**§111. Access and Permits**

A. A valid wildlife management area (WMA) access permit or license conveying an equivalent privilege shall be required for use of department-administered lands including wildlife refuges and wildlife management and habitat conservation areas. Persons under eighteen years of age are exempt from this requirement.

B. Self-Clearing Permits. A self-clearing permit is required for all activities (hunting, fishing, hiking, bird watching, sightseeing, etc.) on department-administered lands including wildlife refuges and wildlife management and habitat conservation areas. The self-clearing permit will consist of two portions: check in, check out. All persons must either check in/check out electronically through the department WMA/public land self-clearing permit app/Internet Web Portal or obtain a self-clearing permit from an information station. Users may check in one day in advance of use. Users that check in by electronic means are required to possess proof of check in and must check out within 24 hours. If utilizing paper self-clearing permits from an information station, check in portion must be completed and put in a permit box before each day's activity. The check out portion must be carried by each person while on the properties and must be completed and put in a permit box immediately upon exiting the properties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:5 and R.S. 56:109.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 48:1590 (June 2022).

**§113. Prohibited Activities**

A. Operation of drones or unmanned aerial vehicles (UAV) is prohibited on department-administered lands including wildlife refuges and wildlife management and habitat conservation areas.

B. Airboats, aircraft, personal watercraft, "mud crawling vessels" (commonly referred to as crawfish combines which use paddle wheels for locomotion) and hovercraft are prohibited on all department-administered lands including wildlife refuges and wildlife management and habitat conservation areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:5 and R.S. 56:109.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 48:1590 (June 2022).

**Chapter 3. Particular Game and Fish Preserves, Wildlife Management Areas, Refuges and Conservation Areas**

**§331. Isles Dernieres Barrier Islands Refuge**

A. Regulations for Isles Dernieres Barrier Islands Refuge

1. Regulations for Wine Island, East Island, Trinity Island, Whiskey Island, and Raccoon Island

a. Public access by any means to the exposed land areas, wetlands and interior waterways of these islands is prohibited. Requests to access exposed land areas, wetlands and interior waterways shall be considered on a case-by-case basis and may be permitted by the secretary or his designee in the interest of conducting research on fauna and flora, of

advancing educational pursuits related to barrier islands, or of planning and implementing island restoration projects.

b. Disturbing, injuring, collecting, or attempting to disturb, injure, or collect any flora, fauna, or other property is prohibited, unless expressly permitted in writing by the secretary or his designee for the uses provided for in Subparagraph 1.a. above.

c. Boat traffic is allowed adjacent to the islands in the open waters of the Gulf and bays; however, boat traffic is prohibited in waterways extending into the interior of the islands or within any land-locked open waters or wetlands of the islands.

d. Fishing from boats along the shore and wade fishing in the surf areas of the islands is allowed.

e. Littering on the islands or in Louisiana waters or wetlands is prohibited.

f. Proposals to conduct oil and gas activities, including seismic exploration, shall be considered on a case-by-case basis and may be permitted by the secretary or his designee, consistent with provisions of the Act of Donation executed by the Louisiana Land and Exploration Company on July 24, 1997.

B. Violation of any provision of these regulations shall be considered a Class 2 violation, as described in R.S. 56:115(D), 56:764, and 56:787.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(18), R.S. 56:109 and R.S. 56:781 et seq.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:1657 (September 1999), amended LR 48:1590 (June 2022).

**§335. White Lake Wetlands Conservation Area**

A. - J. ...

K. Permits and Licenses

1. All persons shall be responsible for obtaining and possessing the proper license or licenses for the activities they will be engaged in when on the White Lake WCA. Proper identification and licenses must be readily available and presented to Wildlife and Fisheries personnel upon request. Licenses will not be available for purchase on site.

2. Special Note: A WMA permit will not be required to hunt on the White Lake WCA.

3. Permits will be issued to lottery fishermen and those individuals must carry their permit on their person while on the White Lake WCA. No permits will be issued to lottery hunters since those hunts are daily hunts and are coordinated and accompanied by Wildlife and Fisheries personnel.

L. - R.9.h. ...

AUTHORITY NOTE: Promulgated in accordance with Act 613 of the 2004 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 33:538 (March 2007), amended LR 33:1882 (September 2007), LR 35:707 (April 2009), LR 48:1590 (June 2022).

**§337. Elmer's Island Wildlife Refuge**

A. Visitor Regulations for Elmer's Island Wildlife Refuge

A.1. - 7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6, R.S. 56:109, R.S. 56:109.2, R.S. 56:763 and R.S. 56:781 et seq.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 36:1280 (June 2010), amended LR 48:1590 (June 2022).

**§339. Queen Bess Island Wildlife Refuge**

A. Regulations for Queen Bess Island Wildlife Refuge:

1. Public access by any means to the exposed land areas, breakwaters and areas between land and breakwaters is prohibited. Requests to access the refuge shall be considered on a case-by-case basis and may be permitted by the secretary or his designee in the interest of conducting research on fauna and flora, of advancing educational pursuits related to bird islands, or of planning and implementing island restoration projects.

2. Disturbing, injuring, collecting, or attempting to disturb, injure, or collect any flora, fauna, natural debris, or other property is prohibited, unless expressly permitted in writing by the secretary or his designee for the uses provided for in Paragraph 1 above.

3. Littering on the refuge or in Louisiana waters or wetlands is prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6, R.S. 56:109, R.S. 56:109.2, R.S. 56:763 and R.S. 56:781 et seq.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 46:705 (May 2020), amended LR 48:1591 (June 2022).

Jack Montoucet  
Secretary

2206#036

**RULE**

**Workforce Commission  
Plumbing Board**

**Continuing Professional Education Programs  
(LAC 46:LV.1001 and 1002)**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:953, the Louisiana State Plumbing Board (board), has amended LAC 46:LV.1001 and 1002 by removing the requirement for continuing education providers (CPE) to produce their own course materials which will be produced by the board. This amendment will be effective upon final publication in the *Louisiana Register*. This Rule is hereby adopted upon the date of promulgation.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LV. Plumbers**

**Chapter 10. Continuing Professional Education  
Programs**

**§1001. Tradesman, Journeyman and Master Plumbers**

A. CPE Requirement

1. All persons seeking to renew a tradesman license issued by the board are required to attend and show proof of attendance at no less than 3 1/2 hours of a board-approved CPE class in the prior calendar year, as set out in this Section.

2. All persons seeking to renew a journeyman license issued by the board are required to attend and show proof of attendance at no less than 3 1/2 hours of a board-approved CPE class in the prior calendar year, as set out in this Section.

3. All persons seeking to renew a master plumber license or to convert an inactive master plumber license to an active master plumber license must attend and show proof of attendance at no less than five hours of a board-approved CPE class in the prior calendar year, as set out in this Section.

4. A holder of an inactive master plumber license who seeks to renew said license must file an affidavit in a form provided by the board, that they have been inactive as a plumber in the previous year, and that they will remain inactive and not work as a plumber for the year for which they seek to renew their license. Upon such filing with the board, the holder of an inactive master plumber license will not be required to meet the CPE requirements set out herein.

5. A holder of an inactive master plumber's license who seeks to function as a journeyman plumber is required to attend and show proof of attendance at no less than 3 1/2 hours of a board-approved CPE class in the prior calendar year, as set out in this Section.

6. All persons holding and seeking to renew both journeyman plumber or tradesman plumber and gas fitter licenses issued by the board are required to attend and show proof of attendance at no less than 4 1/2 hours as set out in this Section and in §1002.

7. All persons holding and seeking to renew both journeyman plumber or tradesman plumber and master gas fitter licenses issued by the board are required to attend and show proof of attendance at no less than six hours as set out in this Section and in §1002.

8. All persons holding and seeking to renew both master plumber and gas fitter licenses issued by the board are required to attend and show proof of attendance at no less than six hours as set out in this Section and in §1002.

9. All persons holding and seeking to renew both master plumber and master gas fitter licenses issued by the board are required to attend and show proof of attendance at no less than six hours as set out in this section and in §1002.

B. Course Materials

1. The board shall be the exclusive agency for distribution of CPE course materials.

2. The course materials will provide the basis for a minimum of 3 1/2 hours of study for tradesman plumbers and journeyman plumbers. One hour will be in the subjects of health protection, consumer protection or environmental protection, 1/2 hour shall include information concerning R.S. 37:1361, et seq., LAC 46:LV, and 2 hours covering current industry practices and codes, and subjects from a list approved and published by the board.

3. The course materials will provide the basis for a minimum of 5 hours of study for master plumbers. One hour will be in the subjects of health protection, consumer protection or environmental protection, 1/2 hour shall include information concerning R.S. 37:1361, et seq., LAC 46:LV, 2 hours covering current industry practices, codes, and subjects from a list approved and published by the board, and 1 1/2 hours on business topics approved by the board.

4. The course materials will include board forms within the binding of the course materials that may be removed for use by the licensees. The forms will include CPE evaluation forms.

5. The board must have legal ownership of or an appropriate license for the use of all copyrighted material included within the course materials. Board approved course materials will contain a prominently displayed approval statement in 10-point bold type or larger containing the following language.

"THIS CONTINUING PROFESSIONAL EDUCATION COURSE MATERIAL HAS BEEN APPROVED BY THE LOUISIANA STATE PLUMBING BOARD FOR USE IN THE (State Year) CPE YEAR. BY ITS APPROVAL OF THIS COURSE MATERIAL, THE LOUISIANA STATE PLUMBING BOARD DOES NOT ASSUME ANY RESPONSIBILITY FOR THE ACCURACY OF THE CONTENTS. FURTHER, THE LOUISIANA STATE PLUMBING BOARD HAS NOT MADE ANY DETERMINATION THAT THE PARTY PUBLISHING THE COURSE MATERIALS HAS COMPLIED WITH ANY APPLICABLE COPYRIGHT AND OTHER LAWS IN PUBLISHING THE COURSE MATERIAL AND THE LOUISIANA STATE PLUMBING BOARD DOES NOT ASSUME ANY LIABILITY OR RESPONSIBILITY THEREFOR. THE COURSE MATERIAL IS NOT BEING PUBLISHED BY NOR IS IT A PUBLICATION OF THE LOUISIANA STATE PLUMBING BOARD."

6. The board will conduct instructor training in the use of course materials.

#### C. Course Providers

1. Course providers shall offer classroom instruction in the course materials used for the CPE required for renewal of tradesman, journeymen and master licenses issued under the Act. Board approval of course providers will be subject to all of the terms and conditions of this Section.

2. CPE courses shall be presented in one of the following formats:

- a. for tradesman and journeyman plumbers, a minimum of 3 1/2 classroom hours presented on one day; or
- b. for master plumbers, five hours on one day; or
- c. for master plumbers, two sessions totaling five classroom hours presented within a 30-day period.

3. Continuing professional education must be based on the course materials and provided in a format approved by the board.

4. In addition to required classroom education offered in each region, material may be provided in additional formatting as approved by the board.

5. Each course provider shall, at its own expense and in a format approved by the board, mail, fax or electronically transmit to the board certification of each licensee's completion of CPE requirements within 10 days of completion.

6. The board is authorized to enter into a cooperative endeavor agreement with either the Louisiana Association of Plumbing, Heating and Cooling Contractors of Louisiana or the Louisiana Pipe Trades Association, or any subsidiary or affiliate of either non-profit organization, to jointly provide CPE services to licensed journeyman and master plumbers. The board is authorized to share costs and expenses with either organization under terms and conditions that promote the public interest and avoid gratuitous donation of public funds.

7. Each course provider must notify the board at least seven working days before conducting classes; the notice shall contain the time(s) and place(s) where the classes will occur.

8. Each course provider will perform self-monitoring and reporting as required by the board, including a certified roster of all persons attending the course, with the license number of each attendee included.

9. Each course provider shall permit any board member or a duly designated representative of the board to monitor any CPE class for compliance purposes.

10. Each course provider shall use only course instructors that have been approved by the board. Each course provider shall annually submit to the board's office a list of course instructors it employs and the instructors' credentials for approval.

a. Lists of course instructors to be approved for the following year must be submitted no later than 30 days prior to the date of the board's last scheduled quarterly meeting for approval by the board, unless an extension is requested at or before the August board meeting and granted by the board.

b. Prior to allowing course instructors to teach CPE, course providers must provide documentation to the board showing the instructor's qualifications to teach CPE, including but not limited to detailed information on an experience in providing instruction, assistance in providing instruction or successful completion of training for providing instruction.

c. Course instructors must comply with this Section. Course providers shall notify the board within 10 working days of any change of an instructor's employment status with the course provider.

11. Any individual, business or association who wishes to be a course provider shall apply to the board for approval using application forms prepared by the board. In order to be approved, the application must satisfy the board as to the ability of the individual, business or association to provide quality instruction in the course materials as required in this Section and must include:

- a. name and address of the applicant;
- b. names and addresses of all officers, directors, trustees or members of the governing board of any business or association applying;
- c. certificate of good standing issued by the Louisiana Secretary of State for corporate applicants;
- d. taxpayer identification number;
- e. facsimile number, statewide toll free telephone number, Internet web site or electronic mail address;
- f. fees to be charged to licensees for attending the course;
- g. a CPE class scheduling plan for providing at least one course in each of the following cities: Lafayette, New Orleans, Baton Rouge, Alexandria, Shreveport, Lake Charles and Monroe; however, the board or its director may, solely at their discretion, grant a request that the course not be offered in one or more of these locations, upon a demonstration of economic infeasibility by the course provider;
- h. a method for quarterly reporting compilations of licensee evaluations of course provider and course instructors to the board;

i. identification of the approved course materials options which will be used by the course provider; and

j. an application fee to be set as provided by law.

12. The course provider shall purchase course materials from the board.

13. The fees charged to the licensees for attending the course will be determined by the course provider.

14. The board may refuse to accept any application for approval as a course provider that is not complete. The board may deny approval of an application for any of the following reasons:

a. failure to comply with the provisions of this Section;

b. inadequate instruction of the materials required to be included in course materials; or

c. unsatisfactory evaluations of the course provider by licensees, board members or board staff.

15. If an application is refused or disapproved, written notice detailing the basis of the decision shall be provided to the applicant within 90 days of the date of the decision.

16. A course provider's authority to offer instruction in the course materials for which CPE credit is given expires on December 31 of the calendar year following approval.

17. The board shall review course providers for quality of instruction: The board shall also investigate and take appropriate action, consistent with the Louisiana Administrative Procedure Act, up to and including revocation of authority to provide CPE, regarding complaints involving approved course providers.

18. A provider's failure to comply with this Section constitutes grounds for disciplinary action in accord with the Louisiana Administrative Procedure Act, up to and including revocation of authority to provide CPE, against the provider or for denial of future applications for approval as a course provider.

#### D. Course Instructors

1. The board will initially approve course instructors to provide instruction in the course materials used for the CPE required for renewal of tradesman plumber, journeyman plumber and master plumber licenses. Board approval of course instructors will be subject to all terms and conditions of this Section. An individual who wishes to be approved by the board as a course instructor must apply to the board using an application form approved by the board. The following minimum criteria will be used by the board in considering approval of course instructors:

a. all course instructors for master gas fitters must hold a Louisiana state master gas fitter license, and those for gas fitter must hold a master or gas fitter license; and

b. demonstrate an ability to train others, including but not limited to providing a description of their previous training experience; and

c. must be employed by an approved course provider.

2. An approved course instructor may use, under its live supervision, a non-licensed supplemental lecturer to present subjects of health protection, consumer protection, or environmental protection, information concerning R.S. 37:1361, et seq., LAC 46:LV published by the board. Prior to approval, a course instructor must identify to the board, any supplemental lecturer they intend to use, including a resume from the supplemental lecturer, and the subject

matter the supplemental lecturer will discuss within 30 days prior to the course being conducted.

3. As a course instructor and licensee of the board, a course instructor must:

a. be well versed in and knowledgeable of the course materials;

b. maintain an orderly and professional classroom environment; and

c. coordinate with the course provider to develop an appropriate method for handling disorderly and disruptive students. A course instructor shall report to the course provider and the board any non-responsive or disruptive student who attends a CPE course. The board may deny CPE credit to any such student and require, at the student's expense, successful completion of an additional CPE course to receive credit.

4. The board shall review course instructors for quality of instruction. The board shall also respond to complaints regarding course instructors.

5. A course instructor's failure to comply with this Section constitutes grounds for disciplinary action against the instructor or for disapproval of future applications for approval as a course instructor, in accord with the Louisiana Administrative Procedure Act.

6. A course instructor may use a vendor approved by the board to provide instruction on products specific to only one approved gas topic and/or one approved plumbing topic.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(I).

HISTORICAL NOTE: Promulgated by the Department of Labor, State Plumbing Board, LR 30:2068 (September 2004), amended LR 37:2440 (August 2011), amended by the Workforce Commission, Plumbing Board, LR 43:979 (May 2017), LR 44:634 (March 2018), LR 48:1591 (June 2022).

### **§1002. Gas Fitters and Master Gas Fitters**

#### A. CPE Requirement

1. All persons seeking to renew a gas fitter license issued by the board are required to attend and show proof of attendance at no less than 2 1/2 hours of a board-approved CPE class in the prior calendar year, as set out in this Section.

2. All persons seeking to renew a master gas fitter license or to convert an inactive master gas fitter license to an active master gas fitter license must attend and show proof of attendance at no less than four hours of a board-approved CPE class in the prior calendar year, as set out in this Section.

3. A holder of an inactive master gas fitter license who seeks to renew said license must file an affidavit in a form provided by the board, that they have been inactive as a gas fitter in the previous year, and that they will remain inactive and not work as a gas fitter for the year for which they seek to renew their license. Upon such filing with the board, the holder of an inactive master gas fitter license will not be required to meet the CPE requirements set out herein.

4. A holder of an inactive master gas fitter license who seeks to function as a gas fitter is required to attend and show proof of attendance at no less than 2 1/2 hours of a board-approved CPE class in the prior calendar year, as set out in this Section.

5. All persons holding and seeking to renew both gas fitter and journeyman plumber licenses issued by the board



are required to attend and show proof of attendance at no less than 4 1/2 hours as set out in this Section and in §1001.

6. All persons holding and seeking to renew both gas fitter and master plumber licenses issued by the board are required to attend and show proof of attendance at no less than six hours as set out in this Section and in §1001.

7. All persons holding and seeking to renew both master gas fitter and journeyman plumber licenses issued by the board are required to attend and show proof of attendance at no less than six hours as set out in this Section and in §1001.

8. All persons holding and seeking to renew both master gas fitter and master plumber licenses issued by the board are required to attend and show proof of attendance at no less than six hours as set out in this Section and in §1001.

#### B. Course Materials

1. The board shall be the exclusive agency for distribution of CPE course materials.

2. The course materials will provide the basis for a minimum of 2 1/2 hours of study for gas fitters. One hour will be in the subjects of health protection, consumer protection or environmental protection, 1/2 hours shall include information concerning R.S. 37:1361 et seq., LAC 46:LV, and one hour covering current industry practices and codes, and subjects from a list approved and published by the board.

3. The course materials will provide the basis for a minimum of four classroom hours of study for master gas fitters. One hour will be in the subjects of health protection, consumer protection or environmental protection, 1/2 hour shall include information concerning R.S. 37:1361 et seq., LAC 46:LV, and one hour covering current industry practices, codes, and subjects from a list approved and published by the board, and 1 1/2 hours on business topics approved by the board.

4. The course materials will include board forms within the binding of the course materials that may be removed for use by the licensees. The forms will include CPE evaluation forms.

5. The publishers of course materials must have legal ownership of or an appropriate license for the use of all copyrighted material included within the course materials. Board-approved course materials will contain a prominently displayed approval statement in 10-point bold type or larger containing the following language.

“THIS CONTINUING PROFESSIONAL EDUCATION COURSE MATERIAL HAS BEEN APPROVED BY THE LOUISIANA STATE PLUMBING BOARD FOR USE IN THE (state year) CPE YEAR. BY ITS APPROVAL OF THIS COURSE MATERIAL, THE LOUISIANA STATE PLUMBING BOARD DOES NOT ASSUME ANY RESPONSIBILITY FOR THE ACCURACY OF THE CONTENTS. FURTHER, THE LOUISIANA STATE PLUMBING BOARD HAS NOT MADE ANY DETERMINATION THAT THE PARTY PUBLISHING THE COURSE MATERIALS HAS COMPLIED WITH ANY APPLICABLE COPYRIGHT AND OTHER LAWS IN PUBLISHING THE COURSE MATERIAL AND THE LOUISIANA STATE PLUMBING BOARD DOES NOT ASSUME ANY LIABILITY OR RESPONSIBILITY THEREFOR. THE COURSE MATERIAL IS NOT BEING PUBLISHED BY NOR IS IT A PUBLICATION OF THE LOUISIANA STATE PLUMBING BOARD.”

6. The publishers of course materials will conduct instructor training in the use of course materials.

#### C. Course Providers

1. Course providers shall offer classroom instruction in the course materials used for the CPE required for renewal of gas fitter and master gas fitter licenses issued under the Act. Board approval of course providers will be subject to all of the terms and conditions of this Section.

2. CPE courses shall be presented in one of the following formats:

a. for gas fitters a minimum of 2 ½ classroom hours presented on one day; or

b. for master gas fitters, four hours on one day; or

c. for gas fitters two sessions totaling 2 1/2 classroom hours presented within a 30-day period; or

d. for master gas fitters, two sessions totaling four classroom hours presented within a 30-day period.

3. Continuing professional education must be based on the course materials and provided in a format approved by the board.

4. In addition to required classroom education provided in each region, material may be provided in additional formatting as approved by the board.

5. Each course provider shall, at its own expense and in a format approved by the board, mail, fax or electronically transmit to the board certification of each licensee's completion of CPE requirements within 10 days of completion.

6. The board is authorized to enter into a cooperative endeavor agreement with either the Louisiana Association of Plumbing, Heating and Cooling Contractors of Louisiana or the Louisiana Pipe Trades Association, or any subsidiary or affiliate of either non-profit organization, to jointly provide CPE services to licensed and master gas fitters. The board is authorized to share costs and expenses with either organization under terms and conditions that promote the public interest and avoid gratuitous donation of public funds.

7. Each course provider must notify the board at least seven working days before conducting classes; the notice shall contain the time(s) and place(s) where the classes will occur.

8. Each course provider will perform self-monitoring and reporting as required by the board, including a certified roster of all persons attending the course, with the license number of each attendee included.

9. Each course provider shall permit any board member or a duly designated representative of the board to monitor any CPE class for compliance purposes.

10. Each course provider shall use only course instructors that have been approved by the board. Each course provider shall initially submit to the board's office a list of course instructors it employs and the instructors' credentials for approval. Course instructors will be granted ongoing approval. Any changes to instructors shall be approved by the board.

a. Lists of course instructors to be approved for the following year must be submitted no later than 30 days prior to the date of the board's last scheduled quarterly meeting for approval by the board, unless an extension is requested at or before the August board meeting and granted by the board.

b. Prior to allowing course instructors to teach CPE, course providers must provide documentation to the board showing the instructor's qualifications to teach CPE, including but not limited to detailed information on any experience in providing instruction, assistance in providing instruction or successful completion of training for providing instruction.

c. Course instructors must comply with this Section. Course providers shall notify the board within 10 working days of any change of an instructor's employment status with the course provider.

11. Any individual, business or association who wishes to be a course provider shall apply to the board for approval using application forms prepared by the board. In order to be approved, the application must satisfy the board as to the ability of the individual, business or association to provide quality instruction in the course materials as required in this Section and must include:

- a. name and address of the applicant;
- b. names and addresses of all officers, directors, trustees or members of the governing body of any business or association applying;
- c. certificate of good standing issued by the Louisiana Secretary of State for corporate applicants;
- d. taxpayer identification number;
- e. facsimile number, statewide toll-free telephone number, internet website or electronic mail address;
- f. fees to be charged to licensees for attending the course;
- g. A CPE class scheduling plan providing for a least one course in each region. Course providers must, at a minimum, offer the CPE class in each of the following cities: Lafayette, New Orleans, Baton Rouge, Alexandria, Shreveport, Lake Charles and Monroe; any CPE provider for gas fitting shall conduct both plumber and gas fitter CPE classes. The board or its director may, solely at their discretion, grant a request that the course not be offered in one or more of these locations, upon a demonstration of economic infeasibility by the course provider;
- h. a method for quarterly reporting compilations of licensee evaluations of course provider and course instructors to the board;
- i. identification of the approved course material options which will be used by the course provider; and
- j. an application fee to be set as provided by law.

12. The course provider shall purchase course materials from the board.

13. The fees charged to the licensees for attending the course will be determined by the course provider.

14. The board may refuse to accept any application for approval as a course provider that is not complete. The board may deny approval of an application for any of the following reasons:

- a. failure to comply with the provisions of this Section;
- b. inadequate instruction of the materials required to be included in course materials; or
- c. unsatisfactory evaluations of the course provider by licensees, board members or board staff.

15. If an application is refused or disapproved, written notice detailing the basis of the decision shall be provided to the applicant within 90 days of the date of the decision.

16. A course provider's authority to offer instruction in the course materials for which CPE credit is given expires on December 31 of the calendar year following approval.

17. The board shall review course providers for quality of instruction. The board shall also investigate and take appropriate action, consistent with the Louisiana Administrative Procedure Act, up to and including revocation of authority to provide CPE, regarding complaints involving approved course providers.

18. A provider's failure to comply with this Section constitutes grounds for disciplinary action in accord with the Louisiana Administrative Procedure Act, up to and including revocation of authority to provide CPE, against the provider or for denial of future applications for approval as a course provider.

#### D. Course Instructors

1. The board will initially approve course instructors to provide instruction in the course materials used for the CPE required for renewal of gas fitter and master gas fitter licenses. Board approval of course instructors will be subject to all of the terms and conditions of this Section. An individual who wishes to be approved by the board as a course instructor must apply to the board using an application form approved by the board. The following minimum criteria will be used by the board in considering approval of course instructors:

- a. all course instructors for master gas fitters must hold a Louisiana state master gas fitter license, and those for gas fitter must hold a master or gas fitter license; and
- b. demonstrate an ability to train others, including but not limited to providing a description of their previous training experience; and
- c. must be employed by an approved course provider.

2. An approved course instructor may use, under its live supervision, a non-licensed supplemental lecturer to present subjects of health protection, consumer protection or environmental protection, information concerning R.S. 37:1361, et seq., LAC 46:LV published by the board. Prior to approval, a course instructor must identify to the board, any supplemental lecturer they intend to use, including a resume from the supplemental lecturer, and the subject matter the supplemental lecturer will discuss within 30 days prior to the course being conducted.

3. As a course instructor and licensee of the board, a course instructor must:

- a. be well versed in and knowledgeable of the course materials;
- b. maintain an orderly and professional classroom environment; and
- c. coordinate with the course provider to develop an appropriate method for handling disorderly and disruptive students. A course instructor shall report to the course provider and the board any non-responsive or disruptive student who attends a CPE course. The board may deny CPE credit to any such student and require, at the student's

expense, successful completion of an additional CPE course to receive credit.

4. The board shall review course instructors for quality of instruction. The board shall also respond to complaints regarding course instructors.

5. A course instructor's failure to comply with this Section constitutes grounds for disciplinary action against the instructor or for disapproval of future applications for approval as a course instructor, in accord with the Administrative Procedure Act.

6. A course instructor may use a vendor approved by the board to provide instruction on products specific to only one approved gas topic and/or one approved plumbing topic.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(I) and R.S. 37:1368(H).

HISTORICAL NOTE: Promulgated by the Workforce Commission, Plumbing Board, LR 43:549 (March 2017), amended LR 44:635 (March 2018), LR 48:1593 (June 2022).

Ashley Jones Tullier  
Executive Director

2206#012

# Notices of Intent

## NOTICE OF INTENT

### Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences

#### Horticulture Programs Nursery Stock Dealers (LAC 7:XXIX.117)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., and pursuant to the authority set forth in R.S. 3:3801 and R.S. 3:3808, notice is hereby given that Department of Agriculture and Forestry ("Department") intends to amend and adopt the Rule set forth below. The proposed Rule changes the words "horticulture service" to "landscape horticulturist" when referencing a particular license. In 2008, the horticulture service and landscape contractor licenses were consolidated into one license, a landscape horticulturist license. The term horticulture service is no longer being used and that license no longer exists. R.S. 3:3815 provides that license renewals shall be issued as a landscape horticulturist license and this particular rule was never updated to reflect that change.

#### Title 7

### AGRICULTURE AND ANIMALS

#### Part XXIX. Horticulture Commission

#### Chapter 1. Horticulture

#### §117. Professional and Occupational Standards and Requirements

A. - E.9. ...

F. Nursery Stock Dealer

1. - 3. ...

4. Nursery stock dealers operating from a mobile unit shall not sell nursery stock within 300 feet of a place of business that holds a nursery stock dealer's permit, nursery certificate permit, landscape horticulturist license, retail florist license or a wholesale florist license.

F.5. - I.6.e. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3801 and R.S. 3:3808.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Horticulture Commission, LR 8:185 (April 1982), amended LR 9:410 (June 1983), LR 11:317 (April 1985), amended by the Department of Agriculture and Forestry, Horticulture Commission, LR 14:8 (January 1988), LR 20:640 (June 1994), LR 27:1832 (November 2001), LR 31:1054 (May 2005), LR 32:78 (January 2006), LR 32:1010 (June 2006), LR 33:1854 (September 2007), LR 53:1228 (July 2009), LR 36:2520 (November 2010), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Horticulture Commission, LR 42:1645 (October 2016), LR 46:1077 (August 2020), LR 48:

#### 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
4. the overall effect on the ability of the provider to provide the same level of service.

#### Public Comments

Interested persons may submit written comments, data, opinions and arguments regarding the proposed Rule via U.S. Mail or hand delivery. Written submissions must be directed to Tina Peltier, Director of the Horticulture Commission, Department of Agriculture & Forestry, 5825 Florida Blvd., Suite 3002, Baton Rouge, Louisiana 70806 and must be received no later than 4 p.m. on July 10, 2022. All written comments must be signed and dated.

Mike Strain, DVM  
Commissioner

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Horticulture Programs Nursery Stock Dealers

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change will not result in any costs or savings to state or local governmental units. The proposed rule amends LAC 7:XXIX.117 F(4) by changing the words "horticulture service" to "landscape horticulturist." In 2008, the

law changed and the horticulture service and landscape contractor licenses were consolidated into the landscape horticulturist license.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change will not result in any effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule change will not result in any additional costs to professional or occupational license holders as they are no longer being issued a horticulture service license but instead issued a landscape horticulturist license.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed action is not anticipated to have a material effect on competition or employment.

Dane K. Morgan  
Assistant Commissioner  
2206#037

Evan Brasseaux  
Interim Deputy Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Health Bureau of Health Services Financing

Experimental Procedures  
Routine Care for Beneficiaries in Clinical Trials  
(LAC 50:I.305)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:I.305 as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing experimental procedures in order to align the provisions governing routine care for beneficiaries in clinical trials with federal requirements specified in the American Rescue Plan Act.

#### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part I. Administration

#### Subpart 1. General Provisions

#### Chapter 3. Experimental Procedures

#### §305. Routine Care for Beneficiaries in Clinical Trials

A. The Medicaid program shall cover routine patient costs for items and services furnished in connection with participation in a qualifying clinical trial in accordance with section 1905(gg) of the Social Security Act.

B. - C. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 46:796 (June 2020), amended 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.

### Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

### Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

### Small Business Analysis

In compliance with the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses.

### Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

### Public Comments

Interested persons may submit written comments to Patrick Gillies, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821—9030. Mr. Gillies is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on August 1, 2022.

### 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 July 11, 2022. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on July 28, 2022 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 July 11, 2022. 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: Experimental Procedures  
Routine Care for Beneficiaries in Clinical Trials**

**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 21-22. It is anticipated that \$432 (\$216 SGF and \$216 FED) will be expended in FY 21-22 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 21-22. It is anticipated that \$216 will be collected in FY 21-22 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, SMALL BUSINESSES OR NONGOVERNMENTAL GROUPS (Summary)**

This proposed rule amends the provisions governing experimental procedures in order to align the provisions governing routine care for beneficiaries in clinical trials with federal requirements specified in the American Rescue Plan Act. The proposed rule does not change existing policy, but it ensures that the terminology and specifications in the Louisiana Administrative Code are in alignment with requirements of the Social Security Act. It is anticipated that implementation of this proposed rule will not result in costs to providers in FY 21-22, FY 22-23, and FY 23-24 but will be beneficial by ensuring that the language in the administrative rule aligns with federal law.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This rule has no known effect on competition and employment.

Patrick Gillies  
Medicaid Executive Director  
2206#052

Evan Brasseaux  
Interim Deputy Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Home Health Program—Durable Medical Equipment  
Enteral Formula Reimbursement  
(LAC 50:XIII.10301)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:XIII.10301 as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing reimbursement for durable medical equipment in the Home Health Program in order to revise the methodology used to set the rates for enteral formulas and allow reimbursement under the standard procedure codes on the Louisiana Medicaid fee schedule.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XIII. Home Health Program**

**Subpart 3. Medical Equipment, Supplies and Appliances**

**Chapter 103. Reimbursement Methodology**

**§10301. General Provisions**

A. - F. ...

G. Effective for dates of service on or after October 1, 2022, fees for enteral formulas will be set at 90 percent of 2021 Rural Medicare fees. For enteral formulas without a corresponding Medicare fee, the Medicaid fees will be set at the lowest fee at which the item has been determined to be widely available based on a review of similar formulas, usual and customary fees charged in the community, and other Medicaid states.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1894 (September 2009), amended LR 36:1247 (June 2010), LR 36:2041 (September 2010), LR 39:1050 (April 2013), amended by the Department of Health, Bureau of Health Services Financing, 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.

**Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 as it will allow recipients access to a wider selection of enteral formulas.

**Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have a positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 as it will allow recipients access to a wider selection of enteral formulas.

**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 be beneficial to small businesses as it simplifies the prior authorization process for durable medical equipment providers and increases access to a wider selection of enteral formulas for their patients.

**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 Patrick Gillies, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821—9030. Mr. Gillies is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on August 1, 2022.

### 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 July 11, 2022. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on July 28, 2022 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 July 11, 2022. 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—Durable Medical Equipment—Enteral Formula Reimbursement

### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that implementation of this proposed rule will have an indeterminable fiscal impact to the state for FY 21-22, FY 22-23 and FY 23-24, since enteral products will now be grouped and reimbursed under categories. It is anticipated that \$540 (\$270 SGF and \$270 FED) will be expended in FY 21-22 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 an indeterminable impact on revenue collections for FY 21-22, FY 22-23 and FY 23-24. It is anticipated that \$270 will be collected in FY 21-22 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, SMALL BUSINESSES OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule amends the provisions governing reimbursement for durable medical equipment in the Home Health Program in order to revise the methodology used to set the rates for Enteral Formulas and allow reimbursement for these products under the standard procedure codes on the

Louisiana Medicaid fee schedule. The proposed rule will allow reimbursement for these products under specific categories on the fee schedule and align Louisiana Medicaid's reimbursement with other states and Medicare. Implementation of this proposed rule will allow beneficiaries greater access to a wider selection of these products to meet their medical needs. Providers will also benefit since it streamlines the prior authorization process and increases access to products for their patients. It is anticipated that implementation of this proposed rule will result in an indeterminable net impact on expenditures in the Medicaid program for FY 21-22, FY 22-23, and FY 23-24, since individual products will be grouped and paid under categories.

### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Patrick Gillies  
Medicaid Executive Director  
2206#053

Evan Brasseaux  
Interim Deputy Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Health Bureau of Health Services Financing

#### Home Health Program—Emergency Provisions (LAC 50:XIII.104)

The Department of Health, Bureau of Health Services Financing proposes to adopt LAC 50:XIII.104 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Bureau of Health Services Financing proposes to adopt provisions in the Home Health Program in order to temporarily allow non-physician practitioners to order and review home health services in the event of a federal or state declared emergency or disaster.

### Title 50

## PUBLIC HEALTH—MEDICAL ASSISTANCE

### Part XIII. Home Health Program

#### Subpart 1. Home Health Services

### Chapter 1. General Provisions

#### §104. Emergency Provisions

A. In the event that the federal or state government declares an emergency or disaster, the Medicaid Program may temporarily allow non-physician practitioners (advanced practice registered nurses and physician assistants) to order and review home health services, including the completion of associated documentation, if such action is deemed necessary to insure sufficient services are available to meet beneficiaries' needs.

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

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

### Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972, as it will ensure continuity of care during a declared disaster or emergency.

### Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

### Small Business Analysis

In compliance with the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses.

### Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

### Public Comments

Interested persons may submit written comments to Patrick Gillies, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Mr. Gillies is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on August 1, 2022.

### 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 July 11, 2022. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on July 28, 2022 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 July 11, 2022. 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 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 21-22. It is anticipated that \$432 (\$216 SFG and \$216 FED) will be expended in FY 21-22 for the state's administrative expenses for promulgation of this proposed rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
It is anticipated that the implementation of this proposed rule will not affect federal revenue collections other than the federal share of the promulgation costs for FY 21-22. It is anticipated that \$216 will be collected in FY 21-22 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, SMALL BUSINESSES OR NONGOVERNMENTAL GROUPS (Summary)  
This proposed rule adopts provisions in the Home Health Program in order to temporarily allow non-physician practitioners to order and review home health services in the event of a federal or state declared disaster or emergency. Beneficiaries and providers will benefit from implementation of this proposed rule as it ensures continuity of care and timely access to services by allowing other medical professionals to order and review home health orders in the event of a shortfall in physician availability during a declared disaster or emergency. It is anticipated that implementation of this proposed rule will not result in costs to home health providers in FY 21-22, FY 22-23, and FY 23-24.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
This proposed rule has no known effect on competition and employment.

Patrick Gillies  
Medicaid Executive Director  
2206#054

Evan Brasseaux  
Interim Deputy Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Health Bureau of Health Services Financing

Hospice Services  
Emergency Services and Inpatient Care  
(LAC 50:XV.3503 and 4309)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:XV.3503 and §4309 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing hospice services in order to:

1. temporarily waive the provision requiring daily visits by the hospice provider to all clients under the age of



21 and allow telemedicine visits as an alternative in the event of a federal or state declared emergency or disaster; and

2. clarify that the five-day limit for inpatient care is applied to respite care only.

#### **Title 50**

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

#### **Part XV. Services for Special Populations**

##### **Subpart 3. Hospice**

#### **Chapter 35. Recipient Eligibility**

##### **§3503. Waiver of Payment for Other Services**

A. - E. ...

F. In the event that the federal or state government declares an emergency or disaster, the Medicaid Program may temporarily waive the provision requiring daily visits by the hospice provider to all clients under the age of 21 to facilitate continued care while maintaining the safety of staff and beneficiaries. Visits will still be completed based on clinical need of the beneficiary, family, and availability of staff, as requested by the family. The use of telemedicine visits as an alternative is allowed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1467 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:129 (January 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 46:1563 (November 2020), LR 48:

##### **§4309. Limitation on Payments for Inpatient Care**

A. ...

1. During the 12-month period beginning November 1 of each year and ending October 31, the number of inpatient respite care days for any one hospice beneficiary may not exceed five days per occurrence.

2. - 2.b....

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1472 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:132 (January 2015), amended by the Department of Health, Bureau of Health Services Financing, 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.

##### **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 will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972, as it will ensure continuity of care during a federal or state declared emergency or disaster and remove unintended barriers to receiving palliative care timely.

##### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or

family poverty in relation to individual or community asset development as described in R.S. 49:973.

##### **Small Business Analysis**

In compliance with the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses.

##### **Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

##### **Public Comments**

Interested persons may submit written comments to Patrick Gillies, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821—9030. Mr. Gillies is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on August 1, 2022.

##### **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 July 11, 2022. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on July 28, 2022 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 July 11, 2022. 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: Hospice Services Emergency Services and Inpatient 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 21-22. It is anticipated that \$648 (\$324 SFG and \$324 FED) will be expended in FY 21-22

for the state's administrative expenses for promulgation of this proposed rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections other than the federal share of the promulgation costs for FY 21-22. It is anticipated that \$324 will be collected in FY 21-22 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, SMALL BUSINESSES OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule amends the provisions governing hospice services in order to: 1) temporarily waive the provision requiring daily visits by the hospice provider to all clients under the age of 21 and allow telemedicine visits as an alternative in the event of a federal or state declared emergency or disaster; and 2) clarify that the five-day limit for inpatient care is applied to respite care only. Implementation of this proposed rule will benefit hospice beneficiaries by ensuring continuity of care during federal or state declared emergencies or disasters and removing unintended barriers to receiving palliative care timely. It is anticipated that implementation of this proposed rule will not result in costs to hospice providers in FY 21-22, FY 22-23, and FY 23-24, but will be beneficial by adding flexibility to waive the daily visit requirement and/or allow telemedicine during declared emergencies or disasters.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule has no known effect on competition and employment.

Patrick Gillies  
Medicaid Executive Director  
2206#055

Evan Brasseaux  
Interim Deputy Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Intermediate Care Facilities for  
Persons with Intellectual Disabilities  
Complex Care Reimbursements  
(LAC 50:VII.32915)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:VII.32915 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing reimbursement to private non-state intermediate care facilities for persons with intellectual disabilities (ICFs/IID) in order to revise and streamline the process by which ICFs/IID can request add-on rates for medically qualified beneficiaries receiving above routine care and whose staffing levels exceed the required minimum.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part VII. Long Term Care**

**Subpart 3. Intermediate Care Facilities for Persons with Intellectual Disabilities**

**Chapter 329. Reimbursement Methodology**

**Subchapter A. Non-State Facilities**

**§32915. Complex Care Reimbursements**

A. Private (non-state) intermediate care facilities for individuals with intellectual disabilities (ICFs/IID) may receive an add-on payment to the per diem rate for providing complex care to Medicaid beneficiaries, when medically necessary. The add-on payment shall be a flat fee daily amount and consists of payment for one of the following components alone or in combination:

1. direct service worker add-on;
2. skilled nursing add-on; and
3. equipment add-on;
4. - 7. Repealed.

B. To qualify, beneficiaries must meet medical necessity criteria established by the Medicaid Program. Supporting medical documentation must also be submitted as specified by the Medicaid Program. The duration of approval of the add-on payment(s) is at the sole discretion of the Medicaid Program and shall not exceed 1 year.

C. Medical necessity of the add-on payment(s) shall be reviewed and re-determined by the Medicaid Program no less than annually from the date of initial approval of each add-on payment. This review shall be performed in the same manner and using the same medical necessity criteria as the initial review.

D. Each add-on payment requires documentation that the enhanced supports are already being provided to the beneficiary, as specified by the Medicaid program.

1. - 2.a.iii. Repealed.

E. One of the following admission requirements must be met in order to qualify for the add-on payment:

1. the beneficiary has been admitted to the facility for more than 30 days with supporting documentation of medical necessity; or
2. the beneficiary is transitioning from another similar agency with supporting documentation of medical necessity.
3. Repealed.

F. The Medicaid Program shall require compliance with all applicable laws, rules, and regulations as a condition of an ICF/IID's qualification for any complex care add-on payment(s) and may evaluate such compliance in its initial annual qualifying reviews.

1. - 2. Repealed.

G. The following additional requirements apply:

1. Beneficiaries receiving enhanced rates must be included in annual surveys to ensure continuation of supports and review of individual outcomes.

2. Fiscal analysis and reporting is required annually.

H. - I.3.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, Bureau of Health Services Financing, LR 42:276 (February 2016), amended by the Department of Health,

Bureau of Health Services Financing, LR 44:1447 (August 2018), LR 45:273 (February 2019), 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.

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

#### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

#### **Small Business Analysis**

In compliance with the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses.

#### **Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

#### **Public Comments**

Interested persons may submit written comments to Patrick Gillies, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821—9030. Mr. Gillies is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on August 1, 2022.

#### **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 July 11, 2022. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on July 28, 2022 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 July 11, 2022. 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: Intermediate Care Facilities for Persons with Intellectual Disabilities—Complex Care Reimbursements**

#### **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 21-22. It is anticipated that \$648 (\$324 SFG and \$324 FED) will be expended in FY 21-22 for the state's administrative expenses for promulgation of this proposed rule.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections other than the federal share of the promulgation costs for FY 21-22. It is anticipated that \$324 will be collected in FY 21-22 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, SMALL BUSINESSES OR NONGOVERNMENTAL GROUPS (Summary)**

This proposed rule amends the provisions governing reimbursement to private non-state intermediate care facilities for persons with intellectual disabilities (ICFs/IID) in order to revise and streamline the process by which ICFs/IID can request add-on rates for medically qualified beneficiaries receiving above routine care and whose staffing levels exceed the required minimum. Implementation of this proposed rule will benefit qualified ICF/IID residents by ensuring improved quality of care for medically fragile beneficiaries. It is anticipated that implementation of this proposed rule will not result in costs to ICFs/IID in FY 21-22, FY 22-23, and FY 23-24, but will be beneficial by ensuring a shorter turnaround time and easier access to add-on rates for medically complex beneficiaries.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This proposed rule has no known effect on competition and employment.

Patrick Gillies  
Medicaid Executive Director  
2206#053

Evan Brasseaux  
Interim Deputy Fiscal Officer  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Department of Health Office of Public Health**

Public Health Immunization Requirements  
(LAC 51:II.701)

Under the authority of R.S. 40:4 and 40:5, and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the state health officer, acting through the Louisiana Department of Health,

Office of Public Health (LDH/OPH), intends to amend §701, Immunization Schedule, of Part II of Title 51. The proposed amendments remove vaccines for SARS-CoV-2 from the list of required vaccinations for school entry and attendance.

#### **Title 51**

### **PUBLIC HEALTH—SANITARY CODE**

#### **Part II. The Control of Diseases**

#### **Chapter 7. Public Health Immunization**

##### **Requirements**

##### **§701. Immunization Schedule**

**[formerly paragraph 2:025]**

A. The Office of Public Health (OPH) will determine the Louisiana immunization schedule, with appropriate immunizations for age using the current immunization schedule from the Advisory Committee for Immunization Practice (ACIP) of the United States Public Health Service (USPHS). Compliance for school and day care center entry will be based on the individual having received an appropriate number of immunizations for his/her age of the following types:

1. vaccines which contain tetanus and diphtheria toxoids, including Diphtheria and Tetanus (DT), Diphtheria/Tetanus/Acellular Pertussis (DTaP), Tetanus and Diphtheria (Tdap), Tetanus Toxoid (TT) or combinations which include these components;

2. polio vaccine, including Inactivated Polio Vaccine (IPV), or combinations which include this component;

3. vaccines which contain measles antigen, including Measles, Mumps, and Rubella (MMR) and combinations which include these components;

4. vaccines which contain hepatitis antigen, including Hepatitis B (HepB), Hepatitis A (HepA), and combinations which include these components;

5. vaccines which contain varicella antigen, including varicella and combinations which include this component.

6. vaccines which contain meningococcal antigen and combinations which include this component.

7. Repealed.

B. - D. ...

E. Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(2), R.S. 40:5(A) and R.S. 40:31.15. Also see R.S. 17:170, R.S. 22:1030, and R.S. 44:17.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1221 (June 2002), amended LR 38:1252 (May 2012), amended by the Department of Health, Office of Public Health, LR 45:670 (May 2019), LR 46:590 (April 2020), LR 47:1877 (December 2020), LR 48:

##### **Family Impact Statement**

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, parents will still be able to exempt their children from being vaccinated for religious, medical, or philosophical reasons.

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 the proposed Rule? Yes.

##### **Poverty Impact Statement**

The proposed Rule should not have any known or foreseeable impact on:

1. the effect on household income, assets, and financial security;

2. the effect on early childhood development and preschool through postsecondary education development;

3. the effect on employment and workforce development;

4. the effect on taxes and tax credits;

5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

##### **Small Business Analysis**

It is anticipated that the proposed Rule will not have a significant adverse impact on small businesses as defined in the Small Business Protection 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 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 no later than Monday, July 25, 2022 to DeAnn Gruber, Bureau Director, Bureau of Infectious Diseases, Office of Public Health, 1450 Poydras St., Ste. 2136, New Orleans, LA, 70112 or faxed to (504) 568-7044.

##### **Public Hearing**

Interested persons may submit a written request to conduct a public hearing either by U.S. mail to the Office of the Secretary, ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on Monday, July 11, 2021. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9 am on Monday, July 25, 2022, in Room 173 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 July 12, 2022. 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 the Bienville building's front security desk.

Joseph Kanter, MD, MPH  
State Health Officer  
and  
Dr. Courtney N. Phillips  
LDH Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Public Health  
Immunization Requirements**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
The Office of Public Health (OPH) will incur \$426 in expenses associated with the publication of this proposed rule change. The expenses will be paid with State General Fund.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
The proposed rule change will not affect revenue collections for state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES OR NONGOVERNMENTAL GROUPS (Summary)  
The proposed rule is not anticipated to have an economic impact.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
The proposed rule is not anticipated to have an impact on existing competition or employment among vaccination providers.

Kimberly Hood, JD, MPH  
Assistant Secretary  
2206#058

Evan Brasseaux  
Interim Deputy Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**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 hereby gives notice of its intent to amend Regulation 42—Group Self-Insurance Funds. The Department of Insurance is amending 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.

**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.

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*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.

\*\*\*

*Standard Premium*—gross premium adjusted by experience modifiers.

*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. 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 48:

**§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), amended LR 47:52 (January 2021), LR 48:

#### **§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), amended LR 47:52 (January 2021), LR 48:

#### **§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 \$500,000, 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. A certified audit 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 a certified annual audit report is available for the fund as a whole. 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. ...

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. ...

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 48:

#### **§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.2. ...

3. for funds with a loss fund greater than or equal to \$100,000,000, the maximum retention shall be 4 percent of the fund's loss fund;

C.4.-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), amended LR 47:52 (January 2021), LR 48:

### **§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), amended LR 47:52 (January 2021), LR 48:

### **§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), amended LR 47:52 (January 2021), LR 48:

### **§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), amended LR 47:52 (January 2021), LR 48:

### **§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 or mail self-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 contracted audit personnel or firms.

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 48:

### **§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), amended LR 47:52 (January 2021), LR 48:

### **§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), amended LR 47:52 (January 2021), LR 48:

### **§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), amended LR 47:52 (January 2021), LR 48:

### **§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 48:

### **§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 48:

#### **Family Impact Statement**

1. Describe the Effect of the Proposed Regulation on the Stability of the Family. The proposed amended regulation should have no measurable impact upon the stability of the family.

2. Describe the Effect of the Proposed Regulation on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. The proposed amended regulation should have no impact upon the rights and authority of children regarding the education and supervision of their children.

3. Describe the Effect of the Proposed Regulation on the Functioning of the Family. The proposed amended regulation should have no direct impact upon the functioning of the family.

4. Describe the Effect of the Proposed Regulation on Family Earnings and Budget. The proposed amended regulation should have no direct impact upon family earnings and budget.

5. Describe the Effect of the Proposed Regulation on the Behavior and Personal Responsibility of Children. The proposed amended regulation should have no impact upon the behavior and personal responsibility of children.

5. Describe the Effect of the Proposed Regulation on the Ability of the Family or a Local Government to Perform the Function as Contained in the Rule. The proposed amended regulation should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in the rule.

#### **Small Business Analysis**

The impact of the proposed regulation on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed regulation that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed regulation on small businesses.

1. Identification and Estimate of the Number of the Small Businesses Subject to the Proposed Rule. The proposed amended regulation should have no measurable impact upon small businesses.

2. The Projected Reporting, Record Keeping, and Other Administrative Costs Required for Compliance with the Proposed Rule, Including the Type of Professional Skills Necessary for Preparation of the Report or Record. The proposed amended regulation should have no measurable impact upon small businesses.

3. A Statement of the Probable Effect on Impacted Small Businesses. The proposed amended regulation should have no measurable impact upon small businesses.

4. Describe any Less Intrusive or Less Costly Alternative Methods of Achieving the Purpose of the Proposed Rule. The proposed amended regulation should have no measurable impact on small businesses; therefore, will have no less intrusive or less cost alternative methods.

#### **Poverty Impact Statement**

1. Describe the Effect on Household Income, Assets, and Financial Security. The proposed amended regulation should have no effect on household income assets and financial security.

2. Describe the Effect on Early Childhood Development and Preschool through Postsecondary Education Development. The proposed amended regulation should have no effect on early childhood development and preschool through postsecondary education development.

3. Describe the Effect on Employment and Workforce Development. The proposed amended regulation should have no effect on employment and workforce development.

4. Describe the Effect on Taxes and Tax Credits. The proposed amended regulation should have no effect on taxes and tax credits.

5. Describe the Effect on Child and Dependent Care, Housing, Health Care, Nutrition, Transportation and Utilities Assistance. The proposed amended regulation should have no effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance.

#### **Provider Impact Statement**

1. Describe the Effect on the Staffing Level Requirements or Qualifications Required to Provide the Same Level of Service. The proposed amended regulation will have no effect.

2. The Total Direct and Indirect Effect on the Cost to the Provider to Provide the Same Level of Service. The proposed amended regulation will have no effect.

3. The Overall Effect on the Ability of the Provider to Provide the Same Level of Service. The proposed amended regulation will have no effect.

#### **Public Comments**

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](mailto:regulations@ldi.la.gov). Comments will be accepted through the close of business, 4:30 p.m., Monday, July 11, 2022.

James J. Donelon  
Commissioner



**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Regulation 42  
Group Self-Insurance Funds**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule changes will not result in additional costs or savings for state or local governmental units. The rule revisions repeal Regulation 80, which was implemented under the provisions of Act 878 of 2004. This regulation exempted commercial property and casualty insurers from the rate approval process unless the commissioner determines that the market for a line of insurance is noncompetitive. LDI is amending Regulation 42 to update statutory references and revise language to align with current law.

**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, SMALL BUSINESSES 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 revisions amend Regulation 42. LDI is amending Regulation 42 to update statutory references and revise language to align with current law.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule changes will not affect competition or employment.

Denise Gardner  
Chief of Staff  
2206#021

Evan Brasseaux  
Interim Deputy Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Insurance  
Office of the Commissioner**

**Regulation 84—Recognition and Selection of the  
Applicable CSO Mortality Table in Determining Minimum  
Reserve Liabilities and Nonforfeiture Benefits  
(LAC 37:XIII.Chapter 107)**

The Department of Insurance, pursuant to the authority of Louisiana Insurance Code, R.S. 22:1 et seq., specifically R.S. 22:11, and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby gives notice of its intent to amend Regulation 84—Recognition and Use of the 2001 CSO Mortality Table in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits, henceforth known as Regulation 84—Recognition and Selection of Applicable CSO Mortality Table in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits

The purpose of Regulation 84 is to prescribe usage of the appropriate mortality tables for life insurance, particularly minimum reserve liabilities and nonforfeiture benefits, in recognition of the Standard Valuation Manuals adopted by the National Association of Insurance Commissioners (NAIC). Policies issued on or after January 1, 2020 will now use mortality tables from the Valuation Manuals most recently adopted by NAIC, rather than the 2001 CSO Mortality Table in use immediately prior to that date.

**Title 37  
INSURANCE**

**Part XIII. Regulations**

**Chapter 107. Regulation 84—Recognition and Selection  
of Applicable CSO Mortality Table in  
Determining Minimum Reserve  
Liabilities and Nonforfeiture Benefits**

**§10701. Authority**

A. This regulation is promulgated by the commissioner of insurance pursuant to authority granted under the Louisiana Insurance Code, Title 22, §22:1 et seq., particularly the Standard Valuation Law, see Title 22, §753 and the Standard Nonforfeiture Law for Life Insurance, see Title 22 §936.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:11, 22:753, 22:936 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:2541 (October 2005), amended LR 48:

**§10703. Purpose**

A. The purpose of this regulation is to recognize, permit and prescribe the use of the applicable Commissioners Standard Ordinary (CSO) Mortality Table in accordance with R.S. 22:753 (the Standard Valuation Law for Life Insurance), R.S. 22:936 (the Standard Nonforfeiture Law for Life Insurance) and Sections 10909.A and Sections 10909.B of Regulation 85.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:11, 22:753, 22:936 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:2541 (October 2005), amended LR 48:

**§10705. Definitions**

\* \* \*

*Valuation Manual*—manual of valuation instructions as adopted by NAIC that sets forth the minimum reserve and related requirements for jurisdictions where the Standard Valuation Law or legislation including substantially similar terms and provisions has been enacted. The purpose of the VM-20 is to assign the appropriate CSO mortality table and interest rate for use in determining the minimum nonforfeiture standard for life insurance policies issued on or after the operative date of the applicable *Valuation Manual* as authorized and superseded by applicable state requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:11, 22:753, 22:936 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:2541 (October 2005), amended LR 48:

**§10707. CSO Mortality Tables**

A. At the election of the company for any one or more specified plans of insurance and subject to the conditions stated in this regulation, the 2001 CSO Mortality Table may be used as the minimum standard for policies issued on or after January 1, 2005 and before the date specified in Subsection B to which R.S. 22:753, R.S. 22:936 and Sections 10909.A and B of Regulation 85 are applicable. If the company elects to use the 2001 CSO Mortality Table, it shall do so for both valuation and nonforfeiture purposes. Notwithstanding the preceding, the commissioner may

specify restrictions on the use of this table for certain categories of life insurance for which the use of this table's mortality assumption is not representative of the business' underlying mortality experience.

B. Subject to the conditions stated in this regulation, the 2001 CSO Mortality Table shall be used in determining minimum standards for policies issued January 1, 2009 through December 31, 2016, to which R.S. 22:753, R.S. 22:936 and Sections 10909.A and B of Regulation 85 are applicable.

C. Subject to the conditions stated in this regulation, either the 2001 CSO Mortality Table or the 2017 CSO Mortality Table may be used in determining the minimum standards for policies issued January 1, 2017 through December 31, 2019, to which R.S. 22:753, R.S. 22:936 and Sections 10909.A and B of Regulation 85 are applicable.

D. Subject to the conditions stated in this regulation, minimum standards for policies issued on or after January 1, 2020 shall be determined using the mortality table in the Valuation Manual adopted by the NAIC at the time of issuance of the policy.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:11, 22:753, 22:936 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:2542 (October 2005), amended LR 48:

#### **§10709. Conditions**

A. - A.1. ...

2. smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by R.S. 22:753 and use composite mortality tables to determine the basic minimum reserves, minimum cash surrender values and amounts of paid-up nonforfeiture benefits; or

A.3. - B. ...

C. For the purpose of determining minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits, the 2001 CSO Mortality Table, or its successor table adopted by the NAIC and detailed in VM-20, may, at the option of the company for each plan of insurance, be used in its ultimate or select and ultimate form, subject to the restrictions of Section 10911 of Regulation 85 relative to use of the select and ultimate form.

D. When the 2001 CSO Mortality Table, or its successor table adopted by the NAIC and detailed in VM-20, is the minimum reserve standard for any plan for a company, the actuarial opinion in the annual statement filed with the commissioner shall be based on an asset adequacy analysis as specified in §2109.A.1 of Regulation 47 of the Louisiana Insurance Regulations. A commissioner may exempt a company from this requirement if it only does business in this state and in no other state.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:11, 22:753, 22:936 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:2542 (October 2005), amended LR 48:

#### **§10711. Applicability of the 2001 CSO Mortality Table or Its Successor Table to Regulation 85**

A. The 2001 CSO Mortality Table, or its successor table adopted by the NAIC and detailed in VM-20, may be used in

applying Regulation 85 in the following manner, subject to the transition dates for use of the 2001 CSO Mortality Table, or its successor table adopted by the NAIC and detailed in VM-20, in §10707 of this regulation.

1. Section 10905.A.(2).(b). The net level reserve premium is based on the ultimate mortality rates in the 2001 CSO Mortality Table, or its successor table adopted by the NAIC and detailed in VM-20.

2. Section 10907. All calculations are made using the 2001 CSO Mortality Table, or its successor table adopted by the NAIC and detailed in VM-20, and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in §10909.B of this regulation. The value of "qx+k+t+1" is the valuation mortality rate for deficiency reserves in policy year k+t, using the unmodified select mortality rates if modified select mortality rates are used in the computation of deficiency reserves.

3. Section 10909.A. The 2001 CSO Mortality Table, or its successor table adopted by the NAIC and detailed in VM-20, is the minimum standard for basic reserves.

4. Section 10909.B. The 2001 CSO Mortality Table, or its successor table adopted by the NAIC and detailed in VM-20, is the minimum standard for deficiency reserves. If select mortality rates are used, they may be multiplied by X percent for durations in the first segment, subject to the conditions specified in §10909.B.3.a. through i. In demonstrating compliance with those conditions, the demonstrations may not combine the results of tests that utilize the 1980 CSO Mortality Table with those tests that utilize the 2001 CSO Mortality Table, or its successor table adopted by the NAIC and detailed in VM-20, unless the combination is explicitly required by regulation or necessary to be in compliance with relevant actuarial standards of practice.

5. Section 10911.C. The valuation mortality table used in determining the tabular cost of insurance shall be the ultimate mortality rates in the 2001 CSO Mortality Table, or its successor table adopted by the NAIC and detailed in VM-20.

6. Section 10911.E.4. The calculations specified in §10911.E shall use the ultimate mortality rates in the 2001 CSO Mortality Table or its successor table adopted by the NAIC and detailed in VM-20.

7. Section 10911.F.4. The calculations specified in §10911.F shall use the ultimate mortality rates in the 2001 CSO Mortality Table or its successor table adopted by the NAIC and detailed in VM-20.

8. Section 10911.G.2. The calculations specified in §10911.G shall use the ultimate mortality rates in the 2001 CSO Mortality Table or its successor table adopted by the NAIC and detailed in VM-20.

9. Section 10913.A.1.b. The one-year valuation premium shall be calculated using the ultimate mortality rates in the 2001 CSO Mortality Table or its successor table adopted by the NAIC and detailed in VM-20.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.22:11, 22:753, 22:936 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:2542 (October 2005).

### §10713. Gender-Blended Tables

A. For any ordinary life insurance policy delivered or issued for delivery in this state on and after January 1, 2005, through December 31, 2016, that utilizes the same premium rates and charges for male and female lives or is issued in circumstances where applicable law does not permit distinctions on the basis of gender, a mortality table that is a blend of the 2001 CSO Mortality Table (M) and the 2001 CSO Mortality Table (F) may, at the option of the company for each plan of insurance, be substituted for the 2001 CSO Mortality Table for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits. No change in minimum valuation standards is implied by this Subsection of the regulation.

B. For any ordinary life insurance policy delivered or issued for delivery in this state on and after January 1, 2017, until the operative date of VM-20 as established by the NAIC, that utilizes the same premium rates and charges for male and female lives or is issued in circumstances where applicable law does not permit distinctions on the basis of gender, a mortality table that is a blend of the 2017 CSO Mortality Table (M) and the 2017 CSO Mortality Table (F) may, at the option of the company for each plan of insurance, be substituted for the 2017 CSO Mortality Table for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits. No change in minimum valuation standards is implied by this Subsection of the regulation.

C. For any ordinary life insurance policy delivered or issued for delivery in this state on and after the operative date of VM-20 as established by the NAIC, that utilizes the same premium rates and charges for male and female lives or is issued in circumstances where applicable law does not permit distinctions on the basis of gender, a mortality table that is prescribed in VM-20 that is a blend of the prescribed mortality tables male and female rates may, at the option of the company for each plan of insurance, be substituted for the prescribed mortality table for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits. No change in minimum valuation standards is implied by this Subsection of the regulation.

D. The company may choose from among the blended tables developed by the American Academy of Actuaries CSO Task Force and adopted by the NAIC in December 2002.

E. It shall not, in and of itself, be a violation of R.S. 22:1211 et seq. for an insurer to issue the same kind of policy of life insurance on both a sex-distinct and sex-neutral basis.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:11, 22:753, 22:936 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:2543 (October 2005), amended LR 48:

### §10717. Effective Date

A. This regulation shall take effect upon final publication in the *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:11, 22:753, 22:936 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:2543 (October 2005), amended LR 48:

### 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, will have no less intrusive or less cost alternative methods.

**Provider Impact Statement**

1. Describe the effect on the staffing level requirements or qualifications required to provide the same level of service. The proposed 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., July 11, 2022.

James J. Donelon  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

**RULE TITLE: Regulation 84—Recognition and Selection of the Applicable CSO Mortality Table in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT 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 being amended to allow the use of mortality tables from the Valuation Manuals most recently adopted by the NAIC.

**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, SMALL BUSINESSES OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule is not anticipated to result in any costs to directly affected persons, small businesses or non-governmental groups. The rule is amended to prescribe policies issued on or after January 1, 2020 to use mortality tables from the Valuation Manuals most recently adopted by NAIC.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule will have no impact upon competition and employment in the state.

Denise Gardner  
Chief of Staff  
2206#027

Evan Brasseaux  
Interim Deputy Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Insurance  
Office of the Commissioner**

**Regulation 100—Coverage of Prescription  
Drugs through a Drug Formulary  
(LAC 37:XIII.Chapter 41)**

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and specifically R.S. 22:11, the Department of Insurance hereby gives notice of its intent to amend Regulation 100 to provide updates in regard to the specific notice requirements a health insurance issuer must follow when implementing a modification of certain drug coverages in accordance with Act No. 217 of the 2021 Regular Session.

**Title 37  
INSURANCE**

**Part XIII. Regulations**

**Chapter 41. Regulation Number 100—Coverage of Prescription Drugs through a Drug Formulary**

**§14101. Purpose**

A. ...

B. The purpose of the amendment to Regulation 100 is to update the Regulation to account for the notice requirements that were added to R.S. 22:1068(D)(3) and R.S. 22:1074(D)(3) by Act No. 217 of the 2021 Regular Session that a health insurance issuer must follow when modifying certain drug coverages offered in the group and individual markets.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:11, R.S. 1068(D) and R.S. 22:1074(D).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:1028 (April 2012), amended LR 48:

**§14111. Requirements for the Modification Affecting Drug Coverage**

A. - B. ...

C. A modification of drug coverage for any drug increasing over \$300 per prescription or refill with an increase in the wholesale acquisition cost of at least 25% in the prior 365 days may occur at any time provided that 30-day notice of the modification of coverage is given. The 30-day notice of the modification of coverage shall include information on the health insurance issuer's process for an enrollee's physician to request an exception from the health

insurance issuer's modification of drug coverage for purposes of continuity of care of the patient.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:11, R.S. 1068(D) and R.S. 22:1074(D).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:1028 (April 2012), amended LR 48:

#### **§14115. Requirements for Modifying a Group Insurance Product**

Pursuant to R.S. 22:1068, a health insurance issuer may modify its drug coverage offered to a group health plan if each of the following conditions is met.

1. - 5. ...

6. As an exception to the requirement that a modification must occur at the time of coverage renewal, modification of drug coverage for any drug increasing over \$300 per prescription or refill with an increase in the wholesale acquisition cost of at least 25 percent in the prior 365 days may occur at any time provided that 30-day notice of the modification of coverage is given. The 30-day notice of the modification of coverage shall include information on the health insurance issuer's process for an enrollee's physician to request an exception from the health insurance issuer's modification of drug coverage for purposes of continuity of care of the patient.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:11, R.S. 1068(D) and R.S. 22:1074(D).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:1028 (April 2012), amended LR 48:

#### **§14117. Requirements for Modifying an Individual Insurance Product**

A. Pursuant to R.S. 22:1074, a health insurance issuer may modify its drug coverage offered to individuals if each of the following conditions is met.

1. - 5. ...

6. As an exception to the requirement that a modification must occur at the time of coverage renewal, modification of drug coverage for any drug increasing over \$300 per prescription or refill with an increase in the wholesale acquisition cost of at least 25 percent in the prior 365 days may occur at any time provided that 30-day notice of the modification of coverage is given. The 30-day notice of the modification of coverage shall include information on the health insurance issuer's process for an enrollee's physician to request an exception from the health insurance issuer's modification of drug coverage for purposes of continuity of care of the patient.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:11, R.S. 1068(D) and R.S. 22:1074(D).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:1028 (April 2012), amended LR 48:

##### **Family Impact Statement**

1. Describe the Effect of the Proposed Regulation on the Stability of the Family. The proposed amended regulation should have no measurable impact upon the stability of the family.

2. Describe the Effect of the Proposed Regulation on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. The proposed amended regulation should have no impact upon the rights and authority of 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 amended regulation should have no direct impact upon the functioning of the family.

4. Describe the Effect of the Proposed Regulation on Family Earnings and Budget. The proposed amended regulation should have no direct impact upon family earnings and budget.

5. Describe the Effect of the Proposed Regulation on the Behavior and Personal Responsibility of Children. The proposed amended regulation should have no impact upon the behavior and personal responsibility of children.

6. Describe the Effect of the Proposed Regulation on the Ability of the Family or a Local Government to Perform the Function as Contained in the Rule. The proposed amended regulation should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in the rule.

##### **Small Business Analysis**

The impact of the proposed regulation on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed regulation that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed regulation on small businesses.

1. Identification and Estimate of the Number of the Small Businesses Subject to the Proposed Rule. The proposed amended regulation should have no measurable impact upon small businesses.

2. The Projected Reporting, Record Keeping, and Other Administrative Costs Required for Compliance with the Proposed Rule, Including the Type of Professional Skills Necessary for Preparation of the Report or Record. The proposed amended regulation should have no measurable impact upon small businesses.

3. A Statement of the Probable Effect on Impacted Small Businesses. The proposed amended regulation should have no measurable impact upon small businesses.

4. Describe any Less Intrusive or Less Costly Alternative Methods of Achieving the Purpose of the Proposed Rule. The proposed amended regulation should have no measurable impact on small businesses; therefore, will have no less intrusive or less cost alternative methods.

##### **Poverty Impact Statement**

1. Describe the Effect on Household Income, Assets, and Financial Security. The proposed amended regulation should have no effect on household income assets and financial security.

2. Describe the Effect on Early Childhood Development and Preschool through Postsecondary Education Development. The proposed amended regulation should have no effect on early childhood development and preschool through postsecondary education development.

3. Describe the Effect on Employment and Workforce Development. The proposed amended regulation should have no effect on employment and workforce development.

4. Describe the Effect on Taxes and Tax Credits. The proposed amended regulation should have no effect on taxes and tax credits.

5. Describe the Effect on Child and Dependent Care, Housing, Health Care, Nutrition, Transportation and Utilities Assistance. The proposed amended regulation should have no effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance.

#### **Provider Impact Statement**

1. Describe the Effect on the Staffing Level Requirements or Qualifications Required to Provide the Same Level of Service. The proposed amended regulation will have no effect.

2. The Total Direct and Indirect Effect on the Cost to the Provider to Provide the Same Level of Service. The proposed amended regulation will have no effect.

3. The Overall Effect on the Ability of the Provider to Provide the Same Level of Service. The proposed amended regulation will have no effect.

#### **Public Comments**

Interested persons who wish to make comments may do so by writing to John Piccione, 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](mailto:regulations@ldi.la.gov). Comments will be accepted through the close of business, 4:30 p.m., July 11, 2022.

James J. Donelon  
Commissioner

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Regulation 100—Coverage of Prescription Drugs through a Drug Formulary**

#### **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 rule is being amended to comply with changes made to R.S. 22:1068(D)(3) and R.S. 22:1074(D)(3) implemented by Act No. 217 of the 2021 Louisiana Regular Legislative Session. These changes add notice requirements a health insurer must follow when implementing a modification of certain drug coverages.

#### **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, SMALL BUSINESSES 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 amendments add notice requirements a health insurance issuer must follow when implementing a modification of certain drug coverages.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule will have no impact upon competition and employment in the state.

Denise Gardner  
Chief of Staff  
2206#001

Evan Brasseaux  
Interim Deputy Fiscal Officer  
Legislative Fiscal Office

## **NOTICE OF INTENT**

### **Office of the Governor Board of Home Inspectors**

Licensure and Standards of Practice  
(LAC 46:XL.113, 115, 121, 123, 139, and 305)

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. 17:1475(4), that the Board of Home Inspectors proposes to amend its administrative rules. The proposed changes to §113 limits the validity of criminal background checks of applicants to one year from issuance. The proposed changes to §115 allow for the removal of certain client information from inspection reports submitted upon license renewal. The proposed changes to §121 allow pre-licensing education classes to count toward continuing education hours. They also provide qualifications for continuing education providers to teach certain classes, requirements to provide notice to the board of certain classes it intends to teach and sets a minimum number of in person hours they must offer each year to remain certified. The proposed changes to §123 provide requirements that certain client identifying information be included in inspection reports. The proposed changes to §139 set forth disciplinary action against education providers who violate the rules. The proposed changes to §305 further define the systems and components to be inspected or excluded from reports.

#### **Title 46**

### **PROFESSIONAL AND OCCUPATIONAL STANDARDS**

#### **Part XL. Home Inspectors**

#### **Chapter 1. General Provisions**

#### **§113. Qualifications for Licensure and Application**

##### **A. Applicants must have:**

1. - 7. ...

8. applied to the Louisiana State Police for a criminal background check, pay all costs associated therewith and submit the results to the board. Background checks shall expire 365 days after the date of issuance.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1475-1477 and R.S. 37:1479.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2740 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 43:1910 (October 2017), LR 48:

#### **§115. Licensing Applications; Forms; Terms; Renewals; Inactive Status**

A. ...

B. Upon renewal of a license, the licensee shall submit a copy of a completed inspection report form from the previous licensing period. Client information, including name, phone number, email and inspection fee amount, may be deleted from the form. Reports must comply with §123 of this Chapter.

C. - E. ....

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1475-1477 and R.S. 37:1479.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2740 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1687 (August 2004), LR 36:2858

(December 2010), LR 37:2405 (August 2011), LR 41:919 (May 2015), LR 43:1910 (October 2017), LR 48:

### **§121. Continuing Education; Instructors**

A.1. - A.2. ...

B. Continuing Education Courses

1. - 7. ...

8. The licensee may receive up to a maximum of 10 hours of continuing education credit per licensing period for any combination of the following types of classes as set forth in Paragraphs 5-8 of this Subsection:

a. - c. ...

d. courses designated for pre-licensing education as set forth in §119.C.1 of this Chapter.

9. Continuing education courses must be taught by continuing education providers who meet the criteria set forth in §121.F.1. Qualified guest lecturers may teach courses on behalf of continuing education provider instructors. The continuing education provider shall be responsible for confirming the qualifications of the guest lecturer.

10. Any remaining balance of continuing education hours must be obtained by participation in live presentation CE classes taught by a board-certified education provider.

11. All licensees must attend a board-approved report writing and standards of practice seminar at least once every three years.

C.1. - F.3. ...

4.a. A certified continuing education provider shall be authorized to offer any continuing education courses that teach items specifically covered within the standards of practice, without applying for prior approval of the chief operating officer and/or board. The continuing education provider shall be responsible for verifying that the course work falls within the scope of the standards of practice or building construction field.

b. a certified continuing education provider wishing to offer the report writing seminar must be approved by the board prior. The provider must notify the board of their intent and provide the board with an outline of their classroom presentation. The presentation must cover all the items included in the board-approved report writing seminar outline.

c. all certified continuing education providers approved by the board to offer the report writing seminar must attend a board-approved report writing instructor train the trainer seminar at least once every three years.

5. - 6. ...

7. The names and contact information for all approved continuing education providers will be posted on the board's official website.

8. All continuing education classes to be attended by three or more students must be reported to the LSBHI at least 10 days prior to the date the class will be held.

9. All certified continuing education providers shall offer a minimum of eight in-person hours of home inspection industry offerings each year in order to retain board approval to provide continuing education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1477 and R.S. 37:1479-1480.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2742 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 36:2860 (December 2010), LR 37:2405

(August 2011), LR 38:2531 (October 2012), LR 40:1003 (May 2014), LR 43:314 (February 2017), LR 43:1911 (October 2017), LR 48:

### **§123. Home Inspection Reports; Consumer Protection**

A. All home inspection reports shall comply with all requirements as set forth in the standards of practice, these rules and the home inspector licensing law. Home inspection reports shall specify the municipal address of the home inspected, the client(s) for whom the home was inspected and the date of the inspection. Home inspection reports shall not be resold for any reason.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475-1477 and R.S. 37:1479-1480.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2742 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 41:920 (May 2015), LR 48:

### **§139. Prohibited Acts: Penalties and Costs**

A. - F. ...

G. The board may suspend or revoke any certification or license, or censure, fine, or impose probationary or other restrictions on any education provider who violates any provisions of these rules or the Home Inspector Licensing law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475 and R.S. 37:1486-1487.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2744 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1688 (August 2004), LR 41:921 (May 2015), LR 43:314 (February 2017), LR 43:1912 (October 2017), LR 48:

## **Chapter 3. Standards of Practice**

### **§305. Purpose and Scope**

A. ...

B. Home inspectors shall:

1. provide the client with a written pre-inspection contract, whenever possible, which shall:

a. - b. ...

c. state that the inspection is limited to only those systems or components, as set forth in these standards of practice, as agreed upon by the client and the inspector or expressly excluded in writing;

d. contain copies of the standards of practice and Code of Ethics; and

B.1.e. - C.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR26:2746 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1690 (August 2004), LR 38:2532 (October 2012), LR 43:1912 (October 2017), LR 48:

### **Family Impact Statement**

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, a Family Impact Statement is hereby submitted 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 or 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 changes.

#### **Poverty Impact Statement**

In accordance with Section 973 of Title 49 of the Louisiana Revised Statutes, a Poverty Impact Statement is hereby submitted 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 household income, assets, and financial security. The proposed Rule change will have no effect on household income, assets, and financial security

2. The effect on early childhood development and preschool through postsecondary education development. The proposed Rule change will have no effect on effect on early childhood development and preschool through postsecondary education development.

3. The effect on employment and workforce development. The proposed Rule change will have no effect on employment and workforce development.

4. The effect on taxes and tax credits. The proposed Rule change will have no effect on taxes and tax credits.

5. The effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance. The proposed Rule change will have no effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

#### **Small Business Analysis**

In accordance with Section 965 of Title 49 of the Louisiana Revised Statutes, a regulatory flexibility analysis is hereby submitted 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 businesses.

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 businesses.

4. The Establishment of Performance Standards for Small Businesses to Replace Design or Operational Standards Required in the Proposed Rule. The proposed rule changes do not impact design or operational 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, a Provider Impact Statement is hereby submitted 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 Morgan Spinosa, Chief Operating Officer, at the office of the Louisiana State Board of Home Inspectors, 5211 Essen Lane, Suite 9, Baton Rouge, LA 70809. She is responsible for responding to inquiries regarding the proposed Rule amendment. 225-248-1334.

#### **Public Hearing**

A public hearing to solicit comments and testimony on the proposed Rule changes is scheduled for August 5, 2022 at 9 am, at the office of the Louisiana State Board of Home Inspectors, 5211 Essen Lane, Suite 9, Baton Rouge, LA 70809. During the hearing, all interested persons will be afforded an opportunity to submit data, views, or arguments, either orally or in writing. The deadline for the receipt of all comments is 12 p.m. noon that same day. To request reasonable accommodations for persons with disabilities, please call the board office at 225.248-1334.

Morgan Spinosa  
Chief Operating Officer



**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Licensure and Standards of Practice**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule changes will require the Louisiana State Board of Home Inspectors (LSBHI) to publish the proposed and final rules in the state register, resulting in attorney's fees of \$1,000 in FY 22. There will be no additional expenditures or cost savings for LSBHI or other state or local governmental units. The LSBHI is funded through license fees and report fees.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule change will not affect revenue collections of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule changes will require continuing education providers to offer at least 8 in classroom hours per year of continuing education. The amount of such increase in economic benefit and cost will vary by provider and is indeterminable.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule changes will have no effect on competition and employment.

Albert J. Nicaud  
Board Attorney  
2206#060

Evan Brasseaux  
Interim Deputy Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Division of Administration  
Racing Commission**

Claiming Rule (LAC 35:XI.Chapter 99)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 4:148, notice is hereby given that the Racing Commission proposes to amend LAC 35:XI.9911 and 9913. In addition, the Racing Commission proposes to adopt LAC 35:XI.9914 and 9949. The proposed §9911, §9913, and §9914 updates and clarifies the standards for cases in which horse claims can be voided. The proposed §9949 establishes standards for purse-to-claim price ratios.

**Title 35**

**HORSE RACING**

**Part XI. Claiming Rules and Engagements**

**Chapter 99. Claiming Rule**

**§9911. Claiming Procedures**

A. All claims shall be signed, sealed, time stamped and deposited in a locked box provided for that purpose in a designated place, at least 15 minutes prior to post time for each race. The claim box shall be opened by the stewards and all claims shall remain in their possession. The claim envelopes shall not be opened by the stewards earlier than 10 minutes prior to post time for the designated race. Notification will be made by the stewards to the proper officials of any claim or claims, if any. No money shall accompany the claim. Each person desiring to make a claim,

unless he shall have such amount to his credit with the horsemen's bookkeeper, must first deposit with the horsemen's bookkeeper the whole amount of his claim in cash, for which a receipt will be given. If more than one person shall enter a claim for the same horse, the disposition of the horse shall be decided by lot by one of the stewards or his deputy, and the person so determined to have the right of the claim shall become the owner of the horse whether it be alive or dead, sound or unsound or injured during the race or after it, except as otherwise provided by voided and voidable claims sections. Any horse, other than the winner, that has been claimed, shall be taken to the paddock after the race has been run, for delivery to the claimant unless sent to the retention barn for delivery to the claimant after the specimen has been collected.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:142 and R.S. 4:148.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 1:497 (November 1975), amended LR 2:446 (December 1976), LR 3:42 (January 1977), LR 4:285 (August 1978), LR 48:

**§9913. Vesting of Title; Tests**

A. Title to a claimed horse shall be vested in the successful claimant at the time the horse becomes a starter. The successful claimant shall then become the owner of the horse whether alive or dead, sound or unsound, or injured at any time after leaving the starting gate, during the race or after, except as otherwise provided by voided and voidable claims section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:142 and R.S. 4:148.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:446 (December 1976), amended LR 3:42 (January 1977), LR 4:285 (August 1978), LR 5:136 (June 1979), amended by the Office of the Governor, Division of Administration, Racing Commission LR 30:1476 (July 2004), LR 31:3160 (December 2005), LR 35:2756 (December 2009), LR 48:

**§9914. Voided and Voidable Claims**

A. A claim shall be voided if a horse is a starter as determined by the regulatory authority, and the horse:

1. dies on the racetrack; or

2. suffers an injury which requires the euthanasia of the horse as determined by the official veterinarian while the horse is on the racetrack.

B. A claim is voidable at the discretion of the new owner for a period of one hour after the race is made official, for any horse:

1. that is vanned off the track at the direction of the official veterinarian; or

2. that is observed by the official veterinarian to be lame or unsound while on the racetrack for that race; or

3. that is observed by the official veterinarian to have bled through its nostrils while on the track.

C. The successful claimant may request on the claim blank at the time he makes his claim that the horse be tested for the presence of equine infectious anemia via a Coggins test and/or erythropoietin and/or darbepoietin.

1. Should the test for equine infectious anemia prove positive, it shall be cause for a horse to be returned to his previous owner and barred from racing in the state of Louisiana.

2. Should the test for recombinant erythropoietin and/or darbepoietin prove positive, it shall be cause for a horse to be returned to his previous owner and barred from racing in the state of Louisiana until such time as the horse tests negative.

3. Additionally, if such erythropoietin and/or darbepoietin positive result is found, the claimant, claimant's trainer or claimant's authorized agent shall have 48 hours in which to request the claim be declared invalid, such request to be made in writing to the stewards.

4. The expense of the tests and the maintenance of the horse during the period requested for the tests shall be absorbed by the successful claimant.

5. If such tests are requested the claimed horse will be sent to the retention barn of the Louisiana State Racing Commission where the state veterinarian will draw blood samples.

a. Blood samples drawn to test for equine infectious anemia shall be sent to a laboratory approved by the Louisiana Livestock Sanitary Board for the conduct of such test.

b. Blood samples drawn to detect by immunoassay recombinant erythropoietin and/or darbepoietin shall be sent to the Louisiana State Racing Commission's state chemist.

6. Notwithstanding any inconsistent provision of the Part, a horse shall not be subject to disqualification from the race and from any share of the purse in the race, and the trainer of the horse shall not be subject to application of trainer's responsibility based upon the finding by the laboratory that erythropoietin and/or darbepoietin was present in the sample taken from that horse.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:142 and R.S. 4:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission LR 48:

#### **§9949. Purse to Claim Price Ratio**

A. The purse-to-claim price ratio in claiming races for open bred horses shall not be greater than a 3:1 ratio, except for races where supplements are added for accredited Louisiana bred horses who compete in open bred races, where the purse-to-claim price ratio shall not be greater than 4:1.

B. The purse-to-claim price ratio for restricted accredited Louisiana bred races shall not be greater than 4:1, except where the conditions for the race limit the entries to accredited Louisiana bred horses sired by stallions standing in the state as of the breeding date where the ratio shall not be greater than 5:1.

C. Modifications to Subsections A and B of this Section may be made at any duly noticed meeting of the Racing Commission.

1. Approved modifications shall be posted on the Racing Commission's website and posted at the Racing Commission's racetrack offices.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:142, and R.S. 4:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission LR 48:

#### **Family Impact Statement**

This proposed Rule has no known impact on family formation, stability, and/or autonomy as described in R.S. 49:972.

#### **Poverty Impact Statement**

This proposed Rule has no known impact on poverty as described in R.S. 49:973.

Small Business Analysis

This proposed Rule has no known measurable impact on small businesses as described in R.S. 49:965.6.

#### **Provider Impact Statement**

This proposed Rule has no known impact on providers of services for individuals with developmental disabilities.

#### **Public Comments**

The domicile office of the Louisiana State Racing Commission is open from 8 a.m. to 4:30 p.m. Monday through Friday, and interested parties may submit oral or written comments, data, views, or arguments relative to this proposed rule for a period up to 20 days (exclusive of weekends and state holidays) from the date of this publication to Brett Bonin, Assistant Attorney General, 320 North Carrollton Avenue, Suite 2-B, New Orleans, Louisiana 70119-5100.

Charles A. Gardiner, III.  
Executive Director

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Claiming Rule**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There is no anticipated direct material effect on state or local governmental units as a result of the proposed administrative rule. The proposed administrative rule updates and clarifies the standards for cases in which horse claims can be voided. Also, the proposed administrative rule establishes standards for purse-to-claim price ratios.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no estimated effect on revenue collections of state or local governmental units as a result of the proposed administrative rule.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed administrative rule is anticipated to impact owners of horses up for claim. The actions on this rule is more restrictive to owners of horses up for claim than the current rules in that a claim will be voided if the horse dies during the claiming race or if the horse is euthanized following the race due to an injury sustained during the claiming race as determined by the official veterinarian. The prospective claimant would be given more discretion to void a claim of a horse that the official veterinarian declares injured within an hour after the claiming race is run or that tests positive for equine infections as specified in the rules. The owners of horses whose claims are voided according to this rule will take on the cost and responsibility of those horses rather than the claimant. Also, the proposed administrative rule establishes standards for

purse-to-claim price ratios, which will limit the amount of purse money payouts from a claiming race to owners based on the stated ratio to claimed prices of their competing horses.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no effect on competition and employment as a result of the proposed administrative rules.

Charles A. Gardiner, III.  
Executive Director  
2206#004

Evan Brasseaux  
Interim Deputy Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Division of Administration  
Racing Commission**

Horses Suspended Concurrent with Trainer  
(LAC 46:XLI.321)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 4:148, notice is hereby given that the Racing Commission proposes to adopt LAC 46:XLI.321. The proposed Rule establishes that horses are suspended from racing concurrently with their trainers, who have been suspended for six months or more, unless the stewards approve transfer of those horses to other trainers, excluding relatives and employees of the suspended trainer as specified, as requested by their owners.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XLI. Horseracing Occupations**

**Chapter 3. Trainer**

**§321. Horses Suspended Concurrent with Trainer**

A. All horses in the charge of a trainer at the time of a violation and also during the pendency of violation proceedings and appeals, where the trainer's license has been revoked or suspended for six months or more, shall not be permitted to race during the period of such trainer's suspension. Upon application by the owners of such suspended horses, the stewards may approve the bona fide transfer of such horses to the care of another registered trainer, and upon such approved transfer, such horses may be entered to race, unless said horse is on the stewards' list for a positive test until the horse is removed from the stewards' list.

B. The trainer whose license has been revoked or suspended for six months or more must remove all signage and relinquish all assigned stalls to the track, and horses may not be transferred to any relative of the suspended trainer, current employee of the suspended trainer, or person employed by the suspended trainer within a year prior to the trainer's suspension. For purposes of this Section, the term *relative* shall be deemed to be any past or present spouses, children, past or present spouses of children, siblings, past or present spouses of siblings, children of siblings, half-siblings, past or present spouses of half-siblings, children of siblings, parents, past or present spouses of parents, grandparents, past or present spouses of grandparents, grandchildren, and past or present spouses of grandchildren.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:142, and R.S. 4:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission LR 48:

**Family Impact Statement**

This proposed Rule has no known impact on family formation, stability, and/or autonomy as described in R.S. 49:972.

**Poverty Impact Statement**

This proposed Rule has no known impact on poverty as described in R.S. 49:973.

**Small Business Analysis**

This proposed Rule has no known measurable impact on small businesses as described in R.S. 49:965.6.

**Provider Impact Statement**

This proposed Rule has no known impact on providers of services for individuals with developmental disabilities.

**Public Comments**

The domicile office of the Louisiana State Racing Commission is open from 8 a.m. to 4:30 p.m. Monday through Friday, and interested parties may submit oral or written comments, data, views, or arguments relative to this proposed rule for a period up to 20 days (exclusive of weekends and state holidays) from the date of this publication to Brett Bonin, Assistant Attorney General, 320 North Carrollton Avenue, Suite 2-B, New Orleans, Louisiana 70119-5100.

Charles A. Gardiner, III.  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Horses Suspended  
Concurrent with Trainer**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There is no anticipated direct material effect on state or local governmental units as a result of the proposed administrative rule. The proposed administrative rule establishes that horses are suspended from racing concurrently with their trainers, who have been suspended for 6 months or more, unless the stewards approve transfer of those horses to other trainers, excluding relatives and employees of the suspended trainer as specified, as requested by their owners.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections of state or local governmental units as a result of the proposed administrative rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES OR NONGOVERNMENTAL GROUPS (Summary)

Owners will be impacted by the proposed administrative rule in that it imposes concurrent suspensions from racing for horses in the charge of trainers with revoked or currently suspended licenses.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no effect on competition and employment as a result of the proposed administrative rule change.

Charles A. Gardiner, III.  
Executive Director  
2206#003

Evan Brasseaux  
Interim Deputy Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

### Office of the Governor Division of Administration Racing Commission

#### Use of Riding Crop in Thoroughbred Races (LAC 35:VII.8902)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 4:148, notice is hereby given that the Racing Commission proposes to adopt LAC 35:VII.8902. The proposed Rule establishes proper use of a riding crop in thoroughbred racing and sets penalty standards for violations.

#### Title 35 HORSE RACING

#### Part VII. Equipment and Colors

#### Chapter 89. Whips

#### §8902. Use of Riding Crop in Thoroughbred Races

A. Although the use of a riding crop is not required, a jockey who uses a riding crop during a thoroughbred race shall do so only in a manner consistent with exerting his or her best efforts to win.

B. In any thoroughbred race in which a jockey will ride without a riding crop, an announcement of that fact shall be made over the public address system.

C. An electrical or mechanical device or other expedient designed to increase or retard the speed of a horse in a thoroughbred race, other than a riding crop approved by the stewards, shall not be possessed by anyone, or applied by anyone to a horse at any time at a location under the jurisdiction of the commission.

D. A riding crop shall not be used on a two-year-old horse in thoroughbred races before April 1 of each year.

E. Allowable uses of a riding crop in thoroughbred races include the following:

1. the riding crop may be used at any time, without penalty, if, in the opinion of the stewards, the riding crop is used to avoid a dangerous situation or preserve the safety of other riders or horses in a race;

2. use of the riding crop in the overhand fashion for a total of six times from the three-eighths pole to the finish line, only to be used two times in succession and then must give a horse a chance to respond;

3. if necessary during a race, a riding crop may be used in a backhanded fashion on the hindquarters from the three-eighths to the finish line. This use will not be counted toward the use of the crop six times in the overhand fashion;

4. tapping the horse on the shoulder with the crop in the down position, while both hands are holding onto the reins and both hands are touching the neck of the horse; and

5. showing or waving the crop without contact with the horse and giving the horse time to respond before striking the horse.

F. Use of the riding crop to make contact with a horse to maintain focus and concentration, to control the horse for safety of the horse and rider, or to encourage a horse is allowed in thoroughbred races, with the following exceptions:

1. in any manner, other than backhanded on the hindquarters as set forth in Paragraph 3 of Subsection E,

tapping on the shoulder as set forth in Paragraph 4 of Subsection E, or resulting in more than six times in the overhand manner as set forth in Paragraph 2 of Subsection E;

2. the riding crop shall not be used more than twice in succession and the horse must be given a chance to respond before using it again;

a. "Chance to respond" is defined as one of the following actions by a jockey:

i. pausing the use of the riding crop on their horse before resuming again;

ii. pushing on their horse with a rein in each hand, keeping the riding crop in the up or down position;

iii. showing the horse the riding crop without making contact; or

iv. moving the riding crop from one hand to the other.

3. with the rider's wrist above helmet height;

4. on the head, flanks, or on any other part of its body other than the shoulders or hindquarters;

5. during the post parade or after the finish of the race except if necessary to control the horse;

6. excessive or brutal use of the crop causing injury to the horse;

7. causing welts or breaks in the skin;

8. if the horse is clearly out of the race or has obtained its maximum placing; and

9. if the horse is showing no response.

G. A riding crop shall not be used to strike another person.

H. Use of the crop during workouts shall be permitted so long as such use does not violate Subsection F of this rule.

I. The giving of instructions by any licensee that, if obeyed, would lead to a violation of this Section may result in disciplinary action also being taken against the licensee who gave the instructions.

J. Only padded/shock absorbing riding crops approved by the stewards, which have not been modified in any way, may be carried in a thoroughbred race.

K. During a thoroughbred race, if a jockey rides in a manner contrary to this Rule, at the stewards' discretion, the stewards may impose a warning or fine of \$100 to \$500 or a suspension. If in the opinion of the stewards the violation is egregious or intentional, the stewards have the discretion to impose both a fine and a suspension. Factors in determining whether a violation is egregious include, but are not limited to:

1. recent history of similar violations;

2. number of uses over the total and consecutive limits described; and

3. using the crop in the overhanded position more than six times.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:147, R.S. 4:148, and R.S. 4:172.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission LR 48:

#### Family Impact Statement

This proposed Rule has no known impact on family formation, stability, and/or autonomy as described in R.S. 49:972.

#### Poverty Impact Statement

This proposed Rule has no known impact on poverty as described in R.S. 49:973.

### Small Business Analysis

This proposed Rule has no known measurable impact on small businesses as described in R.S. 49:965.6.

### Provider Impact Statement

This proposed Rule has no known impact on providers of services for individuals with developmental disabilities.

### Public Comments

The domicile office of the State Racing Commission is open from 8 a.m. to 4:30 p.m. Monday through Friday, and interested parties may submit oral or written comments, data, views, or arguments relative to this proposed Rule for a period up to 20 days (exclusive of weekends and state holidays) from the date of this publication to Brett Bonin, Assistant Attorney General, 320 North Carrollton Avenue, Suite 2-B, New Orleans, Louisiana 70119-5100.

Charles A. Gardiner, III.  
Executive Director

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Use of Riding Crop in Thoroughbred Races

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There is no anticipated direct material effect on state or local governmental units as a result of the proposed administrative rule. The proposed administrative rule establishes proper use of a riding crop in thoroughbred racing and sets penalty standards for violations.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections of state or local governmental units as a result of the proposed administrative rule.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES OR NONGOVERNMENTAL GROUPS (Summary)

Jockeys, association riders, pony riders, and assistant starters will be impacted by the proposed administrative rule in that it allows for penalties of fines and suspensions associated with not following the proper use of riding crop in thoroughbred racing as defined in the rule at the discretion of the Stewards.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no effect on competition and employment as a result of the proposed administrative rule.

Charles A. Gardiner, III.  
Executive Director  
2206#002

Evan Brasseaux  
Interim Deputy Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

### Office of the Governor Office of Financial Institutions

Virtual Currency Business Activity  
(LAC 10:I.1901-1937)

The Office of Financial Institutions (OFI) proposes to enact LAC 10:I.1901-1937 relative to licensure, registration, and regulation of those persons engaging, or planning to engage, in virtual currency business activity in the state of

Louisiana pursuant to 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. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and is intended to provide clear and concise guidance that will allow for the implementation and enforcement of the provisions of the VCBA as required under R.S. 6:1394.

The proposed Rule will enable OFI to achieve its regulatory goals and objectives regarding proper supervision and oversight of such persons included within the scope of the VCBA in a manner that is not overly complex, costly, or burdensome. In doing so, OFI hopes to create new efficiencies and improve the overall effectiveness of its supervisory program over such persons included within the scope of the VCBA. OFI also proposes to implement the necessary fee structure in order to cover the cost of regulating and supervising such persons included within the scope of the VCBA. Such fees are necessary in order for the OFI to effectively discharge its duties and responsibilities over these regulated persons and ensure compliance with the VCBA, and allow for the licensure and registration of those persons in accordance with the provisions of the VCBA.

### 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*—also 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. the power to vote, directly or indirectly, at least 25 percent of outstanding voting shares or voting interests of a licensee or person in control of a licensee, including persons acting in concert in such instances;

c. the power to elect or appoint a majority of key individuals of a licensee;

d. the power to exercise directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee; and

e. any other set of facts and circumstances, as determined by the commissioner in his discretion, 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 required by Subsection 1931(C) of this rule shall be an unfair or deceptive act or practice for purposes of taking enforcement action against 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*—includes, but is not limited to, a practice or conduct by a person licensed or registered to engage in virtual currency business activity or activities in Louisiana which creates the likelihood of material loss, insolvency, dissipation of the licensee's or registrant's assets, materially prejudices the interests of its customers, and any other set of facts and circumstances, as determined by the commissioner in his discretion, that may constitute an unsafe or unsound act or practice.

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:

### **§1903. Implementation**

A. In order to carry out the purposes of the VCBA, the commissioner may:

1. enter into agreements or relationships with other government officials or federal and state regulatory agencies and regulatory associations in order to improve efficiencies and reduce regulatory burden by standardizing methods or procedures, and sharing records or related information obtained under the VCBA;

2. use, hire, contract, or employ analytical systems, methods, or software in examinations or investigations pursuant to the VCBA;

3. consider, accept, and rely upon licensing, examination, or investigative reports prepared by other government agencies or officials, within or outside the state of Louisiana;

4. consider, accept, and rely upon audit reports prepared by an independent certified public accountant or other qualified third-party auditor for any person subject to the VCBA and incorporate all, or part of such audit reports, in the department's report of examination or investigation.

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:

### **§1905. Application for License or Notice of Registration—Transitional Period**

A. A person already engaged in virtual currency business activity or activities in Louisiana must either apply for a license in accordance with section 1385 of the VCBA or file a notice of registration in accordance with section 1389 of

the VCBA and submit a completed application within 90 days of the effective date of this rule. In doing so, such applicant shall be deemed to be in compliance with the licensure requirements of section 1385 of the VCBA or the registration requirements of section 1389 of the VCBA until the applicant has been notified by the commissioner that its application has been denied, in which case it shall immediately cease operating in Louisiana and doing business with residents of Louisiana. Any person engaged in virtual currency business activity that fails to submit a completed application for a license or notice of registration within 90 days of the effective date of this regulation shall be deemed to be conducting unlicensed or unregistered virtual currency business activity or activities and shall be subject to any and all civil and criminal penalties provided by applicable laws and regulations, including but not limited to, the provisions of the VCBA.

B. For purposes of applications for a license or notice of registration submitted pursuant to this Section, no applicant shall be required to submit an application for renewal of any license or notice of registration before November 1, 2023.

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:

### **§1907. Approval of Control Person**

A. In applying for a license issued in accordance with the VCBA to engage in virtual currency business in Louisiana, the applicant or licensee shall provide the following information to the commissioner through the NMLS:

1. the legal name, any former or fictitious name, and the residential and business United States Postal Service address of the applicant's or licensee's proposed executive officers, responsible individuals, and the proposed person or persons who will be in control of the applicant or licensee;

2. a list of any criminal conviction, deferred prosecution agreement, or pending criminal proceeding in any jurisdiction against the applicant's or licensee's proposed executive officers, responsible individuals, and proposed person or persons who will be in control of the applicant or licensee;

3. a list of any bankruptcy or receivership proceeding in any jurisdiction for the ten years before the application is submitted in which the applicant's or licensee's proposed executive officers, responsible individuals, and proposed person or persons who will be in control of the applicant or licensee was a debtor;

4. a list of any litigation, arbitration, or administrative proceeding in any jurisdiction in which the applicant or licensee, or an executive officer or a responsible individual of the applicant or licensee, or proposed person or persons who will be in control, has been a party for the five years before the application is submitted, determined to be material in accordance with generally accepted accounting principles and to the extent the applicant would be required to disclose the litigation, arbitration, or administrative proceeding in the applicant's or licensee's audited financial statements, reports to equity owners, and similar statements or reports;

5. if a person has control of the applicant or licensee and the person's equity interests are publicly traded in the United States, a copy of the audited financial statement of

the person for the most recent fiscal year or most recent report of the person filed pursuant to 15 U.S.C. 78;

6. if a person has control of the applicant or licensee and the person's equity interests are publicly traded outside the United States, a copy of the audited financial statement of the person for the most recent fiscal year of the person or a copy of the most recent documentation similar to that required in Paragraph A.5 of this Section filed with the foreign regulator in the domicile of the person;

7. a set of fingerprints for each executive officer and responsible individual of the applicant or licensee, or proposed person or persons who will be in control, for submission to the federal bureau of investigation and the commissioner for purposes of a national and state criminal background check;

8. a copy of the certificate, or a detailed summary acceptable to the department, of coverage for each liability, casualty, business-interruption, or cyber-security insurance policy maintained by the applicant or licensee for itself, an executive officer, a responsible individual, or the applicant's or licensee's users;

9. if available, for each executive officer and responsible individual of the applicant or licensee, for the five years before any application is submitted, the employment history of the individual; and

10. if available, for each executive officer and responsible individual of the applicant or licensee or proposed person or persons who will be in control, for the five years before any application is submitted, a history of any investigation of the individual or person, or legal proceeding to which the individual or person was a party.

B. For purposes of this Section, *control*, *executive officer*, and *responsible individual* shall be defined by R.S. 6:1382 and section 1901 of this Chapter.

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:

### **§1909. Approval of Change of Control**

A. Not less than 60 calendar days before any proposed change of control of an existing license issued in accordance with the VCBA, the licensee shall provide the following information to the commissioner through the NMLS:

1. written notice of any proposed change or changes of control of the licensee;

2. the legal name, any former or fictitious name, and the residential and business United States Postal Service address of any proposed executive officers, responsible individuals, and the proposed person or persons who will be in control of the licensee;

3. a list of any criminal conviction, deferred prosecution agreement, or pending criminal proceeding in any jurisdiction against the licensee's proposed executive officers, responsible individuals, and proposed person or persons who will be in control of the licensee;

4. a list of any bankruptcy or receivership proceeding in any jurisdiction for the 10 years before the application is submitted in which the licensee's proposed executive officers, responsible individuals, and proposed person or persons who will be in control of the licensee was a debtor;

5. a list of any litigation, arbitration, or administrative proceeding in any jurisdiction in which the applicant or

licensee, or an executive officer or a responsible individual of the licensee, has been a party for the five years before the application is submitted, determined to be material in accordance with generally accepted accounting principles and to the extent the licensee would be required to disclose the litigation, arbitration, or administrative proceeding in the applicant's or licensee's audited financial statements, reports to equity owners, and similar statements or reports;

6. if a person has control of the licensee and the person's equity interests are publicly traded in the United States, a copy of the audited financial statement of the person for the most recent fiscal year or most recent report of the person filed pursuant to 15 U.S.C. 78;

7. if a person has control of the licensee and the person's equity interests are publicly traded outside the United States, a copy of the audited financial statement of the person for the most recent fiscal year of the person or a copy of the most recent documentation similar to that required in Paragraph A.6 of this Section filed with the foreign regulator in the domicile of the person;

8. a set of fingerprints for each executive officer and responsible individual of the licensee, or proposed person or persons who will be in control, for submission to the federal bureau of investigation and the commissioner for purposes of a national and state criminal background check;

9. a copy of the certificate, or a detailed summary acceptable to the department, of coverage for each liability, casualty, business-interruption, or cyber-security insurance policy maintained by the licensee for itself, an executive officer, a responsible individual, or the licensee's users;

10. if available, for each executive officer and responsible individual of the applicant or licensee, for the five years before any application is submitted, the employment history of the individual; and

11. if available, for each executive officer and responsible individual of the applicant or licensee or proposed person or persons who will be in control, for the five years before any application is submitted, a history of any investigation of the individual or person, or legal proceeding to which the individual or person was a party.

B. Not less than 30 calendar days prior to the date on which any proposed change or changes of control persons will take place, the licensee shall provide written notice of the proposed change or changes to the commissioner.

C. For purposes of this Section, *control*, *executive officer*, and *responsible individual* shall be defined by R.S. 6:1382 and Section 1901 of this Chapter.

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:

### **§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 November 1, 2023, all applications for renewal for all licenses and notices of registration to engage in virtual currency business activities shall begin submitting an application or notice of registration for renewal on the first day of November of each calendar year.

C. If a renewal application is submitted timely on or before the thirty-first day of December, the license or notice of registration shall remain in force and effect until the renewal application is either approved or denied by the commissioner. Nothing in this Paragraph shall preclude the commissioner from implementing any administrative or enforcement action or actions authorized by the VCBA or this rule for violations of the VCBA, this rule, or for any material misrepresentation that may have occurred prior to the renewal date of any license or notice of registration.

D. If the commissioner has not received the renewal fee and late fee before the first day of March after expiration of any license or notice of registration required by this Section, the license or notice of registration to engage in virtual currency business in Louisiana shall lapse without hearing or notification, and the license or notice of registration shall not be reinstated. However, the person whose license or notice of registration has lapsed may apply for a new license or notice of registration, in accordance with applicable provisions of the VCBA, including but not limited to R.S. 6:1385, et seq., and 6:1389, et seq.

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:

#### **§1915. Net Worth/Tangible Net Worth**

A. In satisfying the licensure, renewal, and registration requirements provided by the VCBA, including but not limited to R.S. 6:1386(B) through (D), R.S. 6:1388(B)(2)(f), and R.S. 6:1389(A)(7), net worth and tangible net worth shall be clearly evidenced by filing or submitting a current, audited financial statement to the commissioner through the NMLS prepared:

1. in accordance with General Acceptable Accounting Principles (GAAP) standards; and

2. consistent with Public Company Accounting Oversight Board (PCAOB) standards.

B. Licensure, renewal, and registration requirements relative to net worth and net tangible worth provided by the VCBA, including but not limited to those expressly provided by R.S. 6:1386(B) through (D), R.S. 6:1388(B)(2)(f), and R.S. 6:1389(A)(7), shall be:

1. satisfied at the time of initial application for licensure, renewal, and registration under the VCBA;

2. maintained at all times during licensure, renewal, and registration; and

3. annually reported to the commissioner beginning on the first day of November, in compliance with Subsection A of this Section.

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:

#### **§1917. Examination**

A. The commissioner may:

1. conduct on-site examination or investigation, participate in a joint or concurrent examination or investigation with another state or federal agency or agencies, or examine or investigate the books, records, and accounts used in the business of every licensee or registrant;

2. accept and rely upon an examination report or investigative report of any other state or federal agency or agencies.

B. The commissioner is not precluded from conducting an examination or investigation under applicable provisions of the VCBA, including but not limited to R.S. 6:1391, by:

1. participating in a joint examination or investigation;

2. participating in a concurrent examination or investigation; or

3. accepting results of an examination or investigation report conducted by any state or federal agency or agencies.

C. A joint report or concurrent report accepted by the commissioner under this Section may be accepted as an official report of the commissioner for purposes of the VCBA and this Chapter.

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:

#### **§1919. Network Examination**

A. To efficiently and effectively enforce the VCBA and to minimize regulatory burden, the commissioner may participate in multistate examination and investigation processes for licensees that hold licenses in this state and other states. As a participant in any multistate examinations or investigations, the commissioner may, to the extent permitted by law:

1. cooperate, coordinate, and share information with other state and federal regulators;

2. enter into written cooperation, coordination, or information-sharing contracts or agreements with organizations made up of other state and/or federal governmental agencies; and

3. cooperate, coordinate, and share information with organizations made up of other state and/or federal governmental agencies, provided that the organizations agree in writing to maintain confidentiality and security of shared information.

B. Nothing in this Section constitutes a waiver of the commissioner's authority to:

1. conduct any examination or investigation authorized by law;

2. otherwise take any independent action authorized by:

a. law;

b. any rule promulgated in accordance with the Louisiana Administrative Procedure Act (LAPA); or

c. any order issued under the VCBA to enforce compliance with applicable state or federal law.

C. The following shall not constitute a waiver of any examination fee provided by the VCBA and/or any rule or rules promulgated in accordance with LAPA:

1. the commissioner's participation in any joint examination or investigation; or

2. the commissioner's acceptance of an examination or investigative report conducted and prepared by other state or federal agency or agencies.

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:



**§1921. Renewal/Quarterly Reports**

A. In order to meet the reporting requirements of section 1388 of the VCBA, and provide the department with sufficient information as it relates to enforcement pursuant to section 1393 of the VCBA, each licensee shall submit to the NMLS reports of condition which shall be in such form and frequency and contain such information as the NMLS may require.

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:

**§1923. Records**

A. Licensees engaging in virtual currency business activity in Louisiana shall maintain and preserve such records as determined by policy by the commissioner, 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:

**§1925. Policies and Procedures**

A. Licensees engaging in virtual currency business activity in Louisiana will be expected to adopt and implement appropriate policies and procedures as part of the required books, records, and accounts, as determined by policy by the commissioner, pursuant to R.S. 6:1391 and R.S. 6:1393.

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:

**§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:

**§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:

**§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 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. Required Disclosures. Licensees engaging in virtual currency business activity in Louisiana shall provide to a person who uses the licensee’s products or services proper disclosures, as determined by the commissioner by policy, pursuant to R.S. 6:1393. The commissioner shall also determine, by policy, the time and form required for such disclosures. Disclosures required by this section must be made separately from any other information provided by the licensee to a person and in a clear and conspicuous manner. A licensee may propose, for the commissioner’s approval, alternate disclosures as deemed more appropriate for its virtual currency business activity with, or on behalf of, persons in Louisiana.

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:

**§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:

**§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:

**§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:

**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. This proposed Rule has no known impact on family formation, stability, or autonomy as described in R.S. 49:972.

**Poverty Impact Statement**

The proposed Rule has no known impact on poverty, pursuant to 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 has no known impact on small businesses, pursuant to R.S. 49:978.4.

**Provider Impact Statement**

The proposed Rule has no known impact on providers as described in HCR 170 of 2014.

**Public Comments**

Interested persons may submit written comments through 5 pm on July 10, 2022, to Susan Rouprich, General Counsel, Office of Financial Institutions, 8660 United Plaza Boulevard, Second Floor, Baton Rouge, LA 70809.

Stanley M. Dameron  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

**RULE TITLE: Virtual Currency Business Activity**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule will increase cost in the Office of Financial Institutions (OFI) by \$144,307 in FY 23 and \$330,806 in FY 24. The OFI is currently responsible for the regulatory oversight of persons engaging in virtual currency business activity in the State of Louisiana pursuant to the Virtual Currency Businesses Act, (VCBA), R. S. 6:1381 et. seq., as enacted by Acts 341 of the 2020 Regular Session of the Louisiana Legislature. Adoption of the proposed rule will provide for implementation and enforcement of the provisions of Chapter 21, pursuant to R. S. 6:1394 of the VCBA regarding licensure, registration, and regulation of those persons engaging in virtual currency business activity. Adoption of the proposed

rule will also provide the necessary fee structure in order to cover the cost of regulating and supervising such persons included within the scope of the VCBA. Such fees are necessary in order for the OFI to effectively discharge its duties and responsibilities over these regulated persons and ensure compliance with the VCBA, and allow for the licensure and registration of those persons in accordance with the provisions of the VCBA. Virtual currency business licensees and registrants are persons who engage in virtual currency business activity, or hold themselves out as being able to engage in virtual currency business activity, with or on behalf of a Louisiana resident, pursuant to the VCBA. The proposed rule will not result in any cost or savings to local governmental units.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule will increase revenue collection by \$265,750 in FY 23 and \$286,250 in FY 24. The proposed rule will not have a material impact on OFI's source of funding, since the revenues generated will exceed the implementation costs. OFI expects revenue collections to increase in subsequent years as more entities are licensed and/or file registrations in order to conduct virtual currency business activity in the State of Louisiana.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES OR NONGOVERNMENTAL GROUPS (Summary)**

OFI anticipates the costs associated with implementation and regulation will be reasonable to directly affected persons, small businesses, or non-governmental groups resulting from the proposed rule. However, the economic benefits to directly affected persons, small business, or non-governmental groups could be substantial through the expansion of virtual currency business activity in the State of Louisiana.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

OFI anticipates that the proposed rule will have a favorable impact on competition and employment in the private sector through the expansion of virtual currency business activity in the State of Louisiana.

Stanley M. Dameron  
Commissioner  
2206#024

Evan Brasseaux  
Deputy Interim Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Natural Resources  
Office of Conservation**

**Class III (Solution-Mining) Injection Wells  
(LAC 43:XVII.Chapter 33)**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the power delegated under the laws of the state of Louisiana, notice is hereby given that the Department of Natural Resources, Office of Conservation proposes to amend Statewide Order No. 29-M-3 (LAC 43:XVII. Subpart 5. Chapter 33) to facilitate the permitting, siting, construction, operation, monitoring, and site closure of Class III (solution-mining) injection wells.

The Department of Natural Resources, Office of Conservation proposes to amend provisions governing the oversight of the Class III solution-mining program within the Underground Injection Control (UIC) Program located within the Office of Conservation. A Solution-Mined Cavern

is a cavity created within the salt stock by dissolution with water. Oversight for the Class III program is held by the Underground Injection Control Program (UIC Program), located within the Louisiana Office of Conservation. Class III wells are a federally-designated well class that allow for the injection of water to create cavities within geologic salt bodies. The UIC Program has held Primary Enforcement Authority from the United States Environmental Protection Agency (US EPA) for Class III wells since 1982.

#### **Title 43**

### **NATURAL RESOURCES**

## **Part XVII. Office of Conservation—Injection and Mining**

### **Subpart 5. Statewide Order No. 29-M-3**

## **Chapter 33. Class III (Solution-Mining) Injection Wells**

### **§3301. Definitions**

*Act*—Part I, Chapter 1 of Title 30 of the Louisiana Revised Statutes.

*Active Cavern Well*—a solution-mining well or cavern that is actively being used, or capable of being used, to mine minerals, including standby wells. The term does not include an inactive cavern well.

*Application*—the filing on the appropriate Office of Conservation form(s), including any additions, revisions, modifications, or required attachments to the form(s), for a permit to operate a solution-mining well or parts thereof.

*Aquifer*—a geologic formation, groups of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

*Blanket Material*—sometimes referred to as a *pad*. The blanket material is a fluid or gas placed within a cavern that is lighter than the water in the cavern and will not dissolve the salt or any mineral impurities that may be contained within the salt. The function of the blanket is to prevent unwanted leaching of the cavern roof, prevent leaching of salt from around the cemented casing, and to protect the cemented casing from internal corrosion. Blanket material typically consists of crude oil, diesel, mineral oil, or some fluid or gas possessing similar noncorrosive, non-solvent, low density properties. The blanket material is placed against the cavern roof, within the cavern neck, and between the cavern's outermost hanging string and innermost cemented casing.

*Brine*—water within a salt cavern that is saturated partially or completely with salt.

*Cap Rock*—the porous and permeable strata immediately overlying all or part of the salt stock of some salt structures typically composed of anhydrite, gypsum, limestone, and occasionally sulfur.

*Casing*—metallic pipe placed and cemented in the wellbore for the purpose of supporting the sides of the wellbore and to act as a barrier preventing subsurface migration of fluids out of or into the wellbore.

*Catastrophic Collapse*—the sudden failure of the overlying strata caused by the removal or otherwise weakening of underlying sediments.

*Cavern Neck*—the uncased wellbore between the deepest casing shoe and the cavern roof, if present.

*Cavern Roof*—the uppermost part of a cavern being just below the neck of the wellbore. The shape of the salt cavern roof may be flat or domed.

*Cavern Well*—a well extending into the salt stock to facilitate the injection and withdrawal of fluids into and from a salt cavern.

*Cementing*—the operation (either primary, secondary, or squeeze) whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing.

*Circulate to the Surface*—the observing of actual cement returns to the surface during the primary cementing operation.

*Commissioner*—the commissioner of conservation for the state of Louisiana.

*Contamination*—the introduction of substances or contaminants into a groundwater aquifer, a USDW or soil in such quantities as to render them unusable for their intended purposes.

*Discharge*—the placing, releasing, spilling, percolating, draining, pumping, leaking, mixing, migrating, seeping, emitting, disposing, by-passing, or other escaping of pollutants on or into the air, ground, or waters of the state. A discharge shall not include that which is allowed through a federal or state permit.

*Dual-Bore Mining*—for the purposes of these rules, dual bore mining shall be defined as the solution-mining process whereby fluid injection and brine extraction are accomplished through different permitted wells.

*Effective Date*—the date of final promulgation of these rules and regulations.

*Emergency Shutdown Valve*—for the purposes of these rules, a valve that automatically closes to isolate a solution-mining well from surface piping in the event of a specified condition that, if uncontrolled, may cause an emergency.

*Exempted Aquifer*—an aquifer or its portion that meets the criteria of the definition of underground source of drinking water but which has been exempted according to the procedures set forth in §3303.E.2.

*Existing Solution-Mining Well or Project*—a well, salt cavern, or project permitted to solution-mine prior to the effective date of these regulations.

*Facility or Activity*—any facility or activity, including land or appurtenances thereto, that is subject to these regulations

*Fluid*—any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas or any other form or state.

*Ground Subsidence*—the downward settling of the Earth's surface with little or no horizontal motion in response to natural or manmade subsurface actions.

*Groundwater Aquifer*—water in the saturated zone beneath the land surface that contains less than 10,000 mg/l total dissolved solids.

*Groundwater Contamination*—the degradation of naturally occurring groundwater quality either directly or indirectly as a result of human activities.

*Hanging String*—casing whose weight is supported at the wellhead and hangs vertically in a larger cemented casing or another larger hanging string.

*Improved Sinkhole*—a naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings which have been modified by man for the purpose of directing and emplacing fluids into the subsurface.

*Inactive Cavern Well*—a solution-mining well or cavern that is capable of being used to solution-mine minerals but is

not being so used, as evidenced by the filing of a written notice with the Office of Conservation in accordance with §3309.I.3 and §3331.

*Injection and Mining Division*—the Injection and Mining Division of the Louisiana Office of Conservation within the Louisiana Department of Natural Resources.

*Injection Well*—a well into which fluids are being injected, excepting fluids associated with active drilling operations.

*Injection Zone*—a geological formation, group of formations or part of a formation receiving fluids through a well. The portion of the salt stock from the top of the salt stock to the original total depth of the injection well.

*Leaching*—the process of introducing an under-saturated fluid into a salt cavern thereby dissolving additional salt and increasing the volume of the salt cavern.

*Mechanical Integrity*—an injection well has mechanical integrity if there is no significant leak in the casing, tubing, or packer and there is no significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore.

*Mechanical Integrity Pressure and Leak Test* (also called *Mechanical Integrity Test*)—a test performed to determine whether a cavern or well has mechanical integrity.

*Migrating*—any movement of fluids by leaching, spilling, discharging, or any other uncontained or uncontrolled manner, except as allowed by law, regulation, or permit.

*New Cavern Well*—a solution-mining well permitted by the Office of Conservation after the effective date of these regulations.

*Office of Conservation*—the Louisiana Office of Conservation within the Department of Natural Resources.

*Open Borehole*—the portion of the drilled well bore that is uncased at any point in time.

*Operator*—the person recognized by the Office of Conservation as being responsible for the physical operation of the facility or activity subject to regulatory authority under these rules and regulations.

*Owner*—the person recognized by the Office of Conservation as owning the facility or activity subject to regulatory authority under these rules and regulations.

*Permanent Conclusion*—no additional solution-mining activities will be conducted in the cavern. This term will not apply to caverns that are being converted to hydrocarbon storage.

*Permit*—an authorization, license, or equivalent control document issued by the commissioner to implement the requirements of these regulations. Permit includes, but is not limited to, area permits and emergency permits. Permit does not include UIC authorization by rule or any permit which has not yet been the subject of final agency action, such as a draft permit.

*Person*—an individual, association, partnership, public or private corporation, firm, municipality, state or federal agency and any agent or employee thereof, or any other juridical person.

*Post-Closure Care*—the appropriate monitoring and other actions (including corrective action) needed following cessation of a solution-mining project to ensure that USDWs are not endangered.

*Produced Water*—liquids and suspended particulate matter that is obtained by processing fluids brought to the surface in conjunction with the recovery of oil and gas from

underground geologic formations, with underground storage of hydrocarbons, or with solution-mining for brine.

*Project*—a group of wells or salt caverns used in a single operation.

*Public Water System*—a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves at least 25 individuals. Such term includes:

1. any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and
2. any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

*Qualified Professional Appraiser*—for the purposes of these rules, any licensed real estate appraiser holding current certification from the Louisiana Real Estate Appraisers Board and functioning within the rules and regulations of their licensure.

*Release*—the accidental or intentional spilling, pumping, leaking, pouring, emitting, leaching, escaping, or dumping of pollutants into or on any air, land, groundwater, or waters of the state. A release shall not include that which is allowed through a federal or state permit.

*Salt Dome*—a diapiric, typically circular structure that penetrates, uplifts, and deforms overlying sediments as a result of the upward movement of a salt stock in the subsurface. Collectively, the salt dome includes the salt stock and any overlying uplifted sediments.

*Salt Stock*—a typically cylindrical formation composed chiefly of an evaporite mineral that forms the core of a salt dome. The most common form of the evaporite mineral is halite known chemically as sodium chloride (NaCl). Cap rock shall not be considered a part of the salt stock.

*Schedule of Compliance*—a schedule or remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the act and these regulations.

*Site*—the land or water area where any facility or activity is physically located or conducted including adjacent land used in connection with the facility or activity.

*Solution-Mined Cavern*—a cavity created within the salt stock by dissolution with water.

*Solution-Mining Well*—a well which injects for extraction of minerals including:

1. mining of sulfur by the Frasch process;
2. in situ production of uranium or other metals.
3. solution mining of salts or potash.

*State*—the state of Louisiana.

*Subsidence*—see *ground subsidence*.

*Surface Casing*—steel pipe placed inside the conductor casing in the borehole which extends below, and is protective of, the USDW and other shallow geologic formations.

*UIC*—the Louisiana State Underground Injection Control Program.

*Unauthorized Discharge*—a continuous, intermittent, or one-time discharge, whether intentional or unintentional, anticipated or unanticipated, from any permitted or unpermitted source which is in contravention of any provision of the Louisiana Environmental Quality Act (R.S.

30:2001 et seq.) or of any permit or license terms and conditions, or of any applicable regulation, compliance schedule, variance, or exception of the Commissioner of Conservation.

*Underground Source of Drinking Water*—an aquifer or its portion:

1. which supplies any public water system; or
2. which contains a sufficient quantity of groundwater to supply a public water system; and
  - a. currently supplies drinking water for human consumption; or
  - b. contains fewer than 10,000 mg/1 total dissolved solids; and which is not an exempted aquifer.

*USDW*—see underground source of drinking water.

*Waters of the State*—both surface and underground waters within the state of Louisiana including all rivers, streams, lakes, groundwaters, and all other water courses and waters within the confines of the state, and all bordering waters, and the Gulf of Mexico.

*Well*—a bored, drilled, or driven shaft whose depth is greater than the largest surface dimension; or, a dug hole whose depth is greater than the largest surface dimension; or, a subsurface fluid distribution system.

*Well Plug*—a fluid-tight seal installed in a borehole or well to prevent movement of fluids.

*Workover*—to perform one or more of a variety of remedial operations on an injection well, such as cleaning, perforation, changing tubing, deepening, squeezing, plugging back, etc.

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 40:316 (February 2014), amended LR 42:413 (March 2016), LR 48:

### **§3303. General Provisions**

A. - A.3. ...

#### **B. Prohibition of Unauthorized Injection**

1. The construction, conversion, or operation of a solution-mining well without obtaining a permit from the Office of Conservation is a violation of these rules and regulations and applicable laws of the state of Louisiana.

2. - 3. ...

#### **C. Prohibition on Movement of Fluids into Underground Sources of Drinking Water**

1. No authorization by permit shall allow the movement of injected or produced fluids into underground sources of drinking water or outside the salt stock. The owner or operator of the solution-mining well shall have the burden of showing that this requirement is met.

C.2. - E.2.c. ...

#### **F. Exceptions/Variations/Alternative Means of Compliance**

1. Except where noted in specific provisions of these rules and regulations, the Office of Conservation may allow, on a case-by-case basis, exceptions, variances, or alternative means of compliance to these rules and regulations. It shall be the obligation of the applicant, owner, or operator to show that the requested exception, variance, or alternative means of compliance, and any associated mitigating measures shall not result in an unacceptable increase of endangerment to the environment, or the health, safety, and welfare of the public. The applicant, owner, or operator shall submit a written request to the Office of Conservation detailing the reason for

the requested exception, variance, or alternative means of compliance. No deviation from the requirements of these rules or regulations shall be undertaken by the applicant, owner, or operator without prior written authorization from the Office of Conservation.

a. When injection does not occur into, through, or above an underground source of drinking water, the commissioner may authorize a Class III well or project with less stringent requirements for area of review, construction, mechanical integrity, operation, monitoring, and reporting than required herein to the extent that the reduction in requirements will not result in an increased risk of movements of fluids into an underground source of drinking water or endanger the public.

b. When reducing requirements under this Section, the commissioner shall issue a fact sheet in accordance with §3311.F explaining the reasons for the action.

2. Granting of exceptions or variances to these rules and regulations shall only be considered upon proper showing by the applicant, owner, or operator that such exception or variance is reasonable, justified by the particular circumstances, and consistent with the intent of these rules and regulations regarding physical and environmental safety and the prevention of waste. The commissioner may require public notice and a public hearing prior to granting any exception or variance if he determines it to be in the public interest or otherwise appropriate. The requester of the exception or variance shall be responsible for all costs associated with any public notice or public hearing.

3. Operators of solution-mining wells and/or caverns may operate in accordance with alternative means of compliance previously approved by the commissioner of conservation. Alternative means of compliance shall mean operations that are capable of demonstrating a level of performance, which meets or exceeds the standards contemplated by these regulations. Owners or operators of caverns existing at the time of these rules may submit alternative means of compliance to be approved by the commissioner of conservation. The commissioner may review and approve upon finding that the alternative means of compliance meet, ensure, and comply with the purpose of the rules and regulations set forth herein provided the proposed alternative means of compliance ensures comparable or greater safety of personnel and property, protection of the environment and public, quality of operations and maintenance, and protection of the USDW.

G. - G.1. ...

2. All applications, reports, plans, requests, maps, cross-sections, drawings, opinions, recommendations, calculations, evaluations, or other submittals including or comprising geoscientific work as defined by R.S. 37:711.1 et seq. and required by the Office of Conservation must be prepared, sealed, signed, and dated by a licensed professional geoscientist (P.G.) authorized to practice by and in good standing with the Louisiana Board of Professional Geoscientists.

3. All applications, reports, plans, requests, designs, specifications, details, calculations, drawings, opinions, recommendations, evaluations or other submittals including or comprising the practice of engineering as defined by La. R.S. 37:681 et seq. and required by the Office of

Conservation must be prepared, sealed, signed, and dated by a licensed professional engineer (P.E.) authorized to practice by and in good standing with the Louisiana Professional Engineering and Land Surveying Board.

4. The commissioner may prescribe additional requirements for Class III wells or projects in order to protect USDWs and the health, safety, and welfare of the public.

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 40:318 (February 2014), amended LR 42:414 (March 2016), LR 48:

### §3305. Permit Requirements

A. - D.1. ...

a. the authorization is made in writing by a principal executive officer of at least the level of vice-president;

D.1.b. - F. ...

\* \* \*

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 40:319 (February 2014), amended LR 42:414 (March 2016), LR 48:

### §3307. Application Content

A. The following minimum information shall be required for each permit application for a solution-mining well to create a new solution-mining salt cavern. The applicant shall also refer to the appropriate application form for any additional information that may be required.

1. For Class III solution-mining wells being simultaneously permitted for Class II hydrocarbon storage and/or Class V storage, a single consolidated submittal containing all applications may be accepted.

B. Administrative Information:

1. all required state application form(s);
2. the nonrefundable application fee(s) as per LAC 43:XIX.Chapter 7 or successor document;
3. name and mailing address of the applicant and the physical address of the solution-mining well facility;
4. operator's name, address, telephone number, and e-mail address;
5. ownership status as federal, state, private, public, or other entity;
6. brief description of the nature of the business associated with the activity;
7. activity or activities conducted by the applicant which require the applicant to obtain a permit under these regulations;

8. - 9.f. ...

g. ocean dumping permits under the Marine Protection Research and Sanctuaries Act;

9.h. - 10. ...

11. documentation of financial responsibility for closure and post-closure, or documentation of the method by which proof of financial responsibility will be provided as required in §3309.B. Before making a final permit decision, the official instrument of financial responsibility for closure and post-closure must be submitted to and approved by the Office of Conservation;

12. a map with accompanying tabulation identifying names and addresses of all property owners within the area of review of the solution-mining well.

C. Maps and Related Information

1. certified location plat of the solution-mining well and/or area permit boundary prepared and certified by a registered land surveyor licensed and in good standing with the Louisiana Professional Engineering and Land Surveying Board. The location plat shall be prepared according to standards of the Office of Conservation;

2. topographic or other map(s) extending at least one mile beyond the property boundaries of the facility in which the solution-mining well is located depicting the facility and each well where fluids are injected underground, and those wells, springs, or surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area;

3. the section, township and range of the area in which the solution-mining well is located and any parish, city or municipality boundary lines within one mile of the facility location;

4. map(s) showing the solution-mining well for which the permit is sought, the project area or property boundaries of the facility in which the solution-mining well is located, and the applicable area of review. Within the area of review, the map(s) shall show the well name, well number, well state serial number, and location of all existing producing wells, injection wells, abandoned wells and dry holes, public water systems, and water wells. The map(s) shall also show surface bodies of water, mines (surface and subsurface), quarries, and other pertinent surface features including residences and roads. Only information of public record and pertinent information known to the applicant is required to be included on the map(s);

5. - 7. ...

8. maps and vertical cross-sections detailing the geologic structure of the local area. The cross-sections shall be structural (as opposed to stratigraphic cross-sections), be referenced to sea level, show the solution-mining well and the cavern being permitted, all adjacent salt caverns regardless of use and current status, conventional (room and pillar) mines, and all other boreholes and wells that penetrate the salt stock. Cross-sections should be oriented to indicate the closest approach to adjacent caverns, boreholes, wells, the edge of the salt stock, etc., and shall extend at least one mile beyond the edge of the salt stock unless the edge of the salt stock and any existing oil and gas production can be demonstrated in a shorter distance and is administratively approved by the Office of Conservation. Salt caverns shall be depicted on the cross-sections using data from the most recent salt cavern sonar. Known faulting in the area shall be illustrated on the cross-sections such that the displacement of subsurface formations is accurately depicted;

9. - 10. ...

D. Area of Review Information. Refer to §3313.E for area of review boundaries and exceptions. Only information of public record or otherwise known to the applicant need be researched or submitted with the application, however, a diligent effort must be made to identify all wells and other manmade structures that penetrate or are within the salt

stock in response to the area of review requirements. The applicant shall provide the following information on all wells or structures within the defined area of review:

1. a discussion of the protocol used by the applicant to identify wells and manmade structures that penetrate or are within the salt stock in the defined area of review;

2. - 4.a.i. ...

ii. current or previous use of the cavern (waste disposal, hydrocarbon storage, solution-mining), current status of the cavern (active, shut-in, plugged and abandoned), date the well was drilled, and the date the current well status was assigned;

D.4.a.iii. - E. ...

1. for existing caverns the results of the latest cavern sonar survey and mechanical integrity pressure and leak tests;

2. corrective action plan required by §3313.F for wells or other manmade structures within the area of review that penetrate the salt stock but are not properly constructed, completed or plugged and abandoned;

3. plans for performing the geological, geomechanical, geochemical, and hydrogeological studies of §3313 to assess the stability of the salt stock and overlying and surrounding sediments based on past, current and planned well and cavern operations. If such studies have already been done, submit the results obtained along with an interpretation of the results;

4. properly labeled schematic of the surface construction details of the solution-mining well to include the wellhead, gauges, flowlines, and any other pertinent details;

5. properly labeled schematic of the subsurface construction and completion details of the solution-mining well and cavern, if applicable, to include borehole diameters; all cemented casings with cement specifications, casing specifications (size, depths, etc.); all hanging strings showing sizes and depths set; total depth of well; top, bottom, and diameter of cavern; the depth datum; and any other pertinent details;

6. surface site diagram(s) of the facility in which the solution-mining well is located including but not limited to surface pumps, piping and instrumentation, controlled access roads, fenced boundaries, field offices, monitoring and safety equipment and location of such equipment, required curbed or other retaining wall heights, etc.;

7. unless already obtained, a proposed formation testing program to obtain the information required below:

7.a. - 11.d ...

e. the safety requirements of §3321, including, but not limited to an emergency action plan, controlled site access, facility identification, personnel, wellhead protection and identification, valves and flowlines, alarm systems, emergency shutdown valves, systems test and inspections, and surface facility retaining walls and spill containment, contingency plans to cope with all shut-ins or well failures to prevent the migration of contaminating fluids into underground sources of drinking water;

f. the monitoring requirements of §3323, including, but not limited to equipment requirements such as pressure gauges, pressure sensors and flow sensors, continuous recording instruments, and subsidence monitoring, as well as

a description of methods that will be undertaken to monitor cavern growth due to under saturated fluid injection;

g. - n. ...

F. If an alternative means of compliance has previously been approved by the commissioner of conservation within an approved area permit, applicants may submit the alternative means of compliance for new applications for wells within the same area permit in order to meet the requirements of E.11.d, e, and f of this Section.

G. - G.1.b. ...

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 40:320 (February 2014), amended LR 42:414 (March 2016), LR 48:

### §3309. Legal Permit Conditions

A. - B. ...

1. Closure and Post-Closure. The owner or operator of a solution-mining well shall maintain financial responsibility and the resources to close, plug and abandon and, where necessary, conduct post-closure care of the solution-mining well, cavern, and related facilities as prescribed by the Office of Conservation. The related facilities shall include all surface and subsurface constructions and equipment exclusively associated with the operation of the solution-mining cavern including but not limited to Class II saltwater disposal wells and any associated equipment or pipelines whether located inside or outside of the permitted facility boundary. Evidence of financial responsibility shall be by submission of a surety bond, a letter of credit, certificate of deposit, or other instrument acceptable to the Office of Conservation. The amount of funds available shall be no less than the amount identified in the cost estimate of the closure plan of §3337.A and post-closure plan of §3337.B. Any financial instrument filed in satisfaction of these financial responsibility requirements shall be issued by and drawn on a bank or other financial institution authorized under state or federal law to operate in the state of Louisiana. In the event that an operator has previously provided financial security pursuant to LAC 43: XVII.3309, such operator shall provide increased financial security if required to remain in compliance with this Section, within 30 days after notice from the commissioner.

2. - 3.a.ii ...

b. Assistance to residents payments shall not be construed as an admission of responsibility or liability for the emergency or disaster.

B.4. - C. ...

D. Duty to Halt or Reduce Activity. It shall not be a defense for an owner or operator in an enforcement action to claim it would have been necessary to halt or reduce the permitted activity to maintain compliance with the conditions of this Rule or permit.

E. - I.4. ...

a. well construction or conversion is complete, including submission of a notice of completion, a completion report, and all supporting information (e.g., as-drilled location plat, as-built diagrams, records, sampling and testing results, well and cavern tests, logs, etc.) required in §3325;

b. a representative of the commissioner has inspected the well and/or facility and finds it is in compliance with the conditions of the permit; and

4.c. - 8.b. ...

i. monitoring or other information (including a failed mechanical integrity test) that suggests the solution-mining operations may cause an endangerment to underground sources of drinking waters, oil, gas, other commercial mineral deposits (excluding the salt), neighboring salt operations of any kind, or movement outside the salt stock or cavern;

ii. any noncompliance with a regulatory or permit condition or malfunction of the injection/withdrawal system (including a failed mechanical integrity test of) that may cause fluid migration into or between underground sources of drinking waters or outside the salt stock or cavern.

I.9. - J. ...

1. Authorization to Operate. Authorization by permit to operate a solution-mining well shall be valid for the life of the well, unless suspended, modified, revoked and reissued, or terminated for cause as described in §3311.K. The commissioner may issue, for cause, any permit for a duration that is less than the full allowable term under this Section. Permitting of a Class III solution-mining well and cavern for Class II hydrocarbon storage or Class V storage does not nullify or void the existing Class III solution-mining permit unless expressly ordered by the commissioner.

2. Authorization to Drill, Construct, or Convert. Authorization by permit to drill, construct or convert a new solution-mining well shall be valid for two years from the effective date of the permit. If drilling or conversion is not begun in that time, the permit shall be null and void and the operator must obtain a new permit.

3. Extensions. The operator shall submit to the Office of Conservation a written request for an extension of the time of Paragraph 2 above; however, the Office of Conservation shall approve the request for one year only for just cause and only if the permitting conditions have not changed. The operator shall have the burden of proving claims of just cause.

K. Compliance Review. The commissioner shall review each issued solution-mining well permit, area permit, and cavern at least once every five years to determine whether any permit should be modified, revoked and reissued, terminated, whether a minor modifications are needed, or if remedial action or additional monitoring is required for any cavern. Commencement of the compliance review process for each facility shall proceed as authorized by the Commissioner of Conservation.

1. As a part of the five-year compliance review, pursuant to RS 40:4.M.2, the operator shall submit the following minimum information to the Office of Conservation, based upon best available information.

a. Structural Map. A structural map of the top of salt including an aerial view of the maximum outline(s) of the operator's caverns and any other adjacent solution-mining caverns, disposal caverns, storage caverns or room and pillar mines. The maximum cavern outlines shall be based upon the latest sonar survey for each cavern.

b. Cross-Sections

i. Cross-sections illustrating the closest approach between an operator's caverns, between an operator's caverns and any adjacent solution-mining caverns, disposal caverns, storage caverns, or room and pillar mines if indicated to be proximal to adjacent caverns or mines.

ii. Cross-sections illustrating the closest approach between the operator's caverns and the edge of salt stock, if the edge of the cavern, based upon the best available information, is indicated to be less than 500 feet from the edge of the salt stock.

iii. All cross-sections shall be based upon the latest sonar survey for each cavern and the latest structural map of the top of salt based upon the best available information.

c. A tabulation of each of the operator's caverns with minimum offset distances listed to adjacent caverns, the edge of salt, and adjacent property boundaries.

2. As a part of the five-year compliance review, the well operator shall review the closure and post-closure plan and associated cost estimates of §3337 to determine if the conditions for closure are still applicable to the actual conditions.

3. As a part of the five year compliance review, the operator shall submit any other information required by the commissioner.

L. Schedules of Compliance. The permit may specify a schedule of compliance leading to compliance with the act and these regulations.

1. Time for Compliance. Any schedules of compliance under this Section shall require compliance as soon as possible but not later than three years after the effective date of the permit.

2. Interim Dates. Except as provided in Subparagraph b below, if a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

L.2.a. - M.1.a. ...

b. within the same salt dome, facility site, or project; and

1.c. - 4. ...

5. Any approved area permit for hydrocarbon storage in solution-mined salt caverns shall encompass and be valid for future Class III solution-mining wells and resulting caverns constructed for the purpose of future hydrocarbon storage.

N. Recordation of Notice of Existing Solution-Mining Wells. The owner or operator of an existing solution-mining well shall record a certified survey plat of the well location in the mortgage and conveyance records of the parish in which the property is located. Such notice shall be recorded no later than six months after the effective date of these rules and the owner or operator shall furnish a date/file stamped copy of the recorded notice to the Office of Conservation within 15 days of its recording. If an owner or operator fails or refuses to record such notice, the commissioner may, if he determines that the public interest requires, and after due notice and an opportunity for a hearing has been given to the owner and operator, cause such notice to be recorded.

O. Additional Conditions. The Office of Conservation shall, on a case-by-case basis, impose any additional conditions or requirements as are necessary to protect the environment, the health, safety, and welfare of the public, underground sources of drinking waters, oil, gas, or other mineral deposits (excluding the salt), and preserve the integrity of the salt dome.

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 40:323 (February 2014), amended LR 42:414 (March 2016), LR 48:

### §3311. Permitting Process

A. - B. ...

1. The applicant shall make public notice that a permit application for a solution-mining well or wells, or an area permit, is to be filed with the Office of Conservation. A notice of intent shall be published at least 30 days but not more than 180 days before filing the permit application with the Office of Conservation. Without exception, the applicant shall publish a new notice of intent if the application is not received by the Office of Conservation within the filing period. If the applicant is dually permitting a well for both Class III solution-mining and Class II hydrocarbon storage or Class V storage, the public notice of intent for both applications may be combined.

2. The notice shall be published once in the legal advertisement sections in the official state journal and the official journal of the parish of the proposed project location. The cost for publishing the notice of intent shall be the responsibility of the applicant and shall contain the following minimum information:

a. - d. ...

3. The applicant shall submit the proof of publication of the notice of intent when submitting the application.

C. Application Submission and Review

1. The applicant shall complete, sign, and submit one original paper application form, with required attachments and documentation, and one copy of the same to the Office of Conservation. The commissioner may request additional paper copies of the application, either in its entirety or in part, if needed. The complete application shall contain all information to show compliance with applicable state laws and these rules and regulations. In addition to submitting the application on paper, the applicant shall submit an exact duplicate of the paper application in an electronic format approved by the commissioner. The electronic version of the application shall contain the following certification statement.

This document is an electronic version of the application titled (Insert Document Title) dated (Insert Application Date). This electronic version is an exact duplicate of the paper copy submitted in (Insert the Number of Volumes Comprising the Full Application) to the Louisiana Office of Conservation.

2. - 3. ...

4. The Office of Conservation shall deny an application if an applicant fails, refuses, is unable to respond adequately to the notice of application deficiency, or if the Office of Conservation determines that the proposed activity cannot be conducted safely.

a. The Office of Conservation shall notify the applicant by certified mail of the decision denying the application.

D. - D.1. ...

a. Upon acceptance of a permit application as complete and meeting the administrative and technical requirements of these rules and regulations, the commissioner shall require the applicant to give public notice that the following actions have occurred:

i. a draft permit has been prepared under §3311.E; and

ii. a public hearing has been scheduled under §3311.D.

b. No public notice or public hearing is required for additional wells drilled or for conversion under an approved area permit or when a request for permit modification, revocation and reissuance, or termination is denied under §3311.K.

c. In Iberia Parish, no permit to drill or operate a new solution-mined cavern or to return an inactive solution-mining cavern to service shall be issued without a public hearing. The owner or operator shall give public notice of the hearing on 3 separate days within a period of 30 days prior to the public hearing, with at least 5 days between each publication notice, both in the official state journal and in the official journal of Iberia Parish.

2. Public Notice by Applicant

a. Public notice of a hearing shall be published by the applicant in the legal advertisement section of the official state journal and the official journal of the parish of the proposed project location not less than 30 days before the scheduled hearing. If the applicant is dually permitting a well for both Class III solution-mining and Class II hydrocarbon storage or Class V storage the public notice of a hearing for both applications may be combined.

b. The applicant shall provide notice of a scheduled hearing by forwarding a copy of the notice to:

i. the Office of Conservation Injection and Mining Division;

ii. property owners immediately adjacent to the proposed project;

iii. operators of existing projects located on or within the salt stock of the proposed project;

iv. United States Environmental Protection Agency;

v. Louisiana Department of Wildlife and Fisheries;

vi. Louisiana Department of Environmental Quality;

vii. Louisiana Office of Coastal Management;

viii. Louisiana Office of Conservation, Pipeline Division;

ix. Louisiana Department of Culture, Recreation and Tourism, Division of Archaeology;

x. the governing authority for the parish of the proposed project; and

xi. any other interested parties.

3. Public Notice Contents. Public notices shall contain the following minimum information:

a. name and address of the permit applicant and, if different, the facility or activity regulated by the permit;

b. name and address of the regulatory agency processing the permit action;

c. name, address, and phone number of a person within the regulatory agency where interested persons may obtain information concerning the application or permit action;

d. a brief description of the business conducted at the facility or activity described in the permit application;

e. a statement that a draft permit has been prepared under §3311.E;

f. a brief description of the public comment procedures;

g. a brief statement of procedures to request a hearing (unless a hearing has already been scheduled) and

other procedures by which the public may participate in the final permit decision;

h. the time, place, and a brief description of the nature and purpose of the public hearing, if one has already been scheduled;

i. a reference to the date of any previous public notices relating to the permit;

j. any additional information considered necessary or proper by the commissioner.

#### 4. Application Availability for Public Review

a. The applicant shall file at least one copy of the complete permit application with:

i. the local governing authority of the parish of the proposed project location at least 30 days before the scheduled public hearing to be available for public review; and

ii. in a public library in the parish of the proposed project location.

b. A duplicate of the complete permit application in electronic format shall be submitted to the Office of Conservation.

E. - F.2. ...

3. The fact sheet shall be distributed to the permit applicant, all persons identified in §3311.D.2, and, on request, to any interested person.

#### G. Public Hearing

1. If a public hearing has been requested, the Office of Conservation shall fix a time, date, and location for a public hearing. The public hearing shall be held in the parish of the proposed project location. The cost of the public hearing is set by LAC 43:XIX.Chapter 7 (Fees, as amended) and is the responsibility of the applicant. If the applicant is dually permitting a well for both Class III solution-mining and Class II hydrocarbon storage or Class V gas storage, both applications may be considered at the same public hearing.

2. The public hearing shall be fact finding in nature and not subject to the procedural requirements of the Louisiana Administrative Procedure Act. All public hearings shall be publicly noticed as required by these rules and regulations.

3. At the hearing, any person may make oral statements or submit written statements and data concerning the application or permit action being the basis of the hearing. Reasonable limits may be set upon the time allowed for oral statements; therefore, submission of written statements may be required. The hearing officer may extend the comment period by so stating before the close of the hearing.

4. A transcript shall be made of the hearing and such transcript shall be available for public review.

5. Repealed.

H. - H.2.a. ...

b. briefly describe and respond to all significant comments on the draft permit or the permit application raised during the public comment period, or hearing.

3. The Office of Conservation may issue a final permit decision within 30 days following the close of the public comment period; however, this time may be extended due to the nature, complexity, and volume of public comments received.

4. A final permit decision shall be effective on the date of issuance.

5. The owner or operator of a solution-mined cavern permit shall record a certified survey plat and final permit, which shall include any orders, permits to construct, and permits to inject, in the mortgage and conveyance records of the parish in which the property is located. A date/file stamped copy of the plat and final permit is to be furnished to the Office of Conservation within 15 days of its recording. If an owner or operator fails or refuses to record such notice, the commissioner may, if he determines that the public interest requires, and after due notice and an opportunity for a hearing has been given to the owner and operator, cause such notice to be recorded.

H.6. - I.3.d. ...

#### J. Permit Transfer

1. Applicability. A permit may be transferred to a new owner or operator only upon written approval from the Office of Conservation. Written approval must clearly show that the permit has been transferred. It is a violation of these rules and regulations to operate a solution-mining well without a permit or other authorization if a person attempting to acquire a permit transfer allows operation of the solution-mining well before receiving written approval from the Office of Conservation.

J.2. - K.6.d. ...

e. allow for a change in ownership or operational control of a solution-mining well where the Office of Conservation determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Office of Conservation;

6.f. - 7.a.iii. ...

b. If the Office of Conservation decides to terminate a permit, the Office shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit that follows the same procedures as any draft permit prepared under §3311.E. The Office of Conservation may alternatively decide to modify or revoke and reissue a permit for the causes in §3311.K.7.

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 40:326 (February 2014), amended LR 42:416 (March 2016), LR 48:

### §3313. Site Assessment

A. - A.1. ...

2. stability of the salt stock and overlying and surrounding sediments;

A.3. - B.3. ...

4. The proximity of all existing and proposed solution-mining caverns to the periphery of the salt stock and to manmade structures within the salt stock shall be demonstrated to the Office of Conservation at least once every five years (see §3309.K) by providing the following:

a. an updated structure contour map of the salt stock. The updated map should make use of all available data. The horizontal configuration of the salt caverns should be shown on the structure map and reflect the caverns' maximum lateral extent as determined by the most recent sonar caliper surveys; and

b. vertical cross-sections of the salt caverns showing their outline and position within the salt stock... Cross-sections should be oriented to indicate the closest

approach of the salt cavern wall to the periphery of the salt stock. The outline of the salt cavern should be based on the most recent sonar caliper survey.

C. Core Sampling

1. Unless specifically exempted by the commissioner, at least one well at the site of the solution-mining well (or the salt dome) shall be or shall have been cored over sufficient depth intervals to yield representative samples of the subsurface geologic environment. This shall include coring of the salt stock and may include coring of overlying formations, including any cap rock. Cores should be obtained using the whole core method. Core acquisition, core handling, and core preservation shall be done according to standard field sampling practices considered acceptable for laboratory tests of recovered cores.

2. Repealed.

D. Core Analyses and Laboratory Tests. Analyses and tests shall consider the characteristics of the injected materials and should provide data on the salt's geomechanical, geophysical, geochemical, mineralogical properties, x-ray diffraction, microstructure, and where necessary, potential for adjacent cavern connectivity, with emphasis on cavern shape and the operating conditions. All laboratory tests, experimentation, and numeric modeling shall be conducted using methods that simulate the proposed operating conditions of the cavern. Test methods shall be selected to define the deformation and strength properties and characteristics of the salt stock under cavern operating conditions. Test results, analyses, and operating recommendations shall be summarized in an interpretive report.

E. Area of Review. A thorough evaluation shall be undertaken of both surface and subsurface activities in the defined area of review of the individual solution-mining well or project area (area permit) that may influence the integrity of the salt stock, solution-mining well, and cavern, or contribute to the movement of injected fluids outside the cavern, wellbore, or salt stock.

1. - 2.e. ...

3. Water Samples. A representative number of water wells identified under §3313.E.2.b shall be sampled and analyzed by an accredited laboratory for chloride and total dissolved solids.

F. Corrective Action

1. For manmade structures in the area of review that penetrate the salt stock and are not properly constructed, completed, or plugged and abandoned, the applicant shall submit a corrective action plan consisting of such steps, procedures, or modifications as are necessary to prevent the movement of fluids outside the cavern or into underground sources of drinking water.

1.a. - 5. ...

6. In determining the adequacy of proposed corrective action and in determining the additional steps needed to prevent fluid movement into underground sources of drinking water, the following criteria and factors shall be considered by the commissioner:

6.a. - 7....

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 40:330 (February 2014), amended LR 42:416 (March 2016), LR 48:

**§3315. Cavern Design and Spacing Requirements**

A. This Section provides general standards for design of caverns to assure that project development can be conducted in a reasonable, prudent, and a systematic manner and shall stress physical and environmental safety. The owner or operator shall continually review the design throughout the construction and operation phases taking into consideration pertinent additional detailed subsurface information and shall include provisions for protection from damage caused by hydraulic shock. If necessary, the original development and operational plans shall be modified to conform to good engineering practices.

B. - B.1.a.ii. ...

iii. If no objection from a non-consenting adjacent property owner is received within 30 days of the notice provided in accordance with §3315.B.1.a.i above, then the commissioner may approve the continued operation of the cavern administratively.

b. New Solution-Mining Caverns. No part of a newly permitted solution-mining cavern shall extend closer than 100 feet to the property of others without the consent of the owner(s).

2. Adjacent Structures within the Salt. As measured in any direction, the minimum separation between walls of adjacent caverns or between the walls of the cavern and any adjacent cavern or any other manmade structure within the salt stock shall not be less than 200 feet. Caverns must be operated in a manner that ensures the walls between any cavern and any other manmade structure maintain the minimum separation of 200 feet. For solution-mining caverns permitted prior to the effective date of these regulations and which are already within 200 feet of any other cavern or manmade structure within the salt stock, the commissioner of conservation may approve continued operation upon a proper showing by the owner or operator that the cavern is capable of continued safe operations.

3. - 3.b....

c. Without exception or variance to these rules and regulations, an existing solution-mining cavern with cavern walls 100 feet or less from the periphery of the salt stock shall be removed from service immediately and permanently. An enhanced monitoring plan in conformance with §3315.B.3.b above for long term monitoring shall be prepared and submitted to the Office of Conservation. Once approved, the owner or operator shall implement the enhanced monitoring plan.

d. For solution-mining caverns in existence as of the effective date of these regulations with less than 300 feet but more than 100 feet of salt separation at any point between the cavern walls and the periphery of the salt stock, continued or additional solution-mining may be allowed upon submittal of an enhanced monitoring plan in conformance with §3315.B.3.b above in addition to any additional maps, studies, tests, assessments, or surveys required by the commissioner to show that the cavern is capable of continued safe operations.

C. Cavern Coalescence. The Office of Conservation may permit the use of coalesced caverns for solution-mining. It shall be the duty of the applicant, owner or operator to demonstrate that operation of coalesced caverns under the proposed cavern operating conditions can be accomplished in a physically and environmentally safe manner. The

intentional subsurface coalescing of adjacent caverns must be requested by the applicant, owner or operator in writing and be approved by the Office of Conservation before beginning or resumption of solution-mining operations. Approval for cavern coalescence shall only be considered upon a showing by the applicant, owner or operator that the stability and integrity of the cavern and salt stock shall not be compromised and that solution-mining operations can be conducted in a physically and environmentally safe manner. If the design of adjacent caverns should include approval for the subsurface coalescing of adjacent caverns, the minimum spacing requirement of §3315.B.2 above shall not apply to the coalesced caverns.

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 40:332 (February 2014), amended LR 42:417 (March 2016), LR 48:

### **§3317. Well Construction and Completion**

A. - A.2.d.vi. ...

#### **B. Open Borehole Surveys**

1. Open hole wireline surveys that delineate subsurface lithologies, formation tops (including top of cap rock and salt), formation fluids, formation porosity, and fluid resistivities shall be done on wells from total well depth to either ground surface or base of conductor pipe. Wireline surveys shall include, at a minimum, density, neutron, sonic, and caliper logs and shall be presented with gamma-ray and, where applicable, spontaneous potential curves. All surveys shall be presented on a scale of 1 inch to 100 feet and a scale of 5 inches to 100 feet and all logs must include the depth datum. A descriptive report interpreting the results of such logs and tests shall be prepared and submitted to the commissioner.

2. Gyroscopic multi-shot surveys of the borehole shall be taken at intervals not to exceed every 100 feet of drilled borehole. The commissioner may require additional gyroscopic surveys as necessary.

3. Caliper logging to determine borehole size for cement volume calculations shall be done before running casings.

4. The owner or operator shall submit all wireline surveys as one paper copy and an electronic version in a format approved by the commissioner.

C. Casing and Cementing. Except as specified below, the wellbore of the solution-mining well shall be cased, completed, and cemented according to rules and regulations of the Office of Conservation and good industry engineering practices for wells of comparable depth that are applicable to the same locality of the cavern. Design considerations for casings and cementing materials and methods shall address the nature and characteristics of the subsurface environment, the nature of injected materials, the range of conditions under which the well, cavern, and facility shall be operated, and the expected life of the well including closure and post-closure.

1. - 2.g. ...

3. Surface casing shall be set to a depth below the base of the lowermost underground source of drinking water and shall be cemented to ground surface.

4. All solution-mining wells shall be cased with a minimum of two casings cemented into the salt. One casing string shall be an intermediate string, the other being the

final cemented string. The surface casing shall not be considered one of the two casings.

5. The intermediate casing string shall be set a minimum of 50 feet into the salt. The final cemented casing shall be set a minimum distance of 300 feet into the salt and shall make use of a sufficient number of casing centralizers.

6. The following applies to wells existing in caverns before the effective date of these rules and regulations and that are being used for solution-mining. If the design of the well or cavern precludes having distinct intermediate and final casing seats cemented into the salt, the wellbore shall be cased with two concentric casings run from the surface of the well to a minimum distance of 300 feet into the salt. The inner casing shall be set no more than 50 feet above the deepest casing shoe and shall be cemented from its base to surface. Alternatively, a packer and tubing completion may be substituted for the inner casing string. The packer shall be considered the effective casing seat and must be set a minimum distance of 300 feet into the salt and within 50 feet of the deepest cemented casing seat.

7. The intermediate and final casings shall be cemented from their respective casing seats to the surface when practicable.

8. An owner or operator may propose for approval by the Commissioner of Conservation an alternative casing program for a new solution-mining well pursuant to an exception or variance request in accordance with the requirements of §3303.F.

D. Casing and Casing Seat Tests. When performing tests under this paragraph, the owner or operator shall monitor and record the tests by use of a surface readout pressure gauge and a chart or a digital recorder. All instruments shall be properly calibrated and in good working order. If there is a failure of the required tests, the owner or operator shall take necessary corrective action to obtain a passing test.

1. Casing. After cementing each casing, but before drilling out the respective casing shoe, all casings will be hydrostatically pressure tested to verify casing integrity and the absence of leaks. The stabilized test pressure applied at the well surface will be calculated such that the pressure gradient at the depth of the respective casing shoe will not be less than 0.7 PSI/FT of vertical depth or greater than 0.9 PSI/FT of vertical depth. All casing test pressures will be maintained for 1 hour after stabilization. Allowable pressure loss is limited to 5 percent of the test pressure over the stabilized test duration. Test results will be reported as part of the pre-operating requirements

2. Casing Seat. The casing seat and cement of the intermediate and production casings will each be hydrostatically pressure tested after drilling out the casing shoe. At least 10 feet of formation below the respective casing shoes will be drilled before the test.

a. For all casings below the surface casing, excluding the casing strings set within the salt the stabilized test pressure applied at the well surface will be calculated such that the pressure at the casing shoe will not be less than the 85 percent of the predicted formation fracture pressure at that depth. The test pressures will be maintained for 1 hour after pressure stabilization. Allowable pressure loss is limited to 5 percent of the test pressure over the stabilized test duration. Test results will be reported as part of the pre-operating requirements.

b. For casing strings set within the salt, the test pressure applied at the surface will be the greater of the maximum predicted salt cavern operating pressure or a pressure gradient of 0.85 PSI/FT of vertical depth calculated with respect to the depth of the casing shoe. The test pressures will be maintained for 1 hour after pressure stabilization. Allowable pressure loss is limited to 5 percent of the test pressure over the stabilized test duration. Test results will be reported as part of the pre-operating requirements.

3. Casing or casing seat test pressures shall never exceed a pressure gradient equivalent to 0.90 PSI/FT of vertical depth at the respective casing seat or exceed the known or calculated fracture gradient of the appropriate subsurface formation. The test pressure shall never exceed the rated burst or collapse pressures of the respective casings.

E. - E.1 ...

2. A casing inspection log (or similar approved log or method of casing evaluation) shall be run on the final cemented casing.

3. When submitting wireline surveys, the owner or operator shall submit one paper copy and an electronic copy in a format approved by the commissioner.

F. Hanging Strings. Without exception or variance to these rules and regulations, all active solution-mining wells shall be completed with at least two hanging strings except as provided for dual-bore mining. One hanging string shall be for injection; the second hanging string shall be for displacing fluid out of the cavern from below the blanket material. The commissioner may approve a request for a single hanging string in active solution-mining wells only in the case of dual-bore mining. All inactive solution-mining wells shall be completed with at least one hanging string unless excepted by the commissioner. Hanging strings shall be designed with a collapse, burst, and tensile strength rating conforming to all expected operating conditions. The design shall also consider the physical and chemical characteristics of fluids placed into and/or withdrawn from the cavern.

G. Wellhead Components and Related Connections. All wellhead components, valves, flanges, fittings, flowlines, and related connections shall be manufactured of steel. All components shall be designed with a test pressure rating of at least 125 percent of the maximum pressure that could be exerted at the surface. Selection and design criteria for components shall consider the physical and chemical characteristics of fluids placed into and/or withdrawn from the cavern under the specific range of operating conditions, including flow induced vibrations. The fluid withdrawal side of the wellhead (if applicable) shall be rated for the same pressure as the water injection side. All components and related connections shall be maintained in good working order and shall be periodically inspected by the operator.

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 40:333 (February 2014), amended LR 42:417 (March 2016), LR 48:

### **§3319. Operating Requirements**

A. Cavern Roof. Without exception or variance to these rules and regulations, no cavern shall be used for solution-mining if the cavern roof has grown above the top of the salt

stock. The operation of an already permitted cavern shall cease and shall not be allowed to continue if information becomes available that shows this condition exists. The Office of Conservation may order the solution-mining well and cavern closed according to an approved closure and post-closure plan.

B. Blanket Material. Before beginning solution-mining operations, a blanket material shall be placed into the cavern to prevent unwanted leaching of the cavern roof. The blanket material shall consist of crude oil, diesel, mineral oil, or other fluid possessing similar noncorrosive, insoluble, low-density properties. The blanket material shall be placed between the outermost hanging string and innermost cemented casing of the cavern and shall be of sufficient volume to coat the entire cavern roof. In all caverns which have not been plugged and abandoned, the cavern roof and level of the blanket material shall be monitored at least once every five years by running a density interface survey or using an alternative method approved by the Office of Conservation. A blanket meeting the requirements of this section shall remain in place for active caverns and shall be removed from inactive caverns only upon the approval of the Office of Conservation.

C. Remedial Work. No remedial work or repair work of any kind shall be performed on the solution-mining well or cavern without prior authorization from the Office of Conservation. The provision for prior authorization shall also extend to doing mechanical integrity pressure and leak tests, sonar caliper surveys, and all logs, including casing inspection logs and through tubing logs; however, a work permit is not required in order to conduct routine interface surveys. The owner or operator or its agent shall submit a valid work permit request form (Form UIC-17 or successor). Before beginning well or cavern remedial work, the pressure in the cavern shall be relieved, as practicable.

D. Well Recompletion—Casing Repair. The following applies to solution-mining wells where remedial work results from well upgrade, casing wear, or similar condition. For each paragraph below, a casing inspection log shall be performed on the entire length of the innermost cemented casing in the well before doing any casing upgrade or repair. Authorization from the Office of Conservation shall be obtained before beginning any well recompletion, repair, upgrade, or closure. A solution-mining well that cannot be repaired or upgraded shall be properly closed according to an approved closure and post-closure plan.

1.-2. ...

E. Multiple Well Caverns. No newly permitted well shall be drilled into an existing cavern until the cavern pressure has been relieved, as practicable, to 0 PSI measured at the surface.

F. Cavern Allowable Operating Pressure

1. The maximum allowable cavern injection pressure shall be calculated at a depth referenced to the well's deepest cemented casing seat. The injection pressure at the wellhead shall be calculated to ensure that the pressure induced within the salt cavern during injection does not initiate new fractures or propagate existing fractures in the salt. In no case shall injection pressure initiate fractures in the confining zone or cause the migration of injection or formation fluids out of the salt stock or into an underground source of drinking water.

2. When measured at the surface and calculated with respect to the appropriate reference depth, the maximum allowable cavern injection pressure shall never exceed a pressure gradient of 0.90 PSI/FT of vertical depth.

3. The solution-mining well shall never be operated at pressures over the maximum allowable injection pressure defined above, exceed the maximum allowable pressure as may be established by permit, or exceed the rated burst or collapse pressure of all well tubulars (cemented or hanging strings) even for short periods, including pressure pulsation peaks, abnormal operating conditions, well or cavern tests, etc.

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 40:335 (February 2014), amended LR 42:417 (March 2016), LR 48:

### **§3321. Safety**

A. Emergency Action Plan. An Emergency Action Plan containing emergency contact telephone numbers, procedures and specific information for facility personnel to respond to a release, upset, incident, accident, or other site emergency shall be kept at the facility and shall be reviewed and updated as needed. An outline of the plan, including emergency contact telephone numbers, shall be prepared and submitted as part of the permit application or compliance review.

B. Controlled Site Access. Access to solution-mining facilities shall be controlled by fencing or other means around the facility property. All points of entry into the facility shall be through a lockable gate system.

C. Personnel. While solution-mining, testing, or performing any work requiring a UIC-17 (Work Permit), trained and competent personnel shall be on duty and stationed as appropriate at the solution-mining well, facility's onsite local control room, or other facility control location at the storage site, during all hours and phases of facility operation. If the solution-mining facility chooses to use an offsite monitoring and control automated telemetry surveillance system, approved by the commissioner, provisions shall be made for trained personnel to be on-call at all times and 24 hours a day staffing of the facility may not be required.

D. - E.2. ...

3. All flowlines for injection and withdrawal connected to the wellhead of the solution-mining well shall be equipped with remotely operated shut-off valves and shall have manually operated positive shut-off valves at the wellhead. All remotely operated shut-off valves shall be fail-safe and tested and inspected according to §3321.H.

F. Alarm Systems. Manual and automatically activated alarms shall be installed at all cavern facilities. All alarms shall be audible and visible from any normal work location within the facility. The alarms shall always be maintained in proper working order. Automatic alarms designed to activate an audible and a visible signal shall be integrated with all pressure, flow, heat, fire, cavern overflow, leak sensors and detectors, emergency shutdown systems, or any other safety system. The circuitry shall be designed such that failure of a detector or sensor shall activate a warning.

G. Emergency Shutdown Valves. Manual and automatically activated emergency shutdown valves shall be installed on all systems of cavern injection and withdrawal

and any other flowline going into or out from each solution-mining wellhead. All emergency shutdown valves shall be fail-safe and shall be tested and inspected according to §3321.H.

1. Manual controls for emergency shutdown valves shall be designed for operation from a local control room, at the solution-mining well, any remote monitoring and control location, and at a location that is likely to be accessible to emergency response personnel.

2. Automatic emergency shutdown valves shall be designed to actuate on detection of abnormal pressures of the injection system, abnormal increases in flow rates, responses to any heat, fire, cavern overflow, leak sensors and detectors, loss of pressure or power to the well, cavern, or valves, or any abnormal operating condition.

H. - I.1. ...

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 40:335 (February 2014), amended LR 42:417 (March 2016), LR 48:

### **§3323. Monitoring Requirements**

A. Pressure Gauges, Pressure Sensors, Flow Sensors

1. Pressure gauges or pressure sensors/transmitters that show pressure on the fluid injection string, fluid withdrawal string, and any annulus of the well, including the blanket material annulus, shall be installed at each wellhead. Gauges or pressure sensors/transmitters shall be designed to read gauge pressure in 10 PSIG increments. All gauges or pressure sensors/transmitters shall be properly calibrated and shall always be maintained in good working order. The pressure valves onto which the pressure gauges are affixed shall have 1/2 inch female fittings.

2. Pressure sensors designed to actuate the automatic closure of all emergency shutdown valves in response to a preset pressure (high) shall be installed and properly maintained for all fluid injection and fluid withdrawal strings, and blanket material annulus.

3. Flow sensors designed to actuate the automatic closure of all emergency shutdown valves in response to abnormal increases in cavern injection and withdrawal flow rates shall be installed and properly maintained on each solution-mining well.

B. - B.4. ...

C. Casing Inspection.

1. For all Class III Brine Wells, a casing inspection or similar log shall be run on the entire length of the innermost cemented casing in each well at least once every 10 years. Casing inspection logs shall be submitted to the Office of Conservation and shall include an interpretive report.

2. Equivalent alternate monitoring programs to ensure the integrity of the innermost, cemented casing may be approved by the Office of Conservation in place of §3323.C.1.

D. Subsidence Monitoring.

1. The owner or operator shall prepare and carry out a plan approved by the commissioner to monitor subsidence at and in the vicinity of the solution-mining cavern(s). The monitoring plan should include at a minimum all wells/caverns belonging to the owner or operator regardless of the status of the cavern. Subsidence monitoring shall be scheduled to occur annually during the same period each year. A monitoring report shall be prepared and submitted to

the Office of Conservation after completion of each monitoring event.

E. - F. ...

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 40:336 (February 2014), amended LR 42:418 (March 2016), LR 48:

### **§3325. Pre-Operating Requirements—Completion Report**

A. The operator shall submit a report describing, in detail, the work performed resulting from the approved permitted activity. The report shall be submitted in paper and electronic form and shall include all information relating to the work and information that documents compliance with these rules and the approved permitted activity. The report shall be prepared and submitted for any approved work relating to the construction, installation and completion of the surface portion of the facility and information on the construction, conversion, or workover of the solution-mining well or cavern. Injection into a solution-mining well shall not begin until all required information has been submitted to the Office of Conservation and the operator has received written authorization from the Office of Conservation stating operations may begin. Preauthorization pursuant to this Subsection is not required for workovers.

B. Where applicable to the approved permitted activity, information in a completion report shall include:

1. all required state reporting forms containing original signatures;
2. revisions to any operation or construction plans since approval of the permit application;
3. as-built schematics of the layout of the surface portion of the facility;
4. as-built piping and instrumentation diagram(s);
5. copies of applicable records associated with drilling, completing, working over, or converting the solution-mining well and/or cavern including a daily chronology of such activities;
6. a certified, as-drilled location plat of the solution-mining well, accompanied by proof of filing of the plat in the parish conveyance and mortgage records;
7. as-built subsurface diagram of the solution-mining well and cavern labeled with appropriate construction, completion, or conversion information, i.e., depth datum, depth and diameter of all tubulars, depths of top of cap rock and salt, and top and bottom of the cavern;
8. as-built diagram of the surface wellhead labeled with appropriate construction, completion, or conversion information, i.e., valves, gauges, and flowlines;
9. results of any core sampling and testing;
10. results of well or cavern tests such as casing and casing seat tests, well/cavern mechanical integrity pressure and leak tests;
11. paper and electronic copies of any wireline logging such as open hole and/or cased hole logs, the most recent cavern sonar survey, and mechanical integrity test;
12. the status of corrective action on defective wells in the area of review;
13. the proposed operating data;
14. the proposed injection procedures; and

15. any additional data documenting the work performed for the permitted activity, information requested by the Office of Conservation, or any additional reporting requirements imposed by the approved permit.

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 40:337 (February 2014), amended LR 48:

### **§3327. Well and Cavern Mechanical Integrity Pressure and Leak Tests**

A. The operator of the solution-mining well and cavern shall have the burden of meeting the requirements for well and cavern mechanical integrity. The Office of Conservation shall be notified in writing at least seven days before any scheduled mechanical integrity test. The test may be witnessed by Office of Conservation personnel but must be witnessed by a qualified third party. Generally accepted industry methods and standards shall apply when conducting and evaluating the tests required in this Rule.

B. Frequency of Tests

1. Without exception or variance to these rules and regulations, all solution-mining wells and caverns shall be tested for and satisfactorily demonstrate mechanical integrity before beginning injection activities.

2. All subsequent demonstrations of mechanical integrity shall occur at least once every five years. Additionally, mechanical integrity testing shall be done for the following reasons regardless of test frequency:

- a. after physical alteration to any cemented casing or cemented liner;
- b. after performing any remedial work to reestablish well or cavern integrity;
- c. before well closure, except when the cavern has experienced mechanical failure;
- d. whenever leakage into or out of the cavern system is suspected; is suspected;
- e. whenever the commissioner determines a test is warranted.

C. - C.6. ...

7. Inactive caverns. The commissioner may approve hydrostatic brine pressure monitoring for inactive wells and caverns that are in pre-closure monitoring and will not be returned to service. For any cavern removed from pre-closure monitoring that has been subject to hydrostatic brine pressure testing, a MIT must be performed in accordance with §3327.C.1-6 above prior to resuming any injection activities.

D. Submission of Pressure and Leak Test Results. One complete electronic copy of the mechanical integrity pressure and leak test results, certified by a Louisiana licensed P.E. (See §3303.G.3), shall be submitted to the Office of Conservation within 60 days of test completion. The report shall include the following minimum information:

1. - 4. ...

5. interpreted test results showing all calculations including error analysis and calculated leak rates; and

D.6. - E.5. ...

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 40:337 (February 2014), amended LR 42:418 (March 2016), LR 48:

### **§3329. Cavern Configuration and Capacity**

#### **Measurements**

A. Sonar caliper surveys shall be performed on all caverns. With prior approval of the Office of Conservation, the operator may use another similar proven technology designed to determine cavern configuration and measure cavern capacity as a substitute for a sonar survey.

B. Frequency of Surveys. A sonar caliper survey of the entire cavern shall be performed at least once every five years and must include horizontal shots beginning just below the deepest cemented casing shoe. At least once every 10 years a sonar caliper survey, or other approved survey, shall be performed that logs the roof of the cavern using uptilted survey measurements. Additional surveys as specified by the Office of Conservation shall be performed for any of the following reasons regardless of frequency:

1. before commencing cavern closure operations;
2. whenever leakage into or out of the cavern system is suspected is suspected;
3. after performing any remedial work to reestablish solution-mining well or cavern integrity or raise the deepest casing seat;
4. before returning the cavern to storage service after a period of salt solution-mining or washing to purposely increase the storage cavern size or capacity;
5. after completion of any additional solution-mining or washing for caverns engaged in simultaneous storage and salt solution-mining; or
6. whenever the Office of Conservation believes a survey is warranted.

C. Submission of Survey Results. A complete electronic version of each survey shall be submitted to the Office of Conservation within 60 days of survey completion.

1. - 1.c. ...
  - d. graphical plot of cavern depth versus volume;
  - e. graphical plot of the maximum cavern radii;
  - f. vertical cross-sections of the cavern at various azimuths drawn to an appropriate horizontal and vertical scale;
  - g. vertical cross-section overlays comparing results of current survey and up to 3 previous surveys;
  - h. isometric or 3-D shade profile of the cavern at various azimuths and rotations.
  - i. Any data collected from prior surveys shall be clearly identified if included in the submitted report. §

2. The information submitted resulting from use of an approved alternative survey method to determine cavern configuration and measure cavern capacity shall be determined based on the method or type of survey.

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 40:339 (February 2014), amended LR 42:418 (March 2016), LR 48:

### **§3331. Inactive Caverns and Caverns in which Mining Activities are to be Concluded**

A. The operator shall comply with the following minimum requirements when there has been no injection into a solution-mining cavern for one year or the operator is

prepared to conclude mining activities, regardless of the reason:

1. notify the Office of Conservation in writing within seven days of the well or cavern becoming inactive (out-of-service). The notification shall include the date the cavern was removed from service, the reason for taking the cavern out of service, and the expected date when the cavern may be returned to service (if known);

2. disconnect all flowlines for injection to the solution-mining well. If the operator anticipates that the cavern will be put back into service within the following year, they may submit a request to the commissioner to allow the cavern to remain inactive without disconnecting the flowlines;

3. maintain continuous monitoring of cavern pressure, fluid withdrawal, and other parameters required by the permit;

4. submit quarterly reports on the appropriate Form (Form UIC-50 or successor) in accordance with §3333.

5. maintain and demonstrate well and cavern mechanical integrity if mining operations were suspended for reasons other than a lack of mechanical integrity;

7. maintain compliance with financial responsibility requirements of these rules and regulations; and

8. any additional requirements of the Office of Conservation to document the solution-mining well and cavern shall not endanger the environment, or the health, safety and welfare of the public during the period of cavern inactivity.

9. No inactive solution-mining cavern may be returned to service without first submitting a written request and work permit application to the Office of Conservation and obtaining approval of the commissioner.

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 40:339 (February 2014), amended LR 42:418 (March 2016), LR 48:

### **§3333. Operating Reports**

A. The operator shall submit quarterly operation reports to the Office of Conservation. Reports are due no later than 15 days following the end of the reporting period.

B. Quarterly reports shall be submitted electronically on the appropriate form (Form UIC-50 or successor) and reference the operator name, well name, well number, well state serial number, salt dome name, and contain the following minimum information acquired weekly during the reporting quarter:

1. maximum wellhead pressures (PSIG) on the injection string;

2. maximum wellhead pressure (PSIG) on the blanket material annulus;

3. volume in barrels of injected material;

4. results of any monitoring program required by permit or compliance action;

5. summary of any test of the solution-mining well or cavern;

6. summary of any workover performed during the month including minor well maintenance;

7. pressure releases from inactive caverns;

8. description of any event resulting in non-compliance with these rules which triggers an alarm or shutdown device and the response taken;



9. description of any event that exceeds operating parameters for annulus pressure or injection pressure as may be specified in the permit.

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 40:339 (February 2014), and LR 48:

### **§3335. Record Retention**

A. The owner or operator shall retain copies of all records, data, and information concerning the design, permitting, construction, workovers, tests, and operation of the solution-mining well, cavern, and related surface facility. Records shall be retained throughout the operating life of the solution-mining well and for five years following conclusion of any post-closure care requirements. Records, data, and information shall include, but shall not be limited to the permit application, cementing (primary and remedial), wireline logs, drill records, casing records, casing pressure tests, well recompletion records, well/cavern mechanical integrity tests, cavern capacity and configuration surveys, surface construction, closure, post-closure activities, corrective action, sampling data, etc. Unless otherwise specified by the commissioner, monitoring records obtained pursuant to §3323.B shall be retained by the owner or operator for a minimum of five years from the date of collection. All documents shall be available for inspection by agents of the Office of Conservation at any time.

B. When there is a change in the owner or operator of the solution-mining well, copies of all records shall be transferred to the new owner or operator. The new owner or operator shall then have the responsibility of maintaining such records.

C. The Office of Conservation may require the owner or operator to deliver the records to the Office of Conservation at the conclusion of the retention period.

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 40:340 (February 2014), LR 48:

### **§3337. Closure and Post-Closure**

A. Closure. The owner or operator shall close the solution-mining well, cavern, surface facility or parts thereof as approved by the Office of Conservation. Closure shall not begin without written authorization from the Office of Conservation.

#### **1. Notice of Intent to Close**

a. The operator shall review the closure plan before seeking authorization to begin closure activities to determine if the conditions for closure are still relevant to the actual conditions of the solution-mining well, cavern, or surface facility. Revisions to the method of closure reflected in the plan shall be submitted to the Office of Conservation for approval no later than the date on which the notice of closure is required to be submitted as shown in the subparagraph below.

b. The operator shall notify the Office of Conservation in writing at least 30 days before the expected closure of a solution-mining well, cavern, or surface facility. Notification shall be by submission of a request for a work permit. At the discretion of the Office of Conservation, a shorter notice period may be allowed.

2. Closure Plan. Plans for closure of the solution-mining well, cavern, and related surface facility shall be submitted as part of the permit application. The closure plan shall meet the requirements of these rules and regulations and be acceptable to the Office of Conservation. The obligation to implement the closure plan survives the termination of a permit or the cessation of mining operations or related activities. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit. The Office of Conservation may modify a closure plan where necessary.

3. Closure Plan Requirements. The owner or operator shall review the closure plan annually to determine if the conditions for closure are still applicable to the actual conditions of the solution-mining well, cavern, or surface facility. Any revision to the plan shall be submitted to the Office of Conservation for approval. At a minimum, a closure plan shall address the following:

a. assurance of financial responsibility as required in §3309.B.1. All instruments of financial responsibility shall be reviewed each year before its renewal date according to the following process:

i. a detailed cost estimate for adequate closure (plugging and abandonment) of the well and related appurtenances entire solution-mining well facility (solution-mining well, cavern, surface appurtenances, etc.) shall be prepared by a qualified professional. The closure plan and cost estimate shall include provisions for closure acceptable and submitted to the Office of Conservation by the date specified in the permit;

ii. the closure plan and cost estimate shall include provisions for closure acceptable to the Office of Conservation;

iii. after reviewing the required closure cost estimate, the Office of Conservation may amend the required financial surety to reflect the estimated costs to the Office of Conservation to complete the approved closure of the facility increase, decrease or allow the amount to remain the same;

iv. documentation from the operator showing that the required financial instrument has been renewed shall be received each year by the date specified in the permit. When an operator is delinquent in submitting documentation of financial instrument renewal, the Office of Conservation shall initiate procedures to take possession of funds guaranteed by the financial instrument and suspend or revoke the operating permit. Permit suspensions shall remain in effect until renewal documentation is received and accepted by the Office of Conservation;

b. a prediction of the pressure build-up in the cavern following closure;

c. an analysis of potential pathways for leakage from the cavern, cemented casing shoe, and wellbore. Consideration shall be given to site specific elements of geology, salt cavern geometry and depth, cavern pressure build-up over time due to salt creep and other factors inherent to the salt stock and/or salt dome;

d. procedures for determining the mechanical integrity of the solution-mining well and cavern before closure;

- e. removal and proper disposal of any waste or other materials remaining at the facility;
- f. closing, dismantling, and removing all equipment and structures located at the surface (including site restoration) if such equipment and structures will not be used for another purpose at the same solution-mining facility;
- g. the type, number, and placement of each wellbore or cavern plug including the elevation of the top and bottom of each plug;
- h. the type, grade, and quantity of material to be used in plugging;
- i. a description of the amount, size, and location (by depth) of casing and any other well construction materials to be left in the solution-mining well;
- j. any proposed test or measurement to be made before or during closure.

4. Standards for Closure. The following are minimum standards for closing the solution-mining well or cavern. The Office of Conservation may require additional standards prior to actual closure.

a. After permanently concluding mining operations into the cavern but before closing the solution-mining well or cavern, the owner or operator shall:

i. observe and accurately record the shut-in salt cavern pressures and cavern fluid volume for no less than five years or a time period specified by the Office of Conservation to provide information regarding the cavern's natural closure characteristics and any resulting pressure buildup;

ii. using actual pre-closure monitoring data, show and provide predictions that closing the solution-mining well or cavern as described in the closure plan will not result in any pressure buildup within the cavern that could adversely affect the integrity of the solution-mining well, cavern, or any seal of the system.

b. Unless the well is being plugged and abandoned due to a failed mechanical integrity test and the condition of the casing and cavern are known, before closure, the owner or operator shall do mechanical integrity pressure and leak tests to ensure the integrity of both the solution-mining well and cavern.

c. Before closure, the owner or operator shall remove and properly dispose of any free oil or blanket material remaining in the solution-mining well or cavern.

d. Upon permanent closure, the owner or operator shall plug the solution-mining well with cement in a way that will not allow the movement of fluids into or between underground sources of drinking water or outside the salt stock.

5. Plugging and Abandonment. The well/cavern to be abandoned shall be in a state of static equilibrium prior to plugging.

a. A continuous column of cement shall fill the deepest cemented casing from shoe to surface via a series of cement plugs and shall be accomplished as follows:

i. a balanced cement plug shall be placed across the shoe of the deepest cemented casing, tagged to verify the top of cement, and pressure tested to at least 300 PSI for 30 minutes before setting the next cement plug; and

ii. subsequent cement plugs shall be spotted immediately on top of the previously-placed cement plug.

Each plug shall be tagged to verify the top of cement before the next plug is placed.

b. After placing the top plug, the operator shall be required on all land locations to cut and pull the casings a minimum of 5 feet below ground level. A 1/2 inch thick steel plate shall be welded across the top of all casings. The plate shall be inscribed with the plug and abandonment date and the well serial number on top. On all water locations, the casings shall be cut and pulled a minimum of 15 feet below the mud line.

c. The plan of abandonment may be altered if new or unforeseen conditions arise during the well work, but only after approval by the Office of Conservation.

6. Closure Report. The owner or operator shall submit a closure report to the Office of Conservation within 60 days after closure of the solution-mining well, cavern, surface facility, or part thereof. The report shall be submitted electronically and shall be certified as accurate by the owner or operator and by the person charged with overseeing the closure operation (if other than the owner or operator). The report shall contain the following information:

a. detailed procedures of the closure operation. Where actual closure differed from the plan previously approved, the report shall include a written statement specifying the differences between the previous plan and the actual closure;

b. the appropriate Office of Conservation plug and abandon report form (Form UIC-P&A or successor); and

A.6.c. - B. ...

1. The owner or operator shall review the post-closure plan at least every five years to determine if the conditions for post-closure are still applicable to actual conditions. Any revision to the plan shall be submitted to the Office of Conservation for approval. At a minimum, a post-closure plan shall address the following:

a. - a.ii. ...

iii. after reviewing the closure cost estimate, the Office of Conservation may amend the amount to reflect the costs to the Office of Conservation to complete the approved closure of the facility;

1.a.iv. - 2.b. ...

c. conduct any groundwater monitoring by the permit or approved corrective action plan;

2.d. - 3. ...

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 40:340 (February 2014), amended LR 48:

### 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. The proposed rule has a positive impact on family functioning, stability, or autonomy as described in R.S. 49:972.

### 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. 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, housing, health care, nutrition, transportation, and utilities assistance.

#### Small Business Analysis

Pursuant to R.S. 49:965.6, methods for reduction of the impact on small business, as defined in the Regulatory Flexibility Act, have been considered when creating this proposed Rule.

This proposed Rule is not anticipated to have an adverse impact on small businesses; therefore, a Small Business Economic Impact Statement has not been prepared.

#### Provider Impact Statement

The proposed Rule 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. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

#### Public Comments

Interested persons may submit written comments to Stephen Lee, Director of the Injection and Mining Division, Office of Conservation, Louisiana Department of Natural Resources, P.O. Box 94396, Baton Rouge, LA 70804-9396. Written comments will be accepted through the close of business, 5 p.m. on July 27, 2022.

#### Public Hearing

Interested persons may submit written comments to Stephen Lee, Director of the Injection and Mining Division, Office of Conservation, Louisiana Department of Natural Resources, P.O. Box 94396, Baton Rouge, LA 70804-9396. Written comments will be accepted through the close of business, 5 p.m. on July 27, 2022. A public hearing is not currently scheduled, but if requested will be held on the afternoon of Tuesday, July 26, 2022.

Richard P. Ieyoub  
Commissioner

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Class III (Solution-Mining) Injection Wells

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This proposed rule change is not anticipated to result in any changes in costs or savings to state or local governmental units. The proposed rule makes technical and consistency changes to the existing rule that governs the operation of the solution mining of salt caverns as a result of the passage of House Bill 572 (Act 326) of the 2021 Regular Session.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change is not anticipated to have any effect on revenue collections for state or local governmental units.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES OR NONGOVERNMENTAL GROUPS (Summary)

This rule change includes consistency changes and minor updates to reflect changes in operational best practices for the operators of salt cavern solution-mining wells. Some of these changes may result in additional costs to these operators. Any increase will be based on the particular status of their site and salt cavern(s), so quantification of any incremental increase in costs is indeterminable. In pre-discussions with salt cavern operators, companies did not indicate that there would be any substantial increase in expenditures in order to comply with the proposed changes to the rule. Operators may expend additional resources to comply with enhanced timelines for some technical tests. These resources will generally be paid to technical and engineering companies that provide services to Louisiana salt cavern operators.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule promulgation is not anticipated to have any impact on competition or employment.

Richard P Ieyoub  
Commissioner  
2206#041

Evan Brasseaux  
Interim Deputy Fiscal Officer  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Natural Resources Office of Conservation

#### Class V Storage Wells in Solution-Mined Salt Dome Cavities (LAC 43:XVII.Chapter 37)

The Department of Natural Resources, Office of Conservation has promulgated LAC 43:XVII.Chapter 37 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 action adopts Statewide Order No. 29-M-5, which provides comprehensive regulations for storage wells containing hydrogen, nitrogen, ammonia, compressed air, or noble (inert and nonreactive) gases whether liquid, liquefied, or gaseous in salt dome cavities.

#### Title 43

#### NATURAL RESOURCES

#### Part XVII. Office of Conservation—Injection and Mining

#### Subpart 7. Statewide Order No. 29-M-5

#### Chapter 37. Storage Wells in Solution-Mined Salt Dome Cavities

#### §3701. Definitions

*Act*—part I, chapter 1 of title 30 of the *Louisiana Revised Statutes*.

*Active Cavern Well*—a storage well or cavern that is actively being used or capable of being used to store liquid, liquefied, or gaseous substances, including standby wells. The term does not include an inactive cavern well.

*Application*—the filing on the appropriate Office of Conservation form(s), including any additions, revisions, modifications, or required attachments to the form(s), for a permit to operate a storage well or parts thereof.

*Aquifer*—a geologic formation, groups of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

*Blanket Material*—sometimes referred to as a "pad." The blanket material is a fluid or gas placed within a cavern that is lighter than the water in the cavern and will not dissolve the salt or any mineral impurities that may be contained within the salt. The function of the blanket is to prevent unwanted leaching of the cavern roof, prevent leaching of salt from around the cemented casing, and to protect the cemented casing from internal corrosion. Blanket material typically consists of crude oil, diesel, mineral oil, or some fluid or gas possessing similar noncorrosive, non-solvent, low-density properties. The blanket material is placed against the cavern roof, within the cavern neck, and between the cavern's outermost hanging string and innermost cemented casing.

*Brine*—water within a salt cavern that is saturated partially or completely with salt.

*Cap Rock*—the porous and permeable strata immediately overlying all or part of the salt stock of some salt structures typically composed of anhydrite, gypsum, limestone, and occasionally sulfur.

*Casing*—metallic pipe placed and cemented in the wellbore for the purpose of supporting the sides of the wellbore and to act as a barrier preventing subsurface migration of fluids out of or into the wellbore.

*Catastrophic Collapse*—the sudden failure of the overlying strata caused by the removal or otherwise weakening of underlying sediments.

*Cavern Neck*—the uncased wellbore between the deepest casing shoe and the cavern roof, if present.

*Cavern Roof*—the uppermost part of a cavern being just below the neck of the wellbore. The shape of the salt cavern roof may be flat or domed.

*Cavern Well*—a well extending into the salt stock to facilitate the injection and withdrawal of fluids into and from a salt cavern.

*Cementing*—the operation (either primary, secondary, or squeeze) whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing.

*Circulate to the Surface*—the observing of actual cement returns to the surface during the primary cementing operation.

*Commissioner*—the *commissioner* of conservation for the state of Louisiana.

*Contamination*—the introduction of substances or contaminants into a groundwater aquifer, a USDW or soil in such quantities as to render them unusable for their intended purposes.

*Discharge*—the placing, releasing, spilling, percolating, draining, pumping, leaking, mixing, migrating, seeping, emitting, disposing, by-passing, or other escaping of pollutants on or into the air, ground, or waters of the state. A discharge shall not include that which is allowed through a federal or state permit.

*Effective Date*—the date of final promulgation of these rules and regulations.

*Emergency Shutdown Valve*—for the purposes of these rules, a valve that automatically closes to isolate a salt cavern well from surface piping in the event of a specified condition that, if uncontrolled, may cause an emergency.

*Exempted Aquifer*—an aquifer or its portion that meets the criteria of the definition of underground source of drinking water but which has been exempted according to the procedures set forth in §3703.E.2.

*Existing Cavern Well or Storage Project*—a well, salt cavern, or project permitted to store liquid, liquefied, or gaseous substances before the effective date of these regulations.

*Facility or Activity*—any facility or activity, including land or appurtenances thereto, that is subject to these regulations

*Fluid*—any material or substance that flows or moves whether in a semisolid, liquid, sludge, gas or any other form or state.

*Groundwater Aquifer*—water in the saturated zone beneath the land surface that contains less than 10,000 mg/l total dissolved solids.

*Groundwater Contamination*—the degradation of naturally occurring groundwater quality either directly or indirectly as a result of human activities.

*Hanging String*—casing whose weight is supported at the wellhead and hangs vertically in a larger cemented casing or another larger hanging string.

*Improved Sinkhole*—a naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings which have been modified by man for the purpose of directing and emplacing fluids into the subsurface.

*Inactive Cavern Well*—a storage well or cavern that is capable of being used to store liquid, liquefied, or gaseous substances but is not being so used, as evidenced by the filing of a written notice with the Office of Conservation in accordance with §3709.I.3 and §3731.

*Incidental Constituents*—secondary substances collected as an unavoidable consequence of the separation or production processes yielding the primary substance.

*Injection and Mining Division*—the Injection and Mining Division of the Louisiana Office of Conservation within the Louisiana Department of Natural Resources.

*Injection Well*—a well into which fluids are injected, excepting fluids associated with active drilling operations.

*Injection Zone*—a geological formation, group of formations or part of a formation receiving fluids through an injection well.

*Leaching*—See solution-mining.

*Mechanical Integrity*—an injection well has mechanical integrity if there is no significant leak in the casing, tubing, or packer and there is no significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore.

*Mechanical Integrity Pressure and Leak Test* (also called Mechanical Integrity Test)—a test performed to determine whether a cavern or well has mechanical integrity.

*Migrating*—any movement of fluids by leaching, spilling, discharging, or any other uncontained or uncontrolled manner, except as allowed by law, regulation, or permit.

*New Cavern Well*—a storage well or cavern permitted by the Office of Conservation after the effective date of these regulations.

*Office of Conservation*—the Louisiana Office of Conservation within the Department of Natural Resources.

*Open Borehole*—the portion of the drilled well bore that is uncased at any point in time.

*Operator*—the person recognized by the Office of Conservation as being responsible for the physical operation of the facility or activity subject to regulatory authority under these rules and regulations.

*Owner*—the person recognized by the Office of Conservation as owning the facility or activity subject to regulatory authority under these rules and regulations.

*Permit*—an authorization, license, or equivalent control document issued by the commissioner to implement the requirements of these regulations. Permit includes, but is not limited to, area permits and emergency permits. Permit does not include UIC authorization by rule or any permit which has not yet been the subject of final agency action, such as a draft permit.

*Person*—an individual, association, partnership, public or private corporation, firm, municipality, state or federal agency and any agent or employee thereof, or any other juridical person.

*Post-Closure Care*—the appropriate monitoring and other actions (including corrective action) needed following cessation of a storage project to ensure that USDWs are not endangered.

*Previously Closed Cavern Well*—a storage well or cavern that is no longer used or capable of being used to store liquid, liquefied, or gaseous hydrocarbons and was closed prior to the effective date of these regulations.

*Produced Water*—liquids and suspended particulate matter that is obtained by processing fluids brought to the surface in conjunction with the recovery of oil and gas from underground geologic formations, with underground storage of hydrocarbons, or with solution-mining for brine.

*Project*—a group of wells or salt caverns used in a single operation.

*Public Water System*—a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves at least 25 individuals. Such term includes:

1. any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and
2. any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

*Release*—the accidental or intentional spilling, pumping, leaking, pouring, emitting, leaching, escaping, or dumping of pollutants into or on any air, land, groundwater, or waters of the state. A release shall not include that which is allowed through a federal or state permit.

*Qualified Professional Appraiser*—for the purposes of these rules, any licensed real estate appraiser holding current certification from the Louisiana Real Estate Appraisers Board and functioning within the rules and regulations of their licensure.

*Salt Dome*—a diapiric, typically circular structure that penetrates, uplifts, and deforms overlying sediments as a result of the upward movement of a salt stock in the subsurface. Collectively, the salt dome includes the salt stock and any overlying uplifted sediments.

*Salt Stock*—a typically cylindrical formation composed chiefly of an evaporite mineral that forms the core of a salt dome. The most common form of the evaporite mineral is halite known chemically as sodium chloride (NaCl). Cap rock shall not be considered a part of the salt stock.

*Schedule of Compliance*—a schedule or remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the act and these regulations.

*Site*—the land or water area where any facility or activity is physically located or conducted including adjacent land used in connection with the facility or activity.

*Solution-Mining*—the process of dissolving salt by means of circulating water from the surface, through a well to the subsurface where the salt is dissolved, and returning the fluid to the surface as brine.

*Solution-Mined Cavern*—a cavity or cavern created within the salt stock by dissolution with water.

*Solution-Mining Well*—a well which injects for extraction of minerals including:

1. mining of sulfur by the Frasch process;
2. in situ production of uranium or other metals;
3. solution mining of salts or potash.

*Solution-Mining under Gas (SMUG)*—a technique allowing the storage of product while simultaneously solution-mining the cavern for the purpose of cavern enlargement.

*State*—the state of Louisiana.

*Storage Cavern*—a salt cavern created within the salt stock by solution-mining and used to store liquid, liquefied, or gaseous substances.

*Subsidence*—the downward settling of the earth's surface with little or no horizontal motion in response to natural or manmade subsurface actions.

*Surface Casing*—steel pipe placed inside the conductor casing in the borehole which extends below, and is protective of, the USDW and other shallow geologic formations.

*UIC*—the Louisiana State Underground Injection Control Program.

*Unauthorized Discharge*—a continuous, intermittent, or one-time discharge, whether intentional or unintentional, anticipated or unanticipated, from any permitted or unpermitted source which is in contravention of any provision of the Louisiana Environmental Quality Act (R.S. 30:2001 et seq.) or of any permit or license terms and conditions, or of any applicable regulation, compliance schedule, variance, or exception of the commissioner of conservation.

*Underground Source of Drinking Water (USDW)*—an aquifer or its portion:

1. which supplies any public water system; or
2. which contains a sufficient quantity of groundwater to supply a public water system; and
  - a. currently supplies drinking water for human consumption; or
  - b. contains fewer than 10,000 mg/1 total dissolved solids; and which is not an exempted aquifer.

*Waters of the State*—both surface and underground waters within the state of Louisiana including all rivers, streams, lakes, groundwaters, and all other water courses and waters

within the confines of the state, and all bordering waters, and the Gulf of Mexico.

*Well*—a bored, drilled, or driven shaft whose depth is greater than the largest surface dimension; or, a dug hole whose depth is greater than the largest surface dimension; or an improved sinkhole; or, a subsurface fluid distribution system.

*Well Plug*—a fluid-tight seal installed in a borehole or well to prevent the movement of fluids.

*Workover*—to perform one or more of a variety of remedial operations on an injection well, such as cleaning, perforation, changing tubing, deepening, squeezing, plugging back, etc.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq. and R.S. 30:23 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 48:

### **§3703. General Provisions**

#### **A. Applicability**

1. These rules and regulations shall apply to applicants, owners, or operators of any solution-mined salt cavern to store hydrogen, carbon dioxide, nitrogen, ammonia, compressed air, or noble (inert and nonreactive) gases whether liquid, liquefied, or gaseous.

2. No project to develop or use a salt dome in the state of Louisiana for the injection, storage and withdrawal of liquid, liquefied, or gaseous substances shall be allowed until the commissioner has issued an order following a public hearing after 30-day notice, under the rules covering such matters, which order shall include the following findings of fact:

a. that the area of the salt dome sought to be used for the injection, storage, and withdrawal of liquid, liquefied, or gaseous substances is suitable and feasible for such use as to area, salt volume, depth and other physical characteristics;

b. that the use of the salt dome cavern for the storage of liquid, liquefied, or gaseous substances will not contaminate other formations containing fresh water, oil, gas, or other commercial mineral deposits, except salt;

c. that the proposed storage, including all surface pits and surface storage facilities incidental thereto which are used in connection with the salt dome cavern storage operation, will not endanger lives or property and is environmentally compatible with existing uses of the salt dome area, and which order shall provide that:

i. liquid, liquefied, or gaseous substances, which are injected and stored in a solution-mined salt dome cavern, shall at all times be deemed the property of the injector, his successors or assigns, subject to the provisions of any contract with the affected land or mineral owners; and

ii. in no event shall the owner of the surface of the lands or water bottoms or of any mineral interest under or adjacent to which the storage cavern may lie, or any other person, be entitled to any right of claim in or to such liquid, liquefied, or gaseous substances stored unless permitted by the injector;

d. that temporary loss of jobs caused by the storage of liquid, liquefied, or gaseous substances will be corrected by compensation, finding of new employment, or other provisions made for displaced labor.

3. That in presenting evidence to the commissioner to enable him to make the findings described above, the applicant shall demonstrate that the proposed storage of

liquid, liquefied, or gaseous substances enumerated in §3703.A.1 will be conducted in a manner consistent with established practices to preserve the integrity of the salt stock and the overlying sediments. This shall include an assessment of the stability of the proposed cavern design, particularly with regard to the size, shape and depth of the cavern, the amount of separation among caverns, the amount of separation between the outermost cavern wall and the periphery of the salt stock, and any other requirements of this Rule.

4. That these regulations shall apply to all liquid, liquefied, or gaseous solution-mined salt cavern storage projects begun before October 1, 1976, as specified in §3703.A.2, except for the requirements under §3707 and §3711.A-H. Any liquid, liquefied, or gaseous substance storage projects begun before October 1, 1976 shall fulfill the requirements of §3709.K within one year of the effective date of these regulations.

#### **B. Prohibition of Unauthorized Injection**

1. The construction, conversion, or operation of a storage well or salt cavern without obtaining a permit from the Office of Conservation is a violation of these rules and regulations and applicable laws of the state of Louisiana.

#### **C. Prohibition on Movement of Fluids into Underground Sources of Drinking Water**

1. No authorization by permit shall allow the movement of injected or stored fluids into underground sources of drinking water or outside the salt stock. The owner or operator of the storage well shall have the burden of showing that this requirement is met.

2. The Office of Conservation may take emergency action upon receiving information that injected or stored fluid is present in or likely to enter an underground source of drinking water or may present an imminent and substantial endangerment to the environment, or the health, safety and welfare of the public.

D. Prohibition of Surface Discharges. The intentional, accidental, or otherwise unauthorized discharge of fluids, wastes, or process materials into manmade or natural drainage systems or directly into waters of the state is prohibited.

#### **E. Identification of Underground Sources of Drinking Water and Exempted Aquifers**

1. The Office of Conservation may identify (by narrative description, illustrations, maps, or other means) and shall protect as an underground source of drinking water, except where exempted under §3703.E.2 all aquifers or parts of aquifers that meet the definition of an underground source of drinking water. Even if an aquifer has not been specifically identified by the Office of Conservation it is an underground source of drinking water if it meets the definition.

2. After notice and opportunity for a public hearing, the Office of Conservation may identify (by narrative description, illustrations, maps, or other means) and describe in geographic and/or geometric terms (such as vertical and lateral limits and gradient) that are clear and definite, all aquifers or parts thereof that the Office of Conservation proposes to denote as exempted aquifers if they meet the following criteria:

a. the aquifer does not currently serve as a source of drinking water; and

b. the aquifer cannot now and shall not in the future serve as a source of drinking water because:

i. it is mineral, hydrocarbon, or geothermal energy producing or can be demonstrated to contain minerals or hydrocarbons that when considering their quantity and location are expected to be commercially producible;

ii. it is situated at a depth or location that makes recovery of water for drinking water purposes economically or technologically impractical;

iii. it is so contaminated that it would be economically or technologically impractical to render said water fit for human consumption; or

iv. it is located in an area subject to severe subsidence or catastrophic collapse; or

c. the total dissolved solids (TDS) content of the groundwater is more than 3,000 mg/l and less than 10,000 mg/l and it is not reasonably expected to supply a public water system.

#### F. Exceptions/Variations/Alternative Means of Compliance

1. Except where noted in specific provisions of these rules and regulations, the Office of Conservation may allow, on a case-by-case basis, exceptions, variances, or alternative means of compliance to these rules and regulations. It shall be the obligation of the applicant, owner, or operator to show that the requested exception, variance, or alternative means of compliance and any associated mitigating measures shall not result in an unacceptable increase of endangerment to the environment, or the health, safety, and welfare of the public. The applicant, owner, or operator shall submit a written request to the Office of Conservation detailing the reason for the requested exception, variance, or alternative means of compliance. No deviation from the requirements of these rules or regulations shall be undertaken by the applicant, owner, or operator without prior written authorization from the Office of Conservation.

a. When injection does not occur into, through, or above an underground source of drinking water, the commissioner may authorize a storage well or project with less stringent requirements for area-of-review, construction, mechanical integrity, operation, monitoring, and reporting than required herein to the extent that the reduction in requirements will not result in an increased risk of movements of fluids into an underground source of drinking water or endanger the public.

b. When reducing requirements under this Section, the commissioner shall issue a fact sheet in accordance with §3711.F explaining the reasons for the action.

2. Granting of exceptions or variances to these rules and regulations shall only be considered upon proper showing by the applicant, owner, or operator that such exception or variance is reasonable, justified by the particular circumstances, and consistent with the intent of these rules and regulations regarding physical and environmental safety and the prevention of waste. The commissioner may require public notice and a public hearing prior to granting any exception or variance if he determines it to be in the public interest or otherwise appropriate. The requester of the exception or variance shall be responsible for all costs associated with any public notice or public hearing.

3. Operators of Class V Storage wells and/or caverns may request to operate in accordance with alternative means of compliance previously approved by the commissioner of conservation. Alternative means of compliance shall mean operations that are capable of demonstrating a level of performance, which meets or exceeds the standards contemplated by these regulations. Owners or operators of caverns existing at the time of these rules may submit alternative means of compliance to be approved by the commissioner of conservation. The commissioner may review and approve upon finding that the alternative means of compliance meet, ensure, and comply with the purpose of the rules and regulations set forth herein provided the proposed alternative means of compliance ensures comparable or greater safety of personnel and property, protection of the environment and public, quality of operations and maintenance, and protection of the USDW.

#### G. Additional Requirements.

1. All tests, reports, logs, surveys, plans, applications, or other submittals whether required by these rules and regulations or submitted for informational purposes are required to bear the Louisiana Office of Conservation serial number of any solution-mining or storage well associated with the submittal.

2. All applications, reports, plans, requests, maps, cross-sections, drawings, opinions, recommendations, calculations, evaluations, or other submittals including or comprising geoscientific work as defined by La. R.S. 37.711.1. et seq. and required by the Office of Conservation must be prepared, sealed, signed, and dated by a licensed Professional Geoscientist (P.G.) authorized to practice by and in good standing with the Louisiana Board of Professional Geoscientists.

3. All applications, reports, plans, requests, designs, specifications, details, calculations, drawings, opinions, recommendations, evaluations or other submittals including or comprising the practice of engineering as defined by La. R.S. 37.681. et seq. and required by the Office of Conservation must be prepared, sealed, signed, and dated by a licensed Professional Engineer (P.E.) authorized to practice by and in good standing with the Louisiana Professional Engineering and Land Surveying Board.

4. The commissioner may prescribe additional requirements for storage wells or projects in order to protect USDWs and the health, safety, and welfare of the public.

5. Class V storage caverns may encompass a broad range of storage substances and the commissioner may prescribe additional requirements as necessary to protect the USDW and health, safety, and welfare of the public.

6. For additional requirements specific to the stored media identified in §3703.A.1, see §3739 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq. and R.S. 30:23 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 48:

#### §3705. Permit Requirements

A. Applicability. No person shall construct, convert, or operate a storage well or cavern without first obtaining written authorization (permit) from the Office of Conservation.

B. Application Required. Applicants for a storage well or cavern, permittees with expiring permits, or any person

required to have a permit shall complete, sign, and submit one original application form and one electronic copy with all required attachments and documentation to the Office of Conservation. The commissioner may request additional paper copies of the application if it is determined that they are necessary. The complete application shall contain all information necessary to show compliance with applicable state laws and these regulations.

C. Who Applies. It is the duty of the owner or proposed owner of a facility or activity to submit a permit application and obtain a permit. When a facility or activity is owned by one person and operated by another, it is the duty of the operator to file and obtain a permit.

D. Signature Requirements. All permit applications shall be signed as follows.

1. Corporations. By a principal executive officer of at least the level of vice-president, or duly authorized representative of that person if the representative performs similar policy making functions for the corporation. A person is a duly authorized representative only if:

a. the authorization is made in writing by a principal executive officer of at least the level of vice-president;

b. the authorization specifies either an individual or position having responsibility for the overall operation of a storage facility, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. the written authorization is submitted to the Office of Conservation.

2. Limited Liability Company (LLC). By a member if the LLC is member-managed, by a manager if the LLC is manager-managed, or by a duly authorized representative only if:

a. the authorization is made in writing by an individual who would otherwise have signature authority as outlined in this Paragraph;

b. the authorization specifies either an individual or position having responsibility for the overall operation of a storage well, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. the written authorization is submitted to the Office of Conservation.

3. Partnership or Sole Proprietorship. By a general partner or proprietor, respectively; or

4. Public Agency. By either a principal executive officer or a ranking elected official of a municipality, state, federal, or other public agency.

E. Signature Reauthorization. If an authorization under §3705.D is no longer accurate because a different individual or position has responsibility for the overall operation of a storage facility, a new authorization satisfying the signature requirements must be submitted to the Office of Conservation before or concurrent with any reports, information, or applications required to be signed by an authorized representative.

F. Certification. Any person signing an application under §3705.D shall make the following certification on the application.

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine, and/or imprisonment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq. and R.S. 30:23 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 48:

### §3707. Application Content

A. The following minimum information shall be required for each permit application. The applicant shall also refer to the appropriate application form for any additional information that may be required.

1. For Class V storage wells being dually permitted for Class III solution-mining, a single consolidated submittal containing both applications may be accepted.

B. Administrative information:

1. all required state application form(s);

2. nonrefundable application fee(s) as per LAC 43:XIX.Chapter 7 or successor document;

3. name and mailing address of the applicant and the physical address of the storage facility;

4. operator's name, address, telephone number, and e-mail address;

5. ownership status as federal, state, private, public, or other entity;

6. brief description of the nature of the business associated with the activity;

7. activity or activities conducted by the applicant which require the applicant to obtain a permit under these regulations;

8. up to four SIC codes which best reflect the principal products or services provided by the facility;

9. a listing of all permits or construction approvals that the applicant has received or applied for under any of the following programs and which specifically affect the legal or technical ability of the applicant to undertake the activity or activities to be conducted by the applicant under the permit being sought:

a. the Louisiana Hazardous Waste Management;

b. this or any other Underground Injection Control Program;

c. National Pollutant Discharge Elimination System (NPDES) Program under the Clean Water Act;

d. Prevention of Significant Deterioration (PSD) Program under the Clean Air Act;

e. Nonattainment Program under the Clean Air Act;

f. National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

g. ocean dumping permits under the Marine Protection Research and Sanctuaries Act;

h. dredge or fill permits under Section 404 of the Clean Water Act; and



i. other relevant environmental permits including, but not limited to any state permits issued under the Louisiana Office of Coastal Management, the Louisiana Surface Mining Program, or the Louisiana Natural and Scenic Streams System;

10. acknowledgment as to whether the facility is located on Native American or tribal lands or other lands under the jurisdiction or protection of the federal government, or whether the facility is located on state water bottoms or other lands owned by or under the jurisdiction or protection of the state of Louisiana;

11. documentation of financial responsibility for closure and post-closure, or documentation of the method by which proof of financial responsibility for closure and post-closure shall be provided as required in §3709.B. Before making a final permit decision, the official instrument of financial responsibility for closure and post-closure must be submitted to and approved by the Office of Conservation;

12. a map with accompanying tabulation identifying names and addresses of all property owners within the area-of-review of the solution-mined storage cavern.

C. Maps and related information:

1. certified location plat of the storage well and/or area permit boundary prepared and certified by a registered land surveyor licensed and in good standing with the Louisiana Professional Engineering and Land Surveying Board. The location plat shall be prepared according to standards of the Office of Conservation;

2. topographic or other map(s) extending at least one mile beyond the property boundaries of the storage facility depicting the facility and each well where fluids are injected underground, and those wells, springs, or surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area;

3. the section, township, and range of the area in which the storage well is located and any parish, city or municipality boundary lines within one mile of the facility boundary;

4. map(s) showing the storage well for which the permit is sought, the project area or property boundaries of the facility in which the storage well is located, and the applicable area of review. Within the area of review, the map(s) shall show the well name, well number, well state serial number, and location of all existing producing wells, injection wells, abandoned wells and dry holes, public water systems, and water wells. The map(s) shall also show surface bodies of water, mines (surface and subsurface), quarries, and other pertinent surface features including residences and roads. Only information of public record and pertinent information known to the applicant is required to be included on the map(s);

5. maps and cross-sections indicating the vertical limits of all underground sources of drinking water within the area of review, their position relative to the injection formation, and the direction of water movement, where known, in every underground source of drinking water which may be affected by the proposed injection;

6. generalized maps and cross-sections illustrating the regional geologic setting;

7. structure contour mapping of the salt stock on a scale no smaller than 1 inch to 500 feet;

8. maps and vertical cross-sections detailing the geologic structure of the local area. The cross-sections shall be structural (as opposed to stratigraphic cross-sections), be referenced to sea level, show the storage well and the cavern being permitted, all adjacent salt caverns regardless of use and current status, conventional (room and pillar) mines, and all other boreholes and wells that penetrate the salt stock. Cross-sections should be oriented to indicate the closest approach to adjacent caverns, boreholes, wells, the edge of the salt stock, etc., and shall extend at least one mile beyond the edge of the salt stock unless the edge of the salt stock and any existing oil and gas production can be demonstrated in a shorter distance and is administratively approved by the Office of Conservation. Salt caverns shall be depicted on the cross-sections using data from the most recent sonar caliper survey. Known faulting in the area shall be illustrated on the cross-sections such that the displacement of subsurface formations is accurately depicted;

9. sufficient information, including data and maps, to enable the Office of Conservation to identify oil and gas activity in the vicinity of the salt dome which may affect the proposed well; and

10. any other information required by the Office of Conservation to evaluate the storage well, salt cavern, storage project, and related surface facility.

D. Area of Review Information. Refer to §3713.E for area of review boundaries and exceptions. Only information of public record or otherwise known to the applicant need be researched or submitted with the application, however, a diligent effort must be made to identify all wells and other manmade structures that penetrate or are within the salt stock in response to the area of review requirements. The applicant shall provide the following information on all wells or structures within the defined area of review:

1. a discussion of the protocol used by the applicant to identify wells and manmade structures that penetrate or are within the salt stock in the defined area of review;

2. a tabular listing of all known water wells in the area of review to include the name of the operator, well location, well depth, well use (domestic, irrigation, public, etc.), and current well status (active, abandoned, etc.);

3. a tabular listing of all known wells (excluding water wells) in the area of review with penetrations into the cap rock or salt stock to include at a minimum:

a. operator name, well name and number, state serial number (if assigned), and well location;

b. well type and current well status (producing, disposal, storage, solution-mining, shut-in, plugged and abandoned), date the well was drilled, and the date the current well status was assigned;

c. well depth, construction, completion (including completion depths), plug and abandonment data; and

d. any additional information the commissioner may require;

4. the following information shall be provided on manmade structures within the salt stock regardless of use, depth of penetration, or distance to the storage well or cavern being the subject of the application:

a. a tabular listing of all salt caverns to include:

i. operator name, well name and number, state serial number, and well location;

ii. current or previous use of the cavern (waste disposal, storage cavern, solution-mining), current status of the cavern (active, shut-in, plugged and abandoned), date the well was drilled, and the date the current well status was assigned;

iii. cavern depth, construction, completion (including completion depths), plug and abandonment data;

b. a tabular listing of all conventional (dry or room and pillar) mining activities, whether active or abandoned. The listing shall include the following minimum items:

i. owner or operator name and address;

ii. current mine status (active, abandoned);

iii. depth and boundaries of mined levels;

iv. the closest distance of the mine in any direction to the storage well and cavern.

E. Technical Information. The applicant shall submit, as an attachment to the application form, the following minimum information in technical report format:

1. for existing caverns, the results of the latest cavern sonar caliper survey and mechanical integrity pressure and leak tests;

2. corrective action plan required by §3713.F for wells or other manmade structures within the area of review that penetrate the salt stock but are not properly constructed, completed, or plugged and abandoned;

3. plans for performing the geological, geomechanical, geochemical, engineering, and other site assessment studies of §3713 to assess the stability of the salt stock and overlying and surrounding sediments based on past, current, and planned well and cavern operations. If such studies are complete, submit the results obtained along with an interpretation of the results;

4. properly labeled schematic of the surface construction details of the storage well to include the wellhead, gauges, flowlines, and any other pertinent details;

5. properly labeled schematic of the subsurface construction and completion details of the storage well and cavern to include borehole diameters; all cemented casings with cement specifications, casing specifications (size, depths, etc.); all hanging strings showing sizes and depths set; total depth of well; top, bottom, and diameter of cavern; the depth datum; and any other pertinent details;

6. surface site diagram(s) of the facility in which the storage well is located, including but not limited to surface pumps, piping and instrumentation, controlled access roads, fenced boundaries, field offices, monitoring and safety equipment, required curbed or other retaining wall heights, etc.;

7. unless already obtained, a proposed formation testing program to obtain the geomechanical properties of the salt stock;

8. proposed injection and withdrawal procedures;

9. plans and procedures for operating the storage well, cavern, and related surface facility to include at a minimum:

a. average and maximum daily rate and volume of fluid to be injected;

b. average and maximum injection pressure; and

c. the cavern design requirements of §3715, including, but not limited to cavern spacing requirements;

d. enhanced monitoring plan implementation for any existing cavern within the mandatory setback distance location of §3715.B.3;

e. the well construction and completion requirements of §3717, including, but not limited to open borehole surveys, casing and cementing, casing and casing seat tests, cased borehole surveys, hanging strings, and wellhead components and related connections;

f. the operating requirements of §3719, including, but not limited to cavern roof restrictions, blanket material, remedial work, well recompletion, multiple well caverns, cavern allowable operating pressure and rates, and disposition of extracted cavern fluid for pressure management;

g. the safety requirements of §3721, including, but not limited to an emergency action plan, controlled site access, facility identification, personnel, wellhead protection and identification, valves and flowlines, alarm systems, emergency shutdown valves, systems test and inspections, and surface facility retaining walls and spill containment, contingency plans to cope with all shut-ins as a result of noncompliance with these regulations or well failures to prevent the migration of contaminating fluids into underground sources of drinking water;

h. the monitoring requirements of §3723, including, but not limited to equipment requirements such as pressure gauges, pressure sensors and flow sensors, continuous recording instruments, and subsidence monitoring, as well as a description of methods that will be undertaken to monitor cavern growth;

i. the pre-operating requirements of §3725, specifically the submission of a completion report, and the information required therein;

j. the mechanical integrity pressure and leak test requirements of §3727, including, but not limited to frequency of tests, test methods, submission of pressure and leak test results, and notification of test failures;

k. the cavern configuration and capacity measurement procedures of §3729, including, but not limited to sonar caliper surveys, frequency of surveys, and submission of survey results;

l. the requirements for inactive caverns in §3731;

m. the reporting requirements of §3733, including, but not limited to the information required in quarterly operation reports;

n. the record retention requirements of §3735;

o. the closure and post-closure requirements of §3737, including, but not limited to closure plan requirements, notice of intent to close, standards for closure, and post-closure requirements;

p. any other information pertinent to the operation of the storage well, including, but not limited to any waiver for surface siting, monitoring equipment and safety procedures.

F. If an alternative means of compliance has previously been approved by the commissioner of conservation within an area permit, applicants may submit means of compliance for new applications for wells and/or storage caverns within the same area permit in order to meet the requirements of E.9.f, g, and h of this Section.

G. Confidentiality of Information. In accordance with R.S. 44.1 et seq., any information submitted to the Office of Conservation pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed

on the application for, or instructions or, in the case of other submissions, by stamping the words "Confidential Business Information" on each page containing such information. If no claim is made at the time of submission, the Office of Conservation may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in R.S. 44.1 et seq. (Public Information).

1. Claims of confidentiality for the following information will be denied:

- a. the name and address of any permit applicant or permittee; and
- b. information which deals with the existence, absence, or level of contaminants in drinking water or zones other than the approved injection zone.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq. and R.S. 30:23 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 48:

### **§3709. Legal Permit Conditions**

A. Signatories. All reports required by permit or regulation and other information requested by the Office of Conservation shall be signed as in applications by a person described in §3705.D or §3705.E.

#### **B. Financial Responsibility**

1. Closure and Post-Closure. The owner or operator of a Class V storage well shall maintain financial responsibility and the resources to close, plug and abandon and where necessary, conduct post-closure care of the storage well, cavern, and related facilities as prescribed by the Office of Conservation. The related facilities shall include all surface and subsurface constructions and equipment exclusively associated with the operation of the storage cavern including but not limited to Class II Saltwater Disposal Wells and any associated equipment or pipelines whether located inside or outside of the permitted facility boundary. Evidence of financial responsibility shall be by submission of a surety bond, a letter of credit, certificate of deposit, or other instrument acceptable to the Office of Conservation. The amount of funds available shall be no less than the amount identified in the cost estimate of the closure plan of §3737.A and post-closure plan of §3737.B. Any financial instrument filed in satisfaction of these financial responsibility requirements shall be issued by and drawn on a bank or other financial institution authorized under state or federal law to operate in the state of Louisiana. In the event that an operator has previously provided financial security pursuant to LAC 43: XVII.309, such operator shall provide increased financial security if required to remain in compliance with this Section, within 30 days after notice from the commissioner.

2. Renewal of Financial Responsibility. Any approved instrument of financial responsibility coverage shall be renewable yearly. Financial security shall remain in effect until release thereof is granted by the commissioner pursuant to written request by the operator. Such release shall only be granted after plugging and abandonment and associated site restoration is completed and inspection thereof indicates compliance with applicable regulations or upon transfer of such well approved by the commissioner.

3. Assistance to Residents. The operator shall provide assistance to residents of areas deemed to be at immediate

potential risk in the event of a sinkhole developing or other incident that leads to issuance of a mandatory or forced evacuation order pursuant to R.S. 29:721 et seq. if the potential risk or evacuation is associated with the operation of a storage well or cavern.

a. Unless an operator of a Class V storage well or cavern submits a plan to provide evacuation assistance, acceptable to the commissioner, within 5 days of the issuance of a mandatory or forced evacuation order pursuant to R.S. 29:721 et seq. associated with the operation of a storage well or cavern, the commissioner of conservation shall:

- i. call a public hearing as soon as practicable to take testimony from any interested party including the authority which issued the evacuation order and local governmental officials for the affected area to establish assistance amounts for residents subject to the evacuation order and identify the operator(s) responsible for providing assistance, if any. As soon as practicable following the public hearing the commissioner shall issue an order identifying any responsible operator(s) and establishing evacuation assistance amounts. The assistance amounts shall remain in effect until the evacuation order is lifted or until a subsequent order is issued by the commissioner in accordance with Clause ii of this Subparagraph below;

- ii. upon request of an interested party, call for a public hearing to take testimony from any interested party in order to consider establishing or modifying evacuation assistance amounts and/or consider a challenge to the finding of a responsible operator(s). The public hearing shall be noticed and held in accordance with R.S. 30:6. The order shall remain in effect until the evacuation is lifted or the commissioner's order is modified, supplemented, or revoked and reissued, whichever occurs first.

b. Assistance to residents payments shall not be construed as an admission of responsibility or liability for the emergency or disaster.

4. Reimbursement. The operator shall provide the following:

- a. reimbursement to the state or any political subdivision of the state for reasonable and extraordinary costs incurred in responding to or mitigating a disaster or emergency due to a violation of this Chapter or any rule, regulation or order promulgated or issued pursuant to this Chapter. Such costs shall be subject to approval by the director of the Governor's Office of Homeland Security and Emergency Preparedness prior to being submitted to the permittee or operator for reimbursement. Such payments shall not be construed as an admission of responsibility or liability for the emergency or disaster:

- i. the commissioner shall have authority to ensure collection of reimbursement(s) due pursuant to R.S. 30:4.M.6.b and this Subparagraph;

- ii. upon petition by the state or any political subdivision of the state that is eligible for reimbursement under this Subparagraph, the commissioner shall issue an order to the permittee or operator to make payment within 30 days for the itemized costs;

- iii. failure to make the required payment(s) shall be a violation of the permit and these rules;

- iv. should any interested party dispute the amount of reimbursement, they may call for a public hearing to take

testimony from all interested parties. The public hearing shall be noticed and held in accordance with R.S. 30:6;

b. reimbursement to any person who owns noncommercial residential immovable property located within an area under a mandatory or forced evacuation order pursuant to R.S. 29:721 et seq. for a period of more than 180 days, without interruption due to a violation of this Chapter, the Permit or any Order issued pursuant to this Chapter. The offer for reimbursement shall be calculated for the replacement value of the property based upon an appraisal by a qualified professional appraiser. The replacement value of the property shall be calculated based upon the estimated value of the property prior to the time of the incident resulting in the declaration of the disaster or emergency. The reimbursement shall be made to the property owner within 30 days after notice by the property owner to the permittee or operator indicating acceptance of the offer and showing proof of continuous ownership prior to and during the evacuation lasting more than 180 days, provided that the offer for reimbursement is accepted within 30 days of receipt, and the property owner promptly transfers the immovable property free and clear of any liens, mortgages, or other encumbrances to the permittee or operator. Such payments shall not be construed as an admission of responsibility or liability.

C. Duty to Comply. The operator must comply with all conditions of a permit. Any permit noncompliance is a violation of the act, the permit and these rules and regulations and is grounds for enforcement action, permit termination, revocation and possible reissuance, modification, or denial of any future permit renewal applications if the commissioner determines that such noncompliance endangers underground sources of drinking water. If the commissioner determines that such noncompliance is likely to endanger underground sources of drinking water, it shall be the duty of the operator to prove that continued operation of the storage well shall not endanger the environment, or the health, safety, and welfare of the public.

D. Duty to Halt or Reduce Activity. It shall not be a defense for an owner or operator in an enforcement action to claim it would have been necessary to halt or reduce the permitted activity to maintain compliance with the conditions of this Rule or permit.

E. Duty to Mitigate. The owner or operator shall take all reasonable steps to minimize or correct any adverse impact on the environment such as the contamination of underground sources of drinking water resulting from a noncompliance with the permit or these rules and regulations.

#### F. Proper Operation and Maintenance

1. The operator shall always properly operate and maintain all facilities and systems of injection, withdrawal, and control (and related appurtenances) installed or used to achieve compliance with the permit or these rules and regulations. Proper operation and maintenance include effective performance (including well and cavern mechanical integrity), adequate funding, adequate operation, staffing and training, and adequate process controls. This provision requires the operation of back-up, auxiliary facilities, or similar systems when necessary to achieve

compliance with the conditions of the permit or these rules and regulations.

2. The operator shall address any unauthorized escape, discharge, or release of any material from the storage well, or part thereof that is in violation of any state or federal permit or which is not incidental to normal operations, with a corrective action plan. The plan shall address the cause, delineate the extent, and determine the overall effects on the environment resulting from the escape, discharge, or release. The Office of Conservation shall require the operator to formulate a plan to remediate the escaped, discharged, or released material if the material is believed to have entered or has the possibility of entering an underground source of drinking water.

3. The Office of Conservation may immediately prohibit further operations if it determines that continued operations at a storage well, or part thereof, may cause unsafe operating conditions, or endanger the environment, or the health, safety, and welfare of the public. The prohibition shall remain in effect until it is determined that continued operations can and shall be conducted safely. It shall be the duty of the operator to prove that continued operation of the storage well, or part thereof, shall not endanger the environment, or the health, safety, and welfare of the public.

G. Inspection and Entry. Inspection and entry at a storage well facility by Office of Conservation personnel shall be allowed as prescribed in R.S. 30:4.

H. Property Rights. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege or servitude.

I. Notification Requirements. The operator shall give written, and where required, verbal notice to the Office of Conservation concerning activities indicated in this Subsection.

1. Any change in the principal officers, management, owner or operator of the storage well shall be reported to the Office of Conservation in writing within 10 days of the change.

2. Planned physical alterations or additions to the storage well, cavern, surface facility or parts thereof that may constitute a modification or amendment of the permit. No mechanical integrity tests, sonar caliper surveys, remedial work, well or cavern abandonment, or any test or work on a cavern well (excluding an interface survey not associated with a mechanical integrity test) shall be performed without prior authorization from the Office of Conservation. The operator must submit the appropriate work permit request form (Form UIC-17 or subsequent document) for approval.

3. Whenever a storage cavern is removed from service and the cavern is expected to remain out of service for one year or more, the operator shall notify the Office of Conservation in writing within seven days of the cavern becoming inactive (out-of-service). The notification shall include the date the cavern was removed from service, the reason for taking the cavern out of service, and the expected date, if known, when the cavern may be returned to service. See §3731 for additional requirements for inactive caverns.

4. The operator of a new or converted storage well shall not begin storage operations until the Office of Conservation has been notified of the following:

a. well construction or conversion is complete, including submission of a notice of completion, a completion report, and all supporting information (e.g., as-built diagrams, records, sampling and testing results, well and cavern tests, logs, etc.) required in §3725;

b. a representative of the commissioner has inspected the well and/or facility and finds it is in compliance with the conditions of the permit; and

c. the operator has received written approval from the Office of Conservation indicating storage operations may begin.

5. Noncompliance or anticipated noncompliance with the permit or applicable regulations (which may result from any planned changes in the permitted facility or activity) including a failed mechanical integrity pressure and leak test of §3727.

6. Permit Transfer. A permit is not transferable to any person except after giving written notice to and receiving written approval from the Office of Conservation clearly stating that the permit has been transferred. This action may require modification or revocation and re-issuance (see §3711.K) of the permit to change the name of the operator and incorporate other requirements as may be necessary, including but not limited to financial responsibility.

7. Compliance Schedules. Report of compliance or noncompliance with interim and final requirements contained in any compliance schedule in these regulations, or any progress reports, shall be submitted to the commissioner no later than 14 days following each schedule date.

#### 8. Twenty-Four Hour Reporting

a. The operator shall report any noncompliance that may endanger the environment, or the health, safety, and welfare of the public. Any information pertinent to the noncompliance shall be reported to the Office of Conservation by telephone at (225) 342-5515 within 24 hours from when the operator became aware of the circumstances. In addition, a written submission shall be provided within five days from when the operator became aware of the circumstances. The written notification shall contain a description of the noncompliance and its cause, the periods of noncompliance including exact times and dates, and if the noncompliance has not been corrected, the anticipated time it is expected to continue, and steps taken or planned to reduce, eliminate and prevent recurrence of the noncompliance.

b. The following additional information must also be reported within the 24-hour period:

i. monitoring or other information (including a failed mechanical integrity test) that suggests the storage operations may cause an endangerment to underground sources of drinking waters, oil, gas, other commercial mineral deposits (excluding the salt), neighboring salt operations of any kind, or movement outside the salt stock or cavern;

ii. any noncompliance with a regulatory or permit condition or malfunction of the injection/withdrawal system (including a failed mechanical integrity test) that may cause fluid migration into or between underground sources of drinking waters or outside the salt stock or cavern.

9. The operator shall give written notification to the Office of Conservation upon permanent conclusion of storage operations. Notification shall be given within seven days after concluding storage operations. The notification shall include the date on which storage activities were concluded, the reason for concluding the storage activities, and a plan to meet the minimum requirements as per §3731. See §3737 for additional requirements to be conducted after concluding storage activities but before closing the storage well or cavern. Storage caverns that are not in an inactive status as of the date written notification of permanent conclusion of storage operations is submitted to the Office of Conservation will be immediately placed in an inactive status.

10. The operator shall give written notification before abandonment (closure) of the storage well, related surface facility, or in the case of area permits before closure of the project. Abandonment (closure) shall not begin before receiving written authorization from the Office of Conservation.

11. When the operator becomes aware that it failed to submit any relevant facts in a permit application or submitted incorrect information in a permit application or in any report to the Office of Conservation, the operator shall promptly submit such facts and information.

#### J. Duration of Permits

1. Authorization to Operate. Authorization by permit to operate a Class V storage well and salt cavern shall be valid for a fixed term not to exceed ten years. Any Class V storage permit may be suspended, modified, revoked and reissued, or terminated for cause as described in §3711.K. The commissioner may issue for cause any permit for a duration that is less than the full allowable term under this Section. Conversion of a Class III solution-mining well and cavern to storage does not nullify or void the existing Class III solution-mining permit unless expressly ordered by the commissioner.

2. Authorization to Drill, Construct, or Convert. Authorization by permit to drill, construct, or convert a storage well shall be valid for one year from the effective date of the permit. If drilling or conversion is not completed in that time, the permit shall be null and void and the operator must obtain a new permit.

3. Extensions. The operator shall submit to the Office of Conservation a written request for an extension of the time of Paragraph 2 above; however, the Office of Conservation shall approve the request only for just cause and only if the permitting conditions have not changed. The operator shall have the burden of proving claims of just cause.

4. Duty to Reapply. If the permittee wishes to continue an activity regulated by a permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

i. The conditions of an expired permit may continue in force until the effective date of a new permit if the permittee has submitted a timely and a complete application for a new permit no less than 6 months prior to permit expiration, and the commissioner, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit

(e.g., when issuance is impracticable due to time or resource constraints).

K. Compliance Review. The commissioner shall review each Class V storage well permit, area permit, and cavern at least once every five years to determine whether any permit should be modified, revoked and reissued, terminated, whether minor modifications are needed, or if remedial action or additional monitoring is required for any cavern. Commencement of the compliance review process for each facility shall proceed as authorized by the commissioner of conservation.

1. As a part of the five-year compliance review, pursuant to R.S. 30:4.M.2, the operator shall submit the following minimum information to the Office of Conservation, based upon the best available information.

a. Structural Map. A structural map of the top of salt including an aerial view of the maximum extent outline(s) of the operator's caverns and any other adjacent solution-mining caverns, disposal caverns, storage caverns, or room and pillar mines. The maximum cavern outlines shall be based upon the latest sonar survey for each cavern.

b. Cross-Sections

i. Cross-sections illustrating the closest approach between an operator's caverns, between an operator's caverns and any adjacent solution-mining caverns, disposal caverns, storage caverns, or room and pillar mines if indicated to be proximal to adjacent caverns or mines.

ii. Cross-sections illustrating the closest approach between the operator's caverns and the edge of salt stock, if the edge of the cavern, based upon the best available information, is indicated to be less than 500 feet from the edge of salt stock.

iii. All cross-sections shall be based upon the latest sonar survey for each cavern and the latest structural map of the top of salt based upon the best available information.

c. A tabulation of each of the operator's caverns with minimum offset distances listed to adjacent caverns, the edge of salt, and adjacent property boundaries.

2. As a part of the five year compliance review process, the well operator shall review the closure and post-closure plan and associated cost estimates of §3737 to determine if the conditions for closure are still applicable to the actual conditions.

3. As a part of the five year compliance review process, the operator shall submit any other information required by the commissioner.

L. Schedules of Compliance. The permit may specify a schedule of compliance leading to compliance with the act and these regulations.

1. Time for Compliance. Any schedules of compliance under this Section shall require compliance as soon as possible but not later than three years after the effective date of the permit.

2. Interim Dates. Except as provided in Subparagraph b below, if a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

a. The time between interim dates shall not exceed one year.

b. If the time necessary for completion of any interim requirements (such as the construction of a control facility) is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

3. The permit shall be written to require that progress reports be submitted no later than 30 days following each interim date and the final date of compliance.

M. Area or Project Permit Authorization

1. A newly permitted Class V storage well and associated cavern may be constructed within the footprint of an existing Class II HSW or Class III BR area-wide permit boundary, but the operator must conform to all requirements set forth in this Chapter.

N. Recordation of Notice of Existing Storage Caverns. The owner or operator of an existing Class V storage cavern shall record a certified as-drilled survey plat of the well location for the cavern in the mortgage and conveyance records of the parish in which the property is located. Such notice shall be recorded no later than six months after the construction of the storage well and the owner or operator shall furnish a date/file -stamped copy of the recorded notice to the Office of Conservation within 15 days of its recording. If an owner or operator fails or refuses to record such notice, the commissioner may, if he determines that the public interest requires, and after due notice and an opportunity for a hearing has been given to the owner and operator, cause such notice to be recorded.

O. Additional Conditions. The Office of Conservation shall, on a case-by-case basis, impose any additional conditions or requirements as are necessary to protect the environment, the health, safety and welfare of the public, underground sources of drinking waters, oil, gas, or other mineral deposits (excluding the salt), and preserve the integrity of the salt dome.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq. and R.S. 30:23 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 48:

### **§3711. Permitting Process**

A. Applicability. This Section has procedures for issuing and transferring permits to operate a Class V storage well and cavern. Any person required to have a permit shall apply to the Office of Conservation as stipulated in §3705. The Office of Conservation shall not issue a permit before receiving an application form and any required supplemental information showing compliance with these rules and regulations, and that is administratively and technically complete to the satisfaction of the Office of Conservation.

B. Notice of Intent to File Application

1. The applicant shall make public notice that a permit application for a storage cavern or caverns or an area permit, is proposed for filing with the Office of Conservation. A notice of intent shall be published at least 30 days but not more than 180 days before filing the permit application with the Office of Conservation. Without exception, the applicant shall publish a new notice of intent if the application is not received by the Office of Conservation within the filing

period. If the applicant is dually permitting a well for both Class III solution-mining and Class V storage the public notice of intent for both applications may be combined.

2. The notice shall be published once in the legal advertisement sections in the official state journal and in the official journal of the parish of the proposed project location. The cost for publishing the notices is the responsibility of the applicant and shall contain the following minimum information:

- a. name and address of the permit applicant and, if different, the facility to be regulated by the permit;
- b. the geographic location of the proposed project;
- c. name and address of the regulatory agency to process the permit action where interested persons may obtain information concerning the application or permit action; and
- d. a brief description of the business conducted at the facility or activity described in the permit application.

3. The applicant shall submit the proof of publication of the notice of intent when submitting the application.

#### C. Application Submission and Review

1. The applicant shall complete, sign, and submit one original paper application form, with required attachments and documentation, and one copy of the same to the Office of Conservation. The complete application shall contain all information to show compliance with applicable state laws and these rules and regulations. In addition to submitting the application on paper, the applicant shall submit an exact duplicate of the paper application in an electronic format approved by the commissioner. The commissioner may request additional paper copies of the application, either in its entirety or in part, as needed. The electronic version of the application shall contain the following certification statement.

This document is an electronic version of the application titled (Insert Document Title) dated (Insert Application Date). This electronic version is an exact duplicate of the paper copy submitted in (Insert the Number of Volumes Comprising the Full Application) to the Louisiana Office of Conservation.

2. The applicant shall be notified if a representative of the Office of Conservation decides that a site visit is necessary for any reason in conjunction with the processing of the application. Notification may be either oral or written and shall state the reason for the visit.

3. If the Office of Conservation deems an application to be incomplete, deficient of information, or requires additional data, a notice of application deficiency indicating the information necessary to make the application complete shall be transmitted to the applicant.

4. The Office of Conservation shall deny an application if an applicant fails, refuses, is unable to respond adequately to the notice of application deficiency, or if the Office of Conservation determines that the proposed activity cannot be conducted safely.

a. The Office of Conservation shall notify the applicant by certified mail of the decision denying the application.

b. The applicant may appeal the decision to deny the application in a letter to the commissioner who may call a public hearing through §3711.D.

D. Public Hearing Requirements. A public hearing for new well applications shall not be scheduled until administrative and technical review of an application has been completed to the satisfaction of the Office of Conservation.

#### 1. Public Notice of Permit Actions

a. Upon acceptance of a permit application as complete and meeting the administrative and technical requirements of these rules and regulations, the commissioner shall require the applicant to give public notice that the following actions have occurred:

- i. an application has been received;
- ii. a draft permit has been prepared under §3711.E; and
- iii. a public hearing has been scheduled under §3711.D.

b. No public notice or public hearing is required for additional wells drilled or for conversion under an approved area permit or when a request for permit modification, revocation and reissuance, or termination is denied under §3711.K.

#### 2. Public Notice by Applicant

a. Public notice shall be published by the applicant in the legal advertisement section of the official state journal and the official journal of the parish of the proposed project location not less than 30 days before the scheduled hearing. If the applicant is dually permitting a well for both Class III solution-mining and Class V storage the public notice of a hearing for both applications may be combined.

b. The applicant shall provide notice of the scheduled public hearing by forwarding a copy of the notice by mail or e-mail to:

- i. the Office of Conservation, Injection and Mining Division;
- ii. all property owners within 1320 feet of the storage facility's property boundary;
- iii. operators of existing projects located on or within the salt stock of the proposed project;
- iv. United States Environmental Protection Agency;
- v. Louisiana Department of Wildlife and Fisheries;
- vi. Louisiana Department of Environmental Quality;
- vii. Louisiana Office of Coastal Management;
- viii. Louisiana Office of Conservation, Pipeline Division;
- ix. Louisiana Department of Culture, Recreation and Tourism, Division of Archaeology;
- x. the governing authority for the parish of the proposed project; and
- xi. any other interested parties.

3. Public Notice Contents. Public notices shall contain the following minimum information:

- a. name and address of the permit applicant and, if different, the facility or activity regulated by the permit;
- b. name and address of the regulatory agency processing the permit action;
- c. name, address, and phone number of a person within the regulatory agency where interested persons may

obtain information concerning the application or permit action;

d. a brief description of the business conducted at the facility or activity described in the permit application;

e. a statement that a draft permit has been prepared under §3711.E;

f. a brief description of the public comment procedures;

g. a brief statement of procedures whereby the public may participate in the final permit decision;

h. the time, place, and a brief description of the nature and purpose of the public hearing;

i. a reference to the date of any previous public notices relating to the permit;

j. any additional information considered necessary or proper by the commissioner.

#### 4. Application Availability for Public Review

a. The applicant shall file at least one copy of the complete permit application with:

i. the local governing authority of the parish of the proposed project location; and

ii. in a public library in the parish of the proposed project location.

b. The applicant shall deliver copies of the application to the aforementioned locations before the public notices are published in the respective journals.

c. A duplicate of the complete permit application in electronic format shall be submitted to the Office of Conservation.

E. Draft Permit. The Office of Conservation shall prepare a draft permit after an application is determined to be complete. Draft permits shall be publicly noticed and made available for public comment.

#### F. Fact Sheet

1. The Office of Conservation shall prepare a fact sheet for every draft permit. It shall briefly set forth principal facts and significant factual, legal, and policy questions considered in preparing the draft permit.

2. The fact sheet shall include, when applicable:

a. a brief description of the type of facility or activity that is the subject of the draft permit or application;

b. the type and proposed quantity of material to be injected;

c. a brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provision;

d. a description of the procedures for reaching a final decision on the draft permit or application including the beginning and ending date of the public comment period, the address where comments shall be received, and any other procedures whereby the public may participate in the final decision;

e. reasons why any requested variances or alternative to required standards do or do not appear justified;

f. procedures for requesting a hearing and the nature of that hearing; and

g. the name and telephone number of a person within the permitting agency to contact for additional information;

h. that due consideration has been given to alternative sources of water for the leaching of cavities.

3. The fact sheet shall be distributed to the permit applicant and to any interested person on request.

#### G. Public Hearing

1. The Office of Conservation shall fix a time, date, and location for a public hearing. The cost of the public hearing is set by LAC 43:XIX.Chapter 7 (Fees, as amended) and is the responsibility of the applicant. If the applicant is dually permitting a well for both Class III solution-mining and Class V storage, both applications may be considered at the same public hearing.

2. The public hearing shall be fact finding in nature and not subject to the procedural requirements of the Louisiana Administrative Procedure Act. All public hearings shall be publicly noticed as required by these rules and regulations.

3. At the hearing, any person may make oral statements or submit written statements and data concerning the application or permit action being the basis of the hearing. Reasonable limits may be set upon the time allowed for oral statements; therefore, submission of written statements may be required. The hearing officer may extend the public comment period by so stating before the close of the hearing.

4. A transcript shall be made of the hearing and such transcript shall be available for public review.

#### H. Public Comments, Response to Comments, and Permit Issuance

1. Any interested person may submit written comments concerning the permitting activity during the public comment period. All comments pertinent and significant to the permitting activity shall be considered in making the final permit decision.

2. The Office of Conservation shall issue a response to all pertinent and significant comments as an attachment to and at the time of final permit decision. The final permit with response to comments shall be made available to the public. The response shall:

a. specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

b. briefly describe and respond to all significant comments on the draft permit or the permit application raised during the public comment period or hearing.

3. The Office of Conservation may issue a final permit decision within 30 days following the close of the public comment period; however, this time may be extended due to the nature, complexity, and volume of public comments received.

4. A final permit decision shall be effective on the date of issuance.

5. The owner or operator of a solution-mined storage cavern permit shall record a certified survey plat and final permit, which shall include any orders, permits to construct, and permits to store, in the mortgage and conveyance records of the parish in which the property is located. A date/file stamped copy of the plat and final permit is to be furnished to the Office of Conservation within 15 days of its recording. If an owner or operator fails or refuses to record such notice, the commissioner may, if he determines that the public interest requires, and after due notice and an opportunity for a hearing has been given to the owner and operator, cause such notice to be recorded.



6. Approval or the granting of a permit to operate a Class V storage well shall be valid for a term specified by the commissioner not to exceed ten years from its effective date and if not completed in that time, the permit shall be null and void.

#### I. Permit Application Denial

1. The Office of Conservation may refuse to issue, reissue, or reinstate a permit or authorization if an applicant or operator has delinquent, finally determined violations of the Office of Conservation or unpaid penalties or fees, or if a history of past violations demonstrates the applicant's or operator's unwillingness to comply with permit or regulatory requirements.

2. If an application is denied, the applicant may request a review of the Office of Conservation's decision to deny the permit application. Such request shall be made in writing and shall contain facts or reasons supporting the request for review.

3. Grounds for application denial review shall be limited to the following reasons:

a. the decision is contrary to the laws of the state, applicable regulations, or evidence presented in or as a supplement to the permit application;

b. the applicant has discovered since the permit application public hearing or permit denial, evidence important to the issues that the applicant could not with due diligence have obtained before or during the initial permit application review;

c. there is a showing that issues not previously considered should be examined so as to dispose of the matter; or

d. there is other good ground for further consideration of the issues and evidence in the public interest.

#### J. Permit Transfer

1. Applicability. A permit may be transferred to a new owner or operator only upon written approval from the Office of Conservation. Written approval must clearly show that the permit has been transferred. It is a violation of these rules and regulations to operate a storage well without a permit or other authorization if a person attempting to acquire a permit transfer allows operation of the storage well before receiving written approval from the Office of Conservation.

##### 2. Procedures

a. The proposed new owner or operator must apply for and receive an operator code by submitting a completed organization report (Form OR-1), or subsequent form, to the Office of Conservation.

b. The current operator shall submit an application for permit transfer at least 30 days before the proposed permit transfer date. The application shall contain the following:

i. name and address of the proposed new owner or operator;

ii. date of proposed permit transfer; and

iii. a written agreement between the existing and new owner or operator containing a specific date for transfer of permit responsibility, financial responsibility, and liability between them.

c. If no agreement described in §3711.J.2.b.iii. above is provided, responsibility for compliance with the terms and conditions of the permit and liability for any violation will shift from the existing operator to the new operator on the date the transfer is approved.

d. The new operator shall submit an application for a change of operator using Form MD-10-R-A, or subsequent form, to the Office of Conservation containing the signatories of §3705.D and E, along with the appropriate filing fee.

e. The new operator shall submit evidence of financial responsibility under §3709.B.

f. If a person attempting to acquire a permit causes or allows operation of the facility before approval by the commissioner, it shall be considered a violation of these rules for operating without a permit or other authorization.

g. If the commissioner does not notify the existing operator and the proposed new owner or operator of his intent to modify or revoke and reissue the permit under §3711.K.3.b, the transfer is effective on the date specified in the agreement mentioned in §3711.J.2.b.iii. above.

h. Any additional information as may be required to be submitted by these regulations or the Office of Conservation.

K. Permit Suspension, Modification, Revocation and Reissuance, Termination. This subsection sets forth the standards and requirements for applications and actions concerning suspension, modification, revocation and reissuance, termination, and renewal of permits. A draft permit must be prepared and other applicable procedures must be followed if a permit modification satisfies the criteria of this subsection. A draft permit, public notice, or public participation is not required for minor permit modifications defined in §3711.K.6.

##### 1. Permit Actions

a. The permit may be suspended, modified, revoked and reissued, or terminated for cause.

b. The operator shall furnish the Office of Conservation within 30 days, any information that the Office of Conservation may request to determine whether cause exists for suspending, modifying, revoking and reissuing, or terminating a permit, or to determine compliance with the permit. Upon request, the operator shall furnish the Office of Conservation with copies of records required to be kept by the permit.

c. The Office of Conservation may, upon its own initiative or at the request of any interested person, review any permit to determine if cause exists to suspend, modify, revoke and reissue, or terminate the permit for the reasons specified in §3711.K.2, 3, 4, 5, and 6. All requests by interested persons shall be in writing and shall contain only factual information supporting the request.

d. If the Office of Conservation decides the request is not justified, the person making the request shall be sent a brief written response giving a reason for the decision. Denials of requests for suspension, modification, revocation and reissuance, or termination are not subject to public notice, public comment, or public hearing.

e. If the Office of Conservation decides to suspend, modify, or revoke and reissue a permit under §3711.K.2, 3,

4, 5, and 6, additional information may be requested and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the Office of Conservation shall require the submission of a new application.

f. The suitability of an existing well or salt cavern location shall not be considered at the time of permit modification or revocation and reissuance unless new information or standards suggest continued operation at the site endangers the USDW, environment, or the health, safety, and welfare of the public that was unknown at the time of permit issuance. If the storage well location is no longer suitable for its intended purpose, it may be ordered closed according to applicable sections of these rules and regulations.

2. Suspension of Permit. The Office of Conservation may suspend the operator's right to store until violations are corrected. If violations are corrected, the Office of Conservation may lift the suspension. Suspension of a permit or subsequent corrections of the causes for the suspension by the operator shall not preclude the Office of Conservation from terminating the permit, if necessary. The Office of Conservation shall issue a notice of violation (NOV) to the operator that lists the specific violations of the permit or these regulations. If the operator fails to comply with the NOV by correcting the cited violations within the date specified in the NOV, the Office of Conservation shall issue a compliance order requiring the violations be corrected within a specified time and may include an assessment of civil penalties. If the operator fails to take corrective action within the time specified in the compliance order, the Office of Conservation shall assess a civil penalty, and shall suspend, revoke, or terminate the permit.

3. Modification or Revocation and Reissuance of Permits. The following are causes for modification and may be causes for revocation and reissuance of permits.

a. Alterations. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

b. Information. The Office of Conservation has received information pertinent to the permit. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. Cause shall include any information indicating that cumulative effects on the environment, or the health, safety, and welfare of the public are unacceptable.

c. New Regulations

i. The standards or regulations on which the permit was based have been changed by promulgation of new or amended standards or regulations or by judicial decision after the permit was issued and conformance with the changed standards or regulations is necessary for the protection of the USDW, environment, or the health, safety, and welfare of the public. Permits may be modified during their terms when:

(a). the permit condition to be modified was based on a promulgated regulation or guideline;

(b). there has been a revision, withdrawal, or modification of that portion of the regulation or guideline on which the permit condition was based; or

(c). an operator requests modification within 90 days after *Louisiana Register* notice of the action on which the request is based.

ii. The permit may be modified as a minor modification without providing for public comment when standards or regulations on which the permit was based have been changed by withdrawal of standards or regulations or by promulgation of amended standards or regulations which impose less stringent requirements on the permitted activity or facility and the operator requests to have permit conditions based on the withdrawn or revised standards or regulations deleted from his permit.

iii. For judicial decisions, a court of competent jurisdiction has remanded and stayed Office of Conservation regulations or guidelines and all appeals have been exhausted, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the operator to have permit conditions based on the remanded or stayed standards or regulations deleted from his permit.

d. Compliance Schedules. The Office of Conservation determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, materials shortage, or other events over which the operator has little or no control and for which there is no reasonable available remedy.

4. Causes for Modification or Revocation and Reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit.

a. Cause exists for termination under §3711.K.7, and the Office of Conservation determines that modification or revocation and reissuance is appropriate.

b. The Office of Conservation has received notification of a proposed transfer of the permit and the transfer is determined not to be a minor permit modification. A permit may be modified to reflect a transfer after the effective date as per §3711.J.2.b.ii but will not be revoked and reissued after the effective date except upon the request of the new operator.

5. Facility Siting. Suitability of an existing facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that continued operations at the site pose a threat to the health or safety of persons or the environment that was unknown at the time of the permit issuance. A change of injection site or facility location may require modification or revocation and issuance as determined to be appropriate by the commissioner.

6. Minor Modifications of Permits. The Office of Conservation may modify a permit to make corrections or allowances for changes in the permitted activity listed in this subsection without issuing a draft permit and providing for public participation. Minor modifications may only:

a. correct administrative or make informational changes;

- b. correct typographical errors;
- c. amend the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities;
- d. change an interim compliance date in a schedule of compliance, provided the new date does not interfere with attainment of the final compliance date requirement;
- e. allow for a change in ownership or operational control of a storage well where the Office of Conservation determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Office of Conservation;
- f. change quantities or types of fluids injected which are within the capacity of the facility as permitted and, in the judgment of the commissioner, would not interfere with the operation of the facility or its ability to meet conditions prescribed in the permit, and would not change its classification;
- g. change construction requirements or plans approved by the Office of Conservation provided that any such alteration is in compliance with these rules and regulations. No such changes may be physically incorporated into construction or conversion of the storage well or cavern without written approval from the Office of Conservation; or
- h. amend a closure or post-closure plan.

#### 7. Termination of Permits

a. The Office of Conservation may terminate a permit during its term for the following causes:

- i. noncompliance by the operator with any condition of the permit;
- ii. the operator's failure in the application or during the permit issuance process to fully disclose all relevant facts, or the operator's misrepresentation of any relevant facts at any time; or
- iii. a determination that continued operation of the permitted activity cannot be conducted in a way that is protective of the environment, or the health, safety, and welfare of the public.

b. If the Office of Conservation decides to terminate a permit, he shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit that follows the same procedures as any draft permit prepared under §3711.E. The Office of Conservation may alternatively decide to modify or revoke and reissue a permit for the causes in §3711.K.7.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq. and R.S. 30:23 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 48:

#### **§3713. Site Assessment**

A. Applicability. This Section applies to all applicants, owners, or operators of Class V storage wells and caverns. The applicant, owner, or operator shall be responsible for showing that the storage operation shall be accomplished using good engineering and geologic practices for storage operations to preserve the integrity of the salt stock and overlying sediments. In addition to all applicants showing this in their application, as part of the compliance review found in §3709.K, the commissioner may require any owner or operator of a storage well to provide the same or similar

information required in this Section. This shall include, but not be limited to:

- 1. an assessment of the engineering, geological, geomechanical, geochemical, geophysical properties of the salt stock;
- 2. stability of salt stock and overlying and surrounding sediments;
- 3. stability of the cavern design (particularly regarding its size, shape, depth, and operating parameters);
- 4. the amount of separation between the cavern of interest and adjacent caverns and structures within the salt stock; and
- 5. the amount of separation between the outermost cavern wall and the periphery of the salt stock;
- 6. an assessment of well information and oil and gas activity within the vicinity of the salt dome which may affect the storage cavern.

B. Geological Studies and Evaluations. The applicant, owner, or operator shall do a thorough geological, geophysical, geomechanical, and geochemical evaluation of the salt stock to determine its suitability for Class V storage, stability of the cavern under the proposed set of operating conditions, and where applicable, the structural integrity of the salt stock between an adjacent cavern and salt periphery under the proposed set of operating conditions. A listing of data or information used to characterize the structure and geometry of the salt stock shall be included.

1. Where applicable, the evaluation shall include, but should not be limited to:

- a. geologic mapping of the structure of the salt stock and any cap rock;
- b. geologic history of salt movement;
- c. an assessment of the impact of possible anomalous zones (salt spines, shear planes, etc.) on the storage well or cavern;
- d. deformation of the cap rock and strata overlying the salt stock;
- e. investigation of the upper salt surface and adjacent areas involved with salt dissolution;
- f. cap rock formation and any non-vertical salt movement.

2. The applicant shall perform a thorough hydrogeologic study on strata overlying the salt stock to determine the occurrence of the lowermost underground source of drinking water immediately above and near the salt stock.

3. The applicant shall investigate regional and local tectonic activity and the potential impact (including ground subsidence) of the project on surface and subsurface resources.

4. The proximity of all existing and proposed storage caverns to the periphery of the salt stock and to manmade structures within the salt stock shall be demonstrated to the Office of Conservation at least once every five years (see §3709.K) by providing the following:

- a. an updated structure contour map of the salt stock. The updated map should make use of all available data. The horizontal configuration of the salt cavern should be shown on the structure map and reflect the caverns' maximum lateral extent as determined by the most recent sonar caliper survey; and

b. vertical cross-sections of the salt caverns showing their outline and position within the salt stock.

C. Core Sampling

1. Each newly permitted well shall be cored at intervals approved by the commissioner, but at a minimum, coring shall include the shoe of the deepest casing set into the salt, the proposed cavern roof, and the midpoint of the proposed cavern, unless exempted by the commissioner. The cavern shall be or shall have been cored over sufficient depth intervals to yield representative samples of the subsurface geologic environment. This shall include coring of the salt stock and may include coring of overlying formations, including any cap rock. Cores should be obtained using the whole core method. Core acquisition, core handling, and core preservation shall be done according to standard field sampling practices considered acceptable for laboratory tests of recovered cores.

2. Data from previous coring projects that meet modern analytical industry standards may be used instead of actual core sampling provided the data is specific to the salt dome of interest. It shall be the responsibility of the applicant to make a satisfactory demonstration that data are applicable to the salt dome and cavern location(s) of interest.

D. Core Analyses and Laboratory Tests. Analyses and tests shall consider the characteristics of the injected materials and should provide data on the salt's geomechanical, geophysical, geochemical, mineralogical properties, x-ray diffraction analysis, microstructure, and where necessary, potential for adjacent cavern connectivity, with emphasis on cavern shape and the operating conditions. All laboratory tests, experimentation, and numeric modeling shall be conducted using methods that simulate the proposed operating conditions of the cavern. Test methods shall be selected to define the deformation and strength properties and characteristics of the salt stock under cavern operating conditions. Test results, analyses, and operating recommendations shall be summarized in an interpretive report.

E. Area of Review. A thorough evaluation shall be undertaken of both surface and subsurface activities in the defined area of review of the individual storage well or project area (area permit) that may influence the integrity of the salt stock, storage well, and cavern, or contribute to the movement of injected fluids outside the cavern, wellbore, or salt stock.

1. Surface Delineation

a. The area of review for individual storage wells shall be a fixed radius around the wellbore of not less than 1320 feet.

b. The area of review for wells in a storage project area (area permit), shall be the project area plus a circumscribing area the width of which is not less than 1320 feet. The area of review for new storage wells within an existing area permit shall be the project area plus a circumscribing area the width of which is not less than 1320 feet. Only information outlined in §3713.E.2, not previously assessed as part of the area permit application review or as part of the review of an application for a subsequent storage well located within the approved area permit, shall be considered.

c. Exception shall be noted as in §3713.E.2.c and d below.

2. Subsurface Delineation. At a minimum, the following shall be identified within the area of review:

a. all known active, inactive, and abandoned wells within the area of review with known depth of penetration into the cap rock or salt stock;

b. all known water wells within the area of review;

c. all salt caverns within the salt stock regardless of use, depth of penetration, or distance to the proposed storage well or cavern;

d. all conventional (dry or room and pillar) mining activity either active or abandoned occurring anywhere within the salt stock regardless of distance to the proposed Class V storage well or cavern;

e. all producing formations either active or depleted.

3. Water Samples. A representative number of water wells identified under §3713.E.2.b shall be sampled and analyzed by an accredited laboratory for chloride and total dissolved solids.

F. Corrective Action

1. For manmade structures identified in the area of review that penetrate the salt stock and are not properly constructed, completed, or plugged and abandoned, the applicant shall submit a corrective action plan consisting of such steps, procedures, or modifications as are necessary to prevent the movement of fluids outside the cavern or into underground sources of drinking water.

a. Where the plan is adequate, the provisions of the corrective action plan shall be incorporated into the permit as a condition.

b. Where the plan is inadequate, the Office of Conservation shall require the applicant to revise the plan, or prescribe a plan for corrective action as a condition of the permit, or the application shall be denied.

2. Any permit issued for an existing storage well for which corrective action is required shall include a schedule of compliance for complete fulfillment of the approved corrective action procedures. If the required corrective action is not completed as prescribed in the schedule of compliance, the permit shall be suspended, modified, revoked and reissued, or terminated according to these rules and regulations.

3. No permit to inject shall be issued for a new storage well or re-permitted storage well until all required corrective action obligations have been fulfilled.

4. The commissioner may require as a permit condition that injection pressure be so limited that pressure in the injection zone does not cause the movement of fluids into a underground source of drinking water through any improperly completed or abandoned well within the area of review. This pressure limitation shall satisfy the corrective action requirement. Alternatively, such injection pressure limitation can be part of a compliance schedule and last until all other corrective action has been taken.

5. When setting corrective action requirements for storage wells, the commissioner shall consider the overall effect of the project on the hydraulic gradient in potentially affected underground sources of drinking water, and the corresponding changes in potentiometric surface(s) and flow direction(s) rather than the discrete effect of each well. If a decision is made the corrective action is not necessary, the

monitoring program required in §3723 shall be designed to verify the validity of such determination.

6. In determining the adequacy of proposed corrective action and in determining the additional steps needed to prevent fluid movement into underground sources of drinking water, the following criteria and factors shall be considered by the commissioner:

- a. nature and volume of injection fluid;
- b. nature of native fluids or by-products of injection;
- c. potentially affected population;
- d. geology;
- e. hydrology;
- f. history of the injection operation;
- g. completion and plugging records;
- h. abandonment procedures in effect at the time the well was abandoned; and
- i. hydraulic connections with underground sources of drinking water.

7. The Office of Conservation may prescribe additional requirements for corrective action beyond those submitted by the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq. and R.S. 30:23 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 48:

### **§3715. Cavern Design and Spacing Requirements**

A. This Section provides general standards for design of caverns to ensure that project development can be conducted in a reasonable, prudent, and a systematic manner and shall stress physical and environmental safety. The owner or operator shall continually review the design throughout the construction and operation phases taking into consideration pertinent additional detailed subsurface information and shall include provisions for protection from damage caused by hydraulic shock. If necessary, the original development and operational plans shall be modified to conform to good engineering practices.

#### **B. Cavern Spacing Requirements**

##### **1. Property Boundary**

a. Existing Storage Caverns. No part of a storage cavern permitted as of the date these regulations are promulgated shall extend closer than 100 feet to the property of others without consent of the owner(s). Continued operation without this consent of an existing storage cavern within 100 feet of the property of others may be allowed as follows.

i. The operator of the cavern shall make a good faith effort to provide notice in a form and manner approved by the commissioner to the adjacent property owner(s) of the location of its cavern.

ii. The commissioner shall hold a public hearing at Baton Rouge if a non-consenting adjacent owner whose property line is within 100 feet objects to the cavern's continued operation. Following the public hearing the commissioner may approve the cavern's continued operation upon a determination that the continued operation of the cavern has no adverse effects to the rights of the adjacent property owner(s).

iii. If no objection from a non-consenting adjacent property owner is received within 30 days of the notice provided in accordance with §3715.B.1.a.i above, then the

commissioner may approve the continued operation of the cavern administratively.

b. New Class V Storage Caverns. No part of a newly permitted storage cavern shall extend closer than 100 feet to the property of others without the consent of the owner(s).

2. Adjacent Structures within the Salt. As measured in any direction, and excepting that which is provided in §3739, the minimum separation between walls of adjacent caverns or between the walls of the cavern and any adjacent cavern or any other manmade structure within the salt stock shall not be less than 200 feet. Caverns must be operated in a manner that ensures the walls between any cavern and any other manmade structure maintain the minimum separation of 200 feet.

##### **3. Salt Periphery**

a. Without exception or variance to these rules and regulations, at no time shall the minimum separation between the cavern walls at any point and the periphery of the salt stock for a Class V storage cavern be less than 300 feet.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq. and R.S. 30:23 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Injection and Mining Division, LR 48: Department of Natural Resources - Office of Conservation

### **§3717. Well Construction and Completion**

#### **A. General Requirements**

1. All materials and equipment used in the construction of the Class V storage well and related appurtenances shall be designed and manufactured for compatibility with the stored material and shall meet or exceed the operating requirements of the specific project. Consideration shall be given to depth and lithology of all subsurface geologic zones, corrosiveness of formation fluids, corrosiveness of the stored material, compatibility of downhole construction materials, compatibility of wellhead components, hole size, anticipated ranges and extremes of operating conditions, subsurface temperatures and pressures, type and grade of cement, and the projected life of the storage well, etc.

2. All storage wells and caverns shall be designed, constructed, completed, and operated to prevent the escape of injected materials out of the salt stock, into or between underground sources of drinking water, or otherwise create or cause pollution or endanger the environment or public safety. All phases of design, construction, completion, and testing shall be prepared and supervised by qualified personnel.

3. Where the storage well penetrates an underground source of drinking water in an area subject to subsidence or catastrophic collapse, an adequate number of monitoring wells shall be completed into the USDW to detect any movement of injected fluids, process by-products or formation fluids into the USDW. The monitoring wells shall be located outside the physical influence of the subsidence or catastrophic collapse.

a. The following criteria shall be considered in determining the number, location, construction, and frequency of monitoring of any monitor wells:

i. the population relying on the USDW affected or potentially affected by the injection operation;

- ii. the proximity of the storage operation to points of withdrawal of drinking water;
- iii. the local geology and hydrology;
- iv. the operating pressures and whether a negative pressure gradient is being maintained;
- v. the nature and volume of the injected fluid, the formation water, and the process by-products; and
- vi. the injected fluid density.

#### B. Open Borehole Surveys

1. Open hole wireline surveys that delineate subsurface lithologies, formation tops (including top of cap rock and salt), formation fluids, formation porosity, and fluid resistivities shall be performed on all new wells from total well depth to either ground surface or base of conductor pipe. Wireline surveys shall include, at a minimum, density, neutron, sonic, and caliper logs and shall be presented with gamma-ray and, where applicable, spontaneous potential curves. All surveys shall be presented on a scale of 1 inch to 100 feet and a scale of 5 inches to 100 feet and all logs must include the depth datum. A descriptive report interpreting the results of such logs and tests shall be prepared and submitted to the commissioner.

2. Gyroscopic multi-shot surveys of the borehole shall be taken at intervals not to exceed every 100 feet of drilled borehole.

3. Caliper logging to determine borehole size for cement volume calculations shall be performed before running casings.

4. The owner or operator shall submit all wireline surveys as one paper copy and an electronic version in a format approved by the commissioner.

C. Casing and Cementing. Except as specified below, and inclusive of the additional requirements which may be found in §3739, the wellbore of the storage well shall be cased, completed, and cemented according to rules and regulations of the Office of Conservation and good industry engineering practices for wells of comparable depth that are applicable to the same locality of the cavern. Design considerations for casings and cementing materials and methods shall address the nature and characteristics of the subsurface environment, the nature of injected materials, the range of conditions under which the well, cavern, and facility shall be operated, and the expected life of the well including closure and post-closure.

1. Cementing shall be by the pump-and-plug method or another method approved by the Office of Conservation and shall be circulated to the surface. Circulation of cement may be done by staging.

a. For purposes of these rules and regulations, circulated (cemented) to the surface shall mean that actual cement returns to the surface were observed during the primary cementing operation. A copy of the cementing company's job summary or cementing ticket indicating returns to the surface shall be submitted as part of the pre-operating requirements of §3725.

b. If returns are lost during cementing, the owner or operator shall have the burden of showing that sufficient cement isolation is present to prevent the upward movement of injected material into zones of porosity or transmissive permeability in the overburden along the wellbore and to protect underground sources of drinking water.

2. In determining and specifying casing and cementing requirements, the following factors shall be considered:

- a. depth of the storage zone;
- b. injection pressure, external pressure, internal pressure, axial loading, etc.;
- c. borehole size;
- d. size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification, construction material, etc.);
- e. corrosiveness of injected fluids and formation fluids;
- f. lithology of subsurface formations penetrated;
- g. type and grade of cement.

3. Surface casing shall be set to a depth into a confining bed below the base of the lowermost underground source of drinking water and shall be cemented to ground surface.

4. At a minimum, all Class V storage wells shall be cased with a minimum of two casings cemented into the salt. One casing string shall be an intermediate string, the other being the final cemented string. The surface casing will not be considered one of the two casings extending into the salt.

a. All cemented casings in contact with the injected substances shall be constructed of compatible materials with sufficient strength and collapse resistance.

5. The intermediate cemented casing shall be set at a minimum of 100 feet into the salt. The final cemented casing shall be set a minimum distance of 300 feet into the salt and shall make use of a sufficient number of casing centralizers.

6. The following applies to wells existing in caverns before the effective date of these rules and regulations. If the design of the well or cavern precludes having distinct intermediate and final casing seats cemented into the salt, the wellbore shall be cased with two concentric casings run from the surface of the well to a minimum distance of 300 feet into the salt. The inner casing shall be cemented from its base to surface. Alternatively, a packer and tubing completion may be substituted for the inner casing string. The packer shall be considered the effective casing seat and must be set a minimum distance of 300 feet into the salt and within 50 feet of the deepest cemented casing seat.

7. All cemented casings shall be cemented from their respective casing seats to the surface when practicable; however, in every case, casings shall be cemented a sufficient distance to prevent migration of the stored products into zones of porosity or permeability in the overburden.

D. Casing and Casing Seat Tests. When performing tests under this subsection, the owner or operator shall monitor and record the tests by use of a surface readout pressure gauge and a chart or a digital recorder. All instruments shall be properly calibrated and in good working order. If there is a failure of the required tests, the owner or operator shall take necessary corrective action to obtain a passing test.

1. Casing. After cementing each casing, but before drilling out the respective casing shoe, all casings will be hydrostatically pressure tested to verify casing integrity and the absence of leaks. The stabilized test pressure applied at the well surface will be calculated such that the pressure gradient at the depth of the respective casing shoe will not be

less than 0.7 PSI/FT of vertical depth or greater than 0.9 PSI/FT of vertical depth. All casing test pressures will be maintained for one-hour after stabilization. Allowable pressure loss is limited to 5 percent of the test pressure over the stabilized test duration. Test results will be reported as part of the pre-operating requirements.

2. Casing Seat. The casing seat and cement of the intermediate and production casings will each be hydrostatically pressure tested after drilling out the casing shoe. At least 10 feet of formation below the respective casing shoes will be drilled before the test.

a. For all casings below the surface casing, excluding the casing string(s) set into the salt, the stabilized test pressure applied at the well surface will be calculated such that the pressure at the casing shoe will not be less than the 85 percent of the predicted formation fracture pressure at that depth. The test pressures will be maintained for one hour after pressure stabilization. Allowable pressure loss is limited to 5 percent of the test pressure over the stabilized test duration. Test results will be reported as part of the pre-operating requirements.

b. For casing strings set within the salt, the test pressure applied at the surface will be the greater of the maximum predicted salt cavern operating pressure or a pressure gradient of 0.85 PSI/FT of vertical depth calculated with respect to the depth of the casing shoe. The test pressures will be maintained for one hour after pressure stabilization. Allowable pressure loss is limited to 5 percent of the test pressure over the stabilized test duration. Test results will be reported as part of the pre-operating requirements.

3. Casing or casing seat test pressures shall never exceed a pressure gradient equivalent to 0.90 PSI/FT of vertical depth at the respective casing seat or exceed the known or calculated fracture gradient of the appropriate subsurface formation. The test pressure shall never exceed the rated burst or collapse pressures of the respective casings.

E. Cased Borehole Surveys. A cement bond with variable density log (or similar cement evaluation tool) shall be run on all casing strings. When practicable, a temperature log shall be run on all casing strings. The Office of Conservation may consider requests for alternative means of compliance for wireline logging in large diameter casings or justifiable special conditions. A descriptive report interpreting the results of such logs shall be prepared and submitted to the commissioner.

1. It shall be the duty of the well applicant, owner or operator to prove adequate cement isolation on all cemented casings. Remedial cementing shall be done before proceeding with further well construction, completion, or conversion if adequate cement isolation between the storage well and subsurface formations cannot be demonstrated.

2. A casing inspection log (or similar approved log or method of casing evaluation) shall be run on the final cemented casing.

3. When submitting wireline surveys, the owner or operator shall submit one paper copy and an electronic copy in a format approved by the commissioner.

F. Hanging Strings. All Class V storage wells shall be completed with at least one hanging string unless specifically exempted by the Commissioner. Hanging strings

shall be designed with collapse, burst, and tensile strength ratings conforming to all expected operating conditions. The design shall also consider the compatibility of the material used with the physical and chemical characteristics of fluids placed into and withdrawn from the cavern.

G. Wellhead Components and Related Connections. All wellhead components, valves, flanges, fittings, flowlines, and related connections shall be manufactured of material compatible with the stored products and any incidental substances. All components shall be designed with a test pressure rating of at least 125 percent of the maximum pressure that could be exerted at the surface. Selection and design criteria for components shall consider the physical and chemical characteristics of fluids placed into and withdrawn from the cavern under the specific range of operating conditions, including flow induced vibrations. The fluid withdrawal side of the wellhead shall be rated for the same pressure as the fluid injection side. All components and related connections shall be periodically inspected by the well operator and maintained in good working order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq. and R.S. 30:23 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 48:

### **§3719. Operating Requirements**

A. Cavern Roof. Without exception or variance to these rules and regulations, no cavern shall be used for storage if the cavern roof has grown above the top of the salt stock. The operation of an already permitted storage cavern shall cease and shall not be allowed to continue if information becomes available that shows this condition exists. The Office of Conservation may order the storage well and cavern removed from storage service according to an approved closure and post-closure plan.

B. Remedial Work. No remedial work or repair work of any kind shall be performed on the storage well or cavern without prior authorization from the Office of Conservation. The provision for prior authorization shall also extend to doing mechanical integrity pressure and leak tests, sonar caliper surveys, and all logs, and all logs, including casing inspection logs and through tubing logs; however, a work permit is not required in order to conduct routine interface surveys. The owner, operator, or its agent shall submit a valid work permit request form (Form UIC-17 or successor). Before beginning well or cavern remedial work, the pressure in the cavern shall be relieved, as practicable.

C. Well Recompletion—Casing Repair. The following applies to storage wells where remedial work results from well upgrade, casing wear, or similar conditions. For each paragraph below, a casing inspection log shall be performed on the entire length of the innermost cemented casing in the well before doing any casing upgrade or repair. Authorization from the Office of Conservation shall be obtained before beginning any well recompletion, repair, upgrade, or closure. A storage well that cannot be repaired or upgraded shall remain out-of-service and be closed according to an approved closure and post-closure plan.

1. Liner. A liner may be used to recomplete or repair a well with severe casing damage. The liner shall be run from the well surface to the base of the innermost cemented casing. The liner shall be cemented over its entire length and shall be successfully pressure tested.

2. Casing Patch. Internal casing patches shall not be used to repair severely corroded or damaged casing. Casing patches shall only be used for repairing or covering isolated pitting, corrosion, or similar localized damage. The casing patch shall extend a minimum of 10 feet above and below the area being repaired. The entire casing shall be successfully pressure tested.

D. Multiple Well Caverns. No newly permitted well shall be drilled into an existing cavern until the cavern pressure has been relieved, as practicable, to 0 PSI measured at the surface.

E. Cavern Allowable Operating Pressure

1. The maximum and minimum allowable surface injection pressures shall be calculated at a depth referenced to the well's deepest effective cemented casing seat. The injection pressure at the wellhead shall be calculated to ensure that the pressure induced within the salt cavern during injection does not initiate fractures or propagate existing fractures in the salt. In no case shall the injection pressure initiate fractures in the confining zone or cause the migration of injected fluids out of the salt stock or into an underground source of drinking water.

2. When measured at the surface and calculated with respect to the appropriate reference depth, the maximum allowable cavern injection pressure shall not exceed a pressure gradient of 0.90 PSI/FT of vertical depth.

3. The storage well shall not be operated at pressures above the maximum allowable injection pressure defined above, exceed the maximum allowable pressure as may be established by permit, or exceed the rated burst or collapse pressure of all well tubulars (cemented or hanging strings) even for short periods, including pressure pulsation peaks, abnormal operating conditions, well or cavern tests, etc.

5. No storage cavern shall be converted to store a material described in §3703.A.1 without prior approval by the Office of Conservation. Conversion to alternate material storage may require additional geomechanical modeling to establish allowable operating pressures.

F. Solution Mining Under Gas (Smuggling)

1. Within 30 days of a planned cavern enlargement while storing product, the operator shall submit written notice to the Injection and Mining Division with a description and timeline of the planned event.

2. Unless specifically exempted by the commissioner, after the completion of the smuggling period, a sonar survey shall be conducted of the cavern and submitted to the Injection and Mining Division in accordance with §3729.B.4.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq. and R.S. 30:23 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 48:

**§3721. Safety**

A. Emergency Action Plan. An Emergency Action Plan containing emergency contact telephone numbers, procedures and specific information for facility personnel to respond to a release, upset, incident, accident, or other site emergency shall be kept at the facility and shall be reviewed and updated as needed. An outline of the plan, including emergency contact telephone numbers, shall be prepared and submitted as part of the permit application or compliance review.

B. Controlled Site Access. Access to storage facilities shall be controlled by fencing or other means around the facility property. All points of entry into the facility shall be through by a lockable gate system.

C. Personnel. Personnel shall be on duty at the storage facility 24 hours a day. During periods of stored product injection or withdrawal, trained personnel shall be stationed at the storage well, facility's onsite local control room, or other facility control location at the storage site. If the storage facility chooses to use an offsite monitoring and control automated telemetry surveillance system, approved by the commissioner, provisions shall be made for trained personnel to be on-call at all times and 24-hours-a-day staffing of the facility may not be required.

D. Wellhead Protection and Identification

1. A barrier shall be installed and maintained around the storage wellhead as protection from physical or accidental damage by mobile equipment or trespassers.

2. An identifying sign shall be placed at the wellhead of each storage well and, at a minimum, shall include the operator's name, well/cavern name and number, well's state serial number, section-township-range, and any other information required by the Office of Conservation. The sign shall be of durable construction with all lettering kept in a legible condition.

E. Valves and Flowlines

1. All valves, flowlines, flanges, fittings, and related connections shall be manufactured of steel. All components shall be designed with a test pressure rating of at least 125 percent of the maximum pressure that could be exerted at the surface. All components and related connections shall be maintained in good working order and shall be periodically inspected by the operator.

2. All valves, flowlines for injection and withdrawal, and any other flowlines shall be designed to prevent pressures over maximum operating pressure from being exerted on the storage well and cavern and prevent backflow or escape of injected material. The fluid withdrawal side of the wellhead shall have the same pressure rating as the injection side.

3. All flowlines for injection and withdrawal connected to the wellhead shall be equipped with remotely operated shut-off valves and shall have manually operated positive shut-off valves at the wellhead. All remotely operated shut-off valves shall be fail-safe and tested and inspected according to §3721.I.

F. Alarm Systems. Manual and automatically activated alarms shall be installed at all cavern facilities. All alarms shall be audible and visible from any normal work location within the facility. The alarms shall be maintained in proper working order. Automatic alarms designed to activate an audible and a visible signal shall be integrated with all pressure, flow, heat, fire, cavern overflow, leak sensors and detectors, emergency shutdown systems, or any other safety system. The circuitry shall be designed such that failure of a detector or sensor shall activate a warning.

G. Emergency Shutdown Valves. Manual and automatically actuated emergency shutdown valves shall be installed on all systems of cavern injection and withdrawal and any other flowlines going into or out from each storage wellhead. All emergency shutdown valves shall be fail-safe and shall be tested and inspected according to §3721.I.



1. Manual controls for emergency shutdown valves shall be designed to isolate a single well and to operate from a local control room, at each storage wellhead, any remote monitoring and control location, and at a location that is accessible to emergency response personnel.

2. Automatic emergency shutdown valves shall be designed to actuate on detection of abnormal pressures of the injection system, abnormal increases in flow rates, responses to any heat, fire, cavern overfill, leak sensors and detectors, loss of pressure or power to the well, cavern, or valves, or any abnormal operating condition.

H. Vapor Detection. The operator shall develop and implement a plan as required in §3723.D to detect the presence of combustible gases or any potentially ignitable substances in the atmosphere resulting from the storage operation.

1. Installation of a safety system at or near each brine pit or any other location where the uncontrollable release of liquefied gases may occur may be required by the commissioner.

I. Safety Systems Test. The operator shall function-test all critical systems of control and safety at least once every six months. This includes testing of alarms, test tripping of emergency shutdown valves ensuring their closure times are within design specifications, and ensuring the integrity of all electrical, pneumatic, or hydraulic circuits. Tests results shall be documented and kept onsite for inspection by an agent of the Office of Conservation.

J. Safety Inspections

1. The operator shall conduct twice-yearly safety inspections and file with the commissioner a written report consisting of the inspection procedures and results within 30 days following the inspection. Such inspections shall be conducted during the winter and summer months of each year. The operator shall notify the commissioner at least five days prior to such inspections so that his representative may be present to witness the inspections. Inspections shall include, but not be limited to, the following:

- a. operations of all manual wellhead valves;
- b. operation of all automatic shut-in safety valves, including sounding or alarm devices;
- c. safety system;
- d. brine pits, tanks, firewalls, and related equipment;
- e. flowlines, manifolds, and related equipment;
- f. warning signs, safety fences, etc.

2. Visual inspections of the cavern facility shall be conducted each day the facility is operating. At a minimum, this shall include inspections of the wellhead, flowlines, valves, signs, perimeter fencing, and all other areas of the facility. Problems discovered during the inspections shall be corrected timely.

3. Representatives of the Office of Conservation may inspect the storage well and facility at any time during the storage facility regular working hours.

K. Spill Containment. Levees, booms, or other containment devices suitable to retain liquids released by accidental spillage shall surround the wellheads of caverns.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq. and R.S. 30:23 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 48:

## §3723. Monitoring Requirements

### A. Pressure Gauges, Pressure Sensors, Flow Sensors

1. Pressure gauges or pressure sensors/transmitters that show pressure on the fluid injection string, fluid withdrawal string, and any other string in the well shall be installed at each wellhead. Gauges or pressure sensors/transmitters shall be designed to read gauge pressure in 25 PSIG increments. All gauges or pressure sensors/transmitters shall be properly calibrated and shall always be maintained in good working order. The pressure valves onto which the pressure gauges are affixed shall have 1/2 inch female fittings.

2. Pressure sensors designed to actuate the automatic closure of all emergency shutdown valves in response to a preset pressure (high/low) shall be installed and properly maintained for all fluid injection, withdrawal, and any other appropriate string in the well.

3. Flow sensors designed to actuate the automatic closure of all emergency shutdown valves in response to abnormal changes in cavern injection and withdrawal flow rates shall be installed and properly maintained on each storage well.

B. Continuous Recording Instruments. Continuous recording instrumentation shall be installed and properly maintained for each storage well. Continuous recordings may consist of circular charts, digital recordings, or similar type. Unless otherwise specified by the commissioner, digital instruments shall record the required information at no greater than one minute intervals. Mechanical charts shall not exceed a clock period of 24-hour duration. The chart shall be selected such that its scaling is of sufficient sensitivity to record all fluctuations of pressure or any other parameter being monitored. The chart shall be scaled such that the parameter being recorded is 30 percent to 70 percent of full scale. Instruments shall be housed in weatherproof enclosures when located in areas exposed to climatic conditions. All fluid volumes shall be determined by metering or an alternate method approved by the Office of Conservation. Minimum data recorded shall include the following:

1. wellhead pressures on the fluid injection, fluid withdrawal, and any other string in the well;
2. volume and flow rate of fluid injected;
3. volume of fluid withdrawn.

### C. Casing Inspection

1. A casing inspection log or approved alternative method of evaluation shall be run on the entire length of the innermost cemented casing in each well at least once every 10 years, with the exception of that which is provided in §3739 for Class V storage caverns. Casing inspection logs shall be submitted to the Office of Conservation and shall include an interpretive report.

2. Equivalent alternate monitoring programs to ensure the integrity of the innermost, cemented casing may be approved by the Office of Conservation in place of §3723.C.1.

D. Vapor Detection. Unless specifically exempted by the commissioner, the operator shall develop a robust monitoring plan designed to detect the presence of a buildup of combustible gases or any potentially ignitable substances in the atmosphere resulting from the Class V storage

operation. Variations in surface topography, atmospheric conditions typical to the area, characteristics of the stored product, proximity of the facility to homes, schools, commercial establishments, other wells or injection wells, etc., should be considered in developing the monitoring plan. The plan shall be submitted as part of the permit application and updated as needed but no less than every five years, and may be included within the submittal required in §3709.K. The monitoring plan should include provisions for strategic placement of stationary detection devices at various areas of the facility, portable monitoring devices, downhole monitoring devices, or any other appropriate system acceptable to the commissioner.

1. Any stationary detection devices or systems identified in the monitoring plan shall include their integration into the facility's automatic alarm system.

2. Detection of a buildup of combustible gases or any potentially ignitable substances in the atmosphere or system alarm shall cause an immediate investigation by the operator for reason of and correction of the detection.

E. Subsidence Monitoring and Frequency. The owner or operator shall prepare and carry out a plan approved by the commissioner to monitor ground subsidence at and in the vicinity of the storage cavern(s). A monitoring report shall be prepared and submitted to the Office of Conservation after completion of each monitoring event.

1. The frequency of conducting subsidence-monitoring surveys for storage caverns shall be scheduled to occur annually during the same period each year. If there are multiple operators on the same salt dome, a collaborative effort to conduct a joint subsidence survey is required.

F. Wind Sock. At least one windsock shall be installed at all storage cavern facilities. The windsock shall be visible from any normal work location within the facility.

G. Monitor Wells. Quarterly monitoring of any monitor wells required by §3717.A.2.a.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq. and R.S. 30:23 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 48:

### **§3725. Pre-Operating Requirements—Completion Report**

A. The operator shall submit a report describing, in detail, the work performed resulting from the approved permitted activity. The report shall include all information relating to the work and information that documents compliance with these rules and the approved permitted activity. The report shall be prepared and submitted for any approved work relating to the construction, conversion, completion, or workover of the storage well or cavern. Product storage shall not commence until all required information has been submitted to the Office of Conservation and the operator has received written authorization from the Office of Conservation stating storage operations may begin. Preauthorization pursuant to this Subsection is not required for workovers.

B. Where applicable to the approved permitted activity, information in a completion report shall include:

1. all required state reporting forms containing original signatures;

2. revisions to any operation or construction plans since approval of the permit application;

3. as-built schematics of the layout of the surface portion of the facility;

4. as-built piping and instrumentation diagram(s);

5. copies of applicable records associated with drilling, completing, working over, or converting the well and cavern including a daily chronology of such activities;

6. if not already submitted, a certified, as-drilled location plat of the storage well, accompanied by proof of filing of the plat in the parish conveyance and mortgage records;

7. as-built subsurface diagram of the storage well and cavern labeled with the appropriate depth datum, construction, completion, or conversion information, i.e., depth and diameter of all tubulars, depths of top of cap rock and salt, and top and bottom of the cavern;

8. as-built diagram of the wellhead labeled with the appropriate depth datum, construction, completion, or conversion information, i.e., valves, gauges, and flowlines;

9. results of any core sampling and testing;

10. results of well or cavern tests such as casing and casing seat tests, well/cavern mechanical integrity pressure and leak tests;

11. copies of any wireline logging such as open hole logs, cased hole logs, the most recent cavern sonar survey, and mechanical integrity test;

12. the status of corrective action on wells in the area of review;

13. the proposed operating data, if different from proposed in the application;

14. the proposed injection procedures, if different from proposed in the application;

15. any additional data documenting the work performed for the permitted activity, information requested by the Office of Conservation, or any additional reporting requirements imposed by the approved permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq. and R.S. 30:23 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 48:

### **§3727. Well and Cavern Mechanical Integrity Pressure and Leak Tests**

A. The operator of the storage well and cavern shall have the burden of meeting the requirements for well and cavern mechanical integrity. The Office of Conservation shall be notified in writing at least seven days before any scheduled mechanical integrity test. The test may be witnessed by Office of Conservation personnel, but must be witnessed by a qualified third party. Generally accepted industry methods and standards shall apply when conducting and evaluating the tests required in this Rule.

B. Frequency of Tests

1. Without exception or variance to these rules and regulations, all Class V storage wells and caverns shall be tested for and demonstrate mechanical integrity before beginning storage activities.

2. All subsequent mechanical integrity pressure tests shall occur at least once every five years. Additionally, mechanical integrity testing shall be performed for the following reasons regardless of test frequency:

a. after physical alteration to any cemented casing or cemented liner;

- b. after performing any remedial work to reestablish well or cavern integrity;
- c. before returning the cavern to storage service after a period of salt solution-mining or washing to purposely increase storage cavern size or capacity;
- d. before well closure, except when the cavern has experienced mechanical failure;
- e. whenever leakage into or out of the cavern system is suspected;
- f. whenever the commissioner determines a test is warranted.

#### C. Test Method

1. All mechanical integrity pressure and leak tests shall demonstrate no significant leak in the cavern, wellbore, casing seat, and wellhead and the absence of significant fluid movement. Test schedules and methods shall consider neighboring activities occurring at the salt dome to reduce any influences those neighboring activities may have on the cavern being tested.

2. When practicable, tests shall be conducted using an approved interface method with density interface and temperature logging using test materials having the same or comparable leak off qualities as the stored product. An alternative test method may be used if the alternative test can reliably demonstrate well/cavern mechanical integrity and with prior written approval from the Office of Conservation.

3. The cavern pressure shall be stabilized before beginning the test. Pressure stabilization shall be when the rate of cavern pressure change is no more than 10 PSIG during 24 hours.

4. The stabilized test pressure to apply at the surface shall be calculated with respect to the depth of the shallowest occurrence of either the cavern roof or deepest cemented casing seat and shall not exceed a pressure gradient of 0.90 PSI per foot of vertical depth. However, the well or cavern shall never be subjected to pressures that exceed the storage well's maximum allowable operating pressure or exceed the rated burst or collapse pressure of all well tubulars (cemented or hanging strings) even for short periods during testing.

5. A mechanical integrity pressure and leak test shall be run for at least 24 hours after cavern pressure stabilization and must be of sufficient time duration to ensure a sensitive test. All pressures shall be monitored and recorded continuously throughout the test. Continuous pressure recordings may be achieved through mechanical charts or recorded digitally. Mechanical charts shall not exceed a clock period of 24-hour duration. The chart shall be scaled such that the test pressure is 30 percent to 70 percent of full scale. All charts shall be selected such that its scaling is of sufficient sensitivity to record all fluctuations of pressure, temperature, or any other monitored parameter.

6. The commissioner may require that a separate casing pressure test be included as part of the routine MIT.

7. Inactive caverns. The commissioner may approve hydrostatic brine pressure monitoring for inactive wells and caverns that are in pre-closure monitoring and will not be returned to service. For any cavern removed from pre-closure monitoring that has been subject to hydrostatic brine pressure testing, a MIT must be performed in accordance with §3727.C.1-6 above prior to resuming any injection activities.

D. Submission of Pressure and Leak Test Results. Submit one complete copy of the mechanical integrity pressure and leak test results to the Office of Conservation within 60 days after test completion. The report shall include the following minimum information:

- 1. current well and cavern completion data;
- 2. description of the test procedure including pretest preparation and the test method used;
- 3. one paper copy and an electronic version of all wireline logs performed during testing;
- 4. tabulation of measurements for pressure, volume, temperature, etc.;
- 5. interpreted test results showing all calculations including error analysis and calculated leak rates; and
- 6. any information the owner or operator of the cavern determines is relevant to explain the test procedure or results.

#### E. Mechanical Integrity Test Failure

1. Without exception or variance to these rules and regulations, a storage well or cavern that fails a test for mechanical integrity shall be immediately taken out of service. The failure shall be reported to the Office of Conservation according to the notification requirements of §3709.I.8. The owner or operator shall investigate the reason for the failure and shall take appropriate steps to return the storage well or cavern to a full state of mechanical integrity. A storage well or cavern is considered to have failed a test for mechanical integrity for the following reasons:

- a. failure to maintain a change in test pressure of no more than 10 PSIG over a 24-hour period;
- b. not maintaining interface levels according to standards applied in the cavern storage industry; or
- c. stored or test materials are determined to have escaped from the storage well or cavern during storage operations.

2. Written procedures to rehabilitate the storage well or cavern, extended cavern monitoring, or abandonment (closure and post-closure) of the storage well or cavern shall be submitted to the Office of Conservation within 60 days of mechanical integrity test failure.

3. If a storage well or cavern fails to demonstrate mechanical integrity and where mechanical integrity cannot be reestablished, the Office of Conservation may require the owner or operator to begin closure of the well or cavern according to an approved closure and post-closure plan.

a. The Office of Conservation may waive implementation of closure requirements if the owner or operator is engaged in a cavern remediation study and implements an interim cavern monitoring plan. The owner or operator must seek written approval from the Office of Conservation before implementing a salt cavern monitoring program. The basis for the Office of Conservation's approval shall be that any waiver granted shall not endanger the environment, or the health, safety, and welfare of the public. The Office of Conservation may establish a time schedule for salt cavern rehabilitation, cessation of interim cavern monitoring, and eventual cavern closure and post-closure activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq. and R.S. 30:23 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 48:

### **§3729. Cavern Configuration and Capacity Measurements**

A. Sonar caliper surveys shall be performed on all storage caverns. With prior approval of the Office of Conservation, the operator may use another similar proven technology designed to determine cavern configuration and measure cavern capacity as a substitute for a sonar survey.

B. Frequency of Sonar Caliper Surveys. For Class V storage caverns, a sonar caliper survey shall be performed at least once every five years. The survey must include horizontal shots beginning just below the shoe of the deepest cemented casing within the salt as well as downward angled shots imaging the floor of the cavern unless accepted by the commissioner. At least once every 10 years a sonar caliper survey, or other similar and approved survey, shall be performed on the roof of the cavern using angled tilt shots. For Class V storage caverns engaging in simultaneous storage and salt solution-mining or washing, a sonar caliper survey, or other approved survey, shall be performed in accordance with this article or in accordance with LAC 43:XVII.3329, whichever requires the more frequent survey. Additional surveys as specified by the Office of Conservation shall be performed for any of the following reasons regardless of frequency:

1. before commencing cavern closure operations;
2. whenever leakage into or out of the cavern system is suspected;
3. after performing any remedial work to re-establish cavern integrity or raise the deepest casing seat;
4. before returning the cavern to storage service after a period of salt solution-mining or washing to purposely increase storage cavern size or capacity;
5. after the completion of any additional solution-mining while simultaneously engaging in storage;
6. whenever the Office of Conservation determines a survey is warranted.

C. Submission of Survey Results. One complete paper copy and an electronic version of each survey shall be submitted to the Office of Conservation within 60 days of survey completion.

1. Survey readings shall be taken a minimum of every 10 feet of vertical depth. Sonar reports of the surveyed data shall contain the following minimum information and presentations:
  - a. tabulation of incremental and total cavern volume for every survey reading;
  - b. tabulation of the cavern radii at various azimuths for every survey reading;
  - c. tabulation of the maximum cavern radii at various azimuths;
  - d. graphical plot of cavern depth versus volume;
  - e. graphical plot of the maximum cavern radii;
  - f. vertical cross-sections of the cavern at various azimuths drawn to an appropriate horizontal and vertical scale;
  - g. cross-section overlays comparing results of current survey and at least two previous surveys, if available;
  - h. isometric or 3-D shade profile of the cavern at various azimuths and rotations;

i. any data collected from prior surveys shall be clearly identified if included in the submitted report.

2. The information submitted resulting from use of an approved alternative survey method to determine cavern configuration and measure cavern capacity shall be determined based on the method or type of survey.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq. and R.S. 30:23 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 48:

### **§3731. Inactive Caverns**

A. The following minimum requirements apply when a storage cavern is removed from storage service and is expected to remain out of service for one year or more:

1. notify the Office of Conservation in writing within seven days of the well or cavern becoming inactive (out-of-service). The notification shall include the date the cavern was removed from service, the reason for taking the cavern out of service, and the expected date when the cavern may be returned to service (if known);
2. disconnect all flowlines for injection to the well;
3. maintain continuous monitoring of cavern pressures, fluid withdrawal, and other parameters required by the permit;
4. maintain and demonstrate well and cavern mechanical integrity if storage operations were suspended for reasons other than a lack of mechanical integrity;
5. maintain compliance with financial responsibility requirements of these rules and regulations;
6. any additional requirements of the Office of Conservation to document the storage well and cavern shall not endanger the environment, or the health, safety, and welfare of the public during the period of cavern inactivity.
7. No inactive storage cavern may be returned to service without first submitting a written request with Form UIC-17 to the Office of Conservation to obtain approval from the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq. and R.S. 30:23 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 48:

### **§3733. Operating Reports**

A. Operating reports shall be submitted quarterly to the Office of Conservation no later than 15 days following the end of the reporting period.

B. Reports shall be submitted electronically on the appropriate Form (Form UIC-50 or successor document) and reference the operator name, well name, well number, well state serial number, salt dome name, and contain the following minimum information acquired weekly during the reporting quarter:

1. maximum wellhead pressures (PSIG) on the hanging string;
2. maximum wellhead pressure (PSIG) on the hanging string/casing annulus;
3. description of any event resulting in non-compliance with these rules that triggered an alarm or shutdown device and the response taken;
4. description of any event that exceeds operating parameters for annulus pressure or injection pressure as may be specified in the permit;

5. volume, density and type of fluids released from inactive caverns due to pressure build-up.

C. Upon emergency declaration by the commissioner pursuant to R.S. 30:6 the inventory of stored production the cavern shall be reported. Report volumes in:

1. barrels (42-gallon barrels) at standard temperature and pressure for liquid or liquefied storage; or
2. thousand cubic feet (MCF) at standard temperature and pressure for gas storage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq. and R.S. 30:23 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 48:

### **§3735. Record Retention**

A. The owner or operator shall retain copies of all records, data, and information concerning the design, permitting, construction, workovers, tests, and operation of the well and cavern. Records shall be retained throughout the operating life of the well and cavern and for five years following conclusion of any post-closure care requirements. Records, data, and information shall include, but shall not be limited to the permit application, cementing (primary and remedial), wireline logs, drill records, casing records, casing pressure tests, well recompletion records, well/cavern mechanical integrity tests, cavern capacity and configuration surveys, surface construction, closure, post-closure activities, corrective action, sampling data, etc. Unless otherwise specified by the commissioner, monitoring records obtained pursuant to §3723.B shall be retained by the owner or operator for a minimum of five years from the date of collection. All documents shall be available for inspection by agents of the Office of Conservation.

B. When there is a change in the owner or operator of the well and cavern, copies of all records shall be transferred to the new owner or operator. The new owner or operator shall then have the responsibility of maintaining such records.

C. The Office of Conservation may require the owner or operator to deliver the records to the Office of Conservation at the conclusion of the retention period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq. and R.S. 30:23 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 48:

### **§3737. Closure and Post-Closure**

A. Closure. The owner or operator shall close the storage well, cavern, and associated parts as approved by the Office of Conservation. Closure shall not begin without written authorization from the Office of Conservation.

#### **1. Notice of Intent to Close**

a. The operator shall review the closure plan before seeking authorization to begin closure activities to determine if the conditions for closure are still relevant to the actual conditions of the storage well, cavern, or facility. Revisions to the method of closure reflected in the plan shall be submitted to the Office of Conservation for approval no later than the date on which the notice of closure is required to be submitted.

b. The operator shall notify the Office of Conservation in writing at least 30 days before the expected closure of the storage well, cavern, or surface facility. Notification shall be by submission of a request for a work

permit. At the discretion of the Office of Conservation, a shorter notice period may be allowed.

2. Closure Plan. Plans to close the storage well, cavern, and related surface facility shall be submitted as part of the permit application. The closure plan shall meet the requirements of these rules and regulations, shall use accepted industry practices, and be acceptable to the Office of Conservation. The obligation to implement the closure plan survives the termination of a permit or the cessation of storage operations or related activities. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit. The Office of Conservation may modify a closure plan where necessary.

3. Closure Plan Requirements. The owner or operator shall review the closure plan at least every five years to determine if the conditions for closure are still applicable to the actual conditions. Any revision to the plan shall be submitted to the Office of Conservation for approval. At a minimum, a closure plan shall address the following:

a. assurance of financial responsibility as required in §3709.B.1. All instruments of financial responsibility shall be reviewed according to the following process:

i. a detailed cost estimate for closure of the well and related appurtenances (well, cavern, surface appurtenances, etc.) as prepared by a qualified professional. The closure plan and cost estimate shall include provisions for closure acceptable to the Office of Conservation;

ii. after reviewing the required closure cost estimate, the Office of Conservation may amend the required financial surety to reflect the estimated costs to the Office of Conservation to complete the approved closure of the facility;

iii. documentation from the operator showing that the required financial instrument has been renewed shall be received each year by the date specified in the permit. When an operator is delinquent in submitting documentation of financial instrument renewal, the Office of Conservation shall initiate procedures to take possession of funds guaranteed by the financial instrument and suspend or revoke the operating permit. Permit suspensions shall remain in effect until renewal documentation is received and accepted by the Office of Conservation;

b. a prediction of the pressure build-up in the cavern following closure;

c. an analysis of potential pathways for leakage from the cavern, cemented casing shoe, and wellbore. Consideration shall be given to site specific elements of geology, salt cavern geometry and depth, cavern pressure build-up over time due to salt creep and other factors inherent to the salt stock and/or salt dome;

d. procedures for determining the mechanical integrity of the well and cavern before closure;

e. removal and proper disposal of any waste or other materials remaining at the facility;

f. closing, dismantling, and removing all equipment and structures located at the surface (including site restoration);

g. the type, number, and placement of each wellbore or cavern plug including the elevation of the top and bottom of each plug;

h. the type, grade, and quantity of material to be used in plugging;

i. a description of the amount, size, and location (by depth) of casing and any other well construction materials to be left in the well;

j. any proposed test or measurement to be made before or during closure.

4. Standards for Closure. The following are minimum standards for closing the storage well or cavern. The Office of Conservation may require additional standards prior to actual closure.

a. After permanently concluding storage operations with the cavern but before closing the well or cavern, the owner or operator shall:

i. observe and accurately record the shut-in salt cavern pressures and cavern fluid volume for no less than five years or a time period specified by the Office of Conservation to provide information regarding the cavern's natural closure characteristics and any resulting pressure buildup;

ii. using actual pre-closure monitoring data, show and provide predictions that closing the well or cavern as described in the closure plan will not result in any pressure buildup within the cavern that could adversely affect the integrity of the well, cavern, or any seal of the system.

b. Unless the well is being plugged and abandoned due to a failed mechanical integrity test and the condition of the casing and cavern are known, before closure, the owner or operator shall confirm the mechanical integrity of both the well and cavern by well/cavern test methods or analysis of the data collected during the period between the end of storage operations and well/cavern closure.

c. Before closure, the owner or operator shall remove and properly manage any stored product remaining in the well or cavern, with the exception of the materials included in the approved closure plan.

d. Upon permanent closure, the owner or operator shall plug the well with cement, resin, or other approved mechanical plugs in a way that will not allow the movement of fluids into or between underground sources of drinking water or outside the salt stock.

#### 5. Plugging and Abandonment

a. The well and cavern shall be in a state of static equilibrium before plugging and abandoning.

b. A continuous column of cement or other approved material shall fill the deepest cemented casing from its shoe to the surface via a series of balanced cement plugs:

i. each plug shall be tagged to verify the top of cement and pressure tested to at least 300 PSI for 30 minutes before setting the next plug;

ii. an attempt shall be made to place a plug in the open borehole below the deepest cemented casing;

iii. unless specifically exempted by the commissioner, a balanced cement plug, or other approved plug, shall be placed across the shoe of the deepest cemented casing; and

iv. subsequent balanced cement plugs, or other approved plugs, shall be spotted immediately on top of the previously placed plug.

c. After placing the top plug, the operator shall:

i. on land locations cut and pull the casings a minimum of 5 feet below ground level. A 1/2 inch thick steel plate shall be welded across the top of all casings. The well's plug and abandonment date and well serial number shall be inscribed on top of the steel plate; and

ii. on water locations cut and pulled the casings a minimum of 15 feet below the mud line.

d. The operator may alter the plan of abandonment if new or unforeseen conditions arise during the well work, but only after approval by the Office of Conservation.

6. Closure Report. The owner or operator shall submit a closure report to the Office of Conservation within 60 days after closing the storage well, cavern, facility, or part thereof. The report shall be certified as accurate by the owner or operator and by the person charged with overseeing the closure operation (if other than the owner or operator). The report shall contain the following information:

a. detailed procedures of the closure operation. Where actual closure differed from the plan previously approved, the report shall include a written statement specifying the differences between the previous plan and the actual closure;

b. one original of the appropriate Office of Conservation plug and abandon report form (Form UIC-P&A or successor); and

c. any information pertinent to the closure activity including test or monitoring data.

B. Post-Closure. Plans for post-closure care of the storage well, cavern, and related facility shall be submitted as part of the permit application. The post-closure plan shall meet the requirements of these rules and regulations and be acceptable to the Office of Conservation. The obligation to implement the post-closure plan survives the termination of a permit or the cessation of storage operations or related activities. The requirement to maintain and implement an approved post-closure plan is directly enforceable regardless of whether the requirement is a condition of the permit. The Office of Conservation may modify a post-closure plan where necessary.

1. The owner or operator shall review the post-closure plan at least every five years to determine if the conditions for post-closure are still applicable to actual conditions. Any revision to the plan shall be submitted to the Office of Conservation for approval. At a minimum, a post-closure plan shall address the following:

a. assurance of financial responsibility as required in §3709.B.1. All instruments of financial responsibility shall be reviewed according to the following process:

i. detailed cost estimate for adequate post-closure care of the well and cavern shall be prepared by a qualified, independent third party. The post-closure care plan and cost estimate shall include provisions acceptable to the Office of Conservation;

ii. after reviewing the closure cost estimate, the Office of Conservation may amend the amount to reflect the costs to the Office of Conservation to complete the approved closure of the facility;

iii. documentation from the operator showing that the required financial instrument has been renewed must be

received each year by the date specified in the permit. When an operator is delinquent in submitting documentation of financial instrument renewal, the Office of Conservation shall initiate procedures to take possession of the funds guaranteed by the financial instrument and suspend or revoke the operating permit. Any permit suspension shall remain in effect until renewal documentation is received and accepted by the Office of Conservation.

b. any plans for monitoring, corrective action, site remediation, site restoration, etc., as may be necessary.

2. Where necessary and as an ongoing part of post-closure care, the owner or operator shall continue the following activities:

a. conduct subsidence monitoring for a period of no less than 10 years after closure of the facility;

b. complete any corrective action or site remediation resulting from the operation of a storage well;

c. conduct any groundwater monitoring if required by the permit or approved corrective action plan;

d. complete any site restoration.

3. The owner or operator shall retain all records as required in §3737 for five years following conclusion of post-closure requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq. and R.S. 30:23 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 48:

### **§3739. Additional Criteria Specific to Stored Media**

#### **A. Hydrogen**

##### **1. Spacing.**

a. **Adjacent Structures within the Salt.** The minimum pillar spacing between a hydrogen storage cavern and any other adjacent structures within the salt shall be determined on a case-by-case basis, and based upon the depth and configuration of cavern, any geomechanical analyses, monitoring plan, etc. However, without exception or variance to these rules and regulations, as measured in any direction, the minimum separation between walls of adjacent caverns or between the walls of the cavern and any adjacent cavern or any other manmade structure within the salt stock shall not be less than 200 feet. Hydrogen storage caverns must be operated in a manner that ensures the walls between any cavern and any other manmade structure maintain the minimum separation of 200 feet.

b. **Salt Periphery.** The minimum separation between the outermost extent of the cavern and the periphery of the salt stock shall be determined on a case-by-case basis based upon the substances to be stored, the depth and configuration of the cavern, any geomechanical analyses, monitoring plan, etc. However, without exception or variance to these rules and regulations, at no time shall the minimum separation between the cavern walls at any point and the periphery of the salt stock for a Class V storage cavern be less than 300 feet.

##### **3. Casing and Cementing**

a. The first casing string cemented into the salt stock shall have connections with seals approved by the commissioner.

b. Any cemented casing in contact with the hydrogen stream must have welded connections with integrity verified by a method approved by the commissioner.

4. **Casing Inspection Logs.** Unless specifically exempted by the commissioner, a casing inspection log or approved alternative method of evaluation shall be run on the entire length of the innermost cemented casing in each well at least once every five years for Class V hydrogen storage caverns. Casing inspection logs shall be submitted to the Office of Conservation and shall include an interpretive report.

5. Any storage of hydrogen into a solution-mined salt cavern shall require a Class V Hydrogen Storage permit pursuant to this Chapter unless:

a. the hydrogen is an incidental part of another permitted constituent stream; and

b. the hydrogen is compatible with the cavern, wellbore, and wellhead materials.

6. Any monitoring plan approved by the commissioner shall include the specific method(s) for detecting and controlling any hydrogen emissions.

#### **B. Nitrogen**

1. Nothing in this chapter shall require Class V permitting for the use of nitrogen as a blanket material or a test medium in a Class III solution-mined cavern or Class II hydrocarbon storage cavern.

#### **C. Helium**

##### **1. Spacing**

a. **Adjacent Structures. Within the Salt.** The minimum pillar spacing between a helium storage cavern and any other adjacent structures within the salt shall be determined on a case-by-case basis, and based upon the depth and configuration of cavern, any geomechanical analyses, monitoring plan, etc. However, without exception or variance to these rules and regulations, as measured in any direction, the minimum separation between walls of adjacent caverns or between the walls of the cavern and any adjacent cavern or any other manmade structure within the salt stock shall not be less than 200 feet. Helium storage caverns must be operated in a manner that ensures the walls between any cavern and any other manmade structure maintain the minimum separation of 200 feet.

b. **Salt Periphery.** The minimum separation between the outermost extent of the cavern and the periphery of the salt stock shall be determined on a case-by-case basis based upon the substances to be stored, the depth and configuration of the cavern, any geomechanical analyses, monitoring plan, etc. However, without exception or variance to these rules and regulations, at no time shall the minimum separation between the cavern walls at any point and the periphery of the salt stock for a Class V storage cavern be less than 300 feet.

##### **2. Casing and Cementing**

a. The first casing string cemented into the salt stock shall have connections with seals approved by the commissioner.

b. Any cemented casing in contact with the helium stream must have welded connections with integrity verified by a method approved by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq. and R.S. 30:23 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 48:

#### **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. The proposed rule has a positive impact on family functioning, stability, or autonomy as described in R.S. 49:972.

#### **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. 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, housing, health care, nutrition, transportation, and utilities assistance.

#### **Small Business Analysis**

Pursuant to R.S. 49:965.6, methods for reduction of the impact on small business, as defined in the Regulatory Flexibility Act, have been considered when creating this proposed Rule.

This proposed Rule is not anticipated to have an adverse impact on small businesses; therefore, a Small Business Economic Impact Statement has not been prepared.

#### **Provider Impact Statement**

The proposed Rule 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. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

#### **Public Comments**

Interested persons may submit written comments to Stephen Lee, Director of the Injection and Mining Division, Office of Conservation, Louisiana Department of Natural Resources, P.O. Box 94396, Baton Rouge, LA 70804-9396. Written comments will be accepted through the close of business, 5 p.m. on July 27, 2022.

#### **Public Hearing**

Interested persons may submit written comments to Stephen Lee, Director of the Injection and Mining Division, Office of Conservation, Louisiana Department of Natural Resources, P.O. Box 94396, Baton Rouge, LA 70804-9396. Written comments will be accepted through the close of

business, 5 p.m. on July 27, 2022. A public hearing is not currently scheduled, but if requested will be held on the afternoon of Tuesday, July 26, 2022.

Richard P. Ieyoub  
Commissioner

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Class V Storage Wells in Solution-Mined Salt Dome Cavities**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule will result in an increase in costs to the Louisiana Department of Natural Resources (LDNR). The proposed rule expands the existing salt cavern storage program from the current limited scope of hydrocarbon storage only and adds oversight for the storage of certain non-hydrocarbon gasses and liquids. The proposed rule regulates Class V storage wells from inception to plugging and abandonment and site closure, ensuring the health, safety, and welfare of the public and the environment. This program will gradually grow between FY 23 and FY 24, but is expected to be fully operational by the end of FY 24. Expected costs to the state total \$165,000 in FY 23 and \$326,000 in FY 24. After FY 24, the program costs will grow at a slower rate, which will be dependent on salary adjustments and inflation on purchased goods for the program.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule will result in an increase in revenue for the Department of Natural Resources. Revenue collections will begin in FY 23 and increase each year thereafter. Revenue sources for the program include both fees levied upon the applicant/operator as well as additional federal grant funding. Projected revenue for this program is expected to be \$35,500 in FY 23 and grow to \$80,000 in FY 24. The agency will fund this program with a combination of this collected revenue and from other injection well fees deposited in the Oil and Gas Regulatory Fund; no additional General Fund dollars will be needed.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES OR NONGOVERNMENTAL GROUPS (Summary)**

Both individuals and non-governmental groups are predicted to incur positive economic benefits from this program. These projects will require leasing or purchase of the salt minerals that will be mined in order to store these non-hydrocarbon gasses. Additionally, the storage of hydrogen, helium, ammonia, and compressed air can be utilized to implement renewable or low-carbon energy projects, and hydrogen storage in particular will be used in conjunction with carbon sequestration for blue hydrogen projects in the state.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

Construction of these new storage facilities is predicted to positively impact the industrial construction sector as well as the downstream energy sector. It is likely that the availability of construction and energy/technical jobs will increase in order to build or retrofit the energy facilities and the injection sites, but quantifiable predictions are not available at this time.

Richard P Ieyoub  
Commissioner  
2206#042

Evan Brasseaux  
Interim Deputy Fiscal Officer  
Legislative Fiscal Office



## NOTICE OF INTENT

### Department of Natural Resources Office of Conservation

#### Hydrocarbon Storage Wells in Salt Dome Cavities (LAC 43:XVII.Chapter 3)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the power delegated under the laws of the state of Louisiana, notice is hereby given that the Department of Natural Resources, Office of Conservation proposes to amend Statewide Order No. 29-M (LAC 43:XVII. Subpart 3. Chapter 3) to facilitate the permitting, siting, construction, operation, monitoring, and site closure of Class II Hydrocarbon Storage Wells in Solution-Mined Salt Dome Caverns.

The Department of Natural Resources, Office of Conservation proposes to amend provisions governing the oversight of the Class II Hydrocarbon Storage program within the Underground Injection Control (UIC) Program located within the Office of Conservation. A Hydrocarbon Storage Cavern is a salt cavity created within the salt stock by solution mining and used to store liquid, liquefied, or gaseous hydrocarbons. Oversight for the Class II Hydrocarbon Storage program is held by the Underground Injection Control Program (UIC Program), located within the Louisiana Office of Conservation. Class II wells are a federally-designated well class that allow for the injection of water to create cavities within geologic salt bodies. The UIC Program has held Primary Enforcement Authority from the United States Environmental Protection Agency (US EPA) for Class II wells since 1982.

#### Title 43

#### NATURAL RESOURCES

#### Part XVII. Injection and Mining

#### Subpart 3. Statewide Order No. 29-M

#### Chapter 3. Hydrocarbon Storage Wells in Salt Dome Cavities

#### §301. Definitions

*Act*—part I, chapter 1 of title 30 of the *Louisiana Revised Statutes*.

*Active Cavern Well*—a storage well or cavern that is actively being used or capable of being used to store liquid, liquefied, or gaseous hydrocarbons, including standby wells. The term does not include an inactive cavern well.

*Application*—the filing on the appropriate Office of Conservation form(s), including any additions, revisions, modifications, or required attachments to the form(s), for a permit to operate a hydrocarbon storage well or parts thereof.

*Aquifer*—a geologic formation, groups of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

*Blanket Material*—sometimes referred to as a "pad." The blanket material is a fluid or gas placed within a cavern that is lighter than the water in the cavern and will not dissolve the salt or any mineral impurities that may be contained within the salt. The function of the blanket is to prevent unwanted leaching of the cavern roof, prevent leaching of salt from around the cemented casing, and to protect the cemented casing from internal corrosion. Blanket material typically consists of crude oil, diesel, mineral oil, or some

fluid or gas possessing similar noncorrosive, non-solvent, low-density properties. The blanket material is placed against the cavern roof, within the cavern neck, and between the cavern's outermost hanging string and innermost cemented casing.

*Brine*—water within a salt cavern that is saturated partially or completely with salt.

*Cap Rock*—the porous and permeable strata immediately overlying all or part of the salt stock of some salt structures typically composed of anhydrite, gypsum, limestone, and occasionally sulfur.

*Casing*—metallic pipe placed and cemented in the wellbore for the purpose of supporting the sides of the wellbore and to act as a barrier preventing subsurface migration of fluids out of or into the wellbore.

*Catastrophic Collapse*—the sudden failure of the overlying strata caused by the removal or otherwise weakening of underlying sediments.

*Cavern Neck*—the uncased wellbore between the deepest casing shoe and the cavern roof, if present.

*Cavern Roof*—the uppermost part of a cavern being just below the neck of the wellbore. The shape of the salt cavern roof may be flat or domed.

*Cavern Well*—a well extending into the salt stock to facilitate the injection and withdrawal of fluids into and from a salt cavern.

*Cementing*—the operation (either primary, secondary, or squeeze) whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing.

*Circulate to the Surface*—the observing of actual cement returns to the surface during the primary cementing operation.

*Commissioner*—the commissioner of conservation for the state of Louisiana.

*Contamination*—the introduction of substances or contaminants into a groundwater aquifer, a USDW or soil in such quantities as to render them unusable for their intended purposes.

*Discharge*—the placing, releasing, spilling, percolating, draining, pumping, leaking, mixing, migrating, seeping, emitting, disposing, by-passing, or other escaping of pollutants on or into the air, ground, or waters of the state. A discharge shall not include that which is allowed through a federal or state permit.

*Effective Date*—the date of final promulgation of these rules and regulations.

*Emergency Shutdown Valve*—for the purposes of these rules, a valve that automatically closes to isolate a salt cavern well from surface piping in the event of a specified condition that, if uncontrolled, may cause an emergency.

*Exempted Aquifer*—an aquifer or its portion that meets the criteria of the definition of underground source of drinking water but which has been exempted according to the procedures set forth in §303.E.2.

*Existing Cavern Well or Storage Project*—a well, salt cavern, or project permitted to store liquid, liquefied, or gaseous hydrocarbons before the effective date of these regulations.

*Facility or Activity*—any facility or activity, including land or appurtenances thereto, that is subject to these regulations.

*Fluid*—any material or substance that flows or moves whether in a semisolid, liquid, sludge, gas or any other form or state.

*Ground Subsidence*—the downward settling of the earth's surface with little or no horizontal motion in response to natural or manmade subsurface actions.

*Groundwater Aquifer*—water in the saturated zone beneath the land surface that contains less than 10,000 mg/l total dissolved solids.

*Groundwater Contamination*—the degradation of naturally occurring groundwater quality either directly or indirectly as a result of human activities.

*Hanging String*—casing whose weight is supported at the wellhead and hangs vertically in a larger cemented casing or another larger hanging string.

*Hydrocarbon Storage Cavern*—a salt cavern created within the salt stock by solution-mining and used to store liquid, liquefied, or gaseous hydrocarbons.

*Improved Sinkhole*—a naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings which have been modified by man for the purpose of directing and emplacing fluids into the subsurface.

*Inactive Cavern Well*—a storage well or cavern that is capable of being used to store liquid, liquefied, or gaseous hydrocarbons but is not being so used, as evidenced by the filing of a written notice with the Office of Conservation in accordance with §309.I.3 and §331.

*Injection and Mining Division*—the Injection and Mining Division of the Louisiana Office of Conservation within the Louisiana Department of Natural Resources.

*Injection Well*—a well into which fluids are injected, excepting fluids associated with active drilling operations.

*Injection Zone*—a geological formation, group of formations or part of a formation receiving fluids through an injection well.

*Leaching*—the process of introducing an under-saturated fluid into a salt cavern thereby dissolving additional salt and increasing the volume of the salt cavern.

*Mechanical Integrity*—an injection well has mechanical integrity if there is no significant leak in the casing, tubing, or packer and there is no significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore.

*Mechanical Integrity Pressure and Leak Test* (also called *Mechanical Integrity Test*)—a test performed to determine whether a cavern or well has mechanical integrity.

*Migrating*—any movement of fluids by leaching, spilling, discharging, or any other uncontained or uncontrolled manner, except as allowed by law, regulation, or permit.

*New Cavern Well*—a storage well or cavern permitted by the Office of Conservation after the effective date of these regulations.

*Office of Conservation*—the Louisiana Office of Conservation within the Department of Natural Resources.

*Open Borehole*—the portion of the drilled well bore that is uncased at any point in time.

*Operator*—the person recognized by the Office of Conservation as being responsible for the physical operation of the facility or activity subject to regulatory authority under these rules and regulations.

*Owner*—the person recognized by the Office of Conservation as owning the facility or activity subject to regulatory authority under these rules and regulations.

*Permit*—an authorization, license, or equivalent control document issued by the commissioner to implement the requirements of these regulations. Permit includes, but is not limited to, area permits and emergency permits. Permit does not include UIC authorization by rule or any permit which has not yet been the subject of final agency action, such as a draft permit.

*Person*—an individual, association, partnership, public or private corporation, firm, municipality, state or federal agency and any agent or employee thereof, or any other juridical person.

*Post-Closure Care*—the appropriate monitoring and other actions (including corrective action) needed following cessation of a storage project to ensure that USDWs are not endangered.

*Produced Water*—liquids and suspended particulate matter that is obtained by processing fluids brought to the surface in conjunction with the recovery of oil and gas from underground geologic formations, with underground storage of hydrocarbons, or with solution mining for brine.

*Project*—a group of wells or salt caverns used in a single operation.

*Public Water System*—a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves at least 25 individuals. Such term includes:

1. any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and
2. any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

*Release*—the accidental or intentional spilling, pumping, leaking, pouring, emitting, leaching, escaping, or dumping of pollutants into or on any air, land, groundwater, or waters of the state. A release shall not include that which is allowed through a federal or state permit.

*Qualified Professional Appraiser*—for the purposes of these rules, any licensed real estate appraiser holding current certification from the Louisiana Real Estate Appraisers Board and functioning within the rules and regulations of their licensure.

*Salt Dome*—a diapiric, typically circular structure that penetrates, uplifts, and deforms overlying sediments as a result of the upward movement of a salt stock in the subsurface. Collectively, the salt dome includes the salt stock and any overlying uplifted sediments.

*Salt Stock*—a typically cylindrical formation composed chiefly of an evaporite mineral that forms the core of a salt dome. The most common form of the evaporite mineral is halite known chemically as sodium chloride (NaCl). Cap rock shall not be considered a part of the salt stock.

*Schedule of Compliance*—a schedule or remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the act and these regulations.

*Site*—the land or water area where any facility or activity is physically located or conducted including adjacent land used in connection with the facility or activity.

*Solution-Mined Salt Cavern*—a cavity or cavern created within the salt stock by dissolution with water.

*Solution-Mining Well*—a well which injects for extraction of minerals including:

1. mining of sulfur by the Frasch process;
2. in situ production of uranium or other metals;
3. solution mining of salts or potash.

*Solution Mining Under Gas (SMUG)*—a technique allowing the storage of product while simultaneously solution mining the cavern for the purpose of cavern enlargement.

*State*—the state of Louisiana.

*Subsidence*—see ground subsidence.

*Surface Casing*—steel pipe placed inside the conductor casing in the borehole which extends below, and is protective of, the USDW and other shallow geologic formations.

*UIC*—the Louisiana State Underground Injection Control Program.

*Unauthorized Discharge*—a continuous, intermittent, or one-time discharge, whether intentional or unintentional, anticipated or unanticipated, from any permitted or unpermitted source which is in contravention of any provision of the Louisiana Environmental Quality Act (R.S. 30:2001 et seq.) or of any permit or license terms and conditions, or of any applicable regulation, compliance schedule, variance, or exception of the commissioner of conservation.

*Underground Source of Drinking Water*—an aquifer or its portion:

1. which supplies any public water system; or
2. which contains a sufficient quantity of groundwater to supply a public water system; and
  - a. currently supplies drinking water for human consumption; or
  - b. contains fewer than 10,000 mg/l total dissolved solids; and which is not an exempted aquifer.

*USDW*—see underground source of drinking water.

*Waters of the State*—both surface and underground waters within the state of Louisiana including all rivers, streams, lakes, groundwaters, and all other water courses and waters within the confines of the state, and all bordering waters, and the Gulf of Mexico.

*Well*—a bored, drilled, or driven shaft whose depth is greater than the largest surface dimension; or, a dug hole whose depth is greater than the largest surface dimension; or, a subsurface fluid distribution system.

*Well Plug*—a fluid-tight seal installed in a borehole or well to prevent the movement of fluids.

*Workover*—to perform one or more of a variety of remedial operations on an injection well, such as cleaning, perforation, changing tubing, deepening, squeezing, plugging back, etc.

**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 40:342 (February 2014), amended LR 42:419 (March 2016), LR 48:

### §303. General Provisions

A. - A.4. ...

B. Prohibition of Unauthorized Injection

1. The construction, conversion, or operation of a hydrocarbon storage well or salt cavern without obtaining a permit from the Office of Conservation is a violation of these rules and regulations and applicable laws of the state of Louisiana.

2. - 3. Repealed.

C. Prohibition on Movement of Fluids into Underground Sources of Drinking Water

C.1. - E. ...

1. The Office of Conservation may identify (by narrative description, illustrations, maps, or other means) and shall protect as an underground source of drinking water, except where exempted under §303.E.2 all aquifers or parts of aquifers that meet the definition of an underground source of drinking water. Even if an aquifer has not been specifically identified by the Office of Conservation, it is an underground source of drinking water if it meets the definition.

2. After notice and opportunity for a public hearing, the Office of Conservation may identify (by narrative description, illustrations, maps, or other means) and describe in geographic and/or geometric terms (such as vertical and lateral limits and gradient) that are clear and definite, all aquifers or parts thereof that the Office of Conservation proposes to denote as exempted aquifers if they meet the following criteria:

E.2.a. - F. ...

1. Except where noted in specific provisions of these rules and regulations, the Office of Conservation may allow, on a case-by-case basis, exceptions, variances, or alternative means of compliance to these rules and regulations. It shall be the obligation of the applicant, owner, or operator to show that the requested exception, variance, or alternative means of compliance and any associated mitigating measures shall not result in an unacceptable increase of endangerment to the environment, or the health, safety, and welfare of the public. The applicant, owner, or operator shall submit a written request to the Office of Conservation detailing the reason for the requested exception, variance, or alternative means of compliance. No deviation from the requirements of these rules or regulations shall be undertaken by the applicant, owner, or operator without prior written authorization from the Office of Conservation.

a. ...

b. When reducing requirements under this Section, the commissioner shall issue a fact sheet in accordance with §311.F explaining the reasons for the action.

2. Granting of exceptions or variances to these rules and regulations shall only be considered upon proper showing by the applicant, owner, or operator that such exception or variance is reasonable, justified by the particular circumstances, and consistent with the intent of these rules and regulations regarding physical and environmental safety and the prevention of waste. The commissioner may require public notice and a public hearing prior to granting any exception or variance if he determines it to be in the public interest or otherwise appropriate. The requester of the exception or variance shall

be responsible for all costs associated with any public notice or public hearing.

3. Operators of hydrocarbon storage wells and/or caverns may operate in accordance with alternative means of compliance previously approved by the commissioner of conservation. Alternative means of compliance shall mean operations that are capable of demonstrating a level of performance, which meets or exceeds the standards contemplated by these regulations. Owners or operators of caverns existing at the time of these rules may submit alternative means of compliance to be approved by the commissioner of conservation. The commissioner may review and approve upon finding that the alternative means of compliance meet, ensure, and comply with the purpose of the rules and regulations set forth herein provided the proposed alternative means of compliance ensures comparable or greater safety of personnel and property, protection of the environment and public, quality of operations and maintenance, and protection of the USDW.

G - G4. ...

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 40:344 (February 2014), amended LR 42:419 (March 2016), LR 48:

### §305. Permit Requirements

A. ...

B. Application Required. Applicants for a hydrocarbon storage well or cavern, permittees with expiring permits, or any person required to have a permit shall complete, sign, and submit one original application form with required attachments and documentation and an electronic copy of the same to the Office of Conservation. The commissioner may request additional paper copies of the application if it is determined that they are necessary. The complete application shall contain all information necessary to show compliance with applicable state laws and these regulations.

C. - F. ...

\* \* \*

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 40:346 (February 2014), amended LR 42:419 (March 2016), LR 48:

### §307. Application Content

A. The following minimum information shall be required for each permit application. The applicant shall also refer to the appropriate application form for any additional information that may be required.

1. For Class II hydrocarbon storage wells being dually permitted for Class III solution mining, a single consolidated submittal containing both applications may be accepted.

B. Administrative Information:

1. - 9. ...

- a. the Louisiana Hazardous Waste Management;
- b. this or any other Underground Injection Control

Program;

9.c - 10. ...

11. documentation of financial responsibility for closure and post-closure, or documentation of the method by which proof of financial responsibility will be provided as required in §309.B. Before making a final permit decision, the official instrument of financial responsibility for closure

and post-closure must be submitted to and approved by the Office of Conservation;

12. a map with accompanying tabulation identifying names and addresses of all property owners within the area of review of the hydrocarbon storage cavern.

C. Maps and related information:

1. certified location plat of the hydrocarbon storage well and/or area permit boundary prepared and certified by a registered land surveyor licensed and in good standing with the Louisiana Professional Engineering and Land Surveying Board. The location plat shall be prepared according to standards of the Office of Conservation;

2. - 3. ...

4. map(s) showing the hydrocarbon storage well for which the permit is sought, the project area or property boundaries of the facility in which the hydrocarbon storage well is located, and the applicable area of review. Within the area of review, the map(s) shall show the well name, well number, well state serial number, and location of all existing producing wells, injection wells, abandoned wells and dry holes, public water systems and water wells. The map(s) shall also show surface bodies of water, mines (surface and subsurface), quarries, and other pertinent surface features including residences and roads. Only information known to the applicant is required to be included on the map(s);

5. maps and cross-sections indicating the vertical limits of all underground sources of drinking water within the area of review, their position relative to the injection formation, and the direction of water movement, where known, in every underground source of drinking water which may be affected by the proposed injection;

6. generalized maps and cross-sections illustrating the regional geologic setting;

7. ...

8. maps and vertical cross-sections detailing the geologic structure of the local area. The cross-sections shall be structural (as opposed to stratigraphic cross-sections), be referenced to sea level, show the hydrocarbon storage well and the cavern being permitted, all adjacent salt caverns regardless of use and current status, conventional (room and pillar) mines, and all other boreholes and wells that penetrate the salt stock. Cross-sections should be oriented to indicate the closest approach to adjacent caverns, boreholes, wells, the edge of the salt stock, etc. and shall extend at least one mile beyond the edge of the salt stock unless the edge of the salt stock and any existing oil and gas production can be demonstrated in a shorter distance and is administratively approved by the Office of Conservation. Salt caverns shall be depicted on the cross-sections using data from the most recent salt cavern sonar. Known faulting in the area shall be illustrated on the cross-sections such that the displacement of subsurface formations is accurately depicted;

9. - 10. ...

D. Area of Review Information. Refer to §313.E for area of review boundaries and exceptions. Only information of public record or otherwise known to the applicant need be researched or submitted with the application, however, a diligent effort must be made to identify all wells and other manmade structures that penetrate or are within the salt stock in response to the area of review requirements. The applicant shall provide the following information on all wells or structures within the defined area of review:

1. a discussion of the protocol used by the applicant to identify wells and manmade structures that penetrate or are within the salt stock in the defined area of review;

2. a tabular listing of all known water wells in the area of review to include the name of the operator, well location, well depth, well use (domestic, irrigation, public, etc.), and current well status (active, abandoned, etc.);

3. a tabular listing of all known wells (excluding water wells) in the area of review with penetrations into the cap rock or salt stock to include at a minimum:

3.a - 4.b.iv. ...

E. Technical Information. The applicant shall submit, as an attachment to the application form, the following minimum information in technical report format:

1. for existing caverns, the results of the latest cavern sonar survey and mechanical integrity pressure and leak tests;

2. corrective action plan required by §313.F for wells or other manmade structures within the area of review that penetrate the salt stock but are not properly constructed, completed, or plugged and abandoned;

3. plans for performing the geological, geomechanical, geochemical, engineering, and other site assessment studies of §313 to assess the stability of the salt stock and overlying and surrounding sediments based on past, current, and planned well and cavern operations. If such studies are complete, submit the results obtained along with an interpretation of the results;

4. ...

5. properly labeled schematic of the subsurface construction and completion details of the hydrocarbon storage well and cavern to include borehole diameters; all cemented casings with cement specifications, casing specifications (size, depths, etc.); all hanging strings showing sizes and depths set; total depth of well; top, bottom, and diameter of cavern; the depth datum; and any other pertinent details;

6. surface site diagram(s) of the facility in which the hydrocarbon storage well is located, including but not limited to surface pumps, piping and instrumentation, controlled access roads, fenced boundaries, field offices, monitoring and safety equipment, required curbed or other retaining wall heights, etc.;

7. - 9.f. ...

g. the safety requirements of §321, including, but not limited to an emergency action plan, controlled site access, facility identification, personnel, wellhead protection and identification, valves and flowlines, alarm systems, emergency shutdown valves, systems test and inspections, and surface facility retaining walls and spill containment, contingency plans to cope with all shut-ins or well failures to prevent the migration of contaminating fluids into underground sources of drinking water;

E.9.h. - F. ...

G. Confidentiality of Information. In accordance with R.S. 44.1 et seq., any information submitted to the Office of Conservation pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application for, or instructions, or in the case of other submissions, by stamping the words "Confidential Business Information" on each page containing such information. If

no claim is made at the time of submission, the Office of Conservation may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in R.S. 44.1 et seq. (Public Information).

1. - 1.b. ...

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 40:347 (February 2014), amended LR 42:420 (March 2016), LR 48:

### §309. Legal Permit Conditions

A. - B. ...

1. Closure and Post-Closure. The owner or operator of a hydrocarbon storage well shall maintain financial responsibility and the resources to close, plug and abandon and where necessary, conduct post-closure care of the hydrocarbon storage well, cavern, and related facilities as prescribed by the Office of Conservation. The related facilities shall include all surface and subsurface constructions and equipment exclusively associated with the operation of the hydrocarbon storage cavern including but not limited to class II saltwater disposal wells and any associated equipment or pipelines whether located inside or outside of the permitted facility boundary. Evidence of financial responsibility shall be by submission of a surety bond, a letter of credit, certificate of deposit, or other instrument acceptable to the Office of Conservation. The amount of funds available shall be no less than the amount identified in the cost estimate of the closure plan of §337.A and post-closure plan of §337.B. Any financial instrument filed in satisfaction of these financial responsibility requirements shall be issued by and drawn on a bank or other financial institution authorized under state or federal law to operate in the state of Louisiana. In the event that an operator has previously provided financial security pursuant to LAC 43: XVII.309, such operator shall provide increased financial security if required to remain in compliance with this Section, within 30 days after notice from the commissioner.

2. - 3.a.ii. ...

b. Assistance to residents payments shall not be construed as an admission of responsibility or liability for the emergency or disaster.

4. - 4.a.i. ...

ii. Upon petition by the state or any political subdivision of the state that is eligible for reimbursement under this Subparagraph, the commissioner shall issue an order to the permittee or operator to make payment within 30 days for the itemized costs.

iii. - iv. ...

b. Reimbursement to any person who owns noncommercial residential immovable property located within an area under a mandatory or forced evacuation order pursuant to R.S. 29:721 et seq. for a period of more than 180 days, without interruption due to a violation of this Chapter, the permit or any order issued pursuant to this Chapter. The offer for reimbursement shall be calculated for the replacement value of the property based upon an appraisal by a qualified professional appraiser. The replacement value of the property shall be calculated based upon the estimated value of the property prior to the time of the incident resulting in the declaration of the disaster or emergency. The

reimbursement shall be made to the property owner within 30 days after notice by the property owner to the permittee or operator indicating acceptance of the offer and showing proof of continuous ownership prior to and during the evacuation lasting more than 180 days, provided that the offer for reimbursement is accepted within 30 days of receipt, and the property owner promptly transfers the immovable property free and clear of any liens, mortgages, or other encumbrances to the permittee or operator. Such payments shall not be construed as an admission of responsibility or liability.

C. - F.2. ...

3. The Office of Conservation may immediately prohibit further operations if it determines that continued operations at a hydrocarbon storage well cavern, and related facility, or parts thereof, may cause unsafe operating conditions, or endanger the environment, or the health, safety, and welfare of the public. The prohibition shall remain in effect until it is determined that continued operations can and shall be conducted safely. It shall be the duty of the operator to prove that continued operation of the hydrocarbon storage well, or part thereof, shall not endanger the environment, or the health, safety, and welfare of the public.

3.a. - 4. Repealed.

G. - H. ...

I. Notification Requirements. The operator shall give written, and where required, verbal notice to the Office of Conservation concerning activities indicated in this Subsection.

1. - 4.a. ...

b. a representative of the commissioner has inspected the well and/or facility and finds it is in compliance with the conditions of the permit; and

c. ...

5. Noncompliance or anticipated noncompliance with the permit or applicable regulations (which may result from any planned changes in the permitted facility or activity) including a failed mechanical integrity pressure and leak test of §327.

6. Permit Transfer. A permit is not transferable to any person except after giving written notice to and receiving written approval from the Office of Conservation indicating that the permit has been transferred. This action may require modification or revocation and re-issuance of the permit (see §311.K) to change the name of the operator and incorporate other requirements as may be necessary, including but not limited to financial responsibility.

I.7. - J. ...

1. Authorization to Operate. Authorization by permit to operate a hydrocarbon storage well and salt cavern shall be valid for the life of the well and salt cavern, unless suspended, modified, revoked and reissued, or terminated for cause as described in §311.K. The commissioner may issue for cause any permit for a duration that is less than the full allowable term under this Section. Conversion of a Class III solution-mining well and cavern for Class II hydrocarbon storage does not nullify or void the existing Class III solution-mining permit unless expressly ordered by the commissioner.

2. - 3. ...

K. Compliance Review. The commissioner shall review each hydrocarbon storage well permit, area permit, and cavern at least once every five years to determine whether any permit should be modified, revoked and reissued, terminated, whether minor modifications are needed, or if remedial action or additional monitoring is required for any cavern. Commencement of the compliance review process for each facility shall proceed as authorized by the Commissioner of Conservation.

1. As a part of the five-year permit review, pursuant to RS 30:4.M.2, the operator shall submit the following minimum information to the Office of Conservation, based upon the best available information.

a. Structural Map. A structural map of the top of salt including an aerial view of the maximum outline(s) of the operator's caverns and any other adjacent solution-mining caverns, disposal caverns, storage caverns or room and pillar mines. The maximum cavern outlines shall be based upon the latest sonar survey for each cavern.

b. Cross-Sections

i. Cross-sections illustrating the closest approach between an operator's caverns, between an operator's caverns and any adjacent solution-mining caverns, disposal caverns, storage caverns, or room and pillar mines if indicated to be proximal to adjacent caverns or mines.

ii. Cross-sections illustrating the closest approach between the operator's caverns and the edge of the salt stock, if the edge of the cavern, based upon the best available information, is indicated to be less than 500 feet from the edge of the salt stock.

iii. All cross-sections shall be based upon the latest sonar survey for each cavern and the latest structural map of the top of salt based upon the best available information.

c. a tabulation of each of the operator's caverns with minimum offset distances listed to adjacent caverns, the edge of salt, and adjacent property boundaries.

2. As a part of the five year compliance review, the well operator shall review the closure and post-closure plan and associated cost estimates of §337 to determine if the conditions for closure are still applicable to the actual conditions.

3. As a part of the five year compliance review, the operator shall submit any other information required by the commissioner.

L. - M.4. ...

5. Any approved area permit for hydrocarbon storage in solution-mined salt caverns shall encompass and be valid for future Class III solution-mining wells and resulting caverns constructed for the purpose of future hydrocarbon storage.

N. - O. ...

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 40:349 (February 2014), amended LR 42:420 (March 2016), LR 48:

### §311. Permitting Process

A. - B. ...

1. The applicant shall make public notice that a permit application for a hydrocarbon storage cavern or caverns, or

an area permit, is proposed for filing with the Office of Conservation. A notice of intent shall be published at least 30 days but not more than 180 days before filing the permit application with the Office of Conservation. Without exception, the applicant shall publish a new notice of intent if the application is not received by the Office of Conservation within the filing period. If the applicant is dually permitting a well for both Class III solution mining and Class II hydrocarbon storage the public notice of intent for both applications may be combined.

B.2. - C. ...

1. The applicant shall complete, sign, and submit one original paper application form, with required attachments and documentation, and one copy of the same to the Office of Conservation. The complete application shall contain all information to show compliance with applicable state laws and these rules and regulations. In addition to submitting the application on paper, the applicant shall submit an exact duplicate of the paper application in an electronic format approved by the commissioner. The commissioner may request additional paper copies of the application, either in its entirety or in part, as needed. The electronic version of the application shall contain the following certification statement.

This document is an electronic version of the application titled (Insert Document Title) dated (Insert Application Date). This electronic version is an exact duplicate of the paper copy submitted in (Insert the Number of Volumes Comprising the Full Application) to the Louisiana Office of Conservation.

C.2. - D.1. ...

a. Upon acceptance of a permit application as complete and meeting the administrative and technical requirements of these rules and regulations, the commissioner shall require the applicant to give public notice that the following actions have occurred:

a.i. - c. ...

2. Public Notice by Applicant

a. Public notice shall be published by the applicant in the legal advertisement section of the official state journal and the official journal of the parish of the proposed project location not less than 30 days before the scheduled hearing. If the applicant is dually permitting a well for both class III solution mining and class II hydrocarbon storage the public notice of a hearing for both applications may be combined.

b. The applicant shall provide notice of the scheduled public hearing by forwarding a copy of the notice by mail or e-mail to:

i. the Office of Conservation Injection and Mining Division;

ii. - xi. ...

3. Public Notice Contents. Public notices shall contain the following minimum information:

3.a. - 4.b. ...

c. A duplicate of the complete permit application in electronic format shall be submitted to the Office of Conservation.

E. - G. ...

1. The Office of Conservation shall fix a time, date, and location for a public hearing. The public hearing shall be held in the parish of the proposed project location. The cost of the public hearing is set by LAC 43:XIX.Chapter 7 (Fees, as amended) and is the responsibility of the applicant. If the

applicant is dually permitting a well for both Class III solution mining and Class II hydrocarbon storage, both applications may be considered at the same public hearing.

G.2. - H.4. ...

5. The owner or operator of a solution-mined storage cavern permit shall record the final permit, which shall include any orders, permits to construct, permits to store, and a certified as-drilled survey plat if an as-drilled plat has not been previously filed, in the mortgage and conveyance records of the parish in which the property is located. A date/file stamped copy of the plat and final permit is to be furnished to the Office of Conservation within 15 days of its recording. If an owner or operator fails or refuses to record such notice, the commissioner may, if he determines that the public interest requires, and after due notice and an opportunity for a hearing has been given to the owner and operator, cause such notice to be recorded.

H.6. - J.2.b.iii. ...

c. If no agreement described in §311.J.2.b.iii. above is provided, responsibility for compliance with the terms and conditions of the permit and liability for any violation will shift from the existing operator to the new operator on the date the transfer is approved.

d. - f. ...

g. If the commissioner does not notify the existing operator and the proposed new owner or operator of his intent to modify or revoke and reissue the permit under §311.K.3.b, the transfer is effective on the date specified in the agreement mentioned in §311.J.2.b.iii above.

J.2.h. - K.7.b. ...

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 40:352 (February 2014), amended LR 42:422 (March 2016), LR 48:

### §313. Site Assessment

A. Applicability. This Section applies to all applicants, owners, or operators of hydrocarbon storage wells and caverns. The applicant, owner, or operator shall be responsible for showing that the hydrocarbon storage operation shall be accomplished using good engineering and geologic practices for hydrocarbon storage operations to preserve the integrity of the salt stock and overlying sediments. In addition to all applicants showing this in their application, as part of the compliance review found in subsection §309.K, the commissioner shall require any owner or operator of a hydrocarbon storage well to provide the same or similar information required in this Section. This shall include, but not be limited to:

1. ...

2. stability of the salt stock and overlying and surrounding sediments;

A.3. - B.1. ...

a. geologic mapping of the structure of the salt stock and any cap rock;

b. - c. ...

d. deformation of the cap rock and strata overlying the salt stock;

e. ...

f. cap rock formation and any non-vertical salt movement.

2. - 4. ...

a. an updated structure contour map of the salt stock. The updated map should make use of all available data. The horizontal configuration of the salt cavern should be shown on the structure map and reflect the caverns' maximum lateral extent as determined by the most recent sonar caliper survey; and

b. vertical cross-sections of the salt caverns showing their outline and position within the salt stock. Cross-sections should be oriented to indicate the closest approach of the salt cavern wall to the periphery of the salt stock. The outline of the salt cavern should be based on the most recent sonar caliper survey.

C. ...

1. At least one well at the site of the hydrocarbon storage well (or the salt dome) shall be or shall have been cored over sufficient depth intervals to yield representative samples of the subsurface geologic environment. This shall include coring of the salt stock and may include coring of overlying formations, including any cap rock. Cores should be obtained using the whole core method. Core acquisition, core handling, and core preservation shall be done according to standard field sampling practices considered acceptable for laboratory tests of recovered cores.

2. Data from previous coring projects may be used instead of actual core sampling provided the data is specific to the salt dome of interest. It shall be the responsibility of the applicant to make a satisfactory demonstration that data are applicable to the salt dome and cavern location(s) of interest.

D. Core Analyses and Laboratory Tests. Analyses and tests shall consider the characteristics of the injected materials and should provide data on the salt's geomechanical, geophysical, geochemical, mineralogical properties, x-ray diffraction analysis, microstructure, and where necessary, potential for adjacent cavern connectivity, with emphasis on cavern shape and the operating conditions. All laboratory tests, experimentation, and numeric modeling shall be conducted using methods that simulate the proposed operating conditions of the cavern. Test methods shall be selected to define the deformation and strength properties and characteristics of the salt stock under cavern operating conditions. Test results, analyses, and operating recommendations shall be summarized in an interpretive report.

E. Area of Review. A thorough evaluation shall be undertaken of both surface and subsurface activities in the defined area of review of the individual hydrocarbon storage well or project area (area permit) that may influence the integrity of the salt stock, hydrocarbon storage well, and cavern, or contribute to the movement of injected fluids outside the cavern, wellbore, or salt stock.

1. ...

a. The area of review for individual hydrocarbon storage wells shall be a fixed radius around the wellbore of not less than 1320 feet.

b. The area of review for wells in a hydrocarbon storage project area (area permit), shall be the project area plus a circumscribing area the width of which is not less than 1320 feet. The area of review for new hydrocarbon storage wells within an existing area permit shall be the project area plus a circumscribing area the width of which is not less than

1320 feet. Only information outlined in §313.E.2, not previously assessed as part of the area permit application review or as part of the review of an application for a subsequent hydrocarbon storage well located within the approved area permit, shall be considered.

c. Exception shall be noted as in §313.E.2.c and d below.

2. Subsurface Delineation. At a minimum, the following shall be identified within the area of review:

a. all known active, inactive, and abandoned wells within the area of review with known depth of penetration into the cap rock or salt stock;

b. all known water wells within the area of review;

c. - e. ...

3. Water Samples. A representative number of water wells identified under §313.E.2.b shall be sampled and analyzed by an accredited laboratory for chloride and total dissolved solids.

F. ...

1. For manmade structures identified in the area of review that penetrate the salt stock and are not properly constructed, completed, or plugged and abandoned, the applicant shall submit a corrective action plan consisting of such steps, procedures, or modifications as are necessary to prevent the movement of fluids outside the cavern or into underground sources of drinking water.

1.a. - 3....

4. The commissioner may require as a permit condition that injection pressure be so limited that pressure in the injection zone does not cause the movement of fluids into a underground source of drinking water through any improperly completed or abandoned well within the area of review. This pressure limitation shall satisfy the corrective action requirement. Alternatively, such injection pressure limitation can be part of a compliance schedule and last until all other corrective action has been taken.

5. - 7. ...

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 40:357 (February 2014), amended LR 42:422 (March 2016), LR 48:

### **§315. Cavern Design and Spacing Requirements**

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

ii. The commissioner shall hold a public hearing at Baton Rouge if a non-consenting adjacent owner whose property line is within 100 feet objects to the cavern's continued operation. Following the public hearing the commissioner may approve the cavern's continued operation upon a determination that the continued operation of the cavern has no adverse effects to the rights of the adjacent property owner(s).

iii. If no objection from a non-consenting adjacent property owner is received within 30 days of the notice provided in accordance with §315.B.1.a.i above, then the commissioner may approve the continued operation of the cavern administratively.

1.b. - 3.b. ...

c. Without exception or variance to these rules and regulations, an existing hydrocarbon storage cavern with cavern walls 100 feet or less from the periphery of the salt stock shall be removed from hydrocarbon storage service



immediately and permanently. An enhanced monitoring plan in conformance with §315.B.3.b above for long term monitoring shall be prepared and submitted to the Office of Conservation. Once approved, the owner or operator shall implement the enhanced monitoring plan.

d. For hydrocarbon storage caverns in existence as of the effective date of these regulations with less than 300 feet but more than 100 feet of salt separation at any point between the cavern walls and the periphery of the salt stock, continued hydrocarbon storage may be allowed upon submittal of an enhanced monitoring plan in conformance with §315.B.3.b above in addition to any additional maps, studies, tests, assessments, or surveys required by the commissioner to show that the cavern is capable of continued safe operations.

C. ...

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 40:358 (February 2014), amended LR 42:422 (March 2016), LR 48:

### §317. Well Construction and Completion

A. - B. ...

1. Open hole wireline surveys that delineate subsurface lithologies, formation tops (including top of cap rock and salt), formation fluids, formation porosity, and fluid resistivities shall be performed on all new wells from total well depth to either ground surface or base of conductor pipe. Wireline surveys shall include, at a minimum, density, neutron, sonic, and caliper logs and shall be presented with gamma-ray and, where applicable, spontaneous potential curves. All surveys shall be presented on a scale of 1 inch to 100 feet and a scale of 5 inches to 100 feet and all logs must include the depth datum. A descriptive report interpreting the results of such logs and tests shall be prepared and submitted to the commissioner.

2. ...

3. Caliper logging to determine borehole size for cement volume calculations shall be performed before running casings.

B.4. - C.2.g. ...

3. Surface casing shall be set to a depth below the base of the lowermost underground source of drinking water and shall be cemented to ground surface.

4. All hydrocarbon storage wells shall be cased with a minimum of two casings cemented into the salt. One casing string shall be an intermediate string, the other being the final cemented string. The surface casing shall not be considered one of the two casings.

5. The intermediate casing shall be set a minimum distance of 100 feet into the salt. The final cemented casing shall be set a minimum distance of 300 feet into the salt and shall make use of a sufficient number of casing centralizers.

6. The following applies to wells existing in caverns before the effective date of these rules and regulations. If the design of the well or cavern precludes having distinct intermediate and final casing seats cemented into the salt, the wellbore shall be cased with two concentric casings run from the surface of the well to a minimum distance of 300 feet into the salt. The inner casing shall be cemented from its base to surface. Alternatively, a packer and tubing completion may be substituted for the inner casing string. The packer shall be considered the effective casing seat and

must be set a minimum distance of 300 feet into the salt and within 50 feet of the deepest cemented casing seat.

C.7. - D.2. ...

a. For all casings below the surface casing, excluding the casing string(s) set into the salt, the stabilized test pressure applied at the well surface will be calculated such that the pressure at the casing shoe will not be less than the 85 percent of the predicted formation fracture pressure at that depth. The test pressures will be maintained for one hour after pressure stabilization. Allowable pressure loss is limited to 5 percent of the test pressure over the stabilized test duration. Test results will be reported as part of the pre-operating requirements.

b. For the casing strings set within the salt, the test pressure applied at the surface will be the greater of the maximum predicted salt cavern operating pressure or a pressure gradient of 0.85 PSI/FT of vertical depth calculated with respect to the depth of the casing shoe. The test pressures will be maintained for one hour after pressure stabilization. Allowable pressure loss is limited to 5 percent of the test pressure over the stabilized test duration. Test results will be reported as part of the pre-operating requirements.

D.3. - E.1. ...

2. A casing inspection log (or similar approved log or method of casing evaluation) shall be run on the final cemented casing.

E.3. - G. ...

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 40:359 (February 2014), amended LR 42:423 (March 2016), LR 48:

### §319. Operating Requirements

A. ...

B. Remedial Work. No remedial work or repair work of any kind shall be performed on the hydrocarbon storage well or cavern without prior authorization from the Office of Conservation. The provision for prior authorization shall also extend to doing mechanical integrity pressure and leak tests, sonar caliper surveys, and all logs, including casing inspection logs and through tubing logs; however, a work permit is not required in order to conduct routine interface surveys. The owner, operator, or its agent shall submit a valid work permit request form (Form UIC-17 or successor). Before beginning well or cavern remedial work, the pressure in the cavern shall be relieved, as practicable.

C. Well Recompletion—Casing Repair. The following applies to hydrocarbon storage wells where remedial work results from well upgrade, casing wear, or similar condition. For each paragraph below, a casing inspection log shall be performed on the entire length of the innermost cemented casing in the well before doing any casing upgrade or repair. Authorization from the Office of Conservation shall be obtained before beginning any well recompletion, repair, upgrade, or closure. A hydrocarbon storage well that cannot be repaired or upgraded shall remain out-of-service and be closed according to an approved closure and post-closure plan.

C.1. - E.1. ...

2. The maximum and minimum allowable surface injection pressures shall be calculated at a depth referenced to the well's deepest effective cemented casing seat. The

injection pressure at the wellhead shall be calculated to ensure that the pressure induced within the salt cavern during injection does not initiate fractures or propagate existing fractures in the salt. In no case shall the injection pressure initiate fractures in the confining zone or cause the migration of injected fluids out of the salt stock or into an underground source of drinking water.

3. - 4. ...

5. No liquid hydrocarbon storage cavern shall be converted to gas storage without prior approval by the Office of Conservation. Conversion to gas storage may require additional geomechanical modeling to establish allowable operating pressures.

#### F. Solution Mining Under Gas

1. Within 30 days of a planned cavern enlargement while storing product, the operator shall submit written notice to the Injection and Mining Division with a description and timeline of the planned event.

2. Unless specifically exempted by the commissioner, after the completion of the smuggling period, a sonar survey shall be conducted of the cavern and submitted to the Injection and Mining Division in accordance with §329.B.4.

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 40:361 (February 2014), amended LR 48:

### §321. Safety

A. ...

B. Controlled Site Access. Access to hydrocarbon storage facilities shall be controlled by fencing or other means around the facility property. All points of entry into the facility shall be through a lockable gate system.

C. Personnel. Personnel shall be on duty at the storage facility 24 hours a day. During periods of stored product injection or withdrawal, trained personnel shall be stationed at the storage well, facility's onsite local control room, or other facility control location at the storage site. If the storage facility chooses to use an offsite monitoring and control automated telemetry surveillance system, approved by the commissioner, provisions shall be made for trained personnel to be on-call at all times and 24 hours a day staffing of the facility may not be required.

D. - E.1. ...

2. All valves, flowlines for injection and withdrawal, and any other flowlines shall be designed to prevent pressures over maximum operating pressure from being exerted on the hydrocarbon storage well and cavern and prevent backflow or escape of injected material. The fluid withdrawal side of the wellhead shall have the same pressure rating as the injection side.

E.3. - F. ...

G. Emergency Shutdown Valves. Manual and automatically actuated emergency shutdown valves shall be installed on all systems of cavern injection and withdrawal and any other flowline going into or out from each hydrocarbon storage wellhead. All emergency shutdown valves shall be fail-safe and shall be tested and inspected according to §321.I.

G.1. - J.1.f. ...

2. Visual inspections of the cavern facility shall be conducted each day the facility is operating. At a minimum, this shall include inspections of the wellhead, flowlines,

valves, signs, perimeter fencing, and all other areas of the facility. Problems discovered during the inspections shall be corrected timely.

3. Representatives of the Office of Conservation may inspect the storage well and facility at any time during the storage facility regular working hours.

K. ...

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 40:362 (February 2014), amended LR 42:423 (March 2016), LR 48:

### §323. Monitoring Requirements

A. ...

1. Pressure gauges or pressure sensors/transmitters that show pressure on the fluid injection string, fluid withdrawal string, and any other string in the well shall be installed at each wellhead. Gauges or pressure sensors/transmitters shall be designed to read gauge pressure in 25 PSIG increments. All gauges or pressure sensors/transmitters shall be properly calibrated and shall always be maintained in good working order. The pressure valves onto which the pressure gauges are affixed shall have 1/2 inch female fittings.

2. ...

3. Flow sensors designed to actuate the automatic closure of all emergency shutdown valves in response to abnormal changes in cavern injection and withdrawal flow rates shall be installed and properly maintained on each hydrocarbon storage well.

B. Continuous Recording Instruments. Continuous recording instrumentation shall be installed and properly maintained for each hydrocarbon storage well. Continuous recordings may consist of circular charts, digital recordings, or similar type. Unless otherwise specified by the commissioner, digital instruments shall record the required information at no greater than one minute intervals. Mechanical charts shall not exceed a clock period of 24-hour duration. The chart shall be selected such that its scaling is of sufficient sensitivity to record all fluctuations of pressure or any other parameter being monitored. The chart shall be scaled such that the parameter being recorded is 30 percent to 70 percent of full scale. Instruments shall be housed in weatherproof enclosures when located in areas exposed to climatic conditions. All fluid volumes shall be determined by metering or an alternate method approved by the Office of Conservation. Minimum data recorded shall include the following:

1 - 3. ...

#### C. Casing Inspection

1. A casing inspection or similar log shall be run on the entire length of the innermost cemented casing in each well at least once every 10 years for liquid hydrocarbon storage caverns and every 15 years for natural gas storage caverns. Casing inspection logs shall be submitted to the Office of Conservation and shall include an interpretive report.

2. Equivalent alternate monitoring programs to ensure the integrity of the innermost, cemented casing may be approved by the Office of Conservation in place of §323.C.1.

3. - 4. Repealed.

D. Vapor Detection. The operator shall develop a monitoring plan designed to detect the presence of a buildup of combustible gases or any potentially ignitable substances in the atmosphere resulting from the hydrocarbon storage operation. Variations in surface topography, atmospheric conditions typical to the area, characteristics of the stored product, proximity of the facility to homes, schools, commercial establishments, etc., should be considered in developing the monitoring plan. The plan shall be submitted as part of the permit application and should be updated as needed but no less than every five years, and may be included within the submittal required in §309.K. The monitoring plan should include provisions for strategic placement of stationary detection devices at various areas of the facility, portable monitoring devices, or any other appropriate system acceptable to the commissioner.

1. - 2. ...

E. Subsidence Monitoring and Frequency. The owner or operator shall prepare and carry out a plan approved by the commissioner to monitor subsidence at and in the vicinity of the hydrocarbon storage cavern(s). A monitoring report shall be prepared and submitted to the Office of Conservation after completion of each monitoring even.

1. Subsidence monitoring surveys for caverns in gas or liquid storage shall be scheduled to occur annually during the same period each year. If there are multiple operators on the same salt dome, a collaborative effort to conduct a joint subsidence survey is recommended.

2. When multiple cavern owners or operators participate in dome-wide subsidence monitoring, a single dome-wide subsidence monitoring report shall be submitted to the Office of Conservation on behalf of all participating owners or operators. The report must clearly identify all owners or operators participating in the monitoring and all wells/caverns.

F. - G. ...

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 40:363 (February 2014), amended LR 42:423 (March 2016), LR 48:

### **§325. Pre-Operating Requirements—Completion Report**

A. The operator shall submit a report describing, in detail, the work performed resulting from the approved permitted activity. The report shall be submitted in paper and electronic form and shall include all information relating to the work and information that documents compliance with these rules and the approved permitted activity. The report shall be prepared and submitted for any approved work relating to the construction, conversion, completion, or workover of the storage well or cavern. Product storage shall not commence until all required information has been submitted to the Office of Conservation and the operator has received written authorization from the Office of Conservation stating storage operations may begin. Preauthorization pursuant to this Subsection is not required for workovers.

B. - B.5. ...

6. if not already submitted, a certified, as-drilled location plat of the hydrocarbon storage well, accompanied by proof of filing of the plat in the parish conveyance and mortgage records;

7. as-built subsurface diagram of the hydrocarbon storage well and cavern labeled with appropriate construction, completion, or conversion information, i.e., depth datum, depth and diameter of all tubulars, depths of top of cap rock and salt, and top and bottom of the cavern;

8. - 10. ...

11. paper and electronic copies of any wireline logging such as open hole logs, cased hole logs, the most recent cavern sonar survey, and mechanical integrity test;

12. the status of corrective action on wells in the area of review;

13. - 15. ...

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 40:364 (February 2014), amended LR 48:

### **§327. Well and Cavern Mechanical Integrity Pressure and Leak Tests**

A. - B. ...

1. Without exception or variance to these rules and regulations, all hydrocarbon storage wells and caverns shall be tested for and satisfactorily demonstrate mechanical integrity before beginning storage activities.

2. All subsequent demonstrations of mechanical integrity shall occur at least once every five years. Additionally, mechanical integrity testing shall be done for the following reasons regardless of test frequency:

a. - c. ...

d. before well closure, except when the cavern has experienced mechanical failure;

e. whenever leakage into or out of the cavern system is suspected;

f. whenever the commissioner determines a test is warranted.

g. Repealed.

C. - C.6. ...

7. Inactive Caverns. The commissioner may approve hydrostatic brine pressure monitoring for inactive wells and caverns that are in pre-closure monitoring and will not be returned to service. For any cavern removed from pre-closure monitoring that has been subject to hydrostatic brine pressure testing, a MIT must be performed in accordance with §327.C.1-6 above prior to resuming any injection activities.

D. Submission of Pressure and Leak Test Results. Submit one complete electronic copy of the mechanical integrity pressure and leak test results, certified by a Louisiana licensed P.E. (see §303.G.3) to the Office of Conservation within 60 days after test completion. The report shall include the following minimum information:

D.1. - E. ...

1. Without exception or variance to these rules and regulations, a hydrocarbon storage well or cavern that fails a test for mechanical integrity shall be immediately taken out of service. The failure shall be reported to the Office of Conservation according to the notification requirements of §309.I.8. The owner or operator shall investigate the reason for the failure and shall take appropriate steps to return the storage well or cavern to a full state of mechanical integrity. A storage well or cavern is considered to have failed a test for mechanical integrity for the following reasons:

a. - b. ...  
c. fluids are determined to have escaped from the hydrocarbon storage well or cavern during storage operations.

2. Written procedures to rehabilitate the hydrocarbon storage well or cavern, extended cavern monitoring, or abandonment (closure and post-closure) of the storage well or cavern shall be submitted to the Office of Conservation within 60 days of mechanical integrity test failure.

3. Upon reestablishment of mechanical integrity of the hydrocarbon storage well or cavern and before returning either to service, a new mechanical integrity pressure and leak test shall be performed that demonstrates mechanical integrity of the storage well or cavern. The owner or operator shall submit the new test results to the Office of Conservation for written approval before resuming injection operations.

4. If a hydrocarbon storage well or cavern fails to demonstrate mechanical integrity and where mechanical integrity cannot be reestablished, the Office of Conservation may require the owner or operator to begin closure of the well or cavern according to an approved closure and post-closure plan.

a. The Office of Conservation may waive implementation of closure requirement if the owner or operator is engaged in a cavern remediation study and implements an interim cavern monitoring plan. The owner or operator must seek written approval from the Office of Conservation before implementing a salt cavern monitoring program. The basis for the Office of Conservation's approval shall be that any waiver granted shall not endanger the environment, or the health, safety and welfare of the public. The Office of Conservation may establish a time schedule for salt cavern rehabilitation, cessation of interim cavern monitoring, and eventual cavern closure and post-closure activities.

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 40:364 (February 2014), amended LR 42:423 (March 2016).LR 48:

### **§329. Cavern Configuration and Capacity Measurements**

A. ...

B. Frequency of Surveys. For liquid hydrocarbon storage caverns, a sonar caliper survey of the entire cavern, or other approved survey, shall be performed at least once every 5 years and must include horizontal shots beginning just below the deepest cemented casing shoe. At least once every 10 years a sonar caliper survey, or other approved survey, shall be performed that logs the roof of the cavern using uptilted shots. For natural gas storage caverns, a sonar caliper survey, or other approved survey, shall be performed at least once every 5 years and must include horizontal shots beginning just below the deepest cemented casing shoe. At least once every 15 years a sonar caliper survey, or other approved survey, shall be performed that logs the roof of the cavern using uptilted shots. For natural gas storage caverns engaging in simultaneous storage and salt solution mining or washing, a sonar caliper survey, or other approved survey, shall be performed in accordance with this article or in

accordance with LAC 43:XVII.3329, whichever requires the more frequent survey. For storage caverns of a small size, stable configuration, and favorable positioning within the salt stock, the commissioner may approve partial sonar caliper surveys in fulfillment of the required surveys excepting the required survey at least once every 15 years to log the roof of the cavern. Additional surveys as specified by the Office of Conservation shall be performed for any of the following reasons regardless of frequency:

1. ...
2. whenever leakage into or out of the cavern system is suspected;
3. - 6. ...

C. Submission of Survey Results. A complete electronic version of each survey shall be submitted to the Office of Conservation within 60 days of survey completion.

1. - 1.e. ...
  - f. vertical cross-sections of the cavern at various azimuths drawn to an appropriate horizontal and vertical scale;
  - g. cross-section overlays comparing results of current survey and at least two previous surveys, if available;
  - h. isometric or 3-D shade profile of the cavern at various azimuths and rotations;
  - i. any data collected from prior surveys shall be clearly identified if included in the submitted report.
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 40:366 (February 2014), amended LR 42:423 (March 2016), LR 48:

### **§331. Inactive Caverns**

A. The following minimum requirements apply when a hydrocarbon storage cavern is removed from storage service and is expected to remain out of service for one year or more:

1. ...
2. disconnect all flowlines for injection to the well;
3. ...
4. submit quarterly reports on the appropriate Form (Form UIC-50 or successor) in accordance with §333;
5. maintain and demonstrate well and cavern mechanical integrity if storage operations were suspended for reasons other than a lack of mechanical integrity;
6. maintain compliance with financial responsibility requirements of these rules and regulations; and
7. any additional requirements of the Office of Conservation to document the hydrocarbon storage well and cavern shall not endanger the environment, or the health, safety, and welfare of the public during the period of cavern inactivity;
8. no inactive hydrocarbon storage cavern may be returned to service without first submitting a written request with Form UIC-17 to the Office of Conservation and obtaining approval of the commissioner.

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 40:366 (February 2014), amended LR 42:424 (March 2016), LR 48:

**§333. Operating Reports**

A. The operator shall submit quarterly operation reports to the Office of Conservation. Reports are due no later than 15 days following the end of the reporting period.

B. Reports shall be submitted electronically on the appropriate Form (Form UIC-50 or successor) and reference the operator name, well name, well number, well state serial number, salt dome name, and contain the following minimum information acquired weekly during the reporting quarter:

- 1. - 2. ...
- 3. pressure releases from inactive caverns;
- 4. description of any event resulting in non-compliance with these rules that triggered an alarm or shutdown device and the response taken;
- 5. description of any event that exceeds operating parameters for annulus pressure or injection pressure as may be specified in the permit.

C. ...

1. barrels (42-gallon barrels) at standard temperature and pressure for liquid or liquefied storage; or

2. thousand cubic feet (MCF) at standard temperature and pressure for gas storage.

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 40:366 (February 2014), LR 48:

**§335. Record Retention**

A. - C. ...

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 40:367 (February 2014), repromulgated LR 48:

**§337. Closure and Post-Closure**

A. Closure. The owner or operator shall close the hydrocarbon storage well, cavern, and associated parts as approved by the Office of Conservation. Closure shall not begin without written authorization from the Office of Conservation.

1. - 3.a....

i. a detailed cost estimate for closure of the well and related appurtenances (well, cavern, surface appurtenances, etc.) as prepared by a qualified professional. The closure plan and cost estimate shall include provisions for closure acceptable to the Office of Conservation;

3.a.ii. - 5.a. ...

b. A continuous column of cement shall fill the deepest cemented casing from its shoe to the surface via a series of cement plugs:

i. each cement plug shall be tagged to verify the top of cement before setting the next cement plug;

ii. ...

iii. unless specifically exempted by the commissioner, a balanced cement plug shall be placed across the shoe of the deepest cemented casing, tagged to verify the top of cement, and pressure tested to at least 300 PSI for 30 minutes before setting the next cement plug; and

iv. subsequent cement plugs shall be spotted immediately on top of the previously placed cement plug.

c. - c.i. ...

ii. on water locations cut and pull the casings a minimum of 15 feet below the mud line.

d. ...

6. Closure Report. The owner or operator shall submit a closure report to the Office of Conservation within 60 days after closing the storage well, cavern, facility, or part thereof. The report shall be submitted electronically and shall be certified as accurate by the owner or operator and by the person charged with overseeing the closure operation (if other than the owner or operator). The report shall contain the following information:

a. ...

b. the appropriate Office of Conservation plug and abandon report form (Form UIC—P&A or successor); and

c. ...

B. Post-Closure. Plans for post-closure care of the hydrocarbon storage well, cavern, and related facility shall be submitted as part of the permit application. The post-closure plan shall meet the requirements of these rules and regulations and be acceptable to the Office of Conservation. The obligation to implement the post-closure plan survives the termination of a permit or the cessation of storage operations or related activities. The requirement to maintain and implement an approved post-closure plan is directly enforceable regardless of whether the requirement is a condition of the permit. The Office of Conservation may modify a post-closure plan where necessary.

1. - 1.a....

i. a detailed cost estimate for adequate post-closure care of the well and cavern shall be prepared by a qualified, independent third party. The post-closure care plan and cost estimate shall include provisions acceptable to the Office of Conservation;

ii. ...

iii. documentation from the operator showing that the required financial instrument has been renewed must be received each year by the date specified in the permit. When an operator is delinquent in submitting documentation of financial instrument renewal, the Office of Conservation shall initiate procedures to take possession of the funds guaranteed by the financial instrument and suspend or revoke the operating permit. Any permit suspension shall remain in effect until renewal documentation is received and accepted by the Office of Conservation.

b. Repealed.

2. - 2.a. ...

b. complete any corrective action or site remediation resulting from the operation of a hydrocarbon storage well;

c. conduct any groundwater monitoring if required by the permit or approved corrective action plan;

2.d. - 3. ...

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 40:367 (February 2014), amended LR 42:424 (March 2016), LR 48:

**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. The proposed rule has a

positive impact on family functioning, stability, or autonomy as described in R.S. 49:972.

**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. 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, housing, health care, nutrition, transportation, and utilities assistance.

**Small Business Analysis**

Pursuant to R.S. 49:965.6, methods for reduction of the impact on small business, as defined in the Regulatory Flexibility Act, have been considered when creating this proposed Rule.

This proposed Rule is not anticipated to have an adverse impact on small businesses; therefore, a Small Business Economic Impact Statement has not been prepared.

**Provider Impact Statement**

The proposed Rule 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. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

**Public Comments**

Interested persons may submit written comments to Stephen Lee, Director of the Injection and Mining Division, Office of Conservation, Louisiana Department of Natural Resources, P.O. Box 94396, Baton Rouge, LA 70804-9396. Written comments will be accepted through the close of business, 5 p.m. on July 27, 2022.

**Public Hearing**

Interested persons may submit written comments to Stephen Lee, Director of the Injection and Mining Division, Office of Conservation, Louisiana Department of Natural Resources, P.O. Box 94396, Baton Rouge, LA 70804-9396. Written comments will be accepted through the close of business, 5 p.m. on July 27, 2022. A public hearing is not currently scheduled, but if requested will be held on the afternoon of Tuesday, July 26, 2022.

Richard P. Ieyoub  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

**RULE TITLE: Hydrocarbon Storage Wells in Salt Dome Cavities**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

This proposed rule change is not anticipated to result in changes in costs or savings to state or local governmental units. The proposed rule makes technical and consistency changes to the existing rule that governs the operation of salt storage caverns as a result of the passage of House Bill 572 (Act 326) of the 2021 Regular Session.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

This rule change is not anticipated to have any effect revenue collections for state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES OR NONGOVERNMENTAL GROUPS (Summary)**

This rule change includes consistency changes and minor updates to reflect changes in operational best practices for the operators of salt cavern storage wells. Some of these changes may result in additional costs to these operators. Any increase will be based on the particular status of their site and salt cavern(s), so quantification of any incremental increase in costs is indeterminable. In pre-discussions with salt cavern operators, companies did not indicate that there would be any substantial increase in expenditures in order to comply with the proposed changes to the rule. Operators may expend additional resources to comply with enhanced timelines for some technical tests. These resources will generally be paid to technical and engineering companies that provide services to Louisiana salt cavern operators.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule promulgation is not anticipated to have any impact on competition or employment.

Richard P Ieyoub  
Commissioner  
2206#040

Evan Brasseaux  
Interim Deputy Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
Office of State Police**

Hazardous Material Information Development,  
Preparedness, and Response Act  
(LAC 33:V.10105)

In accordance with the provisions of the Administrative Procedures Act, R.S. 49:953(A), the Department of Public Safety and Corrections, Office of State Police, proposes to amend LAC 33:V, Subpart 2, Hazardous Materials, Chapter 101, Hazardous Material Information Development, Preparedness, and Response Act, Section 10105, to redefine the terms “facility” and “owner or operator” to reflect changes made by Act 246 of the 2021 Regular Legislative Session to the enabling statute.

**Title 33**  
**ENVIRONMENTAL QUALITY**  
**Part V. Hazardous Wastes and Hazardous Materials**  
**Subpart 2. Department of Public Safety and**  
**Corrections—Hazardous Materials**  
**Chapter 101. Hazardous Material Information**  
**Development, Preparedness, and**  
**Response Act**

**§10105. Definitions**

A. The following terms, as used in this Chapter shall have the following meanings.

\* \* \*

*Facility*—the physical premises used by the owner or operator in which the hazardous materials are manufactured, used, or stored. A natural gas pipeline, including but not limited to transmission and distribution assets, shall be considered a facility and subject to reporting requirements for facilities under this Chapter. A natural gas pipeline shall not be considered a transport vehicle or otherwise subject to the reporting requirements under Chapter 12 of Title 32 of the Louisiana Revised Statutes of 1950 regarding hazardous materials transportation and motor carrier safety. A natural gas pipeline shall not be classified as a compressed natural gas facility.

\* \* \*

*Owner or Operator*—any person, partnership, or corporation in the state including, unless otherwise stated, the state and local government, or any of its agencies, authorities, department, bureaus, or instrumentalities engaged in business or research operations which use, handle, manufacture, release or store hazardous materials in a facility.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2361, et seq.

HISTORICAL NOTE: Adopted by the Department of Public Safety and Corrections, Office of State Police, LR 12:237 (May 1986), amended LR 13:184 (March 1987), LR 13:759 (December 1987), LR 14:801 (November 1988), LR 16:974 (November 1990), LR 27:858 (June 2001), LR 36:545 (March 2010).

**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. 40:973.

**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, unless they are subject to the Right-to-Know laws, violate the laws, and are assessed a civil penalty.

**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 on the proposed Rule via U.S. Mail addressed to Commander John Porter, Louisiana State Police Emergency Services Unit, c/o Mr. Gene Dunegan, P.O. Box 66168 (A-16), Baton Rouge, LA 70896. Written comments may also be hand-delivered to John Porter, 7919 Independence Blvd., Baton Rouge, LA 70806. All written comments are required to be signed by the person submitting the comments, dated, and received on or before August 10, 2022.

**Public Hearing**

A public hearing will be scheduled pursuant to R.S. 49:953(A)(1)(a) if statutorily required.

Colonel Lamar A. Davis  
Superintendent

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Hazardous Material Information  
Development, Preparedness, and Response Act**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule changes are not anticipated to result in additional costs or savings for the state or local governmental units. The proposed rule changes amend current definitions of “facility” and “owner or operator” in rule to reflect changes in the enabling legislation made by Act 246 of the 2021 Regular Session of the Louisiana Legislature.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule changes may result in an indeterminable impact on collections of civil penalties levied against “owners or operators” or “facilities” that experience a violation of the rules, which funds are deposited into the Right-to-Know Fund. The amounts are indeterminable because it is unknown how many instances of reportable releases will occur and noncompliance with reporting requirements will occur by owners or operators or facilities.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES OR NONGOVERNMENTAL GROUPS (Summary)

There are no direct costs or economic benefits estimated with regard to the proposed rule changes. The proposed rule changes will make definitions provided in the rule consistent with definitions in statute.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule changes are not anticipated to have an effect on competition and employment. The proposed rule changes amend definitions of terms as used in the existing rules.

Colonel Lamar A. Davis  
Superintendent  
2206#007

Evan Brasseaux  
Interim Deputy Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

### Board of Regents Office of Student Financial Assistance

Scholarship/Grant Programs—COVID-19 Exceptions  
(LAC 28:IV.2103)

The Louisiana 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 extends the end-date for the applicability of COVID-19 as an objective circumstance for which an exception may be granted from the fall semester/winter quarter of 2021 through the summer semester/quarter of 2022. (SG22203NI)

#### 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. - E.14.b.iv. ...

c. Length of Exception. Available for the fall semester/quarter of 2020 through the summer semester/quarter of 2022.

F. - H.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), LR 47:862 (July 2021), LR 47:867 (July 2021), LR 47:871 (July 2021), LR 48:

#### 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.

#### Business Analysis Statement

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 (SG22203NI) until 4:30 p.m., July 11, 2022, 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 COVID-19 Exceptions

### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change may result in an indeterminable increase in Taylor Opportunity Program for Students (TOPS) expenditures in future fiscal years by shifting costs to a later term or, in a few cases, allowing a student who would have been cancelled under normal conditions to retain their award. Since 2020, 201 students have been granted a COVID 19 exception, with the number of requests for exceptions dwindling over time. It is estimated that 20 to 30 students may apply and be eligible for the COVID-19 exception for the Spring or Summer 2022 terms authorized under this rulemaking. Students who apply and qualify for the exception for these terms will regain or maintain their TOPS award eligibility for the Fall 2022 term at an estimated cost of \$170,000 or less (30 students times the average award payment), with any subsequent TOPS payments dependent on terms of eligibility remaining and student performance in the subsequent terms. Restoring a student's TOPS award will reduce any program cost savings resulting from student attrition or non-enrollment and will increase TOPS expenditures in future fiscal years by shifting some costs to a later term.

### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change will have no impact on revenue collections of state or local governmental units.

### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rulemaking will benefit students impacted by the COVID-19 health emergency by providing them TOPS funding to enable them to pursue postsecondary education and thus gain educational benefits and access to higher paying jobs.

### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no anticipated effects on competition and employment resulting from this rule change.

Robyn Rhea Lively  
Senior Attorney  
2206#062

Evan Brasseaux  
Interim Deputy Fiscal Officer  
Legislative Fiscal Office



**NOTICE OF INTENT**

**Board of Regents  
Proprietary School Section**

Forms (LAC 28:III.2301)

In accordance with the Administrative Procedure Act, R.S. 49:950, et seq. and Proprietary School Law, R.S. 17:3140 et seq., notice is hereby given that the Board of Regents intends to amend the rules and regulations to LAC 28:III.2301. These changes include removing redundancy in the description of the forms related to oversight of licensed Louisiana proprietary schools and proprietary school student records. The changes also include the removal of form names, which are not relative to rulemaking. The streamlining of the proprietary school forms section will allow for expedited process improvement if a form needs to be renamed or updated or if a new form needs to be created. The changes will also allow for improved function of new online systems to better serve proprietary schools in the state.

**Title 28  
EDUCATION**

**Part III. Proprietary Schools**

**Chapter 23. Forms**

**§2301. Proprietary Schools Licensure Forms**

A. In order to obtain a new proprietary school license, an individual or organization will have to fill out forms published by the commission that include the following information:

- a. institutional contact information;
- b. programmatic information;
- c. surety information;
- d. recruitment and instructional staff information;
- e. tuition and financial documentation.

B. In order to renew a proprietary school license, an individual or organization will have to fill out forms published by the commission that include the following information:

- a. institutional contact information;
- b. programmatic information;
- c. surety information;
- d. recruitment and instructional staff information;
- e. tuition and financial documentation;
- f. student data.

C. In order for an individual or institution to amend a licensed school's data or programs, an individual or organization will have to fill out forms published by the commission that include the following information:

- a. institutional contact information;
- b. programmatic information;
- c. surety information;
- d. recruitment and instructional staff information;
- e. tuition and financial documentation.

D. In order for a former student to receive records or restitution, an individual will have to fill out forms published by the commission that include the following information:

- a. student contact and identifying information;
- b. school, program and enrollment information;
- c. tuition and payment information;
- d. direction of requested materials.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3140.2.

HISTORICAL NOTE: Promulgated by the Board of Regents, Proprietary School Section, LR 40:1688 (September 2014), amended LR 44:1005 (June 2018), amended LR 48:

**Family Impact Statement**

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

**Small Business Analysis**

The proposed Rule will have no adverse impact on small businesses as described in R.S. 49:965.2 et seq.

**Poverty Impact Statement**

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

**Provider Impact Statement**

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014.

**Public Comments**

Interested persons may submit written comments to Courtney Britton, Proprietary Schools Program Administrator, Louisiana Board of Regents, P.O. Box 3677, Baton Rouge, LA, 70821 by July 10, 2022.

Dr. Susannah Craig  
Deputy Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Forms**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule change will have no costs or savings to state or local governmental units. The proposed changes apply to proprietary schools and would allow for streamlining of proprietary school forms to allow for expedited board process improvements.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule change will have no effect on revenue collections for state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule change will have no estimated effect on costs or economic benefits to directly affected persons, small businesses, or non-governmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This rule update has no effect on competition and employment.

Susannah Craig  
Deputy Commissioner  
2206#064

Evan Brasseaux  
Interim Deputy Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Transportation and Development Professional Engineering and Land Surveying Board

Engineering and Land Surveying  
(LAC 46:LXI.903, 909, 1107, 2101,  
2103, 2305, 2503, 3105, 3109 and 3121)

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., notice is hereby given that the Louisiana Professional Engineering and Land Surveying Board has initiated procedures to amend its rules contained in LAC 46:LXI.903, 909, 1107, 2101, 2103, 2305, 2503, 3105, 3109 and 3121.

This is a revision of existing rules under which LAPELS operates. The revision (a) incorporates the new state statute dealing with the licensure of dependents of healthcare professionals, (b) clarifies the land surveying, mapping and real property course requirement for land surveyor interns, (c) codifies current LAPELS procedures with respect to the reactivation of expired, inactive and retired licenses, (d) clarifies the time period for licensees to notify a previous licensee or other related design professional of being engaged to complete, correct, revise or add to their work and (e) clarifies the annual continuing professional development requirements for dual licensees.

#### Title 46

#### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LXI. Professional Engineers and Land Surveyors Chapter 9. Requirements for Certification and Licensure of Individuals and Temporary Permit to Practice Engineering or Land Surveying

#### §903. Professional Engineer Licensure

A. - D.2. ...

E. The requirements for licensure as a professional engineer under the alternatives provided in R.S. 37:1751(C) are as follows:

1. the applicant for licensure as a professional engineer shall be a dependent of a healthcare professional who has satisfied the requirements for licensure under R.S. 37:693(B)(2)(b) and Paragraph 2 of Subsection A herein, who has submitted an application for licensure in accordance with the requirements of R.S. 37:694, and who was duly licensed as a professional engineer by the board; or

2. the applicant for licensure as a professional engineer shall be a dependent of a healthcare professional who has lawfully engaged in the practice of engineering for at least three years in a state, territory, or possession of the United States, or the District of Columbia, that does not use an occupational license or government certification to regulate the practice of engineering, who does not have a disqualifying criminal record as determined by the board in accordance with the laws of this state, who has not had an occupational license revoked by a licensing board in another state, territory, or possession of the United States, or the District of Columbia, because of negligence or intentional misconduct related to their work in the occupation, who has not surrendered an occupational license because of negligence or intentional misconduct related to their work in

the occupation in another state, territory, or possession of the United States, or the District of Columbia, who does not have a complaint, allegation, or investigation pending before a licensing board in another state, territory, or possession of the United States, or the District of Columbia, which relates to unprofessional conduct or an alleged crime, who has submitted an application for licensure in accordance with the requirements of R.S. 37:694, and who was duly licensed as a professional engineer by the board.

F. The provisions of Subsections B, C and D shall not apply to any applicant who received a dishonorable discharge or to a military spouse whose spouse received a dishonorable discharge.

G. In Subsections B, C and D, the term *military* shall mean the armed forces or reserves of the United States, including the Army, Navy, Marine Corps, Coast Guard, Air Force, and the reserve components thereof, the National Guard of any state, the military reserves of any state, or the naval militia of any state.

H. In Subsections B, C and D, the term *dependent* shall mean a resident spouse or resident unmarried child under 21 years of age, a child who is a student under 24 years of age and who is financially dependent upon the parent, or a child of any age who is disabled and dependent upon the parent.

I. In Subsection E, the term *dependent* shall mean any of the following who relocates to Louisiana with a healthcare professional:

1. the healthcare professional's spouse;
2. the healthcare professional's unmarried child under the age of 21 years;
3. the healthcare professional's child who is a student under the age of 24 years and who is financially dependent upon the healthcare professional; or
4. the healthcare professional's child of any age who is disabled and financially dependent upon the healthcare professional.

J. In Subsection E, the term *healthcare professional* shall mean a person who has relocated to and established his/her legal residence in Louisiana, who holds a valid license to provide healthcare services in Louisiana and who is providing healthcare or professional services in Louisiana as a physician, physician assistant, dentist, registered or licensed practical nurse or certified nurse assistant, advanced practice registered nurse, certified emergency medical technician, paramedic, certified registered nurse anesthetist, nurse practitioner, respiratory therapist, clinical nurse specialist, pharmacist, physical therapist, occupational therapist, licensed radiologic technologist, chiropractor, or licensed clinical laboratory scientist.

K. The authority for the executive director to issue a license can only be granted by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688, 37:1751, and 37:3651.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:352 (November 1976), amended LR 5:114 (May 1979), LR 5:365 (November 1979), LR 6:735 (December 1980), LR 7:644 (December 1981), LR 10:804 (October 1984), LR 11:362 (April 1985), LR 19:56 (January 1993), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1028 (July 2001), LR 30:1712 (August 2004), LR 32:1619 (September 2006), LR 37:2412 (August 2011), LR 38:2564 (October 2012), LR 39:1060 (April 2013), LR 39:2801

(October 2013), LR 43:538 (March 2017), LR 43:1419 (July 2017), LR 44:616 (March 2018), LR 47:491 (April 2021), LR 47:894 (July 2021), LR 48:

### **§909. Professional Land Surveyor Licensure**

A. - D.2. ...

E. The requirements for licensure as a professional land surveyor under the alternatives provided in R.S. 37:1751(C) are as follows:

1. the applicant for licensure as a professional land surveyor shall be a dependent of a healthcare professional who has satisfied the requirements for licensure under R.S. 37:693(B)(4)(b) and Paragraph 2 of Subsection A herein, who has submitted an application for licensure in accordance with the requirements of R.S. 37:694, and who was duly licensed as a professional engineer by the board; or

2. the applicant for licensure as a professional land surveyor shall be a dependent of a healthcare professional who has lawfully engaged in the practice of land surveying for at least three years in a state, territory, or possession of the United States, or the District of Columbia, that does not use an occupational license or government certification to regulate the practice of land surveying, who does not have a disqualifying criminal record as determined by the board in accordance with the laws of this state, who has not had an occupational license revoked by a licensing board in another state, territory, or possession of the United States, or the District of Columbia, because of negligence or intentional misconduct related to their work in the occupation, who has not surrendered an occupational license because of negligence or intentional misconduct related to their work in the occupation in another state, territory, or possession of the United States, or the District of Columbia, who does not have a complaint, allegation, or investigation pending before a licensing board in another state, territory, or possession of the United States, or the District of Columbia, which relates to unprofessional conduct or an alleged crime, who has passed the examination required by the board in the Louisiana laws of land surveying, who has submitted an application for licensure in accordance with the requirements of R.S. 37:694, and who was duly licensed as a professional land surveyor by the board.

F. The provisions of Subsections B, C and D shall not apply to any applicant who received a dishonorable discharge or to a military spouse whose spouse received a dishonorable discharge.

G. In Subsections B, C and D, the term *military* shall mean the armed forces or reserves of the United States, including the Army, Navy, Marine Corps, Coast Guard, Air Force, and the reserve components thereof, the National Guard of any state, the military reserves of any state, or the naval militia of any state.

H. In Subsections B, C and D, the term *dependent* shall mean a resident spouse or resident unmarried child under 21 years of age, a child who is a student under 24 years of age and who is financially dependent upon the parent, or a child of any age who is disabled and dependent upon the parent.

I. In Subsection E, the term *dependent* shall mean any of the following who relocates to Louisiana with a healthcare professional:

1. the healthcare professional's spouse;
2. the healthcare professional's unmarried child under the age of 21 years;

3. the healthcare professional's child who is a student under the age of 24 years and who is financially dependent upon the healthcare professional; or

4. The healthcare professional's child of any age who is disabled and financially dependent upon the healthcare professional.

J. In Subsection E, the term *healthcare professional* shall mean a person who has relocated to and established his/her legal residence in Louisiana, who holds a valid license to provide healthcare services in Louisiana and who is providing healthcare or professional services in Louisiana as a physician, physician assistant, dentist, registered or licensed practical nurse or certified nurse assistant, advanced practice registered nurse, certified emergency medical technician, paramedic, certified registered nurse anesthetist, nurse practitioner, respiratory therapist, clinical nurse specialist, pharmacist, physical therapist, occupational therapist, licensed radiologic technologist, chiropractor, or licensed clinical laboratory scientist.

K. The authority for the executive director to issue a license can only be granted by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688, 37:1751, and 37:3651.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:244 (August 1976), amended LR 2:352 (November 1976), LR 5:114 (May 1979), LR 6:735 (December 1980), LR 7:645 (December 1981), LR 11:362 (April 1985), LR 16:773 (September 1990), LR 19:56 (January 1993), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1029 (July 2001), LR 30:1713 (August 2004), LR 32:1619 (September 2006), LR 35:1909 (September 2009), LR 37:2413 (August 2011), LR 38:2564 (October 2012), LR 39:2802 (October 2013), LR 43:539 (March 2017), LR 44:617 (March 2018), LR 47:493 (April 2021), LR 48:

## **Chapter 11. Curricula**

### **§1107. Land Surveying, Mapping and Real Property Courses**

A. To qualify for certification as a land surveyor intern pursuant to §907.A.1, the "30 semester credit hours, or the equivalent, in land surveying, mapping, and real property courses approved by the board" shall include:

1. 15 semester credit hours, or the equivalent, with a grade of "C-" or better in land surveying courses, at least three of which shall be in boundary surveying;
2. three semester credit hours, or the equivalent, with a grade of "C-" or better in mapping courses;
3. three semester credit hours, or the equivalent, with a grade of "C-" or better in real property courses; and
4. nine semester credit hours, or the equivalent, with a grade of "C-" or better in either land surveying or mapping courses.

B. The mapping courses referenced in Subsection A shall not include more than six semester credit hours, or the equivalent, in drafting, graphics, or computer-aided design (CAD).

C. The real property courses referenced in Subsection A must cover subject matter germane to land surveying applications as they apply to real property, such as real property principles and real property law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 45:77 (January 2019), LR 48:

**Chapter 21. Certificates of Licensure and Certification of Individuals or Firms**

**§2101. Expiration and Renewals**

A. ...

B. After the 120-day period, the licensee or certificate holder may apply to the board to reactivate the expired license or certificate to active status. Applicants to reactivate an expired license must also successfully complete the board's Louisiana laws and rules quiz and Louisiana ethics and professionalism quiz prior to reactivation. Additionally, applicants to reactivate an expired professional land surveyor license must successfully complete the board's Louisiana standards of practice for boundary surveys quiz prior to reactivation. Designated supervising professionals for firms applying to reactivate an expired license must also successfully complete the board's Louisiana laws and rules quiz and Louisiana ethics and professionalism quiz prior to reactivation of the firm. Additionally, designated supervising professionals for land surveying firms applying to reactivate an expired professional land surveying license must also successfully complete the board's Louisiana standards of practice for boundary surveys quiz prior to reactivation of the firm.

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:

**§2103. Licensure and Certification Status**

A. The board has established the following licensure statuses for licensees.

\* \* \*

*Inactive Status*—the licensure status which exists for an individual licensee of the board who has chosen not to practice or offer to practice engineering and/or land surveying in Louisiana and who has either elected to be in this status on his/her biennial licensure renewal form or otherwise received authorization from the board to be in this status. A licensee in an inactive status can represent himself/herself to the public as a P.E. inactive or a P.L.S. inactive, as applicable, but cannot otherwise practice or offer to practice engineering and/or land surveying in Louisiana. A licensee in an inactive status may apply to the board to reactivate the inactive license to active status. Applicants to reactivate an inactive license must also successfully complete the board's Louisiana laws and rules quiz and Louisiana ethics and professionalism quiz prior to reactivation. Additionally, applicants to reactivate an inactive professional land surveyor license must successfully complete the board's Louisiana standards of practice for boundary surveys quiz prior to reactivation.

\* \* \*

*Retired Status*—the licensure status which exists for an individual licensee of the board who has chosen not to practice or offer to practice engineering and/or land

surveying in Louisiana and who has either elected to be in this status on his/her biennial licensure renewal form or otherwise received authorization from the board to be in this status. To qualify for the retired status, the licensee must be at least 70 years of age or have been a licensee of the board for at least 35 years. Unless the licensee is granted a waiver by the board, the renewal fee for the retired status shall be one-half of the current renewal fee for the active status. A licensee qualified for the retired status may be granted a waiver of this renewal fee if the licensee is at least 70 years of age, has been a licensee of the board for at least 35 years continuously, has never been subject to disciplinary action in any jurisdiction, has never committed any of the offenses described in R.S. 37:698(A)(3), (4) or (5), and is of good character and reputation. A licensee in a retired status can represent himself/herself to the public as a P.E. retired or a P.L.S. retired, as applicable, but cannot otherwise practice or offer to practice engineering and/or land surveying in Louisiana. A licensee in a retired status may apply to the board to reactivate the retired license to active status. Applicants to reactivate a retired license must also successfully complete the board's Louisiana laws and rules quiz and Louisiana ethics and professionalism quiz prior to reactivation. Additionally, applicants to reactivate a retired professional land surveyor license must successfully complete the board's Louisiana standards of practice for boundary surveys quiz prior to reactivation.

\* \* \*

B. The board has established the following certification statuses for certificate holders.

\* \* \*

*Expired Status*—the certification status which exists for a certificate holder of the board who has either failed to properly renew certification as required in R.S. 37:697 or otherwise received authorization from the board to be in this status. A certificate holder in an expired status may apply to the board to reactivate the expired certification to active status.

\* \* \*

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 24:2151 (November 1998), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1035 (July 2001), LR 30:1719 (August 2004), LR 36:1034 (May 2010), LR 44:622 (March 2018), LR 47:896 (July 2021), LR 48:

**Chapter 23. Firms**

**§2305. Supervising Professional**

A.1. - C. ...

D. If there is a change in a firm's supervising professionals, the new supervising professional(s) must successfully complete the board's Louisiana laws and rules quiz and Louisiana ethics and professionalism quiz. Additionally, if there is a change in a land surveying firm's supervising professionals, the new supervising professional(s) must also successfully complete the board's Louisiana standards of practice for boundary surveys quiz.

E. A failure to comply with any of the provisions of this Chapter may subject both the licensed firm and the supervising professional to disciplinary action by the board.

F. Compliance with this Section will not be met by a contractual relationship between the firm and a licensed professional or a firm of licensed professionals in which such licensed professional or firm of licensed professionals is available on a consultative basis. Nor will it be considered compliance if a licensed professional is related to the firm solely in a nominal or inactive capacity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:689.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 5:115 (May 1979), amended LR 8:191 (April 1982), LR 10:343 (April 1984), LR 11:362 (April 1985), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1036 (July 2001), LR 30:1719 (August 2004), LR 33:2789 (December 2007), LR 35:2856 (December 2009), LR 38:1418 (June, 2012), LR 44:623 (March 2018), LR 46:1398 (October 2020), repromulgated LR 46:1695 (December 2020), LR 47:897 (July 2021), LR 48:

## **Chapter 25. Professional Conduct**

### **§2503. Licensees**

A. – C.3. ...

D. Licensees shall submit to a client only that work prepared by the licensee or under their responsible charge; however, licensees, as third parties, may complete, correct, revise, or add to the work of another licensee or other related design professional, if allowed by Louisiana law, when engaged to do so by a client, provided:

1. ...

2. the previous licensees or other related design professionals are notified in writing by the licensee of the engagement referred to herein within five business days of acceptance of the engagement; and

D.3. – H. ...

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 11:950 (October 1985), LR 16:776 (September 1990), LR 17:273 (March 1991), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1037 (July 2001), LR 30:1721 (August 2004), LR 44:624 (March 2018), LR 48:

## **Chapter 31. Continuing Professional Development (CPD)**

### **§3105. Requirements**

A. – B.2. ...

C. Each dual licensee is required to earn 15 PDHs per calendar year; however, at least one-third of the required PDHs for each calendar year shall be earned separately for each profession.

C.1. – E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:697.1.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 24:2152 (November 1998), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1047 (July 2001), LR 30:1730 (August 2004), LR 37:2420 (August 2011), LR 42:1104 (July 2016), LR 44:629 (March 2018), LR 47:495 (April 2021), LR 48:

### **§3109. Exemptions**

A. A licensee may be exempt from the CPD requirements in this Chapter for any one or more of the following reasons.

1 - 4. ...

5. Licensees who certify their licensure status as inactive on their biennial licensure renewal form shall be exempt from the CPD requirements until their next licensure renewal. In the event such licensee subsequently elects to reactivate his/her inactive license to active status, he/she must meet the requirements set forth in §3121.

6. Licensees who certify their licensure status as retired on their biennial licensure renewal form shall be exempt from the CPD requirements until their next licensure renewal. In the event such licensee subsequently elects to reactivate his/her retired license to active status, he/she must meet the requirements set forth in §3121.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:697.1.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 24:2153 (November 1998), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1048 (July 2001), LR 30:1731 (August 2004), LR 42:1105 (July 2016), LR 44:630 (March 2018), LR 47:495 (April 2021), LR 47:897 (July 2021), LR 48:

### **§3121. CPD Reactivation**

A. To become reactivated to an active status, a licensee in an expired, inactive, or retired status must have earned all PDHs which he/she would have been required to earn if he/she had been in an active status during the previous two calendar years as provided in §3105.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:697.1.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 24:2154 (November 1998), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1049 (July 2001), LR 30:1732 (August 2004), LR 42:1107 (July 2016), LR 44:633 (March 2018), LR 47:497 (April 2021), LR 48:

### **Family Impact Statement**

In accordance with R.S. 49:953(A)(1)(a)(viii) and 972, the following Family Impact Statement is submitted with the Notice of Intent for publication in the *Louisiana Register*: The proposed Rule has no known impact on family formation, stability or autonomy.

### **Poverty Impact Statement**

In accordance with R.S. 49:953(A)(1)(a)(ix) and 973, the following Poverty Impact Statement is submitted with the Notice of Intent for publication in the *Louisiana Register*: The proposed Rule has no known impact on child, individual or family poverty in relation to individual or community asset development.

### **Small Business Analysis**

In accordance with R.S. 49:953(A)(1)(a)(x) and 978.5, the following Small Business Regulatory Flexibility Analysis is submitted with the Notice of Intent for publication in the *Louisiana Register*: The impact of the proposed Rule on small businesses has been considered. LAPELS has,

consistent with health, safety, environmental and economic welfare, considered utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small businesses. The proposed Rule is not anticipated to have an adverse impact on small businesses.

#### **Provider Impact Statement**

In accordance with HCR No. 170 of the 2014 Regular Session, the following Provider Impact Statement is submitted with the Notice of Intent for publication in the *Louisiana Register*: The proposed Rule has no known effect on the staffing level requirements or qualifications required to provide the same level of service, the cost to the provider to provide the same level of service or the ability of the provider to provide the same level of service.

#### **Public Comments**

Interested parties are invited to submit written comments on the proposed Rule through July 11, 2022 at 4:30 p.m., to Donna D. Sentell, Executive Director, Louisiana Professional Engineering and Land Surveying Board, 9643 Brookline Avenue, Suite 121, Baton Rouge, LA 70809-1433.

Donna D. Sentell  
Executive Director

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Engineering and Land Surveying**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There are no estimated implementation costs or savings to state or local governmental units resulting from this proposed rule change. The proposed rule change revises existing rules under which LAPELS operates to: (a) incorporate the new state statute (La. R.S. 37:1751), which relates to alternatives for licensure of dependents of healthcare professionals, (b) clarify the land surveying, mapping and real property course requirement for land surveyor interns, (c) codify current LAPELS procedures with respect to the reactivation of expired, inactive and retired licenses, (d) clarify the time period for licensees to notify a previous licensee or other related design professional of being engaged to complete, correct, revise or add to their work, and (e) clarify the annual continuing professional development requirements for dual licensees.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no estimated effect on revenue collections of state or local governmental units as a result of this proposed rule change.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule change will have no estimated impact on costs and/or economic benefits to directly affected small businesses or non-governmental groups. The proposed rule change codifies an alternative path to licensure for certain individuals as authorized in La. R.S. 37:1751.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There will be no estimated effect on competition and employment in the public and private sectors as a result of the proposed rule change.

Donna D. Sentell  
Executive Director  
2206#013

Evan Brasseaux  
Interim Deputy Fiscal Officer  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Department of Treasury Municipal Employees' Retirement System**

Administration of the Retirement System  
(LAC 58:XXV.Chapters 1-15)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Treasury, Municipal Employees' Retirement System has initiated rulemaking procedures to adopt rules codifying its current policies and procedures for administration of the retirement system. Authority for rulemaking is generally established in R.S. 11:1823. Specific rulemaking authority is set out in R.S. 11:291, 11:1733, 11:1755, and 11:1821.

#### **Title 58 RETIREMENT**

#### **Part XXV. Municipal Employees' Retirement System Chapter 1. General Provisions**

#### **§101. Definitions**

A. Use of the masculine includes the feminine and vice versa. Use of the singular includes the plural and vice versa.

B. The following definitions apply unless the usage clearly indicates another meaning.

*Active Member*—a member of the Municipal Employees' Retirement System (MERS) who is employed by a participating employer and actively contributing to MERS or who is participating in the Deferred Retirement Option Plan (DROP).

*Active Member Trustee*—a trustee holding a seat elected by active members of MERS or appointed to such a seat in accordance with R.S. 11:1821G(4).

*Board of Trustees or Board*—the board of trustees of the Municipal Employees' Retirement System.

*Director*—the executive director of the Municipal Employees' Retirement System.

*DROP*—Deferred Retirement Option Plan.

*Inactive Member*—a member who is not actively contributing to MERS but is not retired and has left their contributions in the system.

*MERS*—the Municipal Employees' Retirement System of Louisiana.

*Retired Member Trustee*—a trustee holding a seat elected by retired members of MERS or appointed to such a seat in accordance with R.S. 11:1821G(4).

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1823.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Municipal Employees' Retirement System, LR 48:

#### **§105. Payment of Benefits**

A. All new retirees and beneficiaries are required to have their monthly benefits electronically deposited into an account at a financial institution.

B. To facilitate electronic payment of benefits, a retiree/beneficiary must provide a copy of their Social Security card, name, complete address, routing number of a financial institution, account number, and indication of whether the account is a checking account or a savings account.

C. A voided check, for a checking account, or deposit slip, for a savings account must be provided by the payee.

D. Direct deposit payments are issued on the first business day of the month for which they are due. Paper checks, for retirees/beneficiaries not subject to the direct deposit rule, are mailed on the last business day of the month prior to the month in which they are due and dated the first of the month for which they are due.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1823.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Municipal Employees' Retirement System, LR 48:

#### **§108. Rollover of Refunds**

A. Qualified rollovers of accumulated employee contributions require a certification from the receiving financial institution that the institution is qualified to receive the rollover.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1823.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Municipal Employees' Retirement System, LR 48:

#### **§110. Plan Year**

A. The plan year for MERS shall be July 1-June 30.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1823.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Municipal Employees' Retirement System, LR 48:

### **Chapter 2. Elections**

#### **§201. Active Eligible Candidates**

A. An active member candidate for a position on the board of trustees must be an active member of the system with at least six years of creditable service.

B. A participant in the deferred retirement option plan (DROP) is eligible to run as an active member candidate.

C. A disability retiree who has returned to work under either R.S. 11:224 or R.S. 11:225 is eligible to run as an active member candidate.

D. An active member candidate for an elected official position must be holding an office elected through the state election code.

E. An active member candidate for a non-elected position may not be an elected official.

F. To satisfy the requirement that no more than two elected trustees from the same employer may serve on the board at the same time, the trustees first elected have preference for the seat. If trustees are elected at the same election, the person elected with the most votes has preference for the seat.

G. Any person convicted of a felony offense shall be prohibited from being a candidate for a period of five years after the latter of their conviction or the end of their imprisonment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1823.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Municipal Employees' Retirement System, LR 48:

#### **§203. Retiree Eligible Candidates**

A. A retiree member candidate for a position on the board of trustees must be a retired member of MERS as of the date that the nomination period for the seat closes.

B. Any person convicted of a felony offense shall be prohibited from being a candidate for a period of five years after the latter of their conviction or the end of their imprisonment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1823.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Municipal Employees' Retirement System, LR 48:

#### **§205. General Schedule of Elections**

A. Elections shall be held in years in which the term of an elected member of the board expires.

B. In the year 2022, an election shall be held for an active member trustee who is an elected official.

C. In the year 2023, an election shall be held for an active member trustee who is an elected official.

D. In the year 2024, an election shall be held for an active member trustee who is not an elected official.

E. In the year 2025, an election shall be held for an active member trustee who is not an elected official.

F. In the year 2026, an election shall be held for an active member trustee who is an elected official.

G. In the year 2027, an election shall be held for a retired member trustee.

H. Elections shall be held during the sixth year after the years listed above for the described trustee seats.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1823.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Municipal Employees' Retirement System, LR 48:

#### **§207. Specific Schedule of Elections**

A. The schedule for elections shall be as follows.

1. nominations open on the first day of May;
2. nominations close by 4 p.m. of the fourth Wednesday of May;
3. ballots will be mailed by the first Friday in July;
4. ballots are due no later than 4 p.m. of the fourth Friday in July. MERS may allow ballots to be cast by mail, telephone, and/or through an online system;
5. ballots will be tabulated by the fourth working day following the deadline for receipt of the ballots;
6. if no candidate receives a majority of the votes cast, a run-off election is required;
7. if a run-off is necessary, the candidates' names will appear alphabetically on the ballot;
8. run-off ballots will be mailed no later than the first Friday in August;
9. run-off ballots are due no later than the fourth Friday in August;
10. ballots will be counted by the fourth working day following the deadline for receipt of ballots.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1823.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Municipal Employees' Retirement System, LR 48:

### **§210. Nomination Process**

A. Candidates for the retiree seat must be nominated by at least 10 active and/or retired members of MERS.

B. Candidates for the elected and non-elected active seats must be nominated by at least 25 actively contributing members of MERS.

C. The nominating petition must contain the signature, printed name, and last four digits of the Social Security number of each person nominating the candidate.

D. Candidates must submit a candidate information form containing their education, positions held, and reasons they are seeking the position.

E. Staff of MERS must verify that candidates and enough members signing the nominating petition meet the criteria set forth in statute and these rules.

F. In the event that an election must be held for a partial term, in addition to a seat for a full term, the candidate must specify whether they are seeking the partial or full term.

G. If a candidate does not have opposition, that candidate may take office at the expiration of the term of the incumbent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1823.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Municipal Employees' Retirement System, LR 48:

### **§215. Election Process**

A. Approximately three months before the expiration of a trustee's term, the director will issue a notice of the upcoming vacancy on the MERS' website and send a notice to participating employers.

B. A nominating petition packet will be made available on the MERS' website and will be distributed via electronic mail or through the United States Post Office upon request.

C. The names of candidates will appear in alphabetical order on the ballot. If an incumbent trustee is a candidate that will be noted on the ballot.

D. The director will cause ballots to be mailed to all eligible voters. The statements provided by each candidate with their nominating petition shall be included in the ballot mailout.

E. The number of votes which may be cast depends on the number of vacancies for which a trustee must be elected.

F. Only votes cast by the deadline will be counted.

G. Votes will be tabulated by a third party, such as a certified public accountant or an election vendor, selected by the director. Candidates may attend and observe the ballot tabulating, at their own expense.

H. A majority of votes is required for a candidate to win a contested election. If a single candidate does not attain a majority of votes, a runoff will be conducted in the same fashion as the original election with the top two vote recipients competing.

I. Ties affecting elected positions shall be decided by a drawing conducted by the director in the presence of at least two witnesses. The candidates, or a representative of the candidates, may attend.

J. Election results shall be certified by the board of trustees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1823.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Municipal Employees' Retirement System, LR 48:

### **§220. Emergency Situations**

A. In the event an act of God or other circumstances beyond the control of the board prevents compliance with timelines set forth in these rules, the director and the board shall fulfill the responsibilities set out in these rules as soon as practicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1823.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Municipal Employees' Retirement System, LR 48:

## **Chapter 3. Employer Agreements**

### **§301. Employer Agreements**

A. A sample agreement for coverage shall be posted on the MERS website.

B. Employers are not required to use the sample agreement so long as any agreement for coverage submitted to the board of trustees for approval contains each of the elements specified in R.S. 11:1733.

C. An employer must submit a resolution of its governing authority agreeing to the application for coverage before it will be considered by the board of trustees.

D. The board of trustees may require that the actuarial study required with an agreement for coverage be conducted by the actuary retained by the system, at the expense of the applying employer.

E. The board of trustees must approve an agreement for coverage by a majority vote at a public meeting before coverage is extended.

F. Amendments to an employer agreement require the same process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1733.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Municipal Employees' Retirement System, LR 48:

## **Chapter 4. Community Property**

### **§401. Spousal Rights**

A. Because Louisiana is a community property state, a spouse has an interest in the retirement benefits of a MERS member.

B. A divorced member of MERS should provide a certified copy of a judgment of divorce and/or community property settlement document indicating that their ex-spouse relinquishes their interest in the member's benefit paid by MERS. Alternatively, the member should provide a certified copy of a Domestic Relations Order (DRO) signed by a judge and indicating how their retirement benefit must be shared with their former spouse.

C. A married member of MERS must obtain consent of their spouse to leave a retirement benefit of less than fifty percent for that spouse.

D. Absent a court order directing MERS to split a member's benefit with an ex-spouse, MERS will make payments to the member only.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:291 and 1823.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Municipal Employees' Retirement System, LR 48:



## **Chapter 5. Refunds**

### **§501. Method of Payment**

A. Refunds of accumulated contributions shall be issued as an electronic payment to the member or as a rollover to a qualified financial institution.

B. Refunds may be paid to a checking account, savings account, or debit card, provided the account is in the name of the member receiving the refund.

C. Refunds are issued after all contributions have been received from the employer. In exceptional circumstances, as set out in a written policy, the director may authorize a partial refund.

D. MERS shall withhold federal taxes on refunds as required by the Internal Revenue Service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1823.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Municipal Employees' Retirement System, LR 48:

### **§503. Documentation Required**

A. A refund to a member's checking account requires a pre-printed voided check or other documentation from the financial institution of the validity of the account.

B. A refund to a member's savings account requires a pre-printed deposit slip or other documentation from the financial institution of the validity of the account.

C. A refund to a debit card requires a signed direct deposit form from the financial institution.

D. A rollover of a refund requires a qualified financial institution to complete a form to acknowledge the status of the account and the ability to accept the funds.

E. A member must provide a copy of their Social Security card and a government issued photo identification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1823.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Municipal Employees' Retirement System, LR 48:

### **§505. Vested Employees**

A. A member who has earned enough service credit to qualify for monthly retirement benefits at their regular retirement age must sign a notarized statement forfeiting their monthly benefits to receive a refund.

B. If the member is married, their spouse must also sign the notarized statement.

C. The notarized statement to be signed by a vested member and legal spouse must state the estimated monthly benefit to which the member is entitled to receive for their lifetime upon reaching retirement age.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1823.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Municipal Employees' Retirement System, LR 48:

## **Chapter 6. Reemployed Retirees**

### **§601. Eligibility**

A. Members who retired with an early retirement or as a disability retiree are not eligible for reemployment with a participating MERS employer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1823.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Municipal Employees' Retirement System, LR 48:

### **§603. Waiting Period**

A. A retiree of MERS wishing to return to work with a participating employer in MERS, whether part-time or full-time, shall wait one month from the effective date of their retirement to begin reemployment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1823.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Municipal Employees' Retirement System, LR 48:

### **§605. Earnings Limit for Part-Time Reemployed**

#### **Retirees**

A. A member returning to work as a part-time employee may request a written earnings limit statement from MERS.

B. Monthly earnings of part-time reemployed retirees must be reported to MERS by the participating MERS employer by which they are employed.

C. It is the responsibility of the reemployed retiree to stay within the statutory earnings limit.

D. The member's monthly retirement benefit may be offset to recoup overearnings as a reemployed retiree.

E. If overearnings by a rehired retiree cannot be recouped through benefit payments, a payment plan subject to board approval shall be established with a promissory note required from the retiree.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1823.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Municipal Employees' Retirement System, LR 48:

## **Chapter 7. Conversion of Leave**

### **§701. Eligibility**

A. A participating employer may irrevocably elect to have its employees convert unused and unpaid annual and sick leave to retirement credit. The employer should submit a resolution to MERS indicating its acceptance of this option.

B. Only leave that is unused and unpaid by the employer at the time of the member's retirement may be converted to retirement credit.

C. Converted leave is not allowed for calculation of DROP account payments.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1755.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Municipal Employees' Retirement System, LR 48:

### **§705. Reporting**

A. Within 30 days of a member's retirement, the participating employer which has elected to convert unused leave to retirement credit shall submit a conversion of leave form certifying the member's unused and unpaid leave.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1755.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Municipal Employees' Retirement System, LR 48:

### **§710. Payment**

A. Upon receipt of the conversion of leave form from an employer, MERS will send an invoice to the employer for the actuarial cost of the leave conversion.

B. The participating employer shall pay to MERS the actuarial cost of the member's unused leave within 30 days of the date of the member's retirement.

C. The employer must make full payment of the actuarial value of the member's unused leave before it is converted to retirement credit.

D. The member's benefit will be recalculated by MERS, to include the value of their converted leave, upon receipt of payment from the employer. Future benefit payments to the member will then include the value of the leave and a one-time retroactive payment to the date of their retirement for leave not previously compensated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1755.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Municipal Employees' Retirement System, LR 48:

## **Chapter 8. Disability Retirement**

### **§801. Application Process**

A. Disability applications should be submitted before the member exhausts all leave or terminates employment.

B. Disability applications will be processed upon receipt of the following:

1. disability application by the member;
2. disability report by supervisor;
3. notification of income from other sources from the member;
4. member statement of disabling condition;
5. copies of all medical records pertaining to the disability;
6. authorization to request income information from the member;
7. salary evaluation form;
8. authorization for direct deposit;
9. copy of member's birth certificate and Social Security card;
10. copy of beneficiary's birth certificate and Social Security card, if applicable;
11. spousal consent form if legally married and maximum option is chosen;
12. copy of certificate of elected service if the member is an elected official in Tier 1;
13. copy of death certificate of spouse if member's spouse is deceased; and
14. certified copy of divorce decree if member is divorced.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1823.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Municipal Employees' Retirement System, LR 48:

## **Chapter 9. Insurance Premium Deductions**

### **§901. Collection of Insurance Premiums**

A. Health and life insurance premiums may be deducted by MERS from benefit payments issued to retirees and beneficiaries.

B. The premiums collected by MERS will then be transmitted to the participating employer which is responsible for paying the premium to the insurer.

C. Written authorization from participating employers to withhold premiums from their retirees' benefits and transmit those premiums to the employer must be made to MERS.

D. The member or beneficiary must provide written authorization to MERS to initiate the premium deduction and to make any changes to the deduction, other than routine rate changes.

E. Deductions will cease on the first of the month following the payee's death or upon the first of the month following notice of death.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1823.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Municipal Employees' Retirement System, LR 48:

## **Chapter 10. Deferred Retirement Option Plan (DROP)**

### **§1001. Application Process**

A. An application for DROP may be made when a member is eligible for retirement.

B. The DROP application shall include:

1. a form submitted by the member's employer providing data on the member's salary for the highest 60 consecutive or joined months of earnings;
2. a written acknowledgement by the member of the number of months in which they will participate in DROP;
3. a copy of the member's birth certificate and Social Security card;
4. a copy of the beneficiary's birth certificate and Social Security card;
5. a designation of a beneficiary to receive the DROP fund balance if the member dies while participating in DROP;
6. a spousal consent form as to the retirement benefit if the member is legally married and not selecting a benefit which provides at least 50 percent to the spouse;
7. a spousal consent form as to the DROP funds if the member is legally married and not leaving at least 50 percent of their DROP fund balance to their spouse;
8. a copy of the spouse's death certificate if the member is widowed;
9. a certified copy of the divorce judgment if the member is divorced; and
10. for elected officials, a certificate of elected service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1823.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Municipal Employees' Retirement System, LR 48:

### **§1003. Ineligible for DROP**

A. A member who has retired is not eligible to enter DROP if they become reemployed.

B. A member who is approved for disability retirement is not eligible for DROP.

C. A member who retires with an actuarially reduced retirement is not eligible for DROP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1823.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Municipal Employees' Retirement System, LR 48:

### **§1005. Third Party Provider**

A. MERS shall engage a third-party provider, selected by the board of trustees, to administer the DROP accounts of members.

B. Upon a member's completion of the DROP participation period, MERS shall transfer their DROP funds to the provider on the first business day of the month following the member's completion of the DROP participation period.

C. In situations where a member terminates employment and DROP prior to the selected participation period, DROP

funds shall be transferred to the third-party provider on the first business day of the month following notification to MERS of the member's termination.

D. The third-party provider shall provide multiple investment options to participants, including fixed and variable investment options. Participation may result in the loss or gain of principal or earnings based on market performance.

E. The third-party provider shall not process withdrawal requests made by the member until MERS notifies the provider that the member has terminated employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1823.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Municipal Employees' Retirement System, LR 48:

## **Chapter 11. Fees**

### **§1101. Adoption of Fees**

A. The board of trustees may adopt fees for various services provided to members through the retirement system.

B. The board of trustees should recoup the amount of fees charged by the system's actuary for member calculations. At the discretion of the director, members may not be required to pay the full amount of fees of the actuary.

C. Fees may only be imposed upon adoption by the board of trustees at a public meeting with opportunity for public comment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1823.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Municipal Employees' Retirement System, LR 48:

## **Chapter 12. Military Service Purchases**

### **§1201. Service Credit**

A. This section is adopted in accordance with R.S. 11:152, R.S. 11:152.1, R.S. 11:153, R.S. 29:411, et seq., and the Uniformed Services Employment and Reemployment Rights Act (USERRA, 38 U.S. C. 4301 et seq.).

B. Purchase of service credit for military service shall be in accordance with R.S. 11:153.

C. The board shall comply with the requirements of the Uniformed Services Employment and Reemployment Rights Act (USERRA, 38 U.S. C. 4301 et seq.) as well as rules and regulations issued by the United States Department of Labor relating to USERRA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:152, R.S. 11:152.1, R.S. 11:153, R.S. 29:411, et seq.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Municipal Employees' Retirement System, LR 48:

## **Chapter 13. Renunciation of Benefits**

### **§1301. Terms and Conditions to Renounce a Benefit**

A. Any person eligible to receive, or receiving a benefit from MERS may renounce such benefit under the following terms and conditions:

1. the renunciation shall be unconditional and irrevocable. Once a benefit is renounced, MERS shall have no further obligation or liability with respect to that benefit, and the person renouncing the benefit shall, under no circumstances, be eligible to receive that benefit;

2. a base benefit may be renounced in whole or in part. An adjustment to a base benefit (cost-of-living adjustment, adjustment for inflation, or one-time supplemental payment) may only be renounced in its entirety. If an adjustment is renounced, the base benefit need not be renounced.

3. if more than one person is entitled to receive a particular survivor benefit, each person entitled to a portion of the benefit may renounce his entitlement. The person or persons who continue to have an entitlement in that benefit shall receive the benefit to which they are entitled without consideration of the person who becomes ineligible through renunciation. Any adjustment shall be prospective only.

4. if the party making the renunciation is married, the spouse must join in the renunciation.

5. if the person making the renunciation is subject to an executed and effective community property settlement, only that portion of the benefit due the person making the renunciation may be renounced.

6. if the person making the renunciation is legally separated or divorced, but is not subject to an executed and effective community property settlement, the renunciation must be approved by the court having jurisdiction over the separation or divorce.

7. if the person making the renunciation is retired and has named a joint and survivor beneficiary, the renunciation cannot affect the joint and survivors' beneficiary or benefit, including adjustments to the joint and survivor benefit.

8. if a benefit is renounced by a member prior to receipt by the member of a sum equal to his or her accumulated contributions, the balance of the accumulated contributions will be paid to the member.

9. a renunciation must be executed before a notary public and two witnesses, neither of whom may be a spouse nor presently named beneficiary. The renunciation is effective and irrevocable when received by MERS.

10. a person revoking or participating in renunciation of a benefit must hold MERS harmless from such action.

11. a renunciation may not be used to terminate active participation in MERS.

12. amounts credited to a DROP account cannot be renounced.

13. a benefit or portion of a benefit that has been renounced may be used to recoup benefits or refunds of accumulated contributions paid by administrative error or mistake.

B. MERS makes no representation with respect to the effect of a renunciation on a person's eligibility for receipt of any state or federal benefits, or for participation in any private, local, state, or federal program. Eligibility for or participation in such programs, or eligibility for or receipt of such benefits, is an issue for which the person making the renunciation is solely responsible. Ineligibility for or termination of participation in such programs or benefits shall not affect the irrevocable character of the renunciation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1823.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Municipal Employees' Retirement System, LR 48:

## **Chapter 14. Collection of Employer Contributions**

### **§1401. Due Dates**

A. Contribution payroll files and payment of employee and employer contributions are required by the tenth of each month, covering the preceding month.

B. Employers may pay contributions through electronic means or with a check.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1823.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Municipal Employees' Retirement System, LR 48:

**§1403. Late Contributions**

A. Interest may be charged for payments submitted after the tenth of the month.

B. Interest is calculated based on the system's actuarial valuation rate.

C. Payments more than 60 days late shall be reported to the board of trustees.

D. The board of trustees may certify delinquent amounts and request that the state treasurer deduct the certified amount from monies payable to the delinquent employer by any department or agency of the state.

E. The board of trustees may authorize the director to retain counsel to file suit for collection of certified delinquent amounts in a court of competent jurisdiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1823.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Municipal Employees' Retirement System, LR 48:

**Chapter 15. Money Manager Obligations**

**§1501. Reporting by Money Managers**

A. Money managers shall report to MERS investments made with system funds in any company having facilities, employees, or both located in a prohibited nation as defined by the legislature.

B. Such reports shall be submitted by January 30 and July 30 of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:312.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Municipal Employees' Retirement System, LR 48:

**Family Impact Statement**

The proposed rules have no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

**Poverty Impact Statement**

The proposed rules have no known impact on poverty, as described in R.S. 49:973.

**Small Business Analysis**

The proposed rules have no known or adverse impact on small business, as described in R.S. 49:978.5.

**Provider Impact Statement**

The proposed rules have no known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session.

**Public Comments**

Interested persons may direct their comments, by July 10, 2022, to Maris E. LeBlanc, Municipal Employees' Retirement System, 7937 Office Park Blvd., Baton Rouge, LA 70809, telephone (225) 925-4810 or (800) 820-1137.

**Public Hearing**

A public hearing will be conducted on the proposed rules if requested in the form required by R.S. 49:953A.

Maris E. LeBlanc  
Executive Director and General Counsel

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Administration  
of the Retirement System**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule will have no associated costs or savings to the Municipal Employees' Retirement System (MERS) other than the cost of rule promulgation.

The proposed rule will have no associated costs or savings to local governments as the rule simply codify existing law, policies, and procedures.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule is not anticipated to have any effect on revenue collections for state or local governmental entities as the proposed rule simply codify existing law, policies, and procedures.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule will have no costs and/or economic benefits to directly affected persons, small businesses, or non-governmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule will not impact competition or employment.

Maris E. LeBlanc  
Executive Director  
2206#023

Evan Brasseaux  
Interim Deputy Fiscal Officer  
Legislative Fiscal Officer

**NOTICE OF INTENT**

**Tuition Trust Authority  
Office of Student Financial Assistance**

**START Saving Program  
(LAC 28:VI.315)**

The Louisiana Tuition Trust Authority announces its intention to amend its START Saving Program rules (R.S. 17:3091 et seq.).

This rulemaking adds the applicable interest rates for the START Saving Program for the 2021 calendar year. (ST22204NI)

**Title 28**

**EDUCATION**

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

**Chapter 3. Education Savings Account**

**§315. Miscellaneous Provisions**

A. - B.44. ...

45. For the year ending December 31, 2021, the Louisiana Education Tuition and Savings Fund earned an interest rate of 0.97 percent.

46. For the year ending December 31, 2021, the Savings Enhancement Fund earned an interest rate of 1.84 percent.

C. - S.2. ...

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:718 (June 1997), amended LR 24:1274 (July 1998), LR 26:1263 (June 2000), repromulgated LR 26:2267 (October 2000), amended LR 27:1221 (August 2001), LR 27:1884 (November 2001), LR 28:1761 (August 2002), LR 28:2335 (November 2002), LR 29:2038 (October 2003), repromulgated LR 29:2374 (November 2003), amended LR 30:791 (April 2004), LR 30:1472 (July 2004), LR 31:2216 (September 2005), LR 32:1434 (August 2006), LR 32:2240 (December 2006), LR 33:2359 (November 2007), LR 34:1886 (September 2008), LR 35:1492 (August 2009), LR 36:492 (March 2010), LR 36:2030 (September 2010), LR 38:1954 (August 2012), LR 39:2238 (August 2013), LR 40:1926 (October 2014), LR 41:1487 (August 2015), LR 42:1082 (July 2016), LR 42:1658 (October 2016), LR 43:1731 (September 2017), LR 44:1888 (October 2018), LR 45:1177 (September 2019), LR 46:1223 (September 2020), LR 47:1495 (October 2021), LR 48:

#### **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 (SG22204NI) until 4:30 p.m., July 11, 2022, 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: START Saving Program**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule changes will not result in any costs or savings to state or local governmental units. The proposed rule changes codify the actual earnings realized on Student Tuition Assistance and Revenue Trust (START) Saving Program accounts that are invested in the Louisiana Principal Protection investment option and the actual earnings realized on the investment of Earnings Enhancements for the 2021 calendar year as required by LSA-R.S. 17:3093.D(1)(f).

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no impact on state or local governmental revenues.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule changes adopt actual interest rates for deposits and earnings enhancements for the year ending December 31, 2021. As determined by the State Treasurer, the interest rate earned for the 2021 calendar year by the Louisiana Education Tuition and Savings Fund was 0.97%, and by the Savings Enhancements Fund was 1.84%. These interest rates are less than the actual rates realized in the previous year and are the property of the account owners.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule will not affect competition and employment.

Robyn Rhea Lively  
Senior Attorney  
2206#026

Evan Brasseaux  
Interim Deputy Fiscal Officer  
Legislative Fiscal Office

### **NOTICE OF INTENT**

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

Domesticated Aquatic Organisms  
(LAC 76:VII.900, 913, and 921)

Under the authority of R.S. 56:411 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Wildlife and Fisheries Commission hereby advertises its intent to modify rules and regulations related to aquaculture and domesticated aquatic organisms. The proposed changes add brown trout (*Salmo trutta*) to the approved domesticated aquatic organism list and changes the name of the rainbow trout permit to coldwater trout permit. Legally permitted aquaculture facilities will be able to produce brown trout with passage of this Notice of Intent. This will allow the development of additional aquaculture business in Louisiana while providing safeguards to assist in protecting native fish species.

In addition, LDWF seeks to add eastern oyster (*Crassostrea virginica*) to the domesticated aquatic organism list and create a molluscan shellfish aquaculture permit. Legally permitted aquaculture facilities will be able to produce all life stages of oysters to support and enhance Louisiana's traditional oyster fishery, oyster restoration as well as the growing alternative oyster culture fishery. This will allow the development of additional aquaculture business in Louisiana while providing safeguards to assist in protecting native species.

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent, including but not limited to, the filing of the fiscal and economic impact statement, the filing of the Notice of Intent and compiling public comments and submissions for the commission's review and consideration. In the absence of any further action by the commission following an opportunity to consider all public comments regarding the proposed Rule, the secretary is authorized and directed to

prepare and transmit a summary report to the legislative oversight committees and file the final Rule.

#### Title 76

### WILDLIFE AND FISHERIES

#### Part VII. Fish and Other Aquatic Life

#### Chapter 9. Aquaculture

#### §900. Domesticated Aquatic Organisms (DAO)

##### A. Definitions

\*\*\*

*Coldwater Trout*—adult fish, juvenile fish, fingerlings, fry and eggs belonging to the species listed in LAC 76:VII.913.A.

*Coldwater Trout Permit*—the official document required for the culture, importation, exportation, transport, culture, possession, disposal, transfer and sale of coldwater trout in Louisiana, as approved by the secretary or designee.

\*\*\*

*Molluscan Shellfish Aquaculture*—the land-based process of using approved broodstock to produce any life stage of molluscan shellfish.

*Molluscan Shellfish Aquaculture Permit*—the permit needed to rear or import and transport for the purpose of rearing molluscan shellfish such as eastern oysters (*Crassostrea virginica*).

\*\*\*

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

D. The following species are approved for commercial sale and transport for aquaculture or mariculture:

##### 1. - 6. ...

17. coldwater trout: a list of approved species can be found in LAC 76:VII.913;

##### 18. - 20. ...

21. molluscan shellfish: a list of approved species can be found in LAC 76:VII.921.

E. The domesticated aquatic organism license shall cost \$25 for residents and \$500 for nonresidents. All holders of species-specific culture permits must have a valid domesticated aquatic organism license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:327 (A)(2) and R.S. 56:411.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 47:1335 (September 2021), amended LR 48:510 (March 2022), LR 48:

#### §913. Coldwater Trout

A. The following coldwater trout species have been approved for commercial culture in Louisiana. Any questions on a species should be directed to the fisheries permit manager:

1. brown trout (*Salmo trutta*);

2. rainbow trout (*Oncorhynchus mykiss*).

##### B. Coldwater Trout Permit Request Procedures

1. Individuals or organizations wishing to import, export, transport, culture, dispose, or transfer live coldwater trout for aquaculture in Louisiana must first request a coldwater trout permit from LDWF fisheries permit manager. A separate permit will be required for each facility or location. This permit is not needed for stocking into public or private waters, and persons interested in stocking coldwater trout should contact the fisheries permit manager to request a special stocking permit.

2. Applications for coldwater trout permits may be obtained by contacting the fisheries permit manager via emailing [fisheriespermits@wlf.la.gov](mailto:fisheriespermits@wlf.la.gov) or by mail:

Louisiana Department of Wildlife and Fisheries

Fisheries Permit Manager

P.O. Box 98000

Baton Rouge, LA 70898-9000

3. The completed applications must be returned to the same address whereby the fisheries permit manager will review the application. Department personnel or a department approved contractor will then make an on-site inspection of the property and culture system. The department may charge the applicant for any associated costs to perform the inspection.

4. After the on-site inspection has been completed, the fisheries permit manager will make a final determination as to whether the applicant is in full compliance with all rules pursuant to the coldwater trout permit. The fisheries permit manager will then make a recommendation of approval or denial of the applicant's request to the secretary or designee.

5. The fisheries permit manager will notify the applicant, in writing, as to whether or not the permit has been granted. In the event that the permit is denied, the fisheries permit manager shall include written reasons for that determination. Applicant may reapply after correcting specified deficiencies noted in letter of denial.

##### C. Rules on Transport of Live Coldwater Trout

1. For each occurrence of live coldwater trout importation into Louisiana from out of state, or live transfer within the state, the permittee must obtain, in writing, approval from the fisheries permit manager. These requests shall be made no less than two business days before the expected date of shipment.

a. Requests shall be made via email to [fisheriespermits@wlf.la.gov](mailto:fisheriespermits@wlf.la.gov).

b. Requests shall include:

i. Louisiana coldwater trout permit number;

ii. date of transport;

iii. total number of coldwater trout;

iv. identification of seller and buyer and any permit numbers from the jurisdiction of origin to the jurisdiction of destination in which they are coming from;

v. a certificate of health from a veterinarian or other certified expert stating that coldwater trout are not showing visible signs of diseases or parasites. The facility and delivery vehicle shall be free of diseases, parasites or other organisms such as *Didymosphenia geminate* (commonly known as didymo or "rock snot").

##### D. Rules of Coldwater Trout Culture

1. It shall be the responsibility of the permittee to immediately notify the secretary or designee of any coldwater trout that leave the facility for any reason other than those specifically identified and allowed for under their current permit, including but not limited to, accidental releases due to weather related events, vandalism, and theft.

2. The department will have just cause to revoke a coldwater trout permit for lapses in security if the permittee is found to be in noncompliance with LAC 76:VII.913.D.1.

3. The applicant must agree to allow department officials or a department approved contractor, at the applicant's expense, to conduct unannounced random

inspections of the transport vehicle, property culture system, and fish. Department officials may request other officials to accompany them during these inspections. Additionally, those individuals performing these inspections may remove or take fish samples for analysis and/or inspection.

4. In order for the permit to be valid, the following licenses are required as a prerequisite:

a. Domesticated Aquatic Organism License.

5. The cost of a coldwater trout permit shall be \$100 and may include the actual cost of the on-site inspection. Universities and other facilities conducting research approved by the department shall be exempt from the fee charge. Permits expire on December 31 of every year. Any permit issued after November 15, will be valid for the remainder of that calendar year and the following calendar year.

6. Permits are not transferable from person to person, or property to property.

7. Transfer of fish between Louisiana coldwater trout permittees within the state of Louisiana must be approved prior to shipment as described in LAC 76:VII.913.C.1. above.

8. No person may release live coldwater trout, fish, or eggs into the waters of Louisiana (whether public or private) without LDWF secretarial approval.

9. Permittee must agree to collect and provide an adequate number of coldwater trout to the department or a department approved contractor upon request for identification and analysis at the permittee's expense.

10. Records for the previous five years shall be kept at the facility of all coldwater trout processed at a culture facility and shall include the following information:

- a. source of fish;
- b. processed pounds of fish; and
- c. date fish processed.

11. A copy of this information shall be sent annually to the fisheries permit manager at the end of each year prior to permit renewal, or at any time upon request.

12. If a permittee terminates coldwater trout culture, the permittee shall notify the secretary or designee immediately and dispose of the coldwater trout according to methods approved by the department.

13. In addition to all other legal remedies, including provisions of R.S. 56:319.E, failure to comply with any of the provisions herein shall be just cause to immediately suspend and/or revoke the permittee's permit. All coldwater trout shall be destroyed at permittee's expense under the department's supervision within 30 days of permit revocation.

14. Any permittee allegedly in violation of the above rules has a right to make a written response of the alleged violation(s) to the secretary requesting a hearing to review the alleged violation(s) within five days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:318 and R.S. 56:319.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 47:1344 (September 2021), amended LR 48:510 (March 2022), LR 48:

## §921. Molluscan Shellfish

A. The following molluscan shellfish species have been approved for commercial culture in Louisiana. Any questions on a species should be directed to the Fisheries permit manager:

1. eastern oysters (*Crassostrea virginica*).

B. Molluscan Shellfish Aquaculture Permit Request Procedures

1. Individuals or organizations wishing to import, export, transport, culture, dispose of, or transfer live molluscan shellfish for land based aquaculture in Louisiana, notwithstanding the provisions of R.S. 56:431.2 and LAC 76:VII.535, must first request a molluscan shellfish aquaculture permit from Louisiana Department of Wildlife and Fisheries (LDWF) Fisheries permit manager. A separate permit will be required for each facility or location.

2. The only molluscan shellfish allowed to be used as broodstock for placement in Louisiana waters are those from approved areas with minimal invasive species or disease concerns. All sources of imported molluscan shellfish must be approved by the LDWF Secretary or designee.

3. Applications for permits may be obtained by contacting the fisheries permit manager via emailing fisheriespermits@wlf.la.gov or by mail:

Louisiana Department of Wildlife and Fisheries  
Fisheries Permit Manager  
P.O. Box 98000  
Baton Rouge, LA 70898-9000

4. A legal description of the molluscan shellfish culture facility that demonstrates/proves ownership must be submitted along with the permit request.

5. The completed applications must be returned to the same address whereby the fisheries permit manager will review the application. Department personnel or a department approved contractor may make an on-site inspection of the property and culture system. The department may charge the applicant for any associated costs to perform the inspection.

6. The fisheries permit manager will make a determination as to whether the applicant is in full compliance with all rules pursuant to the molluscan shellfish aquaculture permit. The fisheries permit manager will then make a recommendation of approval or denial of the applicant's request to the secretary or designee.

7. The fisheries permit manager will notify the applicant, in writing, as to whether or not the permit has been granted. In the event that the permit is denied, the fisheries permit manager shall include written reasons for that determination. The applicant may reapply after correcting the deficiencies specified in letter of denial.

C. Rules on Transport of Live Aquaculture Molluscan Shellfish

1. For each occurrence of live molluscan shellfish oyster importation into Louisiana from previous approved sources, the permittee must obtain, in writing, approval from LDWF Fisheries permit manager which shall be made no less than two business days before the expected date of shipment.

a. Requests shall be made via email to fisheriespermits@wlf.la.gov.

- b. Requests shall include:
  - i. Louisiana molluscan shellfish aquaculture permit number;
  - ii. date of transport;
  - iii. type, stage, and total number of molluscan shellfish;
  - iv. identification of seller and buyer and any permit numbers from the jurisdiction of origin to the jurisdiction of destination;
  - v. a certificate of health must be obtained from an expert certified by the department, using a method approved by the department for ensuring disease-free stock, stating that molluscan shellfish are not carrying diseases or parasites. The facility and delivery vehicle shall be free of diseases, parasites or other organisms.

**D. Rules of Molluscan Shellfish Culture**

1. The molluscan shellfish aquaculture system shall be an approved system designed in such a way that all molluscan shellfish life stages cannot escape. All of the system must be based on land.

2. It shall be the responsibility of the permittee to immediately notify the fisheries permit manager of any molluscan shellfish or any life stage that leave the facility for any reason other than those specifically identified and allowed for under their current permit, including, but not limited to, accidental releases due to weather related events, vandalism, and theft.

3. The department will have just cause to revoke a molluscan shellfish aquaculture permit for lapses in security if the permittee is found to be in noncompliance with Paragraph D.1 of this Section.

4. The applicant must agree to allow department officials or a department approved contractor, at the applicant's expense, to conduct unannounced random inspections of the transport vehicle, property culture system, and molluscan shellfish. Department officials may request other officials to accompany them during these inspections. Additionally, those individuals performing these inspections may remove or take molluscan shellfish samples for analysis and/or inspection.

5. The cost of a molluscan shellfish aquaculture permit shall be \$100. The department may also charge for the actual cost of the on-site inspection. Universities and other facilities conducting research approved by the department shall be exempt from the fee charge.

6. In order for the permit to be valid, the following licenses are required as a prerequisite:

- a. domesticated aquatic organism license.

7. Permits expire on December 31 of every year. Any permit issued after November 15 will be valid for the remainder of that calendar year and the following calendar year.

8. Permits are not transferable from person to person, or property to property.

9. Transfer of molluscan shellfish or any life stages between molluscan shellfish aquaculture permittees within the state must be approved prior to shipment as described in Paragraph B.1 of this Section.

10. No person may release or place aquaculture molluscan shellfish, larval stages, or spat into the waters of Louisiana (whether public or private) without LDWF

secretarial or designee approval except when transferred to permitted alternative oyster culture permitted facilities as outlined in LAC 76:VII.535.

11. The permittee must agree to collect and provide an adequate number of molluscan shellfish to the department or a department-approved contractor upon request for identification and analysis at the permittee's expense.

12. Records for the previous five years shall be kept at the facility of all molluscan shellfish processed at a culture facility and shall include the following information:

- a. source of broodstock;
- b. life stages sold;
- c. buyer, date of sale, and amount sold.

13. A copy of the information above shall be sent annually to the fisheries permit manager at the end of each year prior to permit renewal, or at any time upon request.

14. If a permittee terminates molluscan shellfish aquaculture, the permittee shall notify the fisheries permit manager immediately and dispose of the molluscan shellfish according to methods approved by the department.

15. In addition to all other legal remedies, including provisions of R.S. 56:319.E, failure to comply with any of the provisions herein shall be just cause to immediately suspend and/or revoke the permittee's permit. All molluscan shellfish shall be destroyed at permittee's expense under the department's supervision within 30 days of permit revocation.

16. Any permittee allegedly in violation of the above rules has a right to make a written response of the alleged violation(s) to the secretary requesting a hearing to review the alleged violation(s) within five days.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 56:318 and R.S. 56:319.

**HISTORICAL NOTE:** Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 48:

**Family Impact Statement**

In accordance with Act 1183 of 1999 Regular Session of the Louisiana Legislature, the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission hereby issues 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 Mr. Robert Bourgeois, Office of Fisheries, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, prior to 4:30 p.m., Thursday, August 4, 2022.

Joe McPherson  
Chairman



**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Domesticated Aquatic Organisms**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule change will have no expenditure impact on state or local governmental units.

The proposed rule change adds brown trout to the Domestic Aquatic Organism List and changes the name of the associated Rainbow Trout Permit to the Coldwater Trout Species.

The proposed rule also adds oysters to the Domestic Aquatic Organism List and establishes the Molluscan Shellfish Aquaculture Permit for aquaculture facilities that produce oysters in any stage of development.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule change is anticipated to have a minor effect on revenue collections of the LDWF from license fees, ranging from \$750 to \$1,375 per year. The proposed addition of the brown trout to the Domestic Aquatic Organism List is expected to result in the issuance of permits for one additional aquaculture facility at \$125. In addition, the Louisiana Department of Wildlife and Fisheries (LDWF) expects to issue five to ten Molluscan Shellfish Aquaculture Permits, available at a fee of \$100 per year. Oyster aquaculture facilities would also be required to obtain a Domestic Aquatic Organism Permit at \$25 per year.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule change is anticipated to have a positive effect on persons or businesses involved in aquacultural production of brown trout and oysters. The proposed addition of the brown trout to the Domestic Aquatic Organism List is expected to benefit aquaculture facilities by increasing the types of fish that they may produce. The proposed addition of oysters to the Domestic Aquaculture Organism List and the establishment of the Molluscan Shellfish Aquaculture Permit is expected to benefit aquaculture facilities, including alternative oyster culture producers that would like to produce oysters at any stage of development.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule change is anticipated to have no impact on competition and employment in Louisiana.

Bryan McClinton  
Undersecretary  
2206#018

Evan Brasseaux  
Interim Deputy Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**Passive Hooked Fishing Gear Regulations  
(LAC 76:VII.116 and 134)**

The Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission do provide notice of their intent to amend a Section (LAC 76:VII.116) and repeal a Section (LAC 76:VII.134) by modifying regulations regarding freshwater recreational yo-yos, trigger devices, trotlines, limb lines, jugs, and all other passive fishing devices containing a hook or hooks. Modifications to existing rules

makes marking and use regulations regarding hooked passive devices uniform in all inland waters. Waterbodies with regulations regarding the prohibition of attaching or driving any object to fish a yo-yo or trigger device were moved from the repealed Section (LAC 76:VII.134) into the amended Section (LAC 76:VII.116). In all other waterbodies, non-metal objects can be used to fish passive hooked devices, but must be removed upon cessation of use.

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent, including but not limited to, the filing of the Fiscal and Economic Impact Statement, the filing of the Notice of Intent and compiling public comments and submissions for the commission's review and consideration. In the absence of any further action by the commission following an opportunity to consider all public comments regarding the proposed Rule, the secretary is authorized and directed to prepare and transmit a summary report to the legislative oversight committees and file the final Rule.

**Title 76**

**WILDLIFE AND FISHERIES**

**Part VII. Fish and Other Aquatic life**

**Chapter 1. Freshwater Sports and Commercial Fishing**

**§116. Freshwater Recreational Yo-Yos, Trigger Devices, Trotlines, Limb Lines, Jugs, and all Passive Fishing Devices Containing a Hook or Hooks**

A. The Wildlife and Fisheries Commission hereby adopts the following regulations applicable to the use of freshwater recreational yo-yos, trigger devices, trotlines, limb lines, jugs, and all other passive fishing devices containing a hook or hooks.

1. No more than 50 yo-yos, or trigger devices, limb lines, or floating devices containing a hook or hooks shall be allowed per person.

2. At any given time, no person shall set more than 150 hooks on all trotlines, combined.

3. Each yo-yo, trigger device, trotline, limb line, jug, or other passive fishing device containing a hook or hooks shall be clearly tagged with the name, telephone number, and fishing license number of the owner or user. Information must be attached with a waterproof tag or written directly on the device in indelible ink.

4. Each yo-yo, trigger device, trotline, limb line, jug, or other passive fishing device containing a hook or hooks shall be rebaited at least once every 24 hours, and all fish and any other animal caught, entangled, ensnared, or hooked, shall be immediately removed from the device.

5. Except for those devices that are attached to a privately owned pier, boathouse, seawall, or dock, when not being used in accordance with the provisions of this Paragraph, each yo-yo, trigger device, trotline, limb line, jug, or other passive fishing device containing a hook or hooks shall be removed from the waterbody immediately by the owner or user.

6. Where allowed and when not in use, objects sourced from another location used to anchor yo-yos, trigger devices, trotlines, limb lines, jugs, or other passive fishing devices containing a hook or hooks, which are driven into or

attached to the lake bottom, a stump, tree, or the shoreline must be removed from the waterbody along with the passive devices by the user.

7. No driven or attached objects used to attach yo-yos, trigger devices, trotlines, limb lines, jugs, or other passive fishing devices containing a hook or hooks shall be larger than two inches by two inches or two inches in diameter.

8. No metal object which is driven into or attached to the lake bottom, a stump, tree, or the shoreline shall be used to anchor a yo-yo trigger device, trotline, limb line, jug, or other passive fishing device containing a hook or hooks, except for a metal object used strictly in the construction of a pier, boathouse, seawall, dock, or a retrievable anchor not attached to the bottom.

9. In Black Lake, Clear Lake and Prairie Lake (Natchitoches Parish), Caddo Lake (Caddo Parish), Chicot Lake (Evangeline Parish), D'Arbonne Lake (Union Parish), Lake St. Joseph (Tensas Parish), and Lake Bruin, including the portion known as Brushy Lake (Tensas Parish), Louisiana, except for an object used strictly in the construction of a pier, boathouse, seawall, or dock, no object which is driven into the lake bottom, a stump, tree, or the shoreline shall be used to anchor a yo-yo or trigger device.

10. All trotlines shall have a cotton leader on each end of the trotline.

B. A violation of any of the provisions of this Section shall be a class one violation, except there shall be no imprisonment. In addition, any device found in violation of this Section shall be immediately seized by and forfeited to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6, R.S. 56:8, and R.S. 56:320.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 37:355 (January 2011), amended LR 48:

**§134. Black Lake, Clear Lake, Prairie Lake, Caddo Lake, Chicot Lake, D'Arbonne Lake, Lake St. Joseph, and Lake Bruin**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:326.3 and 56:6(32).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 38:2567 (October 2012), amended LR 39:3101 (November 2013), LR 47:497 (April 2021), repealed LR 48:

**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, 1213 N. Lakeshore Dr., Lake Charles, LA, 70601, or via e-mail to rmaxwell@wlf.la.gov prior to July 29, 2022.

Joe McPherson  
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Passive Hooked  
Fishing Gear Regulations**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule change will have no expenditure impact on state or local governmental units.

The proposed rule change does the following:

Places restrictions on recreational passive fishing devices containing hooks, such as yo-yos, trigger devices, trotlines, limb lines, and jugs, in all Louisiana freshwater water bodies, expanding regulations currently in place for Lake Lafourche to all freshwater water bodies in the state;

Requires the attachment of waterproof tags to all passive fishing devices. Tags may be written in indelible ink directly on the devices;

Requires that all devices be rebaited once every 24 hours;

Limits the number of passive fishing devices to 50 devices per person. It limits the number of trotline hooks to 150 hooks per angler. It requires the placement of a cotton leader on each end of all trotlines;

Prohibits the attachment of passive hook devices to any metal object except for metal objects above the water that are affixed to private piers, docks, houseboats, or other manufactured objects, except for retrievable anchors attached to the bottom. It prohibits the attachment of passive fishing devices to metal objects driven into or attached to water bottoms, stumps, trees, or shorelines. It limits the size of driven or attached non-metal objects used to attach passive fishing devices to two-inches by two-inches or two-inches in diameter;

Requires the removal of all passive fishing devices and all related materials when the devices are not in use; and

Consolidates existing rules regarding passive fishing devices for Black Lake, Clear Lake, Prairie Lake, Chicot Lake, D'Arbonne Lake, Lake Saint Joseph, and Lake Bruin into a single section of Title 76.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule change is anticipated to have no effect on revenue collections of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule change is expected to benefit anglers, waterfowl hunters, and other boat operators and passengers who participate in waters where passive fishing devices are being used. The prohibition on metal objects driven into water bottoms and shoreline objects is expected to remove potential physical hazards to persons operating or riding in vessels on water bodies across the state. The prohibition on leaving gear deployed while not in use is intended to remove potential hazards, increase safety, and reduce harm to fish and wildlife.

The proposed rule change may negatively affect some fishers who use passive fishing devices, especially those who have installed devices attached to metal objects. The limitation on the number of hooks per device may reduce harvests for fishers whose devices currently feature more than 50 hooks. The requirement to check devices daily and the requirement to remove devices that are not actively being used may increase labor requirements and thus operating costs for some fishers. The number of fishers who may be affected by these proposed restrictions cannot be assessed with the available information.

The proposed requirement to attach waterproof tags to passive fishing devices may result in a minor increase in costs for fishers.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change is anticipated to have no impact on competition and employment in Louisiana.

Bryan McClinton  
Undersecretary  
2206#035

Evan Brasseaux  
Interim Deputy Fiscal Officer  
Legislative Fiscal Office

# Potpourri

## POTPOURRI

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

Notice of Public Hearing—NAVLE Waiver, VTNE Waiver, and RVT State Jurisprudence Exam Requirement (LAC 46:LXXXV.303 and 803)

In the April 20, 2022 edition of the Louisiana Register, the Board of Veterinary Medicine published a Notice of Intent to amend its rules relative to the waiver language for the NAVLE and VTNE application requirements for licensure as well as the rule language relative to the RVT state jurisprudence requirement for licensure. The original proposed rule can be seen at [www.lsbvm.org/rulemaking-projects](http://www.lsbvm.org/rulemaking-projects). Pursuant to the board's consideration of comments and testimony received during the May 26, 2022 public hearing and during the period for written comment submission from April 21 to May 10, the board proposes to reduce the average number of weekly hours required for waiver eligibility from 32 hours to 20 hours. This proposed reduction in hours is mirrored in the RVT's waiver of VTNE application requirement.

The original proposed rule already affords the Board greater discretion relative to gaps in employment in the five year period preceding the date of application for Louisiana licensure in determining when a licensed veterinarian applying for a Louisiana license has been a practicing veterinarian when the passing of the national examination (NAVLE) is older than five years. The proposed amendment to the required average number of hours allows waiver eligibility for part-time veterinarians with respect to the NAVLE application requirement. The proposed amendment to the VTNE waiver will also allow waiver eligibility for part-time registered veterinary technicians with respect to the VTNE application requirement.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LXXXV. Veterinarians

#### Chapter 3. Licensure Provisions

#### §303. Examinations

A.-B.4.a. ...

b. has worked as a licensed veterinarian an average of 20 hours per week in a private practice or its equivalent continuously and without substantial interruption for a period of five years immediately preceding his application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1549.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:226 (March 1990), amended LR 20:1380 (December 1994). LR 40:309 (February 2014), LR 48:

#### Chapter 8. Registered Veterinary Technicians §803. Examinations

A. - I. ...

J. The requirement for taking the national examination (VTNE) may be waived when an applicant:

a. ...

b. has been employed as a registered or certified veterinary technician an average of 20 hours per week in a private practice or its equivalent continuously and without substantial interruption for a period of three years immediately preceding his application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1549.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:226 (March 1990), amended LR 20:1380 (December 1994). LR 40:309 (February 2014), LR 48:

#### 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](mailto:director@lsbvm.org) or via hand delivery. Comments will be accepted from June 21, 2022 until 3:00 p.m. on Friday, July 8, 2022. All written comments must be dated and include full name and original signature of the person submitting the comments as well as an email address or a mailing address.

#### Public Hearing

A public hearing to solicit comments and testimony on the proposed Rule amendment is scheduled for 9:30 a.m. on Thursday, July 14, 2022 at 5825 Florida Blvd, Baton Rouge, LA 70806. During the hearing, all interested persons will be afforded an opportunity to submit data, views, or arguments, either orally or in writing. 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  
Executive Director

2206#025

## POTPOURRI

### Department of Insurance Office of Health, Life and Annuity Insurance

#### Annual HIPAA Assessment Rate

Pursuant to Louisiana Revised Statute 22:1071(D)(2), the annual HIPAA assessment rate has been determined by the Department of Insurance to be .00025 percent.

Frank Opelka  
Deputy Commissioner

2206#019

**POTPOURRI**

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

2022 Fourth Quarter Hospital Stabilization Assessment

In compliance with the House Concurrent Resolution (HCR) 51 of the 2016 Regular Session of the Louisiana Legislature, the Department of Health, Bureau of Health Services Financing amended the provisions governing provider fees to establish hospital assessment fees and related matters (*Louisiana Register*, Volume 42, Volume 11).

House Concurrent Resolution 2 of the 2021 Regular Session of the Louisiana Legislature enacted an annual hospital stabilization formula and directed the Department of Health to calculate, levy, and collect an assessment for each assessed hospital.

The Department of Health shall calculate, levy, and collect a hospital stabilization assessment in accordance with HCR 2 for the quarter April 1, 2022 through June 30, 2022. The quarterly assessment amount to all hospitals will be \$28,514,497 which amounts to 0.25 percent of total inpatient and outpatient hospital net patient revenue of the assessed hospitals.

Dr. Courtney N. Phillips  
Secretary

2206#057

**POTPOURRI**

**Department of Health  
Office of Public Health**

Immunization Schedule (LAC 51:II.701)

Notice is hereby given that the Office of Public Health (OPH) intends to repeal through rulemaking those changes made to LAC Title 51, Part II, §701 by a Rule that was promulgated in *Louisiana Register* Vol. 47, No. 12, December 20, 2021. Accordingly, notice is also hereby given that until that repealing rulemaking is finalized, OPH will exercise enforcement discretion under which it will not exercise or initiate any regulatory enforcement of said changes.

Dr. Courtney N. Phillips  
Secretary

2206#059

**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
Barnwell Drilling Co. Inc.	Caddo Pine Island	S	Barnwell-Caddo Oil Unit	001	82597
C. L. Morris, Inc.	Caddo Pine Island	S	Alvin Tucker	002	47925
C. L. Morris, Inc.	Caddo Pine Island	S	Raines	049	56624
C. L. Morris, Inc.	Caddo Pine Island	S	Raines	053	57952
Caddo Pine Island Operating Co	Caddo Pine Island	S	Muslow G	025	44419(30)
Cockrell Oil Corporation	Wildcat-So La Lk Charles Dist	L	SL 8864	001	176170
EW Mcgoldrick & Mcgoldrick OC	Caddo Pine Island	S	C W Lane	004	61877
Gulf Refining Co. Of La	Anse La Butte	L	R Martin	005	5494
Hochendel Consultants	Leeville	L	SL 264 A	001	16078
Joe M. Burnham, et al	Caddo Pine Island	S	Bradford Heirs	002	99951
Ross Exploration, Inc.	Caddo Pine Island	S	Bickham	010	44355(30)

Operator	Field	District	Well Name	Well Number	Serial Number
Ross Exploration, Inc.	Caddo Pine Island	S	Muslow G	034	104581(30)
Wheless Drilling Company et al	Simsboro	S	C E Barham Unit	001	56559(30)

Operator	Field	District	Well Name	Well Number	Serial Number
Wheless Drilling Company et al	Simsboro	S	Gard Sue;C E Barham Unit	001-D	58010(30)

Richard P. Ieyoub  
Commissioner

2206#020

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