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Executive Orders

EXECUTIVE ORDER JBE 19-14

Flags at Half-Staff
Former Governor Kathleen Babineaux Blanco

WHEREAS, former Governor Kathleen Babineaux Blanco died on August 18, 2019, at the age of 76;

WHEREAS, on January 12, 2004, Kathleen Babineaux Blanco was sworn in as the 54th governor of the state of Louisiana and the state's first female governor;

WHEREAS, in her long, distinguished career, Governor Blanco served the people with a vision of creating a new Louisiana, filled with hope and opportunity for all citizens;

WHEREAS, Governor Blanco led Louisiana through some of the state's darkest hours during and in the aftermath of hurricanes Katrina and Rita, when she fought for and succeeded in securing increased funding to help Louisianans rebuild their homes, reopen their businesses and reconstruct billions worth of damaged infrastructure, providing a way for Louisianans to emerge from those disasters stronger and more resilient;

WHEREAS, Governor Blanco was a champion for Louisiana's children and families, prioritizing affordable healthcare, improving the state's education system, and fostering a vibrant economy;

WHEREAS, always a trailblazer, she began her career as a public servant in 1984, when she became the first woman ever elected to represent the people of Lafayette in the state Legislature and was elected to the Public Service Commission five years later, where she became the first woman to serve as a Commissioner and, later, as the first woman to chair the Commission;

WHEREAS, before serving in the state's top office, Governor Blanco completed two terms as Lieutenant Governor, focusing on increasing tourism to the state;

WHEREAS, for 55 years, she was married to her loving husband and biggest supporter, Raymond and together they raised six children and are the proud grandparents of 13 grandchildren; and

Whereas, Governor Blanco was a woman of abiding faith and unconditional love for her family, this state, and the people she served, and while she will be greatly missed, the legacy she leaves behind because of her work on behalf of Louisiana will live on for generations to come.

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: As an expression of respect and to honor former Governor Kathleen Babineaux Blanco, the flags of the United States and the State of Louisiana shall be flown at half-staff over the State Capitol and all state buildings from August 19, 2019, through August 24, 2019.

SECTION 2: This Order is effective upon signature and shall remain in effect until sunset, August 24, 2019.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana in the City of Baton Rouge, on this 18th day of August.

John Bell Edwards
Governor

ATTEST BY
THE GOVERNOR
R. Kyle Aroin
Secretary of State
1909#079

EXECUTIVE ORDER JBE 19-15

Broadband for Everyone in Louisiana Commission

WHEREAS, universal access to broadband service for all Louisiana residents is a key competitive factor for economic development and quality of life in the new global marketplace;

WHEREAS, universal connectivity, particularly in rural areas, is needed for attracting new and expanding business and to facilitate education and training, health care and government services;

WHEREAS, the state of Louisiana has adopted a statewide broadband plan with the goal of improving both the adoption and availability of broadband service for Louisiana residents by providing universal access to broadband service with minimum committed speed of 25 Megabits per second (Mbps) download and 3 Mbps upload, scalable to up to 100 Mbps download and 100 Mbps upload, for all Louisianans by 2029; and

WHEREAS, there exists a necessity to create a broadband commission to serve as the lead facilitator to collaborate with all sectors to successfully execute the statewide broadband plan while embracing all communities to encourage broadband adoption and availability.

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 Broadband for Everyone in Louisiana Commission is hereby created within the governor's office and shall consist of twenty-three members, including sixteen ex officio members and seven members appointed by the governor.

SECTION 2: The commission shall focus on the following two pillars:

1. Adoption. The commission shall encourage adoption of broadband services by:

a. Working with private broadband providers to identify and inventory all low-cost broadband programs currently offered by Internet service providers in Louisiana;

b. Publishing the available programs on the Governor's Office website and publicizing these programs in communications and events;

c. Developing a survey to identify areas of the state where broadband adoption rates fall below the state- or national-average;

d. Identifying communities without low-cost broadband programs and identifying potential partners to launch new programs where needed;

e. Working with private broadband providers, educational institutions, parish and municipal governments, non-profit organizations, and other stakeholders to identify barriers to adoption by individuals and families in Louisiana; and

f. Taking an inventory of best practices for adoption programs and identifying opportunities to use public and private resources to encourage adoption programs that turn Louisiana households in to broadband households.

2. Availability. The commission shall encourage the expansion of broadband networks by:

a. Identifying barriers restraining broadband deployment and propose solutions to the Governor on a quarterly basis;

b. Encouraging partnerships throughout Louisiana to maximize state and federal grant funding for broadband deployment;

c. Celebrating broadband build-outs throughout the state, including providers utilizing FCC, USDA, State Grant (where applicable), and other programs designed to accelerate broadband deployment;

d. Developing a survey for providers to ascertain barriers and opportunities to accelerate the construction of broadband;

e. Surveying governmental entities and existing providers on any buildings and/or assets in need of broadband services;

f. Researching and recommending the viability of local governments creating or expanding special assessment districts to assist in deploying broadband in unserved and underserved areas;

g. Leveraging available federal and state E-Rate funding opportunities, with the immediate goal of achieving 100% of Louisiana's school buildings and libraries gaining access to broadband services; and

h. Collecting, aggregating, and disseminating from the provider community best practices.

SECTION 3: The members of the Commission shall be appointed by and serve at the pleasure of the governor and shall be comprised of up to twenty-three (23) members. Of the members appointed by the governor, one member shall be selected from each of the following:

A. The Public Service Commission;

B. A list of three nominees submitted by the Louisiana Municipal Association;

C. A list of three nominees submitted by the Louisiana Police Jury Association;

D. A list of three private sector individuals submitted by electric utility companies doing business within the state;

E. A list of three private sector individuals submitted by the Internet and Television Association (LCTA);

F. A list of three private sector individuals submitted by the Louisiana Telecommunications Association (LTA); and

G. A list of three private sector individuals submitted by the Cellular Telecommunications and Internet Association (CTIA).

SECTION 4: The appointed members of the commission shall represent the geographic, gender, and racial diversity of the state.

SECTION 5: Commission members shall not receive additional compensation or a *per diem* from the Office of the Governor for serving on the Commission.

Commission members who are an employee or an elected public official of the State of Louisiana or a political subdivision of the State of Louisiana may seek reimbursement of travel expenses, in accordance with PPM 49, from their employing and/or elected department, agency and/or office.

Commission members who are also a member of the Louisiana Legislature may seek a *per diem* from the Louisiana State Senate or House of Representatives, as appropriate, for their attendance.

SECTION 6: The governor shall convene the first meeting of the commission and shall designate the chairman. The commission shall elect a vice-chairman and such other officers as it deems necessary.

SECTION 7: All members of the commission shall remain in office until their successors are appointed. All vacancies shall be filled in the same manner prescribed herein for the remainder of the unexpired term.

SECTION 8: The commission shall meet at least quarterly and at such other times upon the call of the chairman or a majority of the members.

SECTION 9: A quorum to transact business shall be a majority of the members of the commission.

SECTION 10: This Order is effective upon signature and shall continue 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 29th day of August, 2019.

John Bell Edwards
Governor

ATTEST BY
THE GOVERNOR
R. Kyle Aroin
Secretary of State
1909#080

Emergency Rules

DECLARATION OF EMERGENCY

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—PRAXIS Social Studies Exam Scores
(LAC 28:CXXXI.101)

In accordance with the provisions of R.S. 17:6(A)(10) and the Administrative Procedure Act (APA), R.S. 49:953(B)(1) et seq., the Board of Elementary and Secondary Education has amended LAC 28:CXXXI in *Bulletin 746—Louisiana Standards for State Certification of School Personnel*. The revisions further clarify social studies PRAXIS exam requirements approved by BESE in June 2019, which align the required social studies passing score with passing scores recommended by the Educational Testing Service. Specifically, the revisions indicate that specific PRAXIS scores achieved 12 months prior to the effective date will be accepted for purposes of educator certification, as not to penalize individuals who were administered the assessment prior to the revision. This Declaration of Emergency, adopted and effective on August 14, 2019 will remain in effect for a period of 120 days or until adopted as a final Rule.

Title 28
EDUCATION
Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel
Chapter 1. Introduction
§101. Purpose

A. - B. …

C. Certification policies are adopted and implemented in a manner, and with a timeline, that allows for a smooth transition from old to new requirements. Any certification change made by the BESE will include implementation dates to be specified at the time of recommendation to the BESE for action. In particular:

1. If the passing score for a specific Praxis exam increases, there will be a 12-month period from the date of adoption by the BESE to the effective date.

2. If the passing score for a specific Praxis exam decreases, scores achieved up to 12 months prior to the effective date adopted by the BESE will be accepted.

D. - E. …

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1782 (October 2006), amended LR 43:1290 (July 2017), LR 45:

Gary L. Jones
President

1909#004

DECLARATION OF EMERGENCY

Board of Elementary and Secondary Education

Bulletin 118—Statewide Assessment Standards and Practices—LEAP 2025—Science and Biology
(LAC 28:XI.6115 and 6813)

In accordance with the provisions of R.S. 17:6(A)(10) and the Administrative Procedure Act (APA), R.S. 49:953(B)(1) et seq., the Board of Elementary and Secondary Education has amended LAC 28:XI, *Bulletin 118—Statewide Assessment Standards and Practices*. The revisions assign common achievement performance levels to the new LEAP 2025 grades 3-8 science and biology assessments first taken in the spring of 2019, providing for a coherent assessment system from grades 3 through high school. The results, which will be incorporated into the 2018-2019 school performance scores that will be released this fall, will be used to identify students' academic strengths and weaknesses, provide targeted interventions to struggling students, set meaningful goals for individual student and school achievement, and engage parents in supporting their child's academic progress. Use of the emergency provision will enable parents, educators, and school leaders to receive critical information about student academic achievement at the beginning of this current school year so that they may engage in academic planning and interventions to support student learning as quickly as possible. This Declaration of Emergency is adopted and effective on August 14, 2019 and will remain in effect for a period of 120 days or until adopted as a final Rule.

Title 28
EDUCATION
Part XI. Accountability/Testing
Subpart 3. Bulletin 118—Statewide Assessment Standards and Practices
Chapter 61. Louisiana Educational Assessment Program 2025 (LEAP 2025)
Subchapter A. General Provisions
§6115. Performance Standards [Formerly LAC 28:CXI.1115]

A. Performance standards for LEAP English language arts, mathematics, science, and social studies tests are finalized in scaled-score form. The scaled scores range between 650 and 850 for English language arts, mathematics, science, and social studies.

1. English Language Arts

English Language Arts						
Achievement Level	**Grade 3**	**Grade 4**	**Grade 5**	**Grade 6**	**Grade 7**	**Grade 8**
Advanced	810-850	790-850	799-850	790-850	785-850	794-850
Mastery	750-809	750-789	750-798	750-789	750-784	750-793
Basic	725-749					

English Language Arts						
Achievement Level	Grade 3	Grade 4	Grade 5	Grade 6	Grade 7	Grade 8
Approaching Basic	700-724					
Unsatisfactory	650-699					

2. Mathematics

Mathematics						
Achievement Level	Grade 3	Grade 4	Grade 5	Grade 6	Grade 7	Grade 8
Advanced	790-850	796-850	790-850	788-850	786-850	801-850
Mastery	750-789	750-795	750-789	750-787	750-785	750-800
Basic	725-749					
Approaching Basic	700-724					
Unsatisfactory	650-699					

3. Science

Science						
Achievement Level	Grade 3	Grade 4	Grade 5	Grade 6	Grade 7	Grade 8
Advanced	773-850	778-850	781-850	782-850	790-850	782-850
Mastery	750-772	750-777	750-780	750-781	750-789	750-781
Basic	725-749	725-749	725-749	725-749	725-749	725-749
Approaching Basic	698-724	704-724	698-724	701-724	702-724	694-724
Unsatisfactory	650-697	650-703	650-697	650-700	650-701	650-693

4. Social Studies

Social Studies						
Achievement Level	Grade 3	Grade 4	Grade 5	Grade 6	Grade 7	Grade 8
Advanced	777-850	783-850	782-850	773-850	777-850	780-850
Mastery	750-776	750-782	750-781	750-772	750-776	750-779
Basic	725-749	725-749	725-749	725-749	725-749	725-749
Approaching Basic	695-724	696-724	700-724	698-724	704-724	700-724
Unsatisfactory	650-694	650-695	650-699	650-697	650-703	650-699

B. - C.1. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and 17:391.4(A).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1536 (July 2005), amended LR 32:235 (February 2006), LR 42:225 (February 2016), LR 43:2475 (December 2017), LR 44:468 (March 2018), repromulgated LR 44:1424 (August 2018), amended LR 45:

Chapter 68. LEAP 2025 Assessments for High School

Subchapter B. Achievement Levels and Performance Standards

§6813. Performance Standards [Formerly LAC 28:CXI.1813]

A. - B.4. …

5. Biology Scaled-Score Ranges

Biology	
Achievement Level	Scale Score Range
Advanced	772-850
Advanced	750-771

Biology	
Achievement Level	Scale Score Range
Basic	725-749
Approaching Basic	707-724
Unsatisfactory	650-706

6. …

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:215 (February 2009), amended LR 36:478 (March 2010), LR 37:820 (March 2011), repromulgated LR 37:1123 (April 2011), amended LR 38:35 (January 2012), LR 39:76 (January 2013), LR 39:2444 (September 2013), LR 44:470 (March 2018), LR 44:2129 (December 2018), LR 45:

Gary L. Jones
President

1909#005

DECLARATION OF EMERGENCY

Board of Elementary and Secondary Education

Bulletin 139—Louisiana Child Care and Development Fund Programs (LAC 28:CLXV.319 and 515)

In accordance with the provisions of R.S. 17:6(A)(10) and the Administrative Procedure Act (APA), R.S. 49:953(B)(1) et seq., the Board of Elementary and Secondary Education has amended LAC 28:CLXV in *Bulletin 139—Louisiana Child Care and Development Fund Programs*. The revisions add an exception to the existing prohibition for caregivers to receive Child Care Assistance Program (CCAP) payments for children in their custody for a caregiver who serves as an eligible CCAP provider, in order for such provider to receive CCAP payments for the foster child who is cared for through the program. Further, the revisions establish separate rates for the care of infants and toddlers, recognizing increased costs for infant care, while also increasing all rates to at least the twenty-fifth percentile of the market rate. Finally, the proposed revisions provide for a special needs rate above the base rate. This Declaration of Emergency, adopted August 14, 2019 and effective on September 30, 2019 is will remain in effect for a period of 120 days from adoption, or until adopted as a final Rule.

Title 28
EDUCATION

Part CLXV. Bulletin 139—Louisiana Child Care and Development Fund Programs

Chapter 3. CCAP Provider Certification

§319. Caregiver's Ineligibility for CCAP Payments

A. A caregiver, even if certified to receive CCAP, may not receive CCAP payments for the caregiver's own children or other children in the caregiver's custody.

1. Exception. A caregiver may receive CCAP payments for foster children in the caregiver's custody.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S. 17:6 and 17:407.26.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:2114 (October 2015), amended LR 45:

Chapter 5. CCAP Household Eligibility

§515. Payments Made on Behalf of Households

A. The state maximum daily rates for CCAP care are as follows.

Child Care Provider Type	Regular Care	Regular Care for Toddlers	Regular Care for Infants	Special Needs Care Incentive	Special Needs Care Incentive for Toddlers	Special Needs Care Incentive for Infants
Type III Early Learning Center	$22.00	$23.75	$25.00	$27.72	$29.93	$31.50
School Child Care Center	$16.50	$16.50	$16.50	$20.79	$20.79	$20.79
Family Child Care Provider	$17.00	$18.00	$18.00	$21.42	$22.68	$22.68
In-Home Provider	$17.50	$17.50	$17.50	$22.05	$22.05	$22.05
Military Child Care Centers	$22.00	$23.75	$25.00	$27.72	$29.93	$31.50

B. - G. …

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and R.S. 17:6 and 17:407.28.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:2116 (October 2015), amended LR 42:44 (January 2016), LR 42:1870 (November 2016), LR 44:801 (April 2018), LR 45:

Gary L. Jones
President

1909#003

DECLARATION OF EMERGENCY

Office of the Govenor
Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River

Standards of Conduct
(LAC 46:LXX.6311)

In accordance with the emergency provisions of the Administrative Procedures Act, R.S. 49:953 (B), and under the authority of R.S. 34:1041, et seq. and Title 46, Professional and Occupational Standards, Part LXX, River Pilots, Subpart 3, Board of Examiners for the New Orleans and Baton Rouge Steamship Pilots et seq., the Board of Examiners for New Orleans-Baton Rouge Steamship Pilots for the Mississippi River declares an emergency to exist and adopts by emergency process the attached regulation for the increased mandatory rest period for New Orleans-Baton Rouge Steamship Pilots.

Due to the safety sensitive nature of the duties performed by state commissioned pilots, this board has a strong commitment to the public and maritime industry. The board has promulgated standards of conduct, in order to further enhance the safety and well being of the citizens of Louisiana and New Orleans-Baton Rouge Steamship Pilots as well as to prevent any imminent peril to public health, safety and welfare, and to achieve and maintain reliable, safe and efficient pilotage services.

The board has the authority to compel each and every individual pilot to be available for and accept orders for pilotage assignments in declared emergency situations or in other overriding operational conditions. This Emergency Rule amends LAC 46:LXX.6311 to provide for an increased mandatory rest period for New Orleans-Baton Rouge Steamship Pilots during time periods of extreme Mississippi River gauge levels and river currents.

This Emergency Rule becomes effective upon the signature of the President of the Board of Examiners for New Orleans-Baton Rouge Steamship Pilots for the Mississippi River, September 14, 2019, and shall remain in effect for 120 days, unless rescinded, renewed or until permanent rules and regulations become effective.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LXX. River Pilots
Subpart 3. Board of Examiners for the New Orleans and Baton Rouge Steamship Pilots

Chapter 63. Standards of Conduct

§6311. Mandatory Rest Period

A. For the purpose of this Rule, a turn is the time period from dispatch to the termination of the allotted travel time.

B. All pilots shall have a minimum of 12 hours rest period between turns.

C. For the purpose of this Rule, the rest period begins at the termination of the allotted travel time at the completion of one turn and ends at the time of dispatching for the next turn.

D. Notwithstanding Subsection B, the captain of the station and shift pilots shall be exempt from the minimum 12 hours rest period in between turns. However, in no case shall the captain of the station and shift pilots exceed 12 bridge hours in any 24-hour period.

E. Notwithstanding Subsection B, any pilot completing a turn lasting less than four bridge hours or receiving a discharge, shall not be required to comply with the mandatory 12 hours rest period. However, in no case shall any pilot acquire more than 12 hours in a 24-hour period. Pilots requesting 12 hours rest period shall not be called or dispatched in less than 12 hours from the completion of their finishing time.

F. Notwithstanding Subsection B, during a state of declared emergency all pilots shall be exempt from the minimum eight hours rest period in between turns. However, in no case shall any pilot exceed 12 bridge hours in any 24-hour period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 31:56 (January 2005), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:500 (March 2010), LR 38:3167 (December 2012), LR 45:

Captain Robert D. Heitmeier
President

1909#041

DECLARATION OF EMERGENCY

Office of the Governor
Boxing and Wrestling Commission

Class "B" Wrestling
(LAC 46:XI.525)

The Louisiana State Boxing and Wrestling Commission does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B). By this Emergency Rule, the commission will amend Chapter 5, Subchapter B. Class "B" Wrestling to provide small event wrestling promoters relief from the responsibility of verifying bloodwork lab reports. This responsibility was formerly held by ring doctors and/or event coordinators under Chapter 1. General Rules. Due to the promulgation of R.S. 4.83(B) in 2018, Class B events are not required to have a doctor, event coordinator or commissioner in attendance at these events to review and verify bloodwork lab reports to ensure the validity and negative results of HIV, Hepatitis B and C. The commission will provide an avenue for collection of these Class "B" lab reports and establish a database whereupon the commission will become responsible for the review and verification of these lab reports for a fee of $150 per event. The database will contain no personal medical information. This database will be restricted to the name of the contestant, date of blood testing, the negative or positive results and expiration date so as to track when contestants require new testing every six months in accordance with General Rule §108.A, Medical Requirements, under this title.

This Emergency Rule is effective August 10, 2019, and will remain in effect for a period of 120 days, unless renewed by the commissioner or until adoption of the final Rule, whichever occurs first.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS

Chapter 5. Professional Wrestling
Subchapter B. Class "B" Wrestling
§525. Wrestling Promoters Class "B" Licensing

A. - F. …

G. Blood work laboratory results for Class "B" contestants, as required by General Rules - §108(A) Medical Requirements, will be reviewed and verified by the commission and the results entered into an established database.

1. Class "B" contestant's lab reports will be submitted to the commission directly from the testing physician's laboratory or independent laboratory via hard copy, fax or other electronic submission to confirm negative results and verification of legitimacy.

2. A fee of $150 per Class "B" event will be collected by the commission from the promoter to cover the costs of this verification process.

AUTHORITY NOTE: Promulgated in accordance with 4:64, 4:65 and 4:83(B)

HISTORICAL NOTE: Adopted by the Office of the Governor, Boxing and Wrestling Commission, LR 45:541 (April 2019) amended LR 45:

Buddy Embanato
Chairman

1909#001

DECLARATION OF EMERGENCY

Department of Revenue
Office of Alcohol and Tobacco Control

CBD Product Public Safety Regulations
(LAC 55:VII.601-619)

The Louisiana Department of Revenue, Office of Alcohol and Tobacco Control, pursuant to the emergency rulemaking authority granted by R.S. 49:953(B) of the Administrative Procedure Act (R.S. 49:950, et seq.) and the specific rule making authority granted by R.S. 3:1483, hereby adopts the following Emergency Rule for the protection of public health. The effective date of this Rule is upon signature., September 11, 2019.

These second revised CBD Product Public Safety Regulations replace the prior Declaration of Emergency, CBD Product Public Safety Regulations that were promulgated on August 1, 2019. These revisions incorporate requests received from the Author of Act 164 of the 2019 Louisiana Legislature in conjunction with the recommendations of the legislative staff. The revisions include: (1) revising permittees to one CBD dealer classification; (2) clarifying what activities the holder of a CBD dealer permit is authorized to engage in; and (3) removal of civil penalties since same were deemed not authorized by the Act and inclusion of only criminal and/or suspension/revocation remedies for violations.

The Louisiana Department of Revenue, Office of Alcohol and Tobacco Control, finds it necessary to make immediate changes to the Louisiana Administrative Code given the need for regulation of industrial hemp-derived CBD products for consumption and topical use as defined under the provisions of Act No. 164 of the 2019 Louisiana Legislature. The following regulations will give the ATC the ability to properly license and regulate the retail sale of industrial hemp-derived CBD products for consumption and topical use, which will affect the health of Louisiana citizens and give the commissioner of the Office of Alcohol and Tobacco Control the ability to make critical decisions that protect human health. This Rule creates §601 through §619 to address retail CBD licensure, permitting, and related matters since this is not addressed otherwise by existing law or regulation.

This Rule shall have the force and effect of law upon signature and will remain in effect 120 days, unless renewed by the commissioner of alcohol and tobacco control or until permanent rules are promulgated in accordance with law.

Title 55
PUBLIC SAFETY
Part VII. Alcohol and Tobacco Control
Chapter 6. CBD Product Public Safety Regulations
§601. CBD Retail and Retail/Wholesale Permits

A.1. In this Chapter, a "CBD dealer" means any person, who as a business, sells, offers for sale, solicits orders for the sale of, or distributes any industrial hemp-derived product or hemp-derived product that contains CBD intended for consumption or topical to the general public or other sellers.

2. Each person or business who solicits, sells, or is about to engage in the business of selling any industrial hemp-derived product or hemp-derived product that contains CBD intended for consumption or topical use as defined in R.S. 3:1481(5) shall first apply for and obtain a CBD dealer permit for each physical place of business from the Office of Alcohol and Tobacco Control. Online retail sales of industrial hemp-derived CBD products intended for consumption or topical use shall be allowed with a CBD dealer permit and physical place of business within the State. Any industrial hemp-derived product or hemp seed incapable of germination that has been approved by the United States Food and Drug Administration and does not contain any amount of cannabidiol shall not fall under the regulations of this chapter.

3. The commissioner of the Office of Alcohol and Tobacco Control shall have the authority to issue permanent and temporary CBD dealer permits which shall authorize the storage and retail and/or wholesale sale of industrial hemp-derived CBD products to take place at each physical place of business. CBD dealer permit holders may ship industrial hemp-derived CBD products via common carrier from a licensed physical location directly to a consumer and those who further designate their desire to also engage in wholesale sales shall also be allowed to deliver industrial hemp-derived CBD products using their own W-2 employees and vehicles to a licensed retailer or use a common carrier to deliver same to a licensed retailer.

a. Existing retail businesses that desire to have industrial hemp-derived CBD products on their premises for sale to consumers shall have until September 1, 2019 to apply for a temporary CBD dealer permit with the Office of Alcohol and Tobacco Control.

b. Initial applications for CBD dealer permits received by the Office of Alcohol and Tobacco Control shall receive a temporary permit and have until January 31, 2020 to ensure that the industrial hemp-derived CBD products they are carrying have been registered by the manufacturer with the Louisiana Department of Health and until February 28, 2020 to ensure that the CBD products they are carrying have had their labels approved by the Louisiana Department of Health.

c. All industrial hemp-derived CBD products which are required to be registered with the Louisiana Department of Health and which have not been registered by a manufacturer with the Louisiana Department of Health by January 31, 2020 shall be removed from dealer premises. All industrial hemp-derived CBD products which are required to have their labels approved by the Louisiana Department of Health and which have not received label approval from the Louisiana Department of Health by February 28, 2020 shall be removed from dealer premises.

d. A temporary CBD dealer permit holder carrying only hemp-derived CBD products that have been properly registered by the manufacturer with the Louisiana Department of Health and have labels approved by the Louisiana Department of Health, may apply for a permanent CBD dealer permit with the Office of Alcohol and Tobacco Control.

e. Permanent CBD dealer permit holders may not possess, store, display, offer for sale, or sell CBD products which have not been registered with and had their labels approved by the Louisiana Department of Health, if same are required to be registered and approved by the Louisiana Department of Health.

4. The CBD dealer permit shall not authorize the permittee to sell or offer for sale any industrial hemp-derived CBD product that:

a. is derived from any source that is not hemp;

b. contains a tetrahydrocannabinol (THC) concentration of more than 0.3 percent on a dry weight basis;

c. is intended for inhalation;

d. is an alcoholic beverage containing CBD or hemp;

e. is marketed as a dietary supplement, unless approved by the United States Food and Drug Administration;

f. is a food product or beverage containing CBD or hemp, unless the United States Food and Drug Administration approves CBD and/or hemp as a food additive.

g. contains a medical claim, unless approved by the United States Food and Drug Administration;

5. The CBD dealer permit shall only authorize the permittee to sell or offer for sale an industrial hemp-derived CBD products that is:

a. produced from hemp grown by a licensee authorized to grow hemp by the United States Department of Agriculture or under an approved state plan pursuant to the Agriculture Improvement Act of 2018, P.L. 115-334, or under an authorized state pilot program pursuant to the Agriculture Act of 2014, P.L. 113-79;

b. registered with the Louisiana Department of Health in accordance with the State Food, Drug, and Cosmetic Law (R.S. 40:601 et seq.); and

c. labeled in accordance with the State Food, Drug, and Cosmetic Law (R.S. 40:601 et seq.) and approved by the Louisiana Department of Health. The label shall have:

i. the following words printed clearly on its label: "This product has not been evaluated by the Food and Drug Administration and is not intended to diagnose, treat, cure, or prevent any disease", unless approved by the United States Food and Drug Administration and

ii. a scannable bar code, QR code, or web address linked to a document or website that contains a certificate of analysis as required by La. R.S. 3:1482(D).

6. If the permit holder is a corporation or limited liability company, the permit holder shall notify the Office of Alcohol and Tobacco Control in its initial application and renewal applications of all officers, directors, managers, shareholders, members, or persons qualified to conduct or manage the business and same shall meet the qualification requirements of an applicant.

7. The CBD dealer permits shall be considered a privilege and is not transferrable, assignable, or heritable. The permit must be returned to the Office of Alcohol and Tobacco Control or surrendered to an agent of the commissioner within five days of permit closure, when the ownership of the business is transferred, or the business is terminated. When the ownership of the business is transferred, the new owner shall be allowed to continue to operate using the transferor's permit until a new permit is issued or denied, only if the new owner notifies the Office of Alcohol and Tobacco Control of the transfer within five days of the transfer and applies for a new CBD dealer permit within fifteen days of the transfer of ownership. If the permit holder is a corporation or limited liability company, the permit holder shall notify the Office of Alcohol and Tobacco Control of any changes in the officers, directors, managers, shareholders, members, or persons previously qualified to conduct or manage the business within 15 days of the date of such changes. The notification shall include the suitability documents and information for each new individual required to possess the qualifications of the applicants. However, in the event of the dissolution of a partnership by death, the surviving partner or partners may operate under the partnership permit.

8. Receivers and trustees in bankruptcy may operate under the permit of the person succeeded.

9. When the location of a place of business is proposed to be changed, the proposal shall be received and must be approved by the issuing authority before such action is taken. The change of location shall be noted on the permit by the issuing authority and the permit shall be invalid unless the notation is made.

10. The permit, in addition to any other permit required to be displayed, shall be posted in a conspicuous place on the licensed premises, so as to be easily seen and read by the public. No other signs or notices, except those required by state or federal law, shall be required to be displayed by the CBD dealer.

11. A partnership may include a surviving spouse not separate in community and that spouse may operate under the partnership permit for the remainder of the term.

12. A partnership, corporation, or any other authorized legal entity recognized under the laws of the state of Louisiana may include a spouse who has a regime of separation of property, pursuant to Civil Code Article 2370, and may include a spouse who owns the interest in the partnership, corporation, or other legal entity as that spouse's separate property, pursuant to Civil Code Article 2341, and that spouse may operate under the permit of the partnership, corporation, or other legal entity for the remainder of the term after final conviction of the other spouse for any felony that is not directly related to the CBD dealer permit.

13. The failure of a dealer to publicly display his permits, as required by Paragraph 5 above, shall be grounds for the withholding, suspension, or revocation of the CBD dealer permit.

B.1. The commissioner shall collect an initial and annual licensure permit fee in the amount of $175 per year for CBD dealer permits.

2. Initially, the commissioner shall issue temporary CBD dealer permits that shall expire March 31, 2020.

3. The expiration of CBD dealer permits shall be on March 31 of each year and permit holders shall renew their permit prior to that date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 45:

§603. Submission of Applications

A. All applications for CBD dealer permits shall be mailed or delivered to the commissioner in Baton Rouge, Louisiana, unless additional methods are made available by the commissioner. All applications for local permits (if required) shall be mailed or delivered to the respective local authorities, unless additional methods are made available by the local governing authority. An applicant shall mail or deliver both her applications for state and local permits (if required) within twenty-four hours of each other. If she fails to do so, her state application may be withheld and the permits denied. Upon receipt of an application, the commissioner or the local authorities, as the case may be, shall stamp the day, month, and year received, and the commissioner may verify that the applicant does not owe the state or the political subdivision in which the business is located any delinquent sales taxes, penalties, or interest, excluding items under formal appeal pursuant to the applicable statutes. The commissioner and officers or employees specifically so authorized by the commissioner and local authorities may issue the permits immediately after proper investigation but, for a period of 35 days after issuance, such permits shall operate on a probationary basis subject to final action on or withholding of the permits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 45:

§605. Qualifications

A. Upon application for initial permit licensure or annual permit license renewal for a CBD dealer permit, the applicant may be required to submit to a criminal background check. The applicant may be required to submit fingerprints and other identifying information to the Agency along with an application to the Louisiana Bureau of Criminal Identification and Information, who shall forward results of the criminal background check to the Office of Alcohol and Tobacco Control. The costs of providing the criminal background check shall be assessed by the bureau, as specified in R.S. 15:587(B), and paid by the applicant. Information obtained from the criminal background check may be used by the Office of Alcohol and Tobacco Control to determine the applicant's eligibility for a CBD dealer permit and/or renewal pursuant to this chapter.

B. No person shall be eligible to obtain or hold a permit if:

1. convicted of a felony crime under federal or state law as defined in R.S. 14:2(B) or drug related distribution within ten years immediately preceding the date of application;

2. convicted of a felony not defined in Subsection B.1, until two years after the completion of the final sentence.

C. Failure to meet or maintain qualifications is a ground for the denial, withholding, suspension, or revocation of a CBD dealer permit.

D. The applicant is responsible for any employee working under the applicant's license and CBD dealer permit holders shall maintain a record containing the name, date of hire, social security number, and date of employment termination for every employee.

E. Applicants for CBD dealer permits shall:

1. be a person of good character and reputation and over eighteen years of age. In considering a person's good character or reputation, the commissioner may consider a person's arrests in determining suitability;

2. be a citizen of the United States and the state of Louisiana and a resident of the state of Louisiana continuously for a period of not less than two years next preceding the date of the filing of the application;

3. be the owner of the place of business or have a bona fide written lease therefor for the place of business wherein the storage and retail/wholesale sales of industrial hemp-derived CBD products intended for consumption or topical use shall take place;

4. have not had a license or permit to sell or deal in CBD or hemp, issued by the United States, any state, or by any political subdivision of a state authorized to issue permits or licenses, revoked within two years prior to the application;

5. have not been adjudged by the commissioner, or convicted by a court of violating any of the provisions of this Chapter. If the applicant has been so convicted, the granting of a permit or of a renewal shall be within the discretion of the commissioner;

6. not owe the state or the local governmental subdivisions in which the application is made any delinquent taxes, penalties, or interest, excluding items under formal appeal pursuant to applicable statutes;

7. not be the spouse of a person who does not meet the requirements of Paragraphs 1 and 4-6 of this Subsection; however, in such cases the age of the ineligible spouse shall be immaterial. For purposes of this Paragraph, the term "spouse" shall also include persons who are considered married outside of the United States, persons who ordinarily hold themselves out as husband and wife, or persons who file their state and federal income tax returns as either "married filing jointly" or "married filing separate".

F. If the applicant is a partnership recognized by Louisiana law, or anyone in such partnership with or financed by another, all members of such partnership, or all the persons furnishing the money shall also possess the qualifications required of an applicant. The application shall name all partners or financial backers and furnish their social security numbers and proper addresses. If a partner of a partnership applying for dealer permits is a corporation or limited liability company, the requirements as to citizenship and residence shall not apply to officers, directors, and stockholders of the corporation or members of the limited liability company. The corporation or limited liability company shall either be organized under the laws of the state of Louisiana or qualified to do business within the state of Louisiana.

G.1. If the applicant is a corporation or a limited liability company, all officers and directors and all stockholders or members owning in the aggregate more than five percent of the stock or of the membership interest in a limited liability company and the person or persons who shall conduct or manage the business shall possess the qualifications required of an applicant and shall furnish their federal identification number, their Louisiana Department of Revenue business account number, their social security number, and their correct home address. The requirements as to citizenship and residence do not apply to either the officers, directors, or stockholders of corporations, or the officers, managers, or members of limited liability companies. The corporation or limited liability company shall be either organized under the laws of the state of Louisiana or qualified to do business within the state of Louisiana.

2. Notwithstanding any other provisions of law to the contrary, the commissioner may accept from a publicly traded or other corporation or entity, the necessary documentation of those persons described in Subsection H of this Section and three officers of the corporation in full satisfaction of the requirements of this Section.

H. Notwithstanding the provisions of Subsections B, the commissioner may grant or continue a permit with respect to an applicant, even though the applicant's spouse has been convicted of a felony, if the applicant:

1. had state and local permits prior to the spouse's felony conviction; and

2.a. has a regime of separation of property, pursuant to Civil Code Article 2370, and is the owner of the premises or has a bona fide written lease therefor, or

b. owns the permitted premises as the applicant's separate property, pursuant to Civil Code Article 2341.

I. In order to determine suitability, members of a partnership recognized by Louisiana law, the officers and directors of a corporation, the stockholders of a corporation, and members of a limited liability company owning more than five percent of such a corporation or company may be required to submit fingerprints and other identifying information to the Agency along with an application to the Louisiana Bureau of Criminal Identification, who shall forward results of the criminal background check to the Office of Alcohol and Tobacco Control. The costs of providing the criminal background check shall be assessed by the bureau, as specified in R.S. 15:587(B), and paid by the applicant.

J. All licensees and persons required to be qualified pursuant to the provisions of this Chapter shall have a continuing duty to inform the commissioner of any action which they believe would constitute a violation of this Chapter. No person who so informs the commissioner shall be discriminated against by an applicant or licensee because of supplying such information.

K. All licensees and any other persons who have been found suitable in accordance with the provisions of this Section shall maintain suitability throughout the term of the license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 45:

§607. Misstatement or Suppression of Fact

A. Any misstatement or suppression of fact in an application for an initial permit, application for renewal of a permit, special event permit, or any accompanying affidavit to the Office of Alcohol and Tobacco Control is ground for the denial, withholding, suspension, or revocation of a permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 45:

§609. Inspection and Examination

A. The commissioner or her agent may inspect any place of business where industrial hemp-derived CBD products are stored, offered for retail sale, or offered for wholesale. She or her agent may examine, at all reasonable hours, the books, records, and other documents of all CBD dealer permit holders.

B. No person shall refuse to allow, on demand, the commissioner or her agent to make a full inspection of a place of business where industrial hemp-derived CBD products are stored, offered for retail sale, offered for wholesale sale, nor shall any person refuse to allow, on demand, the commissioner or her agent to examine and audit the books and records of any business where industrial hemp-derived CBD products are stored, offered for retail sale, offered for wholesale sale, nor shall any person in any way hinder or prevent such an inspection or audit.

C. Any refusal by a CBD dealer permit holder to allow the commissioner or her agent to inspect the permitted place of business or to examine and audit the books and records of the permitted business as provided within this section is grounds for the suspension of a permit, in addition to other penalties provided in this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 45:

§611. Prohibition on Sales to Minors

A. No Person holding a CBD dealer permit and no servant, agent, or employee of the permittee shall sell any industrial hemp-derived CBD product to any person under the age of 18 years of age.

B. To ensure that no industrial hemp-derived CBD product is sold to a person under the age of eighteen years of age, a CBD dealer permit holder and their servants, agents, and employees may require all persons attempting to purchase CBD products at retail to produce for inspection either:

1. a valid, current, Louisiana driver's license which contains a photograph of the person presenting the driver's license;

2. a valid, current, driver's license of another state which contains a photograph of the person and birth date of the person submitting the driver's license;

3. a valid, current, special identification card issued by the state of Louisiana pursuant to R.S. 40:1321 containing a photograph of the person submitting the identification card;

4. a valid, current, passport or visa issued by the federal government or another country or nation, that contains a permanently attached photograph of the person and the date of birth of the person submitting the passport or visa;

5. a valid, current, military or federal identification card issued by the federal government containing a photograph of the person and date of birth of the person submitting the identification card;

6. a valid, current, special identification card of another state which contains a photograph of the person and birth date of the person submitting the identification card;

7. any digitized identification approved by the commissioner may be accepted by CBD retailers and retail/wholesalers. CBD dealers may choose to accept digitized identification or they may still require a physical identification when checking identification. CBD dealers whom the agency has required to utilize scanners shall still be required to request and scan a physical identification and may not accept digitized identification. Digitized identification may be accepted by establishments provided that all employees have been properly trained prior to acceptance in accordance with the requirements of LAC 55:VII.401.D.

C. Each form of identification listed above must on its face establish the age of the person as eighteen years or older, and there must be no reason to doubt the authenticity or correctness of the identification. No form of identification mentioned above shall be accepted as proof of age if it is expired, defaced, mutilated, or altered. If the state identification card or lawful identification submitted is a duplicate, the person shall submit additional information which contains the name, date of birth, and picture of the person. A duplicate driver's license shall be considered lawful identification for the purposes of this Paragraph, and a person shall not be required to submit additional information containing the name, date of birth, and picture of the person. In addition, an educational institution identification card, check cashing identification card, or employee identification card shall not be considered as lawful identification for the purposes of this Paragraph.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 45:

§613. Administrative Hearings and Penalties

A. Any person who violates any of the provisions of this chapter or the provisions of R.S. 3:1483 or who alters, forges, or counterfeits, or uses without authority any permit, license, or other document provided for in this chapter, who operates without a permit, or who fails to collect or to timely pay the assessments and fees due or assessed pursuant to this chapter or R.S. 3:1483 shall be subject effective January 1, 2020, in addition to any unpaid assessments, late fees, or collection costs, to the following criminal penalties, wherein each day on which a violation occurs shall constitute a separate offense:

1. on a first conviction, the offender shall be fined not more than $300;

2. on a second conviction, the offender shall be fined not more than $1,000;

3. on a third or subsequent conviction, the offender shall be sentenced to imprisonment, with or without hard labor, for not more than two years and shall be fined not more than $5,000.

B. In addition to the criminal penalties provided for by R.S. 3:1484 and above, any licensee who violates any of the provisions of this chapter shall be subject to having her permit suspended or revoked.

C. The procedure for the suspension or revocation of permits shall be substantially as follows.

1. The commissioner shall have periodic examinations made of the business of all persons holding permits under this Chapter. If a violation of any provision of this Chapter or of the law is observed, the commissioner may give the

permittee a written warning. If the permittee has been previously warned or if the violation is of a sufficiently serious nature, the commissioner may instruct any agent or employee of the commissioner to prepare and file, upon information and belief based upon the facts in hand, a petition for suspension or revocation of the permit, setting forth the facts and circumstances of the violation, and shall thereupon summon the permittee to appear and show cause why the permit should not be suspended or revoked.

2. The secretary of the Department of Revenue, municipal authorities, sheriffs, and other law enforcing officers may have periodic investigations made of the business of all permittees within their respective jurisdictions. If any violation of any provision of this Chapter or of any law is observed, such authorities may give the permittee a written warning. If the permittee has been previously warned or if the violation is of a sufficiently serious nature, they shall file an affidavit with the commissioner, setting forth the facts and circumstances of the violation. Thereupon, the commissioner shall summon the permittee to appear and show cause why his permit should not be suspended or revoked.

3. Any person may file with the commissioner or with the municipal officers or parish authorities a sworn petition requesting that a permit be suspended or revoked. If the petition is filed with the local authorities, they shall immediately transmit it to the commissioner. When such a petition is received by the commissioner, she shall summon the permittee to appear and show cause why her permit should not be suspended or revoked.

4. No such petition shall be considered by the commissioner unless sworn to by the petitioner in an affidavit which also affirms that the petitioner, together with witnesses, if any, will appear at the hearing to establish the allegations of the petition, and unless the petition sets forth facts constituting a cause or causes enumerated in or authorized by this Chapter for the suspension or revocation of a permit.

5. If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

D. If a person holds more than one permit and any one of them is suspended or revoked, the commissioner may suspend or revoke all of his permits.

E. Conviction by a court of a violation of the provisions of this Chapter is not an automatic condition precedent to the refusal, suspension, or revocation of a permit under this Chapter for a violation of any of the provisions of this Chapter or the law. When there has been a previous criminal prosecution for the same or similar act upon which the refusal, suspension, or revocation of a permit is being considered, evidence of a conviction or an acquittal in a court of competent jurisdiction shall be admissible in a proceeding before the commissioner. The commissioner shall withhold, suspend, or revoke permits for violations of this Chapter, regardless of any prosecution in a court or of the result of any such prosecution.

F. When a permit is revoked for any legal cause, the commissioner may, at the same time, order that no state or local permit shall be issued covering the same premises until two years after the date of revocation.

G. Whenever the commissioner is to hold a hearing pursuant to the provisions of this Chapter, she shall issue a written summons or notice thereof to the applicant or permittee, directing her to show cause why her permit should not be suspended or revoked. The notice or summons shall state the time, place, and hour of the hearing, which shall be not less than ten nor more than thirty calendar days from the date of the notice. The notice or summons shall enumerate the cause or causes alleged for suspending or revoking the permit. All notices or summonses shall be either delivered to the applicant or permittee in person or sent by certified mail to the applicant or permittee and directed to him at the mailing address as given in his last application for the permit. When so addressed and mailed, notices or summonses shall be conclusively presumed to have been received by the applicant or permittee.

H. Hearings by the commissioner shall, in her discretion, be held either at the agency headquarters in Baton Rouge, the agencies New Orleans' office, in the parish in which the licensed premises in question is located, or at another location designated by the commissioner.

I. To the extent practicable, the commissioner may authorize the use of teleconference, video link, or other visual remote communications technology for the conducting of any hearing pursuant to the following requirements.

1. Prior to authorizing the use of teleconference, video link, or other visual remote communications technology for the conducting of any hearing, the commissioner shall provide the permittee with written notice of his intent to do so. The notice shall be sent by certified mail to the permittee at the address of his place of business as given in his application for the permit and shall be sent not less than 10 nor more than 30 calendar days from the scheduled hearing date. When so addressed and mailed, the notice shall be conclusively presumed to have been received by the permittee.

2. Any party objecting to the commissioner's authorization of the use of teleconference, video link, or other visual remote communications technology to conduct all or any portion of any authorized hearing shall provide the commissioner with written notification of the objection at least five days prior to the scheduled hearing date. Upon receipt of any objection, the commissioner shall not allow the use of teleconference, video link, or other visual remote communications technology to conduct any portion of the hearing for which a proper objection was raised. Failure of a permittee to object in writing within at least five calendar days prior to the scheduled hearing date shall conclusively constitute a waiver of any objections.

3. Any use of teleconference, video link, or other visual remote communications technology for the conducting of any hearing shall be done in real-time.

J. Hearings may be held by the commissioner or by any person designated and authorized by the commissioner. If the hearing is to be held by a person designated by the commissioner, that person shall take an oath for the faithful performance of her duties. The oath may be administered by anyone qualified by law to administer oaths in this state. The commissioner, or the person designated to hold a hearing,

may administer oaths, issue subpoenas for the attendance of witnesses and the production of books, papers, accounts, and documents, and examine witnesses and receive testimony at the hearing.

K. If a person fails to comply with a subpoena issued by the commissioner or by any duly authorized person holding the hearing or if a witness refuses to testify in any matter regarding which he may be lawfully interrogated, the person conducting the hearing shall adjudge him guilty of contempt and may fine him not more than $100 or imprison him for not more than 30 days, or both. The sheriff of the parish in which the hearing is held shall execute the judgment of contempt.

L. If a permittee or applicant who has been notified of a hearing does not appear, the hearing may proceed without her and the commissioner may consider and dispose of the case, but in all cases the commissioner, upon application or ex propria motu, may grant continuances from time to time. If the continuance be granted to a fixed future date by written consent or in the presence of the permittee, applicant, or his counsel, no further notice of the hearing date need be given. In all other cases the same notice of hearing as in original hearings shall be given.

M. In determining cases involving the suspension or revocation of permits, if the commissioner finds that the violation is of a minor nature, or that there are extenuating circumstances, or that there are reasonable grounds to expect that the permittee will not again violate any of the provisions of this Chapter, the commissioner may suspend the permit for such time as she thinks proper. If the permittee has previously been fined or had a permit suspended or revoked, or if the violation is flagrant or serious, the commissioner may revoke the permit or permits and shall immediately notify the state and local authorities of this action. When the commissioner either suspends or revokes a permit, all permits to deal in industrial hemp-derived CBD products as herein defined and all similar local permits are ipso facto suspended or revoked without action on the part of state or local governing authorities. The commissioner shall retain jurisdiction to re-open cases at any time upon petition or ex propria motu, and for good cause shown may modify, revise, or reverse her former findings and decisions, and all such re-opened cases shall be heard and determined under the same rules of procedure as original cases.

N. In hearings of the commissioner which finally result in withholding the issuance of a permit or in suspending or revoking a permit, the commissioner shall assess the costs of the hearing to the applicant or permittee. The costs are recoverable by the commissioner in any appellate proceeding instituted by the applicant or permittee or in any other judicial proceeding.

O. Decisions of the commissioner in withholding, suspending, or revoking permits and of local authorities in withholding permits are final and binding on all parties unless appealed in the manner provided in section R below and finally reversed by the courts.

P. Any party aggrieved by a decision of the commissioner to withhold, suspend, or revoke a permit or of the local authorities to withhold a permit may, within 10 days of the notification of the decision, take a devolutive appeal to the district court having jurisdiction of the applicant's or permittee's place of business, proposed or actual as the case may be. Such appeals shall be filed in the district courts in the same manner as original suits are instituted therein. The appeals shall be tried de novo. Either party may amend and supplement her pleadings and additional witnesses may be called and heard. When there has been a previous criminal prosecution for the same or similar act upon which the refusal, suspension, or revocation of a permit is being considered, evidence of a conviction or an acquittal in a court of competent jurisdiction is admissible in the trial of the appeal. Within ten calendar days of the signing of the judgment by the district court in any such appeal case, the commissioner or the applicant for a permit or permittee, as the case may be, may devolutively appeal the judgment to the appellate court of proper jurisdiction. These appeals shall be perfected in the manner provided for in civil cases and shall be devolutive only. If the district court determines that the decision of the commissioner or of the local authorities in withholding, suspending, or revoking the permit was in error, the decision of the commissioner or local authorities shall not be voided if the commissioner or local authorities take an appeal to the court of appeals in the time provided for suspensive appeals.

Q. All proceedings in the district and appellate courts arising under this Part are civil in nature and shall be heard summarily by the court, without a jury, shall take precedence over other civil cases, and shall be tried in chambers or in open court, in or out of term.

R. The courts of this state shall have jurisdiction to issue restraining orders and writs of injunction restraining the commissioner as provided in the constitution, but no writ or order shall issue before a decision has been made by the commissioner either withholding the application for a permit, or suspending or revoking a permit under the provisions of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 45:

§615. CBD Owner Training

A. CBD dealer permittees must complete the free ATC online CBD education training course within 30 days after receiving their CBD dealer permit. All individuals completing CBD education training shall receive a certificate of completion evidencing their training which shall be valid for two years. CBD dealer permittee employees who may be called upon to sell or serve industrial hemp-derived CBD products to consumers at retail may voluntarily complete the ATC online CBD education training. Individuals who maintain current valid non-expired certificate of CBD education training and the permittee they are employed by may receive a warning in lieu of penalties for a first offense violation of a CBD/hemp product sale to a minor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 45:

§617. CBD Special Event Permits

A. For purposes of this regulation, special events are defined as events, held at any location, where industrial hemp-derived CBD products are sold as an incidental part of the event for payment rendered or are supplied as part of a general admission or other type fee.

B. For such events, this office may issue a special temporary CBD special event permit to existing CBD dealer permit holders authorizing the sale of industrial hemp-derived CBD products that have been registered and had their labels approved by the Louisiana Department of Health at the special event for a maximum duration of three consecutive days only, but wholesalers may deliver products to the event up to two days prior to the effective date of the permit.

C. The commissioner shall collect special event licensure permit fee for each CBD special event permit in the amount of $100.

D. No industrial hemp-derived CBD product intended for consumption or topical use shall be given away free of charge at a special event, even by a special event permit holder, unless authorized in writing by the Louisiana Office of Alcohol and Tobacco Control.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 45:

§619. No Donations or Free CBD Products

A. No industrial hemp-derived CBD product shall be donated or given away free of charge outside the confines of a CBD dealer's permitted place of business, nor shall same be sold through a vending machine, unless authorized in writing by the Louisiana Office of Alcohol and Tobacco Control.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 45:

Juana Marine-Lombard
Commissioner

1909#081

DECLARATION OF EMERGENCY

Department of Revenue
Office of Alcohol and Tobacco Control

Direct Delivery of Alcohol Public Safety Regulations
(LAC 55:VII.801-807)

The Louisiana Department of Revenue, Office of Alcohol and Tobacco Control, pursuant to the emergency rulemaking authority granted by R.S. 49:953(B) of the Administrative Procedure Act (R.S. 49:950, et seq.) and the specific rule making authority granted by R.S. 26:153(D), R.S. 26:307(E), R.S. 26:271.2(2)(b), R.S. 26:271.4, and 26:309(I), hereby adopts the following Emergency Rule for the protection of public health. The effective date of this Rule is upon signature.

The Louisiana Department of Revenue, Office of Alcohol and Tobacco Control, finds it necessary to make immediate changes to the Louisiana Administrative Code given the need for regulation of the direct delivery of alcohol. The following regulations will give the ATC the ability to properly license and regulate the direct delivery of alcohol, which will affect the health of Louisiana citizens and give the commissioner of the Office of Alcohol and Tobacco Control the ability to make critical decisions that protect human health. This Rule creates §801 through §807 to address direct delivery matters not otherwise addressed by existing law or regulation and to resolve differences where the provisions of Act 433 and Act 436 of the 2019 Regular Session either overlap or conflict.

This Rule shall have the force and effect of law upon signature and will remain in effect 120 days, unless renewed by the commissioner of Alcohol and Tobacco Control or until permanent rules are promulgated in accordance with law.

Title 55
PUBLIC SAFETY
Part VII. Alcohol and Tobacco Control
Chapter 8. Direct Delivery of Alcohol Public Safety Regulations

§801. General Direct Delivery Requirements

A. Prior to any alcohol retailer or third party alcohol delivery service engaging in the delivery of alcoholic beverages, same shall obtain an alcoholic beverage delivery permit from the commissioner of the Office of Alcohol and Tobacco Control and shall adhere to the following requirements:

1. Only alcoholic beverages intended for personal consumption and delivered in a manufacturer sealed container may be offered for delivery. "Manufacturer sealed container" as used in this chapter shall mean the original sealed container that is filled with the alcoholic beverage at the permitted facility by the manufacturer as defined in R.S. 26:2(12) and 241(10). The delivery of an "open alcoholic beverage container" as defined by R.S. 32:300 is prohibited.

2. Delivery shall be permitted only in those areas where the sale of alcoholic beverages are permitted. Delivery shall be prohibited in any area where it has been prohibited by a referendum vote or the local governing authority.

3. Delivery by a retailer shall not extend past the boundaries of the parish where the retailer's permitted establishment is located and shall be made only to a residential or commercial address. Third Party Alcohol Delivery Service permittees shall be allowed to deliver within ten miles from the place of purchase, irrespective of parish boundaries.

4. Orders for alcohol delivery of any type may only be accepted and processed if the permitted premises receiving the order has actual physical possession of the alcoholic beverage being ordered on the physical premises at the time the order is accepted and can fulfill the order from stock on-hand.

5. The alcoholic beverages of all deliveries which are refused by a third party or incapable of being delivered for any reason shall be returned to the place of purchase.

6. Alcohol beverage delivery permit holders must verify that a consumer placing an order for alcohol delivery is of legal drinking age.

7. Alcoholic beverages shall not be delivered:

a. to an address on the campus of any elementary school, secondary school, university, college, technical college, or institute;

b. to any public playground or building used primarily as a church, synagogue, mosque, or public library.

c. outside of the hours that the retailers physical premises is open to the public;

d. without verifying that the recipient is not visibly intoxicated;

e. without obtaining the signature of the recipient verifying receipt of the delivery of alcohol and their age.

8. Alcoholic beverage delivery permit holders shall keep and retain a record of all deliveries of alcoholic beverages for a period three years from the date of delivery and shall make such records available to the commissioner of Alcohol and Tobacco Control, and her agents and assigns, upon request. The record of each delivery shall include:

a. The retail dealers name, address, and permit number;

b. The name of the person who placed the order and the date, time, and method of order;

c. The name of the employee making the delivery and the date, time, and address of the delivery;

d. The type, brand, and quantity of each alcoholic beverage delivered; and

e. The name, date of birth, and signature of the person that received the delivery.

9. Parishes and Municipalities may require and issue local direct delivery of alcohol permits similar to those issued by the commissioner of Alcohol and Tobacco Control.

10. All persons delivering alcoholic beverages under an alcoholic beverage delivery permit shall be eighteen years of age or older, be the permittee or a W-2 employee of the delivery permit holder, and possess a valid server permit as provided in R.S. 26:931 et seq.

11. Persons delivering alcoholic beverages under an alcoholic beverage delivery permit shall refuse delivery and return the alcoholic beverages to the place of purchase if:

a. The recipient does not produce a valid and current form of identification as identified in section G(5) of this regulation;

b. There is reason to doubt the authenticity or correctness of the recipient's identification;

c. The recipient refuses to sign for the receipt of the delivery; or

d. The recipient is intoxicated.

12. If an alcohol retailer's alcohol permit is revoked, suspended, or lapsed, then that retailer's alcoholic beverage delivery permit shall also be considered to be revoked, suspended, or lapsed and delivery of alcoholic beverages shall immediately cease.

13. They shall maintain a commercial general liability insurance policy with a minimum coverage amount of one-hundred thousand dollars for the duration of the alcoholic beverage delivery permit and they shall provide proof of coverage to the commissioner of the Office of Alcohol and Tobacco Control upon request.

14. They shall require all delivery drivers to maintain vehicle general liability insurance on any and all vehicles they may use for deliveries as required by State law for the duration of the alcoholic beverage delivery permit and they shall provide proof of coverage to the commissioner of the Office of Alcohol and Tobacco Control upon request.

15. Class B and Class AR retailers who engage the services of a third party alcohol delivery service to deliver alcohol for them, must notify the commissioner of the Office of Alcohol and Tobacco Control in writing within ten days of executing or terminating an agreement with a third party alcohol delivery service to deliver alcohol by providing her with a copy of the agreement and/or termination notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 45:

§803. Package Store Retail Alcohol Delivery Permit

A. Retailers holding a valid class B retail liquor permit, retailers holding a valid class C retail liquor permit, and retailers holding a valid retail liquor permit that allows for off-premises consumption shall be allowed to apply for, obtain, and maintain a class P retail alcohol delivery permit pursuant to this particular regulation (§803) and they shall adhere to the following requirements in addition to the general requirements otherwise enumerated in this chapter:

1. The commissioner of Alcohol and Tobacco shall collect an initial and annual licensure fee for class P retail alcohol delivery permits in the amount of two-hundred and fifty dollars and no cents and same shall expire and be renewable at the same time as the holder's alcohol permit.

2. Each and every order for the delivery of alcoholic beverages received by a class P retail alcohol delivery permit holder shall include food with each order.

3. All alcohol delivery transactions initiated by a consumer shall be processed, assembled, packaged, and fulfilled at the retailer's permitted physical premises wherein the order was received by the permittee or a W-2 employee of the permittee.

4. Deliveries to consumers shall only be made by the permittee or a W-2 employee of the retailer.

5. Alcoholic beverages shall not be delivered without verifying the identity and age of the recipient by reading a valid state-issued photo identification card, valid military identification card, valid passport of the person, or through the use of a real-time electronic age verification device or application that shall be approved by the commissioner of Alcohol and Tobacco Control; and

6. Notwithstanding any law, rule, or regulation to the contrary, the permittee may use electronic means to market, receive, and process orders for alcohol products.

7. The permittee may market, receive, and process orders for alcohol products using electronic means owned, operated, and maintained by a third party, provided that:

a. the permittee maintains ultimate control and responsibility over the sales transaction, the transfer of the physical possession of the alcoholic beverages, and the collection and remittance of all applicable state and local taxes;

b. the permittee retains the sole discretion to determine whether to accept and complete an order or reject it and the permittee, or a W-2 employee of the permittee, reviews and accepts or rejects each order;

c. the permittee retains the independence to determine which alcoholic beverages are made available through electronic means and which alcoholic beverages are made available for delivery to the consumer either at their licensed physical premises itself or at another address designated by the consumer;

d. the permittee independently sets the price of alcoholic beverages being offered for delivery;

e. any credit or debit card information provided by a consumer to the third party for the purpose of transacting a

purchase is automatically directed to the permittee such that the transaction takes place between the consumer and the permittee and the permittee appears as the retail dealer at the time of purchase and on the receipt;

f. the permittee, or a W-2 employee of the permittee, processes at the physical premises that accepted the order all payments initiated by a consumer and assembles, packages, and fulfills each order at the same physical premises;

g. deliveries to consumers shall be made by the permittee or a W-2 employee of the permittee;

h. The relationship between the permittee and the third party shall be one of independent contractors and neither party shall be deemed the employee, agent, or joint venture of the other party under any circumstances or for any purposes;

i. the third party shall not deal, handle, sell, offer for sale, or possess for sale alcoholic beverages or process payments for the sale of alcoholic beverages.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 45:

§805. Restaurant Retail Alcohol Delivery Permit

A. Retailers holding a class AR retail liquor permit shall be allowed to apply for and obtain a class R retail alcohol delivery permit pursuant to this particular regulation (§805) and they shall adhere to the following requirements in addition to the general requirements otherwise enumerated in this chapter:

1. The commissioner of Alcohol and Tobacco shall collect an initial and annual licensure fee for class R retail alcohol delivery permits in the amount of two-hundred and fifty dollars and no cents and same shall expire and be renewable at the same time as the holder's alcohol permit.

2. Only beer, wine, and sparkling wine alcoholic beverages may be may be offered for delivery, no alcohol shall be delivered more than ten miles from the place of purchase, no alcoholic beverages shall be offered for curbside pickup, and each and every order for the delivery of alcoholic beverages shall be composed of at least a thirty percent (30%) food as computed from total cost paid. Alcohol and food purchased from a class AR retailer for delivery shall be included in its gross average monthly sales figures for purposes ensuring that an AR retailer meets its sixty percent food or food items requirement under R.S. 26:73(H). However, pursuant to R.S. 26:73(B)(2), sparkling or still wine delivered by the bottle in conjunction with food shall not be considered an alcoholic beverage when determining gross revenue for purposes of R.S. 26:73(H).

3. All alcohol delivery transactions initiated by a consumer shall be processed, assembled, packaged, and fulfilled at the retailer's permitted physical premises wherein the order was received by the permittee or a W-2 employee of the permittee.

4. Deliveries to consumers shall only be made by the permittee or a W-2 employee of the retailer.

5. At the time of delivery of alcoholic beverages, the permittee shall obtain the recipient's signature and verify the age of the recipient through the use of an electronic age verification device or combination of devices that shall be approved by the commissioner of Alcohol and Tobacco Control. Such devices shall be capable of all of the following:

a. Verifying proof of age through technology of a magnetic card reader or an alternative technology capable of verifying proof of age;

b. Reading a valid state-issued driver's license, a valid state-issued identification card, a valid military identification card, or a valid passport;

c. Storing the recipient's name, age, date of birth, the expiration date of the identification, and the date and time that the identification was scanned.

6. Notwithstanding any law, rule, or regulation to the contrary, the permittee may use electronic means to market, receive, and process orders for alcohol products.

7. The permittee may market, receive, and process orders for alcohol products using electronic means owned, operated, and maintained by a third party, provided that:

a. The permittee maintains ultimate control and responsibility over the sales transaction, the transfer of the physical possession of the alcoholic beverages, and the collection and remittance of all applicable state and local taxes;

b. The permittee retains the sole discretion to determine whether to accept and complete an order or reject it and the permittee, or a W-2 employee of the permittee, shall review and accept or reject each order;

c. The permittee retains the independence to determine which alcoholic beverages are made available through electronic means and which alcoholic beverages are made available for delivery to the consumer at the licensed physical premises itself or at another address designated buy the consumer;

d. The permittee independently sets the price of alcoholic beverages being offered for delivery;

e. Any credit or debit card information provided by a consumer to the third party for the purpose of transacting a purchase is automatically directed to the permittee such that the transaction takes place between the consumer and the permittee and the permittee appears as the retail dealer at the time of purchase and on the receipt;

f. The permittee, or a W-2 employee of the permittee, processes at the physical premises that accepted the order, all payments initiated by a consumer and assembles, packages, and fulfills each order at the same physical premises;

g. Deliveries to consumers shall be made by the permittee or a W-2 employee of the permittee;

h. The relationship between the permittee and the third party shall be one of independent contractors and neither party shall be deemed the employee, agent, or joint venture of the other party under any circumstances or for any purposes; and

i. The third party shall not deal, handle, sell, offer for sale, or possess for sale alcoholic beverages or process payments for the sale of alcoholic beverages.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 45:

§807. Third Party Alcohol Delivery Service Permit

A. Third party alcohol delivery service companies desiring to deliver alcohol to consumers in connection with a delivery agreement with a retail dealer possessing valid class AR or B retail permits shall first apply for and obtain a class T third party alcohol delivery service permit pursuant to this particular regulation (§807) and they shall adhere to the following requirements in addition to the general requirements otherwise enumerated in this Chapter:

1. The commissioner of Alcohol and Tobacco Control shall collect an initial and annual licensure fee for third party alcohol delivery service permits in the amount of one thousand five-hundred dollars and no cents and same shall expire and be renewable annually from date of first issuance.

2. They may enter into third party alcoholic beverage service delivery agreements with retail dealers possessing valid class AR or B retail permits with the Office of Alcohol and Tobacco Control that provide for the use by the retailer of an internet or mobile application or similar technology platform to facilitate the sale of alcoholic beverages for delivery to consumers for personal consumption and the third party alcohol delivery service permittee may deliver the alcoholic beverages so facilitated to the consumer.

3. Only beer, wine, and sparkling wine alcoholic beverages provided by the retail dealer may be may be offered for delivery, no alcohol shall be delivered more than ten miles from the place of purchase, and each and every order for the delivery of alcoholic beverages shall be composed of at least thirty percent (30%) food as computed from total cost paid for each class AR retailer order and each class B retailer order shall contain food. Alcohol and food purchased from a class AR retailer for delivery shall be included in its gross average monthly sales figures for purposes ensuring that an AR retailer meets its sixty percent food or food items requirement under R.S. 26:73(H). However, pursuant to R.S. 26:73(B)(2), sparkling or still wine delivered by the bottle in conjunction with food shall not be considered an alcoholic beverage when determining gross revenue for purposes of R.S. 26:73(H).

4. They shall be licensed to do business in the State of Louisiana, use their own W-2 employees for delivery, be able to monitor the routes of their employees during deliveries, and conduct an interview and background check of all employees that will deliver alcoholic beverages.

5. They shall maintain a general liability insurance policy with a liquor liability endorsement in an amount no less than one million dollars per occurrence for the duration of every agreement they maintain with a retail dealer and they shall provide proof of coverage to every retail dealer with whom they have an agreement and notice to the retail dealer and the commissioner of the Office of Alcohol and Tobacco Control if the coverage lapses or is cancelled.

6. The retail dealer shall manage and control the sale of alcoholic beverages and shall accept or reject all orders placed for alcoholic beverages through the third party delivery service permittee's internet or mobile application or similar technology, collect and remit all applicable state and local taxes, determine the alcoholic beverages offered for sale through the third party delivery service permittee's internet or mobile application or similar technology, and determine the price at which alcoholic beverages are offered for sale or sold through the third party delivery service permittee's internet or mobile application or similar technology.

7. The third party alcohol delivery service permittee may charge retailer dealers a reasonable delivery fee for the orders delivered by the third party and may act as an agent for the retail dealer in the collection of payments from the sale of alcoholic beverages, but the full amount of each order must be handled in a manner that gives the retail dealer control over the ultimate receipt of the payment from the consumer.

8. The third party alcohol delivery service permittee may receive orders and accept payment via the internet or through a mobile application or similar technology.

9 At the time of delivery of alcoholic beverages, the third party alcohol delivery service permittee shall obtain the recipient's signature and verify the age of the recipient through the use of an electronic age verification device or combination of devices that shall be approved by the commissioner of Alcohol and Tobacco Control. Such devices shall be capable of all of the following:

a. Verifying proof of age through technology of a magnetic card reader or an alternative technology capable of verifying proof of age;

b. Reading a valid state-issued driver's license, a valid state-issued identification card, a valid military identification card, or a valid passport;

c. Storing the recipient's name, age, date of birth, the expiration date of the identification, and the date and time that the identification was scanned.

10. A third party alcohol delivery service permittee who delivers alcoholic beverages, but fails to comply with the provisions of section I immediately above or §801(K) and any other applicable rules contained in this chapter, shall be vicariously liable for damages incurred as a result of the failure to comply.

11. Third party alcohol delivery service permittees must maintain and provide the commissioner of Alcohol and Tobacco Control with a list of retailers they have entered into agreements with within sixty days of receiving their permit and at each renewal. An up-to-date version of the retailer list shall be made available upon demand by the commissioner or her agents and assigns.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 45:

Interested persons may submit written comments to Commissioner Juana Marine-Lombard, Office of Alcohol and Tobacco Control, P.O. Box 66404, Baton Rouge, LA 70896 or at legal.department@atc.la.gov.

Signed this day of the 30th day of August 2019.

Juana Marine-Lombard
Commissioner

1909#017

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

2019 Commercial Large Coastal Shark
Daily Possession Limit Adjustment

Louisiana's commercial fishery for large coastal sharks (great hammerhead, scalloped hammerhead, smooth hammerhead, nurse shark, blacktip shark, bull shark, lemon shark, sandbar shark, silky shark, spinner shark, and tiger shark) opened on January 1, 2019 with a daily possession limit of 45 sharks and is open until further notice. NOAA Fisheries has informed the secretary that the daily possession limit for large coastal sharks has been increased from 45 daily to 55 daily through the remainder of the season which is currently scheduled to end on December 31, 2019.

In accordance with the emergency provisions of R.S. 49:953, which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency rules to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, and the authority given to the secretary by the commission in LAC 76:VII.357.H.2 to modify large coastal shark possession limits if notified by NOAA Fisheries of such an adjustment, the secretary hereby declares:

Effective 12:01 a.m., August 12, 2019, the daily bag limit for the commercial harvest of large coastal sharks (great hammerhead, scalloped hammerhead, smooth hammerhead, nurse shark, blacktip shark, bull shark, lemon shark, sandbar shark, silky shark, spinner shark, and tiger shark) shall be 55 sharks per day until 11:59 p.m., December 31, 2019. Persons harvesting large coastal sharks commercially may not possess sandbar sharks unless they also have in their name and in possession a valid federal shark research permit under 50 CFR 635.32(1).

Jack Montoucet
Secretary

1909#001

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Deer—Area 5 Amended Season

In accordance with the provisions of R.S. 49:953(H) and under the authority of R.S. 56:115 and 116, the Wildlife and Fisheries Commission hereby adopts the following Emergency Rule:

Due to anticipated impacts from the 2019 summer flood, the Wildlife and Fisheries Commission is recommending a reduction in the number of either-sex deer days for the 2019-2020 season. The reduction in either-sex deer days is intended to mitigate the anticipated reduction in lactation and subsequent recruitment.

Either-sex harvest will be amended to bucks only during primitive firearm season November 9-15, modern firearm November 16-17, December 14-15, and December 21-22. Either-sex hunting is allowed during the modern firearm season November 29-December 1; during the youth week October 26-November 1; and during archery season, except when bucks only is in progress. Either-sex deer may be harvested any day of the deer season on property enrolled in DMAP, provided that a DMAP tag is possessed by the hunter at the time of harvest.

This Declaration of Emergency shall become effective October 16, 2019, and remain in effect for the duration of the 2019-2020 deer-hunting season. The secretary of the Department of Wildlife and Fisheries is authorized to take any necessary steps on behalf of the commission to promulgate and effectuate this Declaration of Emergency.

Alfred R. Sunseri
Chairman

1909#021

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Modification and Closure of the
2019 Private Recreational Red Snapper Season

Louisiana's private recreational red snapper season was previously set by the Wildlife and Fisheries Commission at its regular meeting on May 2, 2019 to be open on weekends only (Friday, Saturday, and Sunday) including the Monday of Memorial Day and the Fourth of July beginning on May 24, 2019. The recreational season did not originally include the Monday of Labor Day (September 2, 2019) which is added to the season in this action. LA Creel data indicate that harvest rates are such that the state recreational allocation may be met or is projected to be reached, and a closure is warranted.

In accordance with the emergency provisions of R.S. 49:953, which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency rules to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, and the authority given to the secretary by the Commission at its regular meeting on May 2, 2019, the secretary hereby declares:

The season for the recreational harvest of red snapper in Federal and state waters off Louisiana will remain open on weekends only (Friday, Saturday, and Sunday) as previously specified, but shall now include the Monday of Labor Day (September 2, 2019). The season shall then close at 12:01 a.m. on Tuesday, September 3, 2019 and remain closed until further notice.

Any closure shall prohibit the possession and/or landing of red snapper in state waters, except for federally permitted charter boats or commercial Individual Fishing Quota holders operating under federal law during federally established seasons and rules for those vessels.

Jack Montoucet
Secretary

1909#009

Rules

RULE

Department of Agricultural and Forestry
Office of Agricultural and Environmental Sciences

Maintenance and Inspection Fee
(LAC 7:XV.Chapter 3)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., and under the authority of enabling statutes, R.S. 3:1604.1, R.S. 3:1652, and R.S. 3:1655 the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, has amended these rules and regulations to reduce the fee paid by producers for the inspection and certification of cotton for the presence of the boll weevil from $5 per acre to $4 per acre. The excessive rainfall during the fall harvest season of 2018 has caused a hardship on many cotton producers in the State of Louisiana. This hardship experienced by the cotton producers is supported by the USDA's designation of natural disaster in 35 parishes within the state of Louisiana. Due to the wet conditions, some producers were unable to harvest their cotton crop, while other producers were left with the inability to destroy standing cotton stalks. The producers that were able to prepare fields for this year's cotton crop did so at an increased expense, which significantly reduced farm income for cotton producers. The proposed action, while not affecting the quality of inspection and certification for the presence of the boll weevil, will provide some relief in input costs for cotton producers in this state. This Rule is hereby adopted on the day of promulgation.

Title 7
AGRICULTURE AND ANIMALS
Part XV. Plant Protection and Quarantines
Chapter 3. Boll Weevil

§301. Maintenance Inspection Fee

A. In accordance with R.S. 3:1655(D), the state entomologist is authorized to assess fees to defray the costs of inspections or the issuance of certificates or permits for the shipment of agricultural products, commodities, packaging, or equipment. There is hereby established a fee for the inspection and certification of cotton for the presence of the boll weevil to ensure the marketability of cotton in commerce and maintain Louisiana's boll weevil-free status. The fee shall be $4 per acre for each acre of cotton planted in the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1604.1, 1652, and 1655.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Boll Weevil Eradication Commission, amended LR 40:1517 (August 2014); LR 42:1644 (October 2016), LR 45:1167 (September 2019).

§303. Definitions Applicable to Boll Weevil

A. - B. …

* * *

Maintenance Inspection Fee—the fee paid by cotton producers to finance, in whole or in part, a program to inspect cotton for the presence of the boll weevil in the state and to issue certificates or permits in accordance with R.S. 3:1655(D). The charge to the producer is calculated at the rate of $4 per acre for each acre of cotton planted in the state.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1604.1, 1652, and 1655.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Boll Weevil Eradication Commission, LR 21:17 (January 1995), amended LR 23:195 (February 1997), LR 37:2583 (September 2011), LR 40:1517 (August 2014); LR 42:1644 October 2016), LR 45:1167 (September 2019).

§321. Maintenance Inspection Fees, Payment and Penalties

A. The annual maintenance inspection fee on cotton producers in the Louisiana eradication zone shall be $4 per acre for each acre of cotton planted in the state. Each cotton producer shall pay his annual maintenance inspection fee directly to the department no later than July 15 or final certification with the FSA for that growing season, whichever is later. The signed and completed cotton acreage reporting and payment form with FSA Form 578 attached shall be submitted with the annual payment of the maintenance inspection fee.

B. - H. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1604.1, 1609, 1610, 1612, 1652, and 1655.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Boll Weevil Eradication Commission, LR 21:20 (January 1995), amended LR 21:669 (July 1995), LR 23:195 (February 1997), LR 24:2231 (December 1998), LR 25:829 (May 1999), LR 29:859 (June 2003), LR 30:1142 (June 2004), LR 30:2443 (November 2004), LR 37:2583 (September 2011), LR 40:1519 (August 2014); LR 42:1644 (October 2016), LR 45:1167 (September 2019).

Mike Strain DVM
Commissioner

1909#070

RULE

Department of Agricultural and Forestry
Office of Agricultural and Environmental Sciences

Sweet Potato Certification Standards (LAC 7:XIII.755)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry ("Department") and the Agricultural Chemistry and Seed Commission has amended LAC 7:XIII.755 to differentiate Guava Root Knot Nematode ("GRKN") from other Root Knot Nematode species and apply a zero tolerance for GRKN in certified sweet potato seed. GRKN is aggressive and can cause severe damage to host plant species. GRKN

poses an imminent threat to the health and welfare of Louisiana's sweet potato industry.

GRKN was introduced to Louisiana in 2018 through sweet potato seed originating from out-of-state. GRKN has only been positively identified in a very small area of Louisiana but this pest could impact almost every agriculture related industry in Louisiana if it were to become established. In addition, GRKN has been found to attack the native Southern root knot nematode resistant varieties of sweet potato. In other states where GRKN is found, sweet potatoes are not harvested because the potatoes are of such poor quality and shape that they cannot be sold. Also in some instances, only certain crops can be grown in GRKN infested soil limiting the farmer's ability to diversify their crops and markets.

For these reasons, the existence of GRKN in Louisiana presents a peril to the integrity and stability of Louisiana's agriculture and sweet potato industries. The proposed change to LAC 7:XIII.755 would help prevent the spread of GRKN to other parts of the state by applying a zero tolerance standard for its presence in certified sweet potato seed. This Rule is hereby adopted on the day of promulgation.

Title 7
AGRICULTURE AND ANIMALS
Part XIII. Seeds
Chapter 7. Certification of Specific Crops/Varieties
Subchapter B. Grain and Row Crop Seeds
§ 755. Sweet Potato Certification Standards (Virus and Non Virus-Tested)

A. - G.4.b. …

c. Specific Seed Root Tolerance Standards of Virus-Tested and Non-Virus-Tested Sweet Potatoes

Maximum Tolerance Allowed for Virus-tested and Non Virus-tested Sweet Potatoes		
Presence or symptoms of:	**G1 (Foundation) G2 (Certified) Seed Roots**	**G3 (Certified) Seed Roots**
Surface rots (Fusarium spp.) and Soft Rots (Rhizopus spp.)	5%	5%
Bacterial Root Rot (Erwinia spp.)	none	None
Black Rot (Ceratocystis fimbriata)	none	None
Scurf (Monilochaetes infuscans)	1.0%	2.0%
Streptomyces soil rot (Streptomyces ipomoeae)	2.5%	5.0%
Root-Knot Nematode - (Meloidogyne spp.) (Other than Guava Root-Knot Nematode)	1.0%	2.0%
Guava Root-Knot Nematode (Meloidogyne enterolobii)	None	None
Russet Crack (a strain of SPFMV)	None	None
Wilt (Fusarium oxysporum f. sp. batatas)	None	None
Sweetpotato Weevil (Cylas formicarius)	None	None
Exotic or hazardous pests	None	None
Variety Mixture	None	None
Off-types (mutations)	0.20%	0.50%

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:579 (November 1982), amended LR 9:202 (April 1983), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 22:1210 (December 1996), LR 36:1220 (June 2010), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2725 (October 2013), amended LR 40:755 (April 2014), LR 44:1855 (October 2018), LR 45:1168 (September 2019).

Mike Strain, DVM
Commissioner

1909#069

RULE

Departmen of Children and Family Services
Division of Child Welfare

Foster Care
(LAC 67:V.4101)

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:V, Subpart 5 Foster Care, Chapter 41 Guardianship Subsidy Program, Section 4101 Subsidizing Guardianship Arrangements for Children in Foster Care.

Pursuant to SEC. 473. [42 U.S.C. 673], amendment of Section 4101 of this code is necessary to ensure children in foster care in Louisiana are afforded the full benefits possible in achieving permanency through guardianship. Additionally, with regard to federal Public Law 115-123 enacted February 9, 2018, the benefits available through the guardianship subsidy are being expanded.

The amendment allows the department to implement this opportunity for establishing more stable, permanent care options for children in foster care, and stabilizing situations where guardians of children who have exited foster care and achieved the legal age of majority can continue to receive support as long as the guardian continues to provide care for the child and the guardian remains responsible for financial support of the child, if the child meets the same eligibility criteria as children eligible for the department's Extended Foster Care program. This Rule is hereby adopted on the day of promulgation, and it is effective October 1, 2019.

Title 67
SOCIAL SERVICES
Part V. Child Welfare
Subpart 5. Foster Care
Chapter 41. Guardianship Subsidy Program
§4101. Subsidizing Guardianship Arrangements for Children in Foster Care

A. Overview of Program Purpose

1. The Subsidized Guardianship Program enables the Department of Children and Family Services (DCFS) to make payments to certified relative and fictive kin caregivers as well as certified caregivers with a significant familial bond with the child on behalf of a child who otherwise might not be able to achieve permanency outside of department custody because of special needs or other circumstances. Subsidy payments shall be limited to child(ren) for whom guardianship is indicated due to other more permanent options such as reunification with the parents, immediate unsubsidized custody to a relative or other caregiver, or adoption being determined unfeasible for the child. The guardianship subsidy applies only to a child(ren) for whom the DCFS holds legal custody, only to potential caregivers with whom the child has a significant

familial bond; with whom it would be in the child's best interest to remain until the age of majority, and when the kinship placement provider or other caregiver with a significant familial bond becomes a certified foster caregiver according to the certification standards of the state, and, the child(ren) remains in the certified kinship placement or placement with the other caregiver with a significant familial bond for at least six consecutive months during the current foster care episode prior to entering the guardianship subsidy arrangement. The guardianship subsidy also applies to successor guardian(s) who meet the following criteria:

a. the successor guardian is named in the guardianship subsidy agreement with DCFS;

b. the successor guardian and all adult household members have satisfactorily completed national fingerprint based criminal and child abuse/neglect background clearances; and

c. guardianship is transferred by a court to the successor guardian in accordance with *Louisiana Children's Code* articles 718 through 724.1.

2. The prospective guardianship family must meet basic foster care certification eligibility requirements or the successor guardianship criteria in all respects except for the ability to assume complete financial responsibility for the child's care.

3. An extended guardianship subsidy may be provided to the guardians or successor guardians of a child who initially received a guardianship subsidy from DCFS after achieving the age of 16, but prior to achieving the age of 18, when the guardian continues to provide care for the child and the guardian remains responsible for financial support of the child, if the child meets the same eligibility criteria as children eligible for the department's extended foster care program.

B. Types of Subsidy Payments. The child may be subsidized for the following services up to age 18.

1. Maintenance. The maintenance subsidy includes basic living expenses such as board, room, clothing, spending money, and ordinary medical costs. The maintenance subsidy may be ongoing until the child reaches age 18, but must be renewed on a yearly basis. The maintenance subsidy may be renewed on the child's eighteenth birthday and extended up to age 21 if the guardian continues to provide care for the child and the guardian remains responsible for financial support of the child, if the child meets the same eligibility criteria as children eligible for the department's extended foster care program. This extended maintenance subsidy must be reviewed quarterly and may be renewed annually as long as the child continues to meet the same eligibility criteria as children eligible for the department's extended foster care program. This renewal will be dependent upon the child remaining in the care of the guardian or successor guardian with whom the subsidy agreement was established. The amount of payment shall not exceed 80 percent of the state's regular foster care board rate based on the monthly flat rate payments of the regular foster care board rate for the corresponding age group. Monthly maintenance payments shall not be based on subsidized foster care arrangements such as specialized foster care, alternate family care, or therapeutic foster care. Changes in the maintenance subsidy rate routinely only occur once a year and the adjustment is typically made at the time of the subsidy renewal, or due to a change in the child's age. Adjustments to the maintenance subsidy rate may also occur due to availability of funds, legislative changes or adjustments to the regular foster care board rate.

2. Special Board Rate. Foster parents entering into a guardianship agreement for a foster child for whom a special board rate was received during the foster care episode may request up to a maximum of $240 which is 80 percent of the special board rate amount of $300. This is only provided if the care and needs of the child in the guardianship arrangement warrant this same special board rate. The special board rate subsidy may be renewed on the child's eighteenth birthday and extended up to age 21 if the guardian continues to provide care for the child and the guardian remains responsible for financial support of the child, if the child meets the same eligibility criteria as children eligible for the department's extended foster care program. An extended special board subsidy for a child ages 18 to 21 must be reviewed quarterly and may be renewed annually as long as the child continues to meet the same eligibility criteria as children eligible for the department's extended foster care program. The continued need for the special board rate shall be reviewed at the time of the quarterly reviews. The review shall consist of a determination of whether the same level of specialized care by the guardian, for which the special board rate was being provided at the time of the initial subsidy agreement, continues to be necessary to meet the child's needs. Any reduction in the level of care required by the guardian or successor guardian should result in a decrease in the amount of special board rate compensation to the guardian.

3. Special Services

a. The special services subsidy is time limited and in some cases may be a one-time payment. It is the special assistance given to handle an anticipated expense when no other family or community resource is available. If needed, it can be offered in addition to the maintenance and special board rate subsidy. The special services subsidy must be established as a part of the initial guardianship subsidy agreement, and may not be provided or renegotiated based on any circumstances which develop or issues identified after that point. Special services subsidies include the following types of needs:

i. special medical costs deemed medically necessary for the daily functioning of the child for any condition existing prior to the date of the initial judgment establishing guardianship with the kinship caregiver or other caregiver with a significant familial bond and not covered by Medicaid or other insurance;

ii. ongoing therapeutic treatment costs to complete current therapy and future treatment costs on a time limited basis up to 18 years of age or for the duration of an extended subsidy for any eligible child, as department resources allow, related to the abuse/neglect received by the child and impacting the child's capacity to function effectively as part of the child's educational, family or social environment. This does not include the cost of residential care or psychiatric hospitalization, nor does it include therapeutic intervention for the sole purpose of providing behavior management assistance to the guardian;

iii. legal and court costs to the potential guardian family up to $1000 for children who are not title IV-E eligible and up to $2000 for children who are title IV-E eligible for establishing the guardianship arrangement. This service is only available for costs distinct and separate from the routine costs of the child in need of care proceedings to provide for costs to the potential guardian in establishing the guardianship arrangement. This legal and/or court fee will be provided as a non-reoccurring, one-time payment for each guardianship episode.

b. Medicaid Eligibility. The child remains eligible for Medicaid coverage up to 18 years of age when entering a guardianship subsidy arrangement from foster care. This coverage will be eligible utilizing title IV-E federal benefits if the child was title IV-E eligible at the time of the subsidy arrangement. For children not eligible for title IV-E, this coverage will be provided through title XIX federal benefits or state general funds. For a Louisiana child who is placed out of state in a potential guardianship placement or who moves to another state after the establishment of a guardianship subsidy, if the child is eligible for title IV-E guardianship subsidy payments, the child is also categorically eligible for Medicaid in the state in which the child resides whether that state participates in the title IV-E Guardianship Subsidy Assistance Program or not.

c. Chaffee Foster Care Independent Living Skills Training and Education Training Voucher Eligibility. The child is eligible for consideration for participation in the Chaffee Foster Care Independent Living Skills Training and for Education Training Vouchers if the child initially enters a guardianship arrangement from foster care (not a successor guardianship) after reaching 16 years of age, as long as the child meets any other program eligibility requirements.

C. Exploration of Guardianship Resources

1. Before a child is determined by the Department of Children and Family Services (DCFS) as eligible for a guardianship subsidy, it must be determined the child cannot be reunited with the parents, and resources for adoptive placement must be explored by the child's worker. If the kinship family or other caretakers with a significant familial bond with the child and with whom the child is placed refuses to adopt the child or is unable to be certified as an adoptive family, the department has to show efforts to achieve the more permanent case goal of adoption for the child and demonstrate the benefits of maintaining the child in the placement in a guardianship arrangement as opposed to ongoing efforts in pursuing adoption or any other long term permanency arrangement. It is also necessary for the child's worker to discuss plans for a guardianship arrangement with the child and document the outcome of that discussion with the child, including agreement with that plan by any child 14 years of age up to 18 years of age. Lack of agreement by any child 14 years of age up to 18 years of age should be an ongoing topic of counseling regarding the benefits of the arrangement between the worker and the child, until a permanency option is achieved for the child or until the child attains 18 years of age.

2. Whenever an eligible child in the custody of DCFS is legally placed based on the interstate compact on the placement of children guidelines with a certified kinship caregiver or other certified caretaker with a significant familial bond with the child in another state, the family shall be eligible for a guardianship subsidy under the same conditions as Louisiana residents.

D. Eligibility Criteria

1. The DCFS, Guardianship Subsidy Program, will determine the appropriateness of subsidy benefits, the type of subsidy, and, the level of the subsidy. An agreement form between the DCFS and the prospective guardianship parent(s), with clearly delineated terms, including designation of a successor guardian, if desired, must be signed prior to the granting of the final decree for guardianship. This agreement will be reviewed on an annual basis thereafter by the DCFS to insure ongoing eligibility. Any extended guardianship subsidy for a child who has attained 18 years of age must be reviewed quarterly to ascertain ongoing eligibility.

2. Subsidy payments shall be limited to a child(ren) for whom guardianship is indicated due to other more permanent options such as reunification with the parents, or adoption being determined unfeasible for or not in the best interests of the child. The exception would be any child who has been receiving a subsidy payment and enters a successor guardianship. A more permanent option for placement is not required as these children do not re-enter state custody.

3. The guardianship subsidy applies only to a child(ren) for whom the DCFS holds legal custody, only to potential caregivers with whom the child has an established familial or emotional relationship which it is deemed to be in the child's best interest to continue, and when the kinship placement provider or other caregiver with a significant familial bond with the child becomes a certified foster caregiver according to the certification standards of the state, and, the child(ren) remains in the certified kinship/caregiver placement for at least six consecutive months during the current foster care episode prior to entering the guardianship subsidy arrangement. The exception would be children entering a successor guardianship. There is no requirement for the child to be in DCFS custody, to be with a caregiver with an established relationship, for certification of the caregiver, nor for a child to be placed with the successor guardian for any length of time prior to entering the guardianship subsidy arrangement.

4. A family is considered eligible for participation in the Guardianship Subsidy Program if they are related to the child or family of the child through blood or marriage or if there exists a fictive kin relationship, which is defined as a relationship with those individuals connected to an individual child or the family of that child through bonds of affection, concern, obligation, and/or responsibility prior to the child's original entry into the custody of the state, and the individual(s) are considered by the child or family to hold the same level of relationship with the child or family as those individuals related by blood or marriage. The exception would be an individual considered for the successor guardianship named by the guardian in the guardianship subsidy agreement with DCFS. Additionally, a family is eligible for participation in the Guardianship Subsidy Program if they have a significant familial bond with the child. This term is used to describe individuals with whom the child has a very close affinity who may or may not have been known to the child or his/her family prior to foster care entry. It is also intended to convey the importance of the relationship to the well-being of the child in

maintaining a connection into the future. The child demonstrates this bond through a strong attachment to the caregiver. A family with whom the child shares a significant familial bond could potentially include foster parents who are unable or unwilling to establish an adoptive relationship with the child in spite of DCFS efforts to overcome barriers to adoption, yet who are willing to commit to long term permanency through guardianship for the child. This is demonstrated by non-related family who have a significant and positive relationship with the child and who have a strong commitment to caring permanently for the child.

E. Effects of Deaths of Guardians on Guardianship Subsidy

1. When a child has been placed in an approved guardianship placement with a guardianship subsidy agreement in effect and the guardian dies prior to the child reaching the age of majority, the child's eligibility for a guardianship subsidy shall not be affected if a successor guardian was named in the original guardianship subsidy agreement. The child may remain in the care of a duly designated tutor/guardian as established by the guardian family prior to their death, without further involvement of the department. If the duly designated tutor/guardian requires financial assistance to maintain the care of the child and the individual was named in the guardianship subsidy agreement as a successor guardian, it is not necessary for the child to return to state custody and those individuals to become certified foster parents. Successor guardians named in the original guardianship subsidy agreement who take over financial responsibility for a child for whom the original guardians have been receiving an extended guardianship subsidy and the original guardians have died may receive the extended guardianship subsidy as well as long as the child continues to meet eligibility requirements up to the child achieving age 21.

2. If no successor guardian was named in the guardianship subsidy agreement, any individual otherwise legally designated as a tutor/guardian for the child and requiring financial assistance to sustain the care of the child would have to return the child to state custody and those individuals would have to become certified foster parents. Adoption of the child by the family should be explored as well, since adoption is a more permanent relationship for the child and family. If the family and home are determined to be safe for the care of the child through assessment of the home environment, fingerprint based criminal records clearance, and child abuse/neglect clearances, the child may remain in the care of the family while they are certified.

3. Where a guardianship subsidy agreement is in effect and the guardians both die prior to the child reaching the age of majority, the subsidy agreement will end. The child may remain in the care of a duly designated tutor/guardian as established by the family prior to their death, without further involvement of the department.

4.a. If the designated tutor/guardian requires financial assistance to maintain the care of the child, it will be necessary for the child to return to state custody and those individuals to become certified as foster parents and provide care to the child six consecutive months after certification and prior to entering into a guardianship subsidy agreement with the department. During the process of becoming certified as foster parents the family may continue to provide care to the child, as long as they are determined to be safe caregivers through a minimum of:

i. department assessment of the home environment;

ii. national fingerprint based criminal records clearances on all adults in the home; and

iii. child abuse/neglect clearances on all adults in the home.

b. Adoption of the child by the family will be explored by the department as well. There can be no financial support of the child by the child welfare agency while being cared for by the family until such family has been certified, other than incidental expenditures routinely reimbursed to other non-certified caregivers of children in foster care. Each guardianship arrangement is considered a new episode. Therefore, the department may provide legal and court costs to support the establishment of this new legal guardianship arrangement between the potential guardian and the child up to $1000 for children who are not title IV-E eligible and up to $2000 for children who are title IV-E eligible. No legal or court costs are provided for any guardianship arrangement established on or after the child's eighteenth birthday.

AUTHORITY NOTE: Promulgated in accordance with SEC. 473. [42 U.S.C. 673], and P.L. 115-123.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 36:552 (March 2010), amended by the Department of Children and Family Services, Division of Programs, Child Welfare Section, LR 41:2308 (November 2015), amended by the Department of Children and Family Services, Child Welfare, LR 45:1168 (September 2019), effective October 1, 2019.

Marketa Garner Walters
Secretary

1909#027

RULE

Board of Elementary and Secondary Education

Bulletin 1530—Louisiana's IEP Handbook for Students with Exceptionalities (LAC 28:XCVII.503)

Under the authority granted in R.S. 17:6 and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 1530—Louisiana's IEP Handbook for Students with Exceptionalities*. The revisions provide technical edits including references to outdated assessments and standards. This Rule is hereby adopted on the day of promulgation.

Title 28
EDUCATION
Part XCVII. Bulletin 1530—Louisiana's IEP Handbook for Students with Exceptionalities
Chapter 5. Participation in Statewide Assessments
§503. Types of Alternate Assessments

A. LEAP alternate assessment (alternate assessment), was developed for students with disabilities who are served under IDEA for whom there is evidence that the student has a significant cognitive disability. The alternate assessment is a performance-based assessment designed for students

whose instructional program is aligned with the Louisiana Connectors standards.

B. - B.1. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2343 (November 2009), amended LR 41:535 (March 2015), LR 45:527 (April 2019), LR 45:1171 (September 2019).

Shan N. Davis
Executive Director

1909#064

RULE

Board of Regents
Office of Student Financial Assistance

Scholarship/Grant Programs—TOPS Exceptions
(LAC 28:IV.301, 803, 1501, 1507, 1903 and 2103)

The Louisiana Board of Regents has amended the rules of the Scholarship/Grant programs [R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1.1-3042.8, R.S. 17:5001 et seq., and R.S. 56:797.D(2)]. (SG19186R). This Rule is hereby adopted on the day of promulgation.

Title 28
EDUCATION
Part IV. Student Financial Assistance—Higher Education Scholarship and Grant Programs

Chapter 3. Definitions

§301. Definitions

A. Words and terms not otherwise defined in this Chapter shall have the meanings ascribed to such words and terms in this Section. Where the masculine is used in these rules, it includes the feminine, and vice versa; where the singular is used, it includes the plural, and vice versa. The term "the board" refers to the Louisiana Board of Regents.

* * *

Selective Enrollment Program—a course of study with competitive admissions based on a student's qualifications including successful completion of required college courses and a minimum college cumulative grade point average. Examples of selective enrollment programs include, but are not limited to, medical technology, nursing, occupational therapy, physical therapy, and radiation technology.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3031, R.S. 17:3042.1 and R.S. 17:5001 et seq.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458 and 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR 26:1262 (June 2000), LR 26:1601 (August 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 26:2752 (December 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), LR 27:1219 (August 2001), LR 27:1840 (November 2001), LR 27:1875 (November 2001), LR 28:45 (January 2002), LR 28:446 (March 2002), LR 28:772 (April 2002), LR 28:2330, 2331 (November 2002), LR 29:555 (April 2003), LR 29:879 (June 2003), LR 30:1159 (June 2004), LR 30:2015 (September 2004), LR 31:36 (January 2005), LR 31:3112 (December 2005), LR 33:86 (January 2007), LR 33:439 (March 2007), LR 33:1339 (July 2007), LR 33:2612 (December 2007), LR 34:234 (February 2008), LR 34:1388 (July 2008), LR 34:1884 (September 2008), LR 35:228 (February 2009), LR 35:1489 (August 2009), LR 35:1490 (August 2009), LR 36:311 (February 2010), LR 36:490 (March 2010), LR 36:2854 (December 2010), LR 37:1561 (June 2011), LR 37:1562 (June 2011), LR 38:1953 (August 2012), LR 38:3156 (December 2012), LR 39:308 (February 2013), LR 40:53 (January 2014), LR 40:281 (February 2014), LR 41:649, 658 (April 2015), LR 41:2595 (December 2015), amended by the Board of Regents, Office of Student Financial Assistance, LR 42:1880 (November 2016), amended by the Board of Regents, Office of Student Financial Assistance, LR 44:486 (March 2018), LR 45:1172 (September 2019).

Chapter 8. TOPS-Tech Award

§803. Establishing Eligibility

A. - A.6.c. …

7. have achieved an *ACT score*, as defined in §301, of at least:

a. if qualifying under §803.A.5.a, an ACT composite score of at least 17 or beginning with the 2010-2011 academic year, or in the alternative, have attained a silver level score on the assessments of the ACT WorkKeys system; or

A.7.b.i. - B.4.b.ii. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, R.S. 17:3042.1, and R.S. 17:3048.1..

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:1904 (October 1998), amended LR 24:2237 (December 1998), LR 25:1795 (October 1999), LR 26:65 and 67 (January 2000), LR 26:1602 (August 2000), LR 26:1997 (September 2000), LR 26:2269 (October 2000), LR 26:2754 (December 2000), LR 27:36 (January 2001), LR 27:1220 (August 2001), repromulgated LR 27:1854 (November 2001), amended LR 28:447 (March 2002), LR 28:773 (April 2002), LR 28:2330 (November 2002), LR 29:554 (April 2003), LR 30:1164 (June 2004), LR 30:2019 (September 2004), LR 31:39 (January 2005), LR 31:3114 (December 2005), LR 33:437 (March 2007), LR 33:2614 (December 2007), LR 35:230 (February 2009), LR 36:491 (March 2010), LR 36:2270 (October 2010), LR 36:2856 (December 2010), LR 38:3159 (December 2012), LR 41:654 (April 2015), LR 41:2597 (December 2015), LR 42:48 (January 2016), amended by the Board of Regents, Office of Student Financial Assistance, LR 44:523 (March 2018), amended LR 44:1874 (October 2018), LR 45:1172 (September 2019).

Chapter 15. Grant Opportunity for Youth ChalleNGe Skills Training Program

§1501. General Provisions

A. - E.2. …

F. Grant Amounts. The program grant shall be paid for a period not to exceed the equivalent of two academic years in an amount:

1. equal to the actual cost of tuition for a student enrolled in a Louisiana public postsecondary institution;

2. equal to the average tuition amount paid for students attending public postsecondary institutions for a student enrolled at a regionally accredited independent college or university in the state that is a member of the Louisiana Association of Independent Colleges and Universities. See §1903.B.8 for method of computation.

G. Definitions. For the purposes of this Chapter, the following definitions are applicable.

Certification—the time at which LOSFA has received both the certification from the State Military Department and the results of the FAFSA data from the federal processor.

FAFSA—the free application for federal student aid used to apply for federal grant aid and eligibility for other federal assistance.

Graduate—a student who has completed the Louisiana GO-Youth ChalleNGe Program and, no later than 18 months after entry into the program, received a Louisiana high school equivalency diploma.

Program—the GO-Youth ChalleNGe Program.

Resident of Louisiana—a student who actually resides in Louisiana during the 24 months prior to the month the student enrolls for the first time as a full-time student in an eligible institution as a recipient of a grant under the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, and R.S. 17:3050.1-3050.4.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 30:782 (April 2004), repromulgated by the Board of Regents, Office of Student Financial Assistance, LR 44:545 (March 2018), amended LR 45:1172 (September 2019).

§1507. Maintaining Eligibility

A. To continue receiving the program grant, the student must meet all of the following criteria:

1. have received the program grant for not more than two years, unless granted an exception for cause; and

2. continue to enroll each subsequent semester or quarter (excluding summer sessions and intersessions unless required by the institution for a particular course of study) as a full-time student, unless granted an exception for cause; and

3. maintain steady academic progress as defined in §301; and

4. earn at least 24 hours each academic year as defined in §301, unless granted an exception for cause; and

5. maintain a cumulative grade point average of at least 2.50 on a 4.00 scale at the end of each academic year; and

6. not have a criminal conviction, except for misdemeanor traffic violations; and

7. if the student has been in the United States Armed Forces and has separated from such service, has received an honorable discharge or general discharge under honorable conditions; and

8. submit a FAFSA or renewal FAFSA for each academic year during which the student is enrolled in a postsecondary institution.

B. Students failing to meet the requirements listed in §1507.A.3 and 5 may have their tuition grants reinstated upon regaining steady academic progress (see §301) and/or attainment of the required GPA, if the student has maintained other continuation requirements and the period of ineligibility did not persist for more than one year from the date of loss of eligibility. If the one-year period is interrupted due to a student's active duty in the United States Armed Forces, the one-year period will be extended for the length of time equal to the student's active-duty service, not to exceed four years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, and R.S. 17:3050.1-3050.4.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 30:783 (April 2004), repromulgated by the Board of Regents, Office of Student Financial Assistance, LR 44:546 (March 2018), amended LR 45:1173 (September 2019).

Chapter 19. Eligibility and Responsibilities of Post-Secondary Institutions

§1903. Responsibilities of Post-Secondary Institutions

A. - B.8. …

9. upon the school's certification that a recipient of a GO-Youth ChalleNGe Program Grant is enrolled full-time, institutions shall bill for and the board will reimburse the institution for each such recipient as follows:

a. eligible public community colleges and Louisiana Technical College may bill for an amount up to the tuition for that institution, as defined in §301; and

b. regionally-accredited independent colleges or universities in the state that are members of LAICU may bill up to an amount equal to the award amount authorized for TOPS-Tech students attending LAICU institutions during the academic year;

B.10 - F.2. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3031, R.S. 17:3041.10-3041.15, 17:3041.21-3041.26, 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), repromulgated LR 24:645 (April 1998), amended LR 24:1914 (October 1998), LR 25:1459 (August 1999), LR 26:1998 and 2002 (September 2000), repromulgated LR 27:1864 (November 2001), amended LR 28:448 (March 2002), LR 28:775 (April 2002), LR 28:1760 (August 2002), LR 28:2333 (November 2002), LR 30:784 (April 2004), LR 30:1166 (June 2004), LR 31:40 (January 2005), LR 31:3111, 3114 (December 2005), LR 33:1340 (July 2007), LR 35:1233 (July 2009), LR 35:1490 (August 2009), LR 35:1491 (August 2009), LR 36:2857 (December 2010), LR 40:282 (February 2014), LR 40:1003 (May 2014), LR 41:667 (April 2015), LR 41:2599 (December 2015), amended by the Board of Regents, Office of Student Financial Assistance, LR 43:519 (March 2017), LR 44:557 (March 2018), LR 45:1173 (September 2019).

Chapter 21. Miscellaneous Provisions and Exceptions

§2103. Circumstances Warranting Exception to the Initial and Continuous Enrollment Requirements

A. - C.3.b. …

D. Procedure for Requesting Exceptions to the Initial and Continuous Enrollment Requirement

1. The student should complete and submit an application for an exception, with documentary evidence, to the office as soon as possible after the occurrence of the event or circumstance that supports the request. The deadline for filing the exception shall be prominently displayed on the notice of cancellation. If the applicant for an exception is a dependent student, a parent or court-ordered custodian of the dependent student may submit the application for exception on behalf of the applicant.

a. Through the 2000-2001 academic year (TOPS), the student must submit application for an exception no later than May 30 of the academic year the student requests reinstatement.

b. Commencing with the 2001-2002 academic year (TOPS), the student must submit the application for

exception no later than six months after the date of the notice of cancellation, except as follows:

i. A returning student must submit the application for exception no later than six months after the date of the notice of ineligibility due to failure to meet the continuing eligibility requirements of §705.

ii. Beginning with the 2019-2020 academic year, the deadline for a student who submits a request for exception based on military service shall be six months after his discharge from continuous active duty status.

2. If determined eligible for an exception, the recipient will be reinstated if he or she enrolls in the first fall, winter or spring term immediately following the exception ending date.

3. If determined ineligible by LOSFA for an exception provided in §2103.E.11.a.ii, recipient may appeal in accordance with §2109 of these rules.

E. Qualifying Exceptions to the Initial and Continuous Enrollment Requirement. A student who has been declared ineligible for TOPS, TOPS-Tech, TOPS Teacher, the Rockefeller State Wildlife Scholarship or the Louisiana GO Youth Challenge Program because of failure to meet the initial or continuous enrollment requirements may request reinstatement in that program based on one or more of the following exceptions.

1. Parental Leave

a. Definition. The student/recipient is pregnant or caring for a newborn or newly adopted child less than one year of age.

b. Certification Requirements. The student/recipient must submit:

i. a completed exception request form; and

ii. a written statement from a doctor of medicine who is legally authorized to practice certifying the date of diagnosis of pregnancy and the anticipated delivery date or the actual birth date or a copy of the hospital's certificate of live birth or a copy of the official birth certificate or equivalent official document or written documentation from the person or agency completing the adoption that confirms the adoption and date of adoption; and

iii. if the student requesting the exception is not the custodial parent of the child, the student must provide documentation of adoption/custodianship as well as documentation evidencing that the student was assisting in the care of the child, which may include, but not be limited to, a letter from the custodial parent confirming that care was provided by the student, evidence of child support payments made, and/or evidence of bills paid by the requesting student for the benefit of the child.

c. Maximum length of exception—up to the equivalent of one academic year (college) per pregnancy.

2. Physical Rehabilitation Program

a. Definition. The student/recipient is receiving rehabilitation in a program prescribed by a qualified medical professional and administered by a qualified medical professional.

b. Certification Requirements. The student/recipient must submit:

i. a completed exception request form including the reason for the rehabilitation, the necessity of withdrawing, dropping hours, etc., the semester(s) involved, and any other information or documents that may be relevant to student's request; and

ii. a written statement from a qualified medical professional confirming the student/recipient's rehabilitation, and the beginning and ending dates of the rehabilitation.

c. Maximum length of exception—up to four consecutive semesters (six consecutive quarters) per occurrence.

3. Substance Abuse Rehabilitation Program

a. Definition. The student/recipient is receiving rehabilitation in a substance abuse program.

b. Certification Requirements. The student/recipient must submit:

i. a completed exception request form, the reason for the rehabilitation, the necessity of withdrawing, dropping hours, etc., the semester(s) involved, and any other information or documents that may be relevant to student's request; and

ii. a written statement from a qualified professional or from the director of a substance abuse rehabilitation facility confirming the student's rehabilitation and the beginning and ending dates of the rehabilitation.

c. Maximum length of exception—up to two consecutive semesters (three consecutive quarters). This exception shall be available to a student only one time.

4.a. Temporary Disability—Student

i. Definition. The student/recipient is recovering from an accident, injury, illness or required surgery.

ii. Certification Requirements. The student/recipient must submit:

(a). a completed exception request form, the reason for the disability, the necessity of withdrawing, dropping hours, etc., the semester(s) involved, and any other information or documents that may be relevant to student's request; and

(b). a written statement from a qualified professional if a medical disability or from a qualified professional or a clergyman if a mental disability certifying the existence of a temporary disability, the dates of treatment, and opinions as to the impact of the disability on the student's ability to attend school.

iii. Maximum length of exception—up to two full academic years.

b. Temporary Disability—Student/Recipient's Care of Immediate Family Member

i.(a). Definition. The student/recipient is providing continuous care to his/her immediate family member due to an accident, illness, injury or required surgery.

(b). An immediate family member is his/her spouse, dependent, parent, stepparent, custodian, or grandparent.

ii. Certification Requirements. The student/recipient must submit:

(a). a completed exception request form,, the reason for the disability, the necessity of withdrawing, dropping hours, etc., the semester(s) involved, and any other information or documents that may be relevant to student's request; and

(b). a written statement from a qualified professional of the existence of a temporary disability of the

immediate family member, and the beginning and ending dates of the doctor's care; and

(c). a statement from a family member or a qualified professional confirming the care given by the student.

iii. Maximum length of exception—up to a maximum of two consecutive semesters (three consecutive quarters).

5. Permanent Disability

a. Definition. The student/recipient is permanently disabled in a manner that prevents the student from attending classes on a full-time basis.

b. Certification Requirements. The student/recipient must submit:

i. a completed exception request form, a description of the disability, the reason for the disability, the reason(s) the disability restricts class attendance to less than full-time; and

ii. a written statement from a qualified professional stating the diagnosis of and prognosis for the disability, stating that the disability is permanent, and opining why the disability restricts the student/recipient from attending classes full-time.

c. Maximum length of exception—up to the equivalent of eight full-time semesters of post-secondary education in part-time semesters.

6. Exceptional Educational Opportunity

a. Definition. The student/recipient is enrolled in an internship, residency, cooperative work, or work/study program or a similar program that is related to the student's major or otherwise has an opportunity not specifically sponsored by the school attended by the student that, in the opinion of the student's academic dean or director of the student's program of study, will enhance the student's education. Participation in one of the programs does not qualify as an exception to the initial enrollment requirement.

b. Certification Requirements. The student/recipient must submit:

i. a completed exception request form; and

ii. a written statement from the college/school official that the applicant is a student at the school/college and that the program is offered or sponsored by the college/school, or a statement from the dean of the college or the dean's designee or from the Director of the student's program of study that the program is related to the student's major and will enhance the student's education. The statements must include the dates of leave of absence, the semester(s) involved, the beginning and ending dates of the program.

c. Maximum length of exception—up to four semesters (six consecutive quarters) or required program of study.

7. Religious Commitment

a. Definition. The student/recipient is a member of a religious group that requires the student to perform certain activities or obligations which necessitate taking a leave of absence from school.

b. Certification Requirements. The student/recipient must submit:

i. a completed exception request form, the necessity of withdrawing, dropping hours, etc., the semester(s) or number of days involved, and the length of the religious obligation; and

ii. a written statement from the religious group's governing official evidencing the requirement necessitating the leave of absence including dates of the required leave of absence.

c. Maximum length of exception—up to five consecutive semesters (eight consecutive quarters).

8. Death of Immediate Family Member

a. Definition. The student's spouse, parent, stepparent, custodian, dependent, sister or brother, step sibling, grandparent or step grandparent dies.

b. Certification Requirements. The student/recipient must submit:

i. a completed exception request form; and

ii. a copy of the death certificate or a doctor's or funeral director's verifying statement or a copy of the obituary published in the local newspaper; and

iii. if the name of the deceased has a different last name than the student, a letter from a member of the student's family verifying the relationship between the student and the deceased, provided that if the student provides an obituary which names the student and specifies the relationship between the deceased and the student, a letter from a member of the student's family is not required.

c. Maximum length of exception—up to one semester or two quarters per death.

9.a. Military Service—Student

i. Definition. The student/recipient is in the United States Armed Forces Reserves or National Guard and is called on active duty status or is performing emergency state service with the National Guard or enlists or reenlists and enters on active duty as a member of the regular United States Armed Forces.

ii. Certification Requirements. The student/recipient must submit:

(a). a completed exception request form, the dates of the required leave of absence, necessity of withdrawing, dropping hours, etc., the semester(s) or number of days involved, and the length of duty (beginning and ending dates); and

(b). a written certification from the military including the dates and location of active duty; or

(c). a copy of the military orders or other military documents confirming military service.

iii. Maximum length of exception—up to the length of the required active-duty service period.

9.b. Military Service—Spouse

i. Definition. The student/recipient's spouse is in the United States Armed Forces Reserves or National Guard and is called on active duty status or is performing emergency state service with the National Guard or enlists or reenlists and enters on active duty as a member of the regular United States Armed Forces.

ii. Certification Requirements. The student/recipient must submit:

(a). a completed exception request form, the dates of the required leave of absence, necessity of withdrawing, dropping hours, etc., the semester(s) or number of days involved, and the length of duty (beginning and ending dates); and

(b). a copy of the student's marriage license;

(c). a written certification from the military including the dates and location of active duty of the student/recipient's spouse; or

(d). a copy of the military orders or other military documents confirming the military service of the student/recipient's spouse.

iii. Maximum length of exception—up to two consecutive semesters.

10. Transfer—Selective Enrollment Program

a. Definition. A student/recipient who completed his or her program requirements for transfer to a selective enrollment program.

b. Certification Requirements. The student/recipient must submit:

i. a completed exception request form; and

ii. a written statement from the dean of the college or the dean's designee certifying that the student/recipient has or will complete his or her course requirements for transfer to a selective enrollment program and the timing of completion of those course requirements.

c. Maximum length of exception—two consecutive semesters or three consecutive quarters.

11. Unavailability of Courses

a. Definition. The student/recipient is unable to enroll full-time due to the advanced coursework required, the necessity of earning credits in pre-requisites before moving on to the next block of courses, and/or the unavailability of courses due to limited course offerings.

b. Certification Requirements. The student/recipient has earned credit for at least 75% of the courses required to complete his degree, and he must submit:

i. a completed exception request form, including college transcripts, a description of his major, the total hours required to graduate, the structure of courses, and an explanation as to why he is unable to enroll full time; and

ii. a letter from his academic counselor or from his academic dean or director of his program of study explaining the course structure and certifying that the student has earned credit for at least 75 percent of the courses required to complete his degree and that he was unable to enroll full time due to this structure.

12. Natural Disaster

a. Definition. The student/recipient is unable to enroll in school, to maintain continuous enrollment in school, or to earn the required annual hours due to the fact that he or his family lives in a region of the state of Louisiana that is declared a natural disaster by the Governor of the state.

b. Certification Requirements. The student/recipient must submit:

i. A completed exception request form;

ii. A written statement detailing the natural disaster's impact on the student and/or the student's immediate family (mother, father, custodian, siblings and/or spouse and children), which prevented the student from meeting the continuation requirements, including the length of the impact; and

iii. Documentation corroborating the student's statement (examples: photographs of damage; insurance, FEMA, fire and/or police reports; statements from public officials; statements from family members or other persons with actual knowledge; receipts and invoices for work done and materials purchased; a copy of a lease and statement from lessor regarding the impact of the flood; etc.).

iii. Maximum length of exception—up to two consecutive semesters (three consecutive quarters).

13. Exceptional Circumstances

a. Definition. The student/recipient has exceptional circumstances, other than those listed in §2103.E.1-10, which are beyond his immediate control and which necessitate full or partial withdrawal from, or non-enrollment in an eligible postsecondary institution.

i. The following situations are not exceptional circumstances:

(a). financial conditions related to a student's ability to meet his or her educational expenses are not a justified reason for failure to meet the hours or continuous enrollment requirement, because TOPS is a merit, rather than need-based award, except that the student's family's financial condition may be considered, provided that the student provides documentation that he has been required to obtain employment in order to supplement the family's income due to unexpected circumstances which has adversely affected the family's finances;

(b). dropping a course, failing a course, or withdrawing from school to protect the student's grade point average or because of difficulty with a course or difficulty arranging tutoring;

(c). not being aware of or understanding the requirements;

(d). assumption that advanced standing, or correspondence course work credited outside the academic year would be applied to the hours requirement;

(e). differing scholarship or award requirements for other programs, such as NCAA full-time enrollment requirements;

(f). voluntary withdrawal from school to move out-of-state or pursue other interests or activities;

(g). claims of receipt of advice that is contrary to these rules, public information promulgated by LOSFA, award letters, and the rights and responsibilities document that detail the requirements for full-time continuous enrollment. This provision shall not preclude an exception being granted when an academic counselor or academic dean confirms, in writing, that the student acted as a direct result of misinformation provided by the counselor, dean, or other college official;

(h). failure to provide or respond to a request for documentation within 30 days of the date of the request, unless additional time is requested in writing, LOSFA grants the request, and the requested documentation is provided within the additional time granted;

(i). an involuntary drop, suspension, or withdrawal from enrollment because of academics, scholastics, or failure to attend classes or to comply with institutional regulations;

(j). a suspension or expulsion for misconduct;

(k). an inability to register because of failure to satisfy financial obligations.

ii. All other situations will be assessed at the discretion of LOSFA and subject to appeal to the board.

b. Certification Requirement. Submit a completed exception request form including a sworn affidavit from the

student detailing the circumstances and including the official college transcripts and documentation necessary to support the request for reinstatement.

c. Maximum length of exception—up to the number of semesters or quarters determined to be supported by the request for exception and accompanying documentation.

F. - G.5.b.iii. …

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).

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1909#015

RULE

Board of Regents
Office of Student Financial Assistance

START Saving Program
(LAC 28:VI.309, 315, and 715)

The Louisiana Tuition Trust Authority has amended its START Saving Program rules (R.S. 17:3091 et seq.) (ST19185R). This Rule is hereby adopted on the day of promulgation.

Title 28
EDUCATION
Part VI. Student Financial Assistance—Higher Education Savings
Chapter 3. Education Savings Account
§309. Disbursement of Account Funds for Payment of Qualified Higher Education Expenses of a Beneficiary

A. - A.1.a. …

2. The request for disbursement must include:

a. the START account number;

b. the account owner's name, address, and signature (may be electronic);

c. the beneficiary's name and address;

d. the amount to be disbursed and to whom;

e. the name and address of the eligible educational institution.

A.3. - E. …

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:716 (June 1997), amended LR 24:1272 (July 1998), LR 24:2238 (December 1998), LR 26:2265 (October 2000), LR 27:1881 (November 2001), LR 30:789 (April 2004), LR 30:1169 (June 2004), LR 32:1433 (August 2006), LR 33:444 (March 2007), LR 35:236 (February 2009), LR 42:1079 (July 2016), LR 45:1177 (September 2019).

§315. Miscellaneous Provisions

A. - B.38. …

39. For the year ending December 31, 2018, the Louisiana Education Tuition and Savings Fund earned an interest rate of 1.75 percent.

40. For the year ending December 31, 2018, the Savings Enhancement Fund earned an interest rate of 1.75 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).

Chapter 7. START K12
§715. Disbursement of Account Funds for Payment of Qualified Education Expenses of a Beneficiary

A. - A.1. …

2. The request for disbursement must include:

a. the START K12 account number;

b. the account owner's name, address, and signature (may be electronic);

c. the beneficiary's name and address;

d. the amount to be disbursed and to whom; and

e. the name and address of the eligible educational institution.

A.3. - D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3100.1 et seq.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 44:1883 (October 2018), amended LR 45:1177 (September 2019).

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Senior Attorney

1909#016

RULE

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

Bayou Chene DO Criterion
(LAC 33:IX.1123)(WQ101)

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.1123, Table 3 (WQ101).

This Rule will classify subsegment 050603 (Bayou Chene-From headwaters to Lacassine Bayou; includes Bayou Grand Marais) as naturally dystrophic waters with a seasonal dissolved oxygen criteria of 5 mg/L December-February and 3 mg/L March-November. A Use Attainability Analysis (UAA) was conducted in the Mermentau River Basin in 1998, on six named streams which provided the basis for a revision to the dissolved oxygen (DO) criteria and classification as naturally dystrophic waters for those streams. An addendum to the UAA for four additional streams followed in 1999. This Rule results from a second addendum to the 1998 Mermentau River Basin UAA. The Bayou Chene subsegment will be classified as naturally dystrophic with a seasonal DO criteria of 5 mg/L December-February and 3 mg/L March-November.

The basis and rationale for this Rule are to classify this subsegment as naturally dystrophic and establish seasonal dissolved oxygen criteria as a result of the second addendum to the USE Attainability Analysis. 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
§1123. Numerical Criteria and Designated Uses

A. - D. …

* * *

E. Endnotes. Numbers in brackets, e.g. [1], in Table 3 refer to endnotes listed at the end of the table.

Table 3. Numerical Criteria and Designated Uses									
A-Primary Contact Recreation; B-Secondary Contact Recreation; C-Fish And Wildlife Propagation; L-Limited Aquatic Life and Wildlife Use; D-Drinking Water Supply; E-Oyster Propagation; F-Agriculture; G-Outstanding Natural Resource Waters									
Code	Stream Description	Designated Uses	Numerical Criteria						
			CL	SO_4	DO	pH	BAC	°C	TDS
Atchafalaya River Basin (01)									
* * *									
Mermentau River Basin (05)									
* * *									
050603	Bayou Chene—From headwaters to Lacassine Bayou; includes Bayou Grand Marais	A B C F	90	10	[16]	6.5-9.0	1	33	400
* * *									

* * *

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 15:738 (September 1989), amended LR 17:264 (March 1991), LR 20:431 (April 1994), LR 20:883 (August 1994), LR 21:683 (July 1995), LR 22:1130 (November 1996), LR 24:1926 (October 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2405 (December 1999), LR 27:289 (March 2001), LR 28:462 (March 2002), LR 28:1762 (August 2002), LR 29:1814, 1817 (September 2003), LR 30:1474 (July 2004), amended by the Office of Environmental Assessment, LR 30:2468 (November 2004), LR 31:918, 921 (April 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:815, 816, 817 (May 2006), LR 33:832 (May 2007), LR 34:1901 (September 2008), LR 35:446 (March 2009), repromulgated LR 35:655 (April 2009), amended LR 36:2276 (October 2010) amended by the Office of the Secretary, Legal Division, LR 41:2603 (December 2015), LR 42:737 (May 2016), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1178 (September 2019).

Herman Robinson
General Counsel

1909#035

RULE

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

Transportation Safety Requirements
(LAC 33:XV.763 and Chapter 15)(RP065ft)

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 Radiation Protection Regulations, LAC 33:XV.763,1501, 1502, 1503, 1504, 1505, 1506, 1508, 1509, 1510, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1520, and 1599. (Log #RP065ft).

This Rule is identical to federal regulations found in 10 CFR 35 and 71, which are applicable in Louisiana. For more information regarding the federal requirement, contact Deidra Johnson with the Regulation Development Section at (225) 219-3985. No fiscal or economic impact will result from the rule. This Rule will be promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

This Rule makes changes to the transportation safety requirements for licensed material. This Rule was promulgated by the Nuclear Regulatory Commission (NRC) as RATS ID 2015-3. This Rule will update the state regulations to be compatible with changes in the federal regulations. Outline formatting and cross-referencing corrections are made in Section 763.

The changes in the state regulations are compatibility category B, C, and health and safety requirements for the state of Louisiana to remain an NRC agreement state. The basis and rationale for this Rule are to mirror the federal regulations and maintain an adequate agreement state program. 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 XV. Radiation Protection
Chapter 7. Use of Radionuclides in the Healing Arts
§763. Training

A. - C. …

1. who is certified by a medical specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or an agreement state, and who meets the requirements in Paragraph C.4 of this Section. (The names of board certifications that have been recognized by the Nuclear Regulatory Commission or an agreement state will be posted on the NRC's web page.) To have its certification process recognized, a specialty board shall require all candidates for certification to:

1.a. - 3.a.ii.(f). …

4. has obtained written attestation, signed by a preceptor authorized user who meets the requirements in Subsection B or C or D or Paragraph E.1 of this Section, or equivalent agreement state requirements or Nuclear Regulatory Commission requirements, that the individual has satisfactorily completed the requirements in Subparagraph C.1.a or C.3.a of this Section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized in LAC 33:XV.729.

D. …

1. who is certified by a medical specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or an agreement state, and who meets the requirements in Paragraph D.4 of this Section. (The names of board certifications that have been recognized by the Nuclear Regulatory Commission or an agreement state will be posted on the NRC's web page.) To have its certification process recognized, a specialty board shall require all candidates for certification to:

1.a. - 3.a.ii.(g). …

4. has obtained written attestation, signed by a preceptor authorized user who meets the requirements in this Subsection, Subsection B or Subclause D.3.a.ii.(f) and Paragraph E.1 of this Section, or equivalent agreement state requirements, or Nuclear Regulatory Commission requirements that the individual has satisfactorily completed the requirements in Subparagraph D.1.a or D.3.a of this Section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized in LAC 33:XV.729 and LAC 33:XV.731.H.

E. - E.1. …

a. who is certified by a medical specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or an agreement state, and who meets the requirements in Division E.1.b.i.(b).(vii) and Subparagraph E.1.c of this Section. (Specialty boards whose certification processes have been recognized by the Nuclear Regulatory Commission or an agreement state will be posted on the NRC's web page.) To be recognized, a specialty board shall require all candidates for certification to:

a.i. - b.i.(b).(vii).[d]. …

c. has obtained written attestation that the individual has satisfactorily completed the requirements in Clause E.1.a.i and Division E.1.b.i.(b).(vii) or Clause E.1.b.i of this Section, and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized in LAC 33:XV.735.C. The written attestation shall be signed by a preceptor authorized user who meets the requirements in this Paragraph, Subsection B of this Section or equivalent agreement state requirements or Nuclear Regulatory Commission requirements. The preceptor authorized user who meets the requirements in Subparagraph E.1.b of this Section shall have experience in administering dosages in the same dosage category or categories (i.e., Division E.1.b.i.(b).(vii) of this Section) as the individual requesting authorized user status.

2. …

a. who is certified by a medical specialty board whose certification process includes all of the requirements in Clauses E.2.c.i and ii of this Section and whose certification process has been recognized by the Nuclear Regulatory Commission or an agreement state, and who meets the requirements in Subparagraph E.2.d of this Section. (The names of board certifications that have been recognized by the Nuclear Regulatory Commission or an agreement state will be posted on the NRC's web page.); or

b. - c.ii.(f). …

d. has obtained written attestation that the individual has satisfactorily completed the requirements in Clauses E.2.c.i and ii of this Section, and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized in LAC 33:XV.735.C. The written attestation shall be signed by a preceptor authorized user who meets the requirements in Subsection B or Paragraph E.1, 2, or 3 of this Section, or equivalent agreement state requirements or Nuclear Regulatory Commission requirements. A preceptor authorized user who meets the requirement in Subparagraph

E.1.b of this Section shall also have experience in administering dosages as specified in Subdivision E.1.b.i.(b).(vii).[a] or [b] of this Section.

3. …

a. who is certified by a medical specialty board whose certification process includes all of the requirements in Clauses E.3.c.i and ii of this Section and whose certification process has been recognized by the Nuclear Regulatory Commission or an agreement state, and who meets the requirements in Subparagraph E.3.d of this Section. (The names of board certifications that have been recognized by the Nuclear Regulatory Commission or an agreement state will be posted on the NRC's web page.); or

b. - c.ii.(f). …

d. has obtained written attestation that the individual has satisfactorily completed the requirements in Clauses E.3.c.i and ii of this Section, and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized in LAC 33:XV.735.C. The written attestation shall be signed by a preceptor authorized user who meets the requirements in Subsection B or Paragraph E.1 or 3 of this Section, or equivalent agreement state requirements or Nuclear Regulatory Commission requirements. A preceptor authorized user who meets the requirements in Subparagraph E.1.b of this Section shall also have experience in administering dosages as specified in Subdivision E.1.b.i.(b).(vii).[b] of this Section.

4. - 4.d.ii.(f). …

e. has obtained written attestation that the individual has satisfactorily completed the requirements in Subparagraph E.4.b or c of this Section, and has achieved a level of competency sufficient to function independently as an authorized user for the parenteral administration of unsealed byproduct material requiring a written directive. The written attestation shall be signed by a preceptor authorized user who meets the requirements in Subsection B or Paragraph E.1 or 4 of this Section, or equivalent agreement state requirements or Nuclear Regulatory Commission requirements. A preceptor authorized user who meets the requirements in Paragraph E.1 of this Section shall have experience in administering dosages as specified in Subdivisions E.1.b.i.(b).(vii).[c] and/or [d] of this Section.

F. …

1. who is certified by a medical specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or an agreement state, and who meets the requirements in Paragraph F.3 of this Section. (The names of board certifications that have been recognized by the Nuclear Regulatory Commission or an agreement state will be posted on the NRC's web page.) To have its certification process recognized, a specialty board shall require all candidates for certification to:

1.a. - 2.b. …

3. has obtained written attestation, signed by a preceptor authorized user who meets the requirements in this Subsection, Subsection B of this Section or equivalent agreement state requirements, or Nuclear Regulatory Commission requirements that the individual has satisfactorily completed the requirements in Subparagraph F.1.a, or Paragraph F.2.a and b of this Section, and has achieved a level of competency sufficient to function independently as an authorized user of manual brachytherapy sources for the medical uses authorized in LAC 33:XV.741.

G. - G.2.b.iv. …

3. has obtained written attestation, signed by a preceptor authorized user who meets the requirements in Subsections B or F and G of this Section, or equivalent agreement state requirements, or Nuclear Regulatory Commission requirements that the individual has satisfactorily completed the requirements in Paragraphs G.1 and 2 of this Section and has achieved a level of competency sufficient to function independently as an authorized user of strontium-90 for ophthalmic use.

H. - I. …

1. who is certified by a medical specialty board whose certification process has been recognized by the commission or an agreement state, and who meets the requirements in Paragraphs I.3 and 4 of this Section. (The names of board certifications that have been recognized by the Nuclear Regulatory Commission or an agreement state will be posted on the NRC's web page.) To have its certification process recognized, a specialty board shall require all candidates for certification to:

1.a. - 2.b. …

3. has obtained written attestation that the individual has satisfactorily completed the requirements in Subparagraph I.1.a or Subparagraphs I.2.a and b and Paragraph I. 4 of this Section, and has achieved a level of competency sufficient to function independently as an authorized user of each type of therapeutic medical unit for which the individual is requesting authorized user status. The written attestation must be signed by a preceptor authorized user who meets the requirements in this Subsection or Subsection B of this Section or equivalent agreement state requirements or Nuclear Regulatory Commission requirements for an authorized user for each type of therapeutic medical unit for which the individual is requesting authorized user status; and

4. who has received training in device operation, safety procedures, and clinical use for the type(s) of use for which authorization is sought. This training requirement may be satisfied by satisfactory completion of a training program provided by the vendor for new users or by receiving training supervised by an authorized user or authorized medical physicist, as appropriate, who is authorized for the type(s) of use for which the individual is seeking authorization.

J. …

1. who is certified by a specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or an agreement state, and who meets the requirements in Paragraphs J.3 and 4 of this Section. (The names of board certifications that have been recognized by the Nuclear Regulatory Commission or an agreement state will be posted on the NRC's web page.) To have its certification process recognized, a specialty board shall require all candidates for certification to:

1.a. - 2.a.iv. …

3. has obtained written attestation that the individual has satisfactorily completed the requirements in Subparagraphs J.1.a and b and Paragraph J.4, or Subparagraph J.2.a and Paragraph J.4, of this Section, and

has achieved a level of competency sufficient to function independently as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status. The written attestation must be signed by a preceptor authorized medical physicist who meets the requirements in this Subsection, Subsection B of this Section or equivalent agreement state requirements or Nuclear Regulatory Commission requirements for an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status; and

4. who has training for the type(s) of use for which authorization is sought that includes hands-on device operation, safety procedures, clinical use, and the operation of a treatment planning system. This training requirement may be satisfied by satisfactorily completing either a training program provided by the vendor or by training supervised by an authorized medical physicist authorized for the type(s) of use for which the individual is seeking authorization.

K. …

1. who is certified by a specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or an agreement state, and who meets the requirements in Paragraph K.3 of this Section. (The names of board certifications that have been recognized by the Nuclear Regulatory Commission or an agreement state will be posted on the NRC's web page.) To have its certification process recognized, a specialty board shall require all candidates for certification to:

1.a. - 2.a.ii.(e). …

3. has obtained written attestation, signed by a preceptor authorized nuclear pharmacist, that the individual has satisfactorily completed the requirements in Subparagraphs K.1.a, b, and c, or Paragraph K.2, of this Section and has achieved a level of competency sufficient to function independently as an authorized nuclear pharmacist.

L. - M. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and 2104.B.(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended LR 24:2106 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2590 (November 2000), LR 30:1186 (June 2004), amended by the Office of Environmental Assessment, LR 31:1061 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:814 (May 2006), LR 34:983 (June 2008), LR 34:2121 (October 2008), LR 36:1772 (August 2010), amended by the Office of the Secretary, Legal Division, LR 38:2748 (November 2012), LR 40:1342 (July 2014), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:2137 (December 2018), LR 45:1179 (September 2019).

Chapter 15. Transportation of Radioactive Material

§1501. Purpose

A. The regulations in this Chapter establish requirements for packaging, preparation for shipment, and transportation of licensed material.

B. The packaging and transport of licensed material are also subject to other Chapters of LAC 33:XV (such as LAC 33:XV.Chapters 3 and 4), and to the regulations of other agencies (such as the United States Department of Transportation (U.S. DOT)) and the United States Postal Service) having jurisdiction over means of transport. The requirements of this Chapter are in addition to, and not in substitution for, other requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104(B) and 2113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of the Secretary, Legal Affairs Division, LR 34:2103 (October 2008), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1181 (September 2019).

§1502. Scope

A. The regulations in this Chapter apply to any specific or general licensee authorized to receive, possess, use, or transfer licensed material, if the licensee delivers that material to a carrier for transport, transports the material outside the site of usage as specified in the license, or transports that material on public highways. No provision in this Chapter authorizes possession of licensed material.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104(B) and 2113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1265 (June 2000), LR 26:2771 (December 2000), LR 27:1238 (August 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 34:2103 (October 2008), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1181 (September 2019).

§1503. Definitions

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

* * *

Contamination—the presence of a radioactive substance on a surface in quantities in excess of 0.4 Bq/cm^2 (1×10^{-5} µCi/cm^2) for beta and gamma emitters and low toxicity alpha emitters, or 0.04 Bq/cm^2 (1×10^{-6} µCi/cm^2) for all other alpha emitters.

a. *Fixed Contamination*—contamination that cannot be removed from a surface during normal conditions of transport.

b. *Non-Fixed Contamination*—contamination that can be removed from a surface during normal conditions of transport.

* * *

Criticality Safety Index (CSI)—the dimensionless number (rounded up to the next tenth) assigned to and placed on the label of a fissile material package, to designate the degree of control of accumulation of packages, overpacks, or freight containers containing fissile material during transportation. Determination of the *criticality safety index* is described in LAC 33:XV.1511 and 1512 and in 10 CFR 71.59. The *criticality safety index* for an overpack, freight container, consignment or conveyance containing fissile material packages is the arithmetic sum of the criticality safety indices of all the fissile material packages contained within the overpack, freight container, consignment or conveyance.

* * *

Low Specific Activity (LSA) Material—radioactive material with limited specific activity that is nonfissile or that is excepted under LAC 33:XV.1505.C, and that satisfies the descriptions and limits set forth below. Shielding

materials surrounding the *LSA material* may not be considered in determining the estimated average specific activity of the package contents. *LSA material* shall be in one of three groups:

a. LSA-I:

i. uranium and thorium ores, concentrates of uranium and thorium ores, and other ores containing naturally occurring radionuclides that are intended to be processed for the use of these radionuclides;

ii. natural uranium, depleted uranium, natural thorium, or their compounds or mixtures, provided they are unirradiated and in solid or liquid form;

iii. radioactive material other than fissile material, for which the A_2 value is unlimited; or

iv. …

b. LSA-II:

i. …

ii. other radioactive material in which the activity is distributed throughout, and the estimated average specific activity does not exceed 10^{-4} A_2/g for solids and gases, and 10^{-5} A_2/g for liquids.

c. LSA-III. Solids (e.g., consolidated wastes, activated materials), excluding powders, that satisfy the requirements of 10 CFR 71.77, in which:

i. - ii. …

iii. the estimated average specific activity of the solid, excluding any shielding material, does not exceed 2 x 10^{-3} A_2/g.

* * *

Special Form Radioactive Material—radioactive material that satisfies the following conditions:

a. …

b. the piece or capsule has at least one dimension not less than 5 millimeters (0.2 inch); and

c. it satisfies the requirements of 10 CFR 71.75. A special form encapsulation designed in accordance with the requirements of 10 CFR 71.4 in effect on June 30, 1983 (see 10 CFR Part 71, revised as of January 1, 1983), and constructed prior to July 1, 1985; a special form encapsulation designed in accordance with the requirements of 10 CFR 71.4 in effect on March 31, 1996 (see 10 CFR Part 71, revised as of January 1, 1996), and constructed before April 1, 1998; and special form material that was successfully tested before September 10, 2015 in accordance with the requirements of 10 CFR 71.75(d) in effect before September 10, 2015 may continue to be used. Any other special form encapsulation shall meet the specifications of this definition.

* * *

Uranium: Natural, Depleted, Enriched—

a. *Natural Uranium*—uranium (which may be chemically separated) with the naturally occurring distribution of uranium isotopes (approximately 0.711 weight percent uranium-235, and the remainder by weight essentially uranium-238).

b. - c. …

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104(B) and 2113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1265 (June 2000), amended by the Office of Environmental Assessment, LR 31:55 (January 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 34:2103 (October 2008), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1181 (September 2019).

§1504. Requirements for the Transportation of Licensed Material

A. Except as authorized in a general or specific license issued by the department, or as exempted in accordance with this Chapter, no licensee may transport licensed material or deliver licensed material to a carrier for transport.

B. - E. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104(B) and 2113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2602 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 34:2106 (October 2008), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1182 (September 2019).

§1505. Exemptions

A. …

B. A licensee is exempt from all the requirements of this Chapter with respect to shipment or carriage of the following low-level materials:

1. natural material and ores containing naturally occurring radionuclides that are either in their natural state, or have only been processed for purposes other than for the extraction of the radionuclides, and which are not intended to be processed for use of these radionuclides, provided the activity concentration of the material does not exceed 10 times the applicable radionuclide activity concentration values specified in Table A-2 or Table A-3 of 10 CFR Part 71, Appendix A, incorporated by reference in LAC 33:XV.1599.A;

2. materials for which the activity concentration is not greater than the activity concentration values specified in Table A-2 or Table A-3 of 10 CFR Part 71, Appendix A, incorporated by reference in LAC 33:XV.1599.A, or for which the consignment activity is not greater than the limit for an exempt consignment found in Table A-2 or Table A-3 of 10 CFR Part 71, Appendix A, incorporated by reference in LAC 33:XV.1599.A; or

3. Non-radioactive solid objects with radioactive substances present on any surfaces in quantities not in excess of the levels cited in the definition of *contamination* in LAC 33:XV.1503.A.

C. - C.3. …

4. uranium enriched in uranium-235 to a maximum of 1 percent by weight, and with total plutonium and uranium-233 content of up to 1 percent of the mass of uranium-235, provided that the mass of any beryllium, graphite, and hydrogenous material enriched in deuterium constitutes less than 5 percent of the uranium mass, and that the fissile material is distributed homogeneously and does not form a lattice arrangement within the package;

5. - 6. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104(B) and 2113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental

Assessment, LR 31:55 (January 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 34:2106 (October 2008), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1182 (September 2019).

§1508. General License: NRC Approved Packages

A. A general license is issued to any licensee of the department to transport, or to deliver to a carrier for transport, licensed material in a package for which a license, certificate of compliance (CoC), or other approval has been issued by the U.S. NRC.

B. This general license applies only to a licensee who has a quality assurance program approved by the department as satisfying the provisions of LAC 33.XV.1520.

C. Each licensee issued a general license under Subsection A of this Section shall:

1. maintain a copy of the certificate of compliance, or other approval of the package, and the drawings and other documents referenced in the approval relating to the use and maintenance of the packaging and to the actions to be taken prior to shipment;

2. comply with the terms and conditions of the license, certificate, or other approval, as applicable, and the applicable requirements of this Chapter; and

3. submit in writing before the first use of the package to: ATTN: Document Control Desk, Director, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards, using an appropriate method listed in 10 CFR 71.1(a), the licensee's name and license number and the package identification number specified in the package approval.

D. The general license in this Section applies only when the package approval authorizes use of the package under this general license.

E. For a Type B or fissile material package, the design of which was approved by the U.S. NRC before April 1, 1996, the general license is subject to additional restrictions of 10 CFR 71.19.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104(B) and 2113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1267 (June 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 34:2107 (October 2008), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1183 (September 2019).

§1509. General License: DOT Specification Container [Formerly §1510]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104(B) and 2113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1267 (June 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 34:2107 (October 2008), repealed by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1183 (September 2019).

§1510. General License: Use of Foreign Approved Package

A. A general license is issued to any licensee of the department to transport, or to deliver to a carrier for transport, licensed material in a package the design of which has been approved in a foreign national competent authority certificate that has been revalidated by the U.S. DOT as meeting the applicable requirements of 49 CFR 171.23.

B. Except as otherwise provided in this Section, the general license applies only to a licensee who has a quality assurance program approved by the department as satisfying the applicable provisions of LAC 33.XV.1520.

C. - D.1. …

2. complies with the terms and conditions of the certificate and revalidation and with the applicable requirements of this Chapter and of 10 CFR Part 71, Subparts A, G, and H.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104(B) and 2113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1268 (June 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 34:2108 (October 2008), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1183 (September 2019).

§1511. General License: Fissile Material

A. …

B. The general license applies only to a licensee who has a quality assurance program approved by the department as satisfying the provisions of 10 CFR Part 71, Subpart H.

C. - Table 2. …

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104(B) and 2113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:2108 (October 2008), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1183 (September 2019).

§1512. General License: Plutonium-Beryllium Special Form Material

A. …

B. The general license applies only to a licensee who has a quality assurance program approved by the department as satisfying the provisions of 10 CFR Part 71, Subpart H.

C. - E.2. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104(B) and 2113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:2109 (October 2008), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1183 (September 2019).

§1513. External Radiation Standards for All Packages

A. - D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104(B) and 2113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:2109 (October 2008), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1183 (September 2019).

§1515. Records

A. Each licensee shall maintain, for a period of three years after shipment, a record of each shipment of licensed material not exempt under 10 CFR 71.14, showing where applicable:

1. identification of the packaging by model number and serial number;

2. verification that there are no significant defects in the packaging, as shipped;

3. volume and identification of coolant;

4. type and quantity of licensed material in each package, and the total quantity of each shipment;

5. for each item of irradiated fissile material:

a. identification by model number and serial number;

b. irradiation and decay history to the extent appropriate to demonstrate that its nuclear and thermal characteristics comply with license conditions; and

c. any abnormal or unusual condition relevant to radiation safety;

6. date of the shipment;

7. for fissile packages and for Type B packages, any special controls exercised;

8. name and address of the transferee;

9. address to which the shipment was made; and

10. results of the determinations required by 10 CFR 71.87 and by the conditions of the package approval.

B. The licensee shall make available to the department for inspection, upon reasonable notice, all records required by this Section. Records are only valid if stamped, initialed, or signed and dated by authorized personnel, or otherwise authenticated.

C. The licensee shall maintain sufficient written records to furnish evidence of the quality of packaging. These records shall be maintained for three years after the life of the packaging to which they apply. The records to be maintained include:

1. results of the determinations required by 10 CFR 71.85;

2. design, fabrication, and assembly records;

3. results of reviews, inspections, tests, and audits;

4. results of monitoring work performance and materials analyses; and

5. results of maintenance, modification, and repair activities. Inspection, test, and audit records shall identify the inspector or data recorder, the type of observation, the results, the acceptability, and the action taken in connection with any deficiencies noted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104(B) and 2113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1183 (September 2019).

§1516. Preliminary and Routine Determinations

A. The licensee shall ascertain that the determinations in 10 CFR 71.85(a) – (c) have been made.

B. Prior to each shipment of licensed material, the licensee shall ensure that the package with its contents satisfies the applicable requirements of this Chapter and of the license. The licensee shall verify that:

1. the package is proper for the contents to be shipped;

2. the package is in unimpaired physical condition except for superficial defects such as marks or dents;

3. each closure device of the packaging, including any required gasket, is properly installed and secured and free of defects;

4. any system for containing liquid is adequately sealed and has adequate space or other specified provision for expansion of the liquid;

5. any pressure relief device is operable and set in accordance with written procedures;

6. the package has been loaded and closed in accordance with written procedures;

7. for fissile material, any moderator or neutron absorber, if required, is present and in proper condition;

8. any structural part of the package that could be used to lift or tie down the package during transport is rendered inoperable for that purpose unless it satisfies design requirements specified in 10 CFR 71.45;

9. the level of non-fixed (removable) radioactive contamination on the external surfaces of each package offered for shipment is as low as reasonably achievable and within the limits specified in U.S. DOT regulations at 49 CFR 173.443;

10. external radiation levels around the package and around the vehicle, if applicable, will not exceed the limits specified in LAC 33:XV.1513 at any time during transportation; and

11. accessible package surface temperatures shall not exceed the limits specified in 10 CFR 71.43(g) at any time during transportation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104(B) and 2113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1268 (June 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 34:2110 (October 2008), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1184 (September 2019).

§1520. Quality Assurance

A. Quality Assurance Requirements

1. This Section describes quality assurance requirements applying to design, purchase, fabrication, handling, shipping, storing, cleaning, assembly, inspection, testing, operation, maintenance, repair, and modification of components of packaging that are important to safety. As used in this Section, "quality assurance" comprises all those planned and systematic actions necessary to provide adequate confidence that a system or component will perform satisfactorily in service. Quality assurance includes quality control, which comprises those quality assurance actions related to control of the physical characteristics and quality of the material or component in accordance with predetermined requirements. Each licensee is responsible for satisfying the quality assurance requirements that apply to its use of a packaging for the shipment of licensed material subject to this Section.

2. Each licensee shall establish, maintain, and execute a quality assurance program that satisfies each of the applicable criteria of this Section and that satisfies any specific provisions that are applicable to the licensee's activities, including procurement of packaging. The licensee shall execute the applicable criteria in a graded approach to an extent that is commensurate with the quality assurance requirement's importance to safety.

3. Before using any package for the shipment of licensed material subject to this Section, each licensee shall obtain department approval of its quality assurance program. Using an appropriate method listed in 10 CFR 71.1(a), each licensee shall file a description of its quality assurance program, including a discussion of which requirements of this Section are applicable and how they will be satisfied, by submitting the description to the Office of Environmental Compliance.

4. A program for transport container inspection and maintenance limited to radiographic exposure devices, source changers, or packages transporting these devices, and meeting the requirements of LAC 33:XV.547.B, is deemed to satisfy the requirements of LAC 33:XV.1508.B and Paragraph A.2 of this Section.

B. Quality Assurance Organization

1. The licensee shall be responsible for the establishment and execution of the quality assurance program. The licensee may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, or any part of the quality assurance program, but shall retain responsibility for the program. These activities include performing the functions associated with attaining quality objectives and the quality assurance functions.

2. …

3. The persons and organizations performing quality assurance functions shall have sufficient authority and organizational freedom to:

a. - c. …

4. The persons and organizations performing quality assurance functions shall report to a management level that assures that the required authority and organizational freedom, including sufficient independence from cost and schedule factors, when opposed to safety considerations, are provided.

5. …

6. Irrespective of the organizational structure, any individual assigned the responsibility for assuring effective execution of any portion of the quality assurance program, at any location where activities subject to this Section are being performed, shall have direct access to the levels of management necessary to perform this function.

C. Quality Assurance Program

1. The licensee shall establish, at the earliest practicable time consistent with the schedule for accomplishing the activities, a quality assurance program that complies with the requirements of this Section. The licensee shall document the quality assurance program by written procedures or instructions and shall carry out the program in accordance with those procedures throughout the period during which the packaging is used. The licensee shall identify the material and components to be covered by the quality assurance program, the major organizations participating in the program, and the designated functions of these organizations.

2. The licensee, through its quality assurance program, shall provide control over activities affecting the quality of the identified materials and components to an extent consistent with their importance to safety, and as necessary to assure conformance to the approved design of each individual package used for the shipment of radioactive material. The licensee shall assure that activities affecting quality are accomplished under suitably controlled conditions. Controlled conditions include the use of appropriate equipment; suitable environmental conditions for accomplishing the activity, such as adequate cleanliness; and assurance that all prerequisites for the given activity have been satisfied. The licensee shall take into account the need for special controls, processes, test equipment, tools, and skills to attain the required quality, and the need for verification of quality by inspection and test.

3. The licensee shall base the requirements and procedures of its quality assurance program on the following considerations concerning the complexity and proposed use of the package and its components:

a. - b. …

c. the need for special controls and surveillance over processes and equipment;

d. - e. …

4. The licensee shall provide for indoctrination and training of personnel performing activities affecting quality, as necessary to assure that suitable proficiency is achieved and maintained. The licensee shall review the status and adequacy of the quality assurance program at established intervals. Management of other organizations participating in the quality assurance program shall review regularly the status and adequacy of that part of the quality assurance program they are executing.

D. Handling, Storage, and Shipping Control. The licensee shall establish measures to control, in accordance with instructions, the handling, storage, shipping, cleaning, and preservation of materials and equipment to be used in packaging to prevent damage or deterioration. When necessary for particular products, special protective environments, such as an inert gas atmosphere and specific moisture content and temperature levels, shall be specified and provided.

E. Inspection, Test, and Operating Status

1. The licensee shall establish measures to indicate, by the use of markings such as stamps, tags, labels, or routing cards, or by other suitable means, the status of inspections and tests performed upon individual items of the packaging. These measures shall provide for the identification of items that have satisfactorily passed required inspections and tests, where necessary, to preclude inadvertent bypassing of the inspections and tests.

2. …

F. Nonconforming Materials, Parts, or Components. The licensee shall establish measures to control materials, parts, or components that do not conform to the licensee's requirements in order to prevent their inadvertent use or installation. These measures shall include, as appropriate, procedures for identification, documentation, segregation, disposition, and notification to affected organizations. Nonconforming items shall be reviewed and accepted, rejected, repaired, or reworked in accordance with documented procedures.

G. Corrective Action. The licensee shall establish measures to assure that conditions adverse to quality, such as deficiencies, deviations, defective material and equipment, and nonconformances, are promptly identified and corrected. In the case of a significant condition adverse to quality, the measures shall assure that the cause of the condition is

determined and corrective action is taken to preclude repetition. The identification of the significant condition adverse to quality, the cause of the condition, and the corrective action taken shall be documented and reported to appropriate levels of management.

H. Quality Assurance Records. The licensee shall maintain sufficient written records to describe the activities affecting quality. These records shall include changes to the quality assurance program as required by Subsection J of this Section, the instructions, procedures, and drawings required by 10 CFR 71.111 to prescribe quality assurance activities and shall include closely related specifications such as required qualifications of personnel, procedures, and equipment. The records shall include instructions or procedures that establish a records retention program that is consistent with applicable regulations and designates factors such as duration, location, and assigned responsibility. The licensee shall retain these records for three years beyond the date when the licensee last engaged in the activity for which the quality assurance program was developed. If any portion of the quality assurance program, written procedures or instructions is superseded, the licensee shall retain the superseded material for three years after it is superseded.

I. Audits. The licensee shall carry out a comprehensive system of planned and periodic audits to verify compliance with all aspects of the quality assurance program and to determine the effectiveness of the program. The audits shall be performed in accordance with written procedures or checklists by appropriately trained personnel not having direct responsibilities in the areas being audited. Audited results shall be documented and reviewed by management having responsibility in the area audited. Follow-up action, including re-audit of deficient areas, shall be taken where indicated.

J. Changes to Quality Assurance Program

1. Each licensee shall submit, in accordance with 10 CFR 71.1(a), a description of a proposed change to its department-approved quality assurance program that will reduce commitments in the program description as approved by the department. The licensee shall not implement the change before receiving department approval.

a. The description of a proposed change to the department-approved quality assurance program shall identify the change, the reason for the change, and the basis for concluding that the revised program incorporating the change continues to satisfy the applicable requirements of this Section.

b. Reserved

2. Each licensee may change a previously approved quality assurance program without prior department approval, if the change does not reduce the commitments in the quality assurance program previously approved by the department. Changes to the quality assurance program that do not reduce the commitments shall be submitted to the department every 24 months, in accordance with 10 CFR 71.1(a). In addition to quality assurance program changes involving administrative improvements and clarifications, spelling corrections, and non-substantive changes to punctuation or editorial items, the following changes are not considered reductions in commitment:

a. the use of a quality assurance standard approved by the department that is more recent than the quality assurance standard in the licensee's current quality assurance program at the time of the change;

b. the use of generic organizational position titles that clearly denote the position function, supplemented as necessary by descriptive text, rather than specific titles, provided that there is no substantive change to either the functions of the position or reporting responsibilities;

c. the use of generic organizational charts to indicate functional relationships, authorities, and responsibilities, or alternatively, the use of descriptive text, provided that there is no substantive change to the functional relationships, authorities, or responsibilities;

d. the elimination of quality assurance program information that duplicates language in quality assurance regulatory guides and quality assurance standards to which the licensee has committed to on record; and

e. organizational revisions that ensure that persons and organizations performing quality assurance functions continue to have the requisite authority and organizational freedom, including sufficient independence from cost and schedule when opposed to safety considerations.

3. Each licensee shall maintain records of quality assurance program changes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104(B) and 2113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:2112 (October 2008), repromulgated LR 34:2393 (November 2008), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1184 (September 2019).

§1599. Appendix—Incorporation by Reference of 10 CFR Part 71, Appendix A, Tables A-1, A-2, A-3, and A-4; Procedures for Determining A_1 and A_2

A. Tables A-1, A-2, A-3, and A-4 in 10 CFR Part 71, Appendix A, July 13, 2015, are hereby incorporated by reference. These tables are used to determine the values of A_1 and A_2, as described in Subsections B-F of this Section.

B. - D. …

E. For mixtures of radionuclides whose identities and respective activities are known, the following conditions apply.

1. For special form radioactive material, the maximum quantity that may be transported in a Type A package is as follows.

$$\sum_{i} \frac{B(i)}{A_1(i)} \leq 1$$

where:

B(i) = the activity of radionuclide i in special form

$A_1(i)$ = the A_1 value for radionuclide i

2. For normal form radioactive material, the maximum quantity that may be transported in a Type A package is as follows.

$$\Sigma B(i)/A_2(i) \leq 1$$

where:

B(i) = the activity of radionuclide i in normal form

$A_2(i)$ = the A_2 value for radionuclide i

3. If the package contains both special and normal form radioactive material, the activity that may be transported in a Type A package is as follows.

$$\sum_i \frac{B(i)}{A_1(i)} + \sum_j \frac{C(j)}{A_2(j)} \leq 1$$

where:

B(i) = the activity of radionuclide i as special form radioactive material

$A_1(i)$ = the A_1 value for radionuclide i

C(j) = the activity of radionuclide j as normal form radioactive material

$A_2(j)$ = the A_2 value for radionuclide j.

4. Alternatively, the A_1 value for mixtures of special form material may be determined as follows.

$$A_1 \text{ for mixture} = \frac{1}{\Sigma_i \frac{f(i)}{A_1(i)}}$$

where:

f(i) = the fraction of activity for radionuclide i in the mixture

$A_1(i)$ = the appropriate A_1 value for radionuclide i

5. Alternatively, the A_2 value for mixtures of normal form material may be determined as follows.

$$A_2 \text{ for mixture} = \frac{1}{\Sigma_i \frac{f(i)}{A_2(i)}}$$

where:

f(i) = the fraction of activity for radionuclide i in the mixture

$A_2(i)$ = the appropriate A_2 value for radionuclide i

6. The exempt activity concentration for mixtures of nuclides may be determined as follows.

$$\text{Exempt activity concentration for mixture} = \frac{1}{\Sigma_i \frac{f(i)}{[A](i)}}$$

where:

f(i) = the fraction of activity concentration of radionuclide i in the mixture

[A] = the activity concentration for exempt material containing radionuclide i

7. The activity limit for an exempt consignment for mixtures of radionuclides may be determined as follows.

$$\text{Exempt consignment activity limit for mixture} = \frac{1}{\Sigma_i \frac{f(i)}{A(i)}}$$

where:

f(i) = the fraction of activity of radionuclide i in the mixture

A(i) = the activity limit for exempt consignments for radionuclide i

F. When the identity of each radionuclide is known, but the individual activities of some of the radionuclides are not known, the radionuclides may be grouped, and the lowest A_1 or A_2 value, as appropriate, for the radionuclides in each group may be used in applying the formulas in Subsection E. Groups may be based on the total alpha activity and the total beta/gamma activity when these are known, using the lowest A_1 or A_2 values for the alpha emitters and beta/gamma emitters. When the identity of each radionuclide is known but the individual activities of some of the radionuclides are not known, the radionuclides may be grouped and the lowest [A] (activity concentration for exempt material) or A (activity limit for exempt consignment) value, as appropriate, for the radionuclides in each group may be used in applying the formulas in Subsection E of this Section. Groups may be based on the total alpha activity and the total beta/gamma activity when these are known, using the lowest [A] or A values for the alpha emitters and beta/gamma emitters, respectively.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104(B) and 2113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:1270 (June 2000), amended LR 27:2233 (December 2001), LR 28:997 (May 2002), LR 29:701 (May 2003), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 31:920 (April 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:604 (April 2006), LR 33:641 (April 2007), LR 34:867 (May 2008), LR 34:2114 (October 2008), LR 35:1110 (June 2009), LR 36:2275 (October 2010), amended by the Office of the Secretary, Legal Division, LR 38:2748 (November 2012), LR 40:1929 (October 2014), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1186 (September 2019).

Herman Robinson
General Counsel

1909#034

RULE

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

Wilson Slough and Bradley Slough Turbidity Criteria
(LAC 33:IX.1113)(WQ103)

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.B.9.b.iii (WQ103).

This Rule revises the turbidity criteria for two subsegments in the Pearl River Basin (PRB). The turbidity criteria for subsegment 090205, Wilson Slough, and subsegment 090206, Bradley Slough, has been revised from 25 nephelometric turbidity units (NTU) to a more appropriate turbidity criteria of 50 NTU.

A report was submitted by the department to Region 6 of the U.S. Environmental Protection Agency that defined the turbidity issues in subsegments 090205 and 090206 and justified the revisions to the turbidity criteria as appropriate and protective. The basis and rationale for this Rule are to set criteria for waters of the state that is appropriate and protective of the designated uses of those waters. 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. - B.9.b.ii. …

iii. Amite, Pearl (includes Wilson Slough and Bradley Slough), Ouachita, Sabine, Calcasieu, Tangipahoa, Tickfaw, and Tchefuncte rivers—50 NTU;

B.9.b.iv. - C.6.f. …

* * *

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).

Herman Robinson
General Counsel

1909#036

RULE

Office of the Governor
Division of Administration
Office of Facility Planning and Control

Architects Selection Board,
Engineers Selection Board, and
Landscape Architects Selection Board
(LAC 4:VII.Chapters 1-5)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the provisions of RS 38:2311, the Division of Administration, Facility Planning and Control, at the request of the Architects Selection Board, Engineers Selection Board, and Landscape Architects Selection Board, has amended LAC 4:VII.Chapters 1-5, Landscape Architects Selection Board. This Rule amends the language of the Architects', Engineers', and Landscape Architects' Selection Board rules to correct, update, coordinate, and improve the processes in keeping with the three selection boards' purposes. The amended Rules apply to the following aspects of the three selection boards: officers, election of officers, officer terms, meetings, parliamentary authority, applications, interview procedures, voting and selection procedure, emergency procedures, and communication. This Rule is hereby adopted on the day of promulgation.

Title 4
ADMINISTRATION
Part VII. Governor's Office
Chapter 1. Architects Selection Board
Subchapter A. Organization
§105. Objective

A. The objective of this board is to provide a system for the selection of professional services rendered by architects, licensed to practice in the state of Louisiana, that is impartial, equitable, and in the best public interest of the citizens of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Architects Selection Board, LR 1:180 (April 1975), amended LR 4:494 (December 1978), repromulgated LR 10:453 (June 1984), amended LR 24:330 (February 1998), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1188 (September 2019).

§107. Members

A. The board shall be composed of eight members, appointed or elected, serving terms in accordance with the provisions of the authority set forth in §103.

B. Any member desiring to resign from the board shall submit his/her resignation, in writing by registered mail, to the Board of Architectural Examiners, with a copy addressed to the chairperson of the board. The effective date of resignation shall be the date of registered mailing to the Board of Architectural Examiners.

C. The filling of a board vacancy for the unexpired term due to resignation, death, or removal from office by just cause, shall be made in accordance with the provisions of the authority stated in §103.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Architects Selection Board, LR 1:180 (April 1975), amended LR 4:494 (December 1978), repromulgated LR 10:453 (June 1984), amended LR 15:262 (April 1989), LR 24:330 (February 1998), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1188 (September 2019).

§109. Officers

A. The officers of this board shall be a chairperson and a vice-chairperson. These officers shall perform the duties prescribed in §103 and by these rules.

B. The chairperson shall:

1. be the presiding officer at meetings of the board;

2. have the authority to order a special meeting of the board;

3. be responsible for coordinating the activities of the board;

4. appoint all committees and serve as an ex-officio member thereof;

5. authenticate by his/her signature, when necessary, all acts, orders, and proceedings of the board;

6. be responsible for implementing all orders and resolutions of the board.

C. In the event of absence or incapacity of the chairperson, the vice-chairperson shall assume the duties of the chairperson as outlined above. In the absence of the secretary, the duties of the secretary shall be delegated to the vice-chairperson.

D. Nomination and election of chairperson and vice-chairperson of the board shall be held and conducted at the first regularly scheduled meeting after September 15 of each year.

E. The chairperson and vice-chairperson shall begin their terms in office immediately upon election. They shall serve a maximum of one year, unless re-elected for one additional term (§109.G).

F. In the event that the term of office of the chairperson and vice-chairperson expires in accordance with §109.E and a meeting is called at a time when there is no duly elected chairperson or vice-chairperson, upon convening, the first order of business of the board shall be the selection of a temporary chairperson who shall serve merely for the purpose of conducting the nomination and election of chairperson and vice-chairperson. Upon election, the temporary chairpersonship automatically dissolves and the newly elected officers begin their terms in office. Nothing in this section shall prevent the temporary chairperson from either voting or being nominated for or elected to the office of chairperson or vice-chairperson.

G. No member shall hold more than one office at a time. A member may serve consecutive terms in accordance with R.S. 38:2311(B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Architects Selection Board, LR 1:180 (April 1975), amended LR 4:494 (December 1978), repromulgated LR 10:454 (June 1984), amended LR 15:262 (April 1989), LR 24:330 (February 1998), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1188 (September 2019).

§110. Secretary

A. The office of secretary shall be furnished to the board by the Office of Facility Planning and Control, subject to approval by the board.

B. The secretary shall:

1. be under the general supervision of the board;

2. give notice of all meetings of the board and its committees to the board and general public;

3. attend all meetings of the board and committees and record the minutes of all proceedings and make the minutes and records available upon request;

4. keep on file all committee reports;

5. receive and conduct the general correspondence of the board; that is, correspondence which is not a function proper to the officers, or to the committees;

6. cause the official advertisement to be advertised in accordance with R.S. 38:2312(A) and the rules of selection procedure adopted by the board;

7. maintain and be the custodian of a file of all applications for projects, as well as all data submitted by applicants selected by the board to furnish architectural services for state projects as provided for in the rules of selection procedure;

8. perform such other duties as may be prescribed by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Facility Planning and Control, LR 45:1189 (September 2019).

§111. Meetings

A. A regular meeting of the board shall be held on the third Wednesday in the months of January, March, May, July, September, and November of each year, unless such meeting is waived by the chairperson as unnecessary.

B. Special meetings may be called by the chairperson or shall be called upon the written request of a minimum of five members of the board. Special meetings may be held at any place provided the time, the place, and the purpose of the meeting shall be stated in the call and made public in accordance with applicable laws. Except in cases of emergency, at least three days' notice shall be given for special meetings.

C. A minimum of five members of the board shall be present to constitute a quorum.

D. All meetings shall be held in public, except as provided in §128.A.6.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Architects Selection Board, LR 1:180 (April 1975) amended LR 4:494 (December 1978), repromulgated LR 10:454 (June 1984), amended LR 15:262 (April 1989), LR 17:1206 (December 1991), LR 24:330 (February 1998), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1189 (September 2019).

§113. Committees

A. Committees, standing or special, shall be appointed by the chairperson of the board as he/she shall deem necessary to carry on the work of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Architects Selection Board, LR 4:494 (December 1978), repromulgated LR 10:454 (June 1984), LR 24:330 (February 1998), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1189 (September 2019).

§115. Parliamentary Authority

A. The rules contained in the current edition of *Robert's Rules of Order, Newly Revised*, shall govern the board in all cases to which they are applicable and in which they are not inconsistent with these rules of organization and any special rules of order that the board may adopt.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Architects Selection Board, LR 1:180 (April 1975), amended LR 4:494 (December 1978), repromulgated LR 10:454 (June 1984), amended LR 24:330

(February 1998), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1189 (September 2019).

§117. Voting

A. Only the votes of members present at the meeting shall be counted in the board's official actions. Proxy votes on behalf of elected members are not allowed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Architects Selection Board, LR 1:180 (April 1975), amended LR 4:494 (December 1978), repromulgated LR 10:454 (June 1984), amended LR 24:330 (February 1998), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1190 (September 2019).

§119. Amendments to Rules

A. These rules of organization may be amended at any regular or special called meeting of the board by an affirmative vote of a simple majority of the attending board, provided the proposed amendment has been submitted, in writing, at the previous regular or special meeting, and is in full compliance with the Louisiana Administrative Procedure Act and other applicable laws. Upon receipt of a proposed written amendment, the chairperson, before the next regular or special meeting, shall cause to give at least 20 days' notice of the board's intended action as provided in the Louisiana Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Architects Selection Board, amended LR 4:494 (December 1978), repromulgated LR 10:454 (June 1984), amended LR 24:331 (February 1998), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1190 (September 2019).

Subchapter B. Selection Procedure

§121. Public Notification

A. Upon being advised by the Office of Facility Planning and Control that an agency intends to contract for professional services, the chairperson shall request the official advertisement to be published by the Office of Facility Planning and Control. There shall be a minimum seven-business-day application period, commencing with the day of the first publication of the official advertisement and ending on the day of the deadline for receiving applications. During this period, the official advertisement shall be published in the official state journal one time. A copy of the official advertisement shall be provided to the Board of Architectural Examiners.

B. The official advertisement specified above shall include all information required under R.S. 38:2312(A) and the tentative date and time of the board meeting at which applications will be considered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Facility Planning and Control, LR 45:1190 (September 2019).

§123. Communications with Applicant Firms [Formerly §131]

A. No member of the board shall communicate in any manner concerning a project application with any representative of an applicant firm or anyone communicating on behalf of an applicant firm. This restriction shall apply from the time advertisement of a project begins until the opening of the board meeting at which the project application will be considered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Architects Selection Board, LR 10:454 (June 1984), repromulgated LR 24:332 (February 1998), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1190 (September 2019).

§125. Application

A. Any applicant (proprietorship, partnership, corporation or joint venture of any of these) meeting the requirements of R.S. 38:2310 et seq., may submit an application for selection consideration for a particular project upon which official advertisement has been published. The applicant shall submit data concerning its experience, previous projects undertaken, present state projects now being performed, scope and amount of work on hand, and any other information that the board deems appropriate.

B.1. The Louisiana Architects Selection Board hereby adopts the use of the LSB-1 Form as the format for submitting an application to the board.

2. The board will accept only those applications submitted on the current edition of the LSB-1 Form. Any special information requested in the advertisement shall be submitted with the required LSB-1 Form. Any submittal not following this format will be deemed non-responsive and not considered.

3. In the LSB-1 Form, the term *prime professional* is as defined in R.S. 38:2310(9).

4. The board has the right to require proof of compliance with the above definition.

C. Consultants, if applicable, shall be listed on the submitted application form and shall possess the necessary qualifications and expertise to satisfactorily provide the services required for this project.

D. All applications shall be received on behalf of the board at the Office of Facility Planning and Control during the time prescribed in the advertisement. The secretary shall date, when received, all applications. The burden for timely and complete submittal lies solely with the applicant.

E. The submission of an application on a particular project shall be considered by the board to mean that based on all publicly available information:

1. the applicant is aware of the scope of work of the project;

2. the applicant has the necessary qualifications and expertise to satisfactorily provide the services required for the project;

3. the applicant can perform the work within the time frame stated;

4. the applicant concurs that the project budget is reasonable;

5. the fee is equitable;

6. the architect contract shall contain a prohibition against contingent fees;

7. the applicant is familiar with the terms and conditions set forth in the current *Louisiana Capital Improvement Projects Procedure Manual for Design and Construction*, and will comply therewith;

8. should an applicant determine that any of the above items are incomplete, inadequate, or insufficient, the

applicant is invited to submit a letter stating in detail the applicant's findings, and the board will consider this information in the selection process. No unsolicited, additional information shall be considered. The board reserves the right to reject all applications for selection consideration and to re-advertise any official advertisement.

F. The board may, at its option and with the concurrence of the Office of Facility Planning and Control and the user agency, conduct design competitions in accordance with nationally accepted professional standards. Final selection of the applicant from among the competition submissions will be made within 30 days of deadline date of receipt of the entries. No closed competitions will be allowed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2312.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Architects Selection Board, LR 1:180 (April 1975), amended LR 4:494 (December 1978), repromulgated LR 10:454 (June 1984), amended LR 15:262 (April 1989), LR 20:29 (January 1994), LR 24:331 (February 1998), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1190 (September 2019).

§127. Selection Procedure

A. After the deadline for applications, the Office of Facility Planning and Control shall forward copies of the applications, together with any available description of the job to the board members.

B. The selection procedure shall be as follows.

1. The user agency shall present the scope of the project and make its recommendations, with supporting data, of an applicant or applicants for the project under consideration.

2. The board shall discuss the applications and user agency recommendations.

3.a. The board shall then take a weighted vote with points awarded as follows:

i. first choice—three points;

ii. second choice—two points;

iii. third choice—one point.

b. Each board member present shall, by written ballot, vote for his/her first, second, and third choice of applicants for each project.

c. A ballot without all three choices shall not be counted, however:

i. where fewer than six applicants have applied, board members may vote for only a first and second choice of applicants;

ii. where there are three or fewer applicants, board members may vote for only one applicant;

iii. in all cases, board members may abstain from voting entirely.

4. The secretary shall tabulate these ballots aloud and report to the board the results of the balloting.

5. If, as a result of the weighted vote, an applicant receives a majority of first place votes, the selection shall be awarded to that applicant and a second ballot will not be required.

6.a. If, as the result of the weighted vote, the first place choice does not receive a majority of first place votes, the two applicants receiving the most points as a result of the weighted vote shall be considered nominated, and will then be voted on by written ballot, with each board member having one vote. The results of this balloting shall be announced by the secretary. The applicant selected must receive a majority vote.

b. In case of a tie for nomination under §127.B.6.a, there shall be a runoff election to reduce the nominees to two in accordance with the procedures prescribed in §127.B.6.a.

7. In the event no applicant receives a majority vote for selection under §127.B.6.a, a discussion will be held, and new balloting for selection shall take place by written ballot with each board member having one vote.

8. In the event no applicant receives a majority vote for selection by a third ballot, the selected applicant shall then be decided by a coin toss conducted by the chairperson.

9. The selection of an applicant by the board shall be final unless formal charges of having submitted false information required by R.S. 38:2313 are made against the selected applicant by the Office of Facility Planning and Control, in writing, with proper accompanying documentation, to the board members and the selected applicant within seven days of the selection. When a formal charge is made, the board shall, within 10 calendar days, hold a hearing at which time the evidence of false information shall be presented and the selected applicant shall be given the opportunity to present rebuttal. If the board determines that the charges of false information are not sufficiently documented, the selection shall become final. If the board determines that the information was false, the application will be rejected and the project re-advertised. The applicant shall be allowed to reapply.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2313.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Architects Selection Board, LR 1:181 (April 1975), amended LR 4:495 (December 1978), repromulgated LR 10:454 (June 1984), amended LR 15:263 (April 1989), LR 24:331 (February 1998), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1191 (September 2019).

§128. Interview Procedures for Special Projects

A. The interview procedures of the board are as follows:

1. The user agency notifies the Office of Facility Planning and Control, or the Office of Facility Planning and Control may determine on its own that the proposed project is of a special nature and should be considered under the interview procedure.

2. The user agency, the Office of Facility Planning and Control, and the chairperson of the board (vice-chairperson in the absence of a chairperson) shall decide if the nature of the project warrants utilizing the interview procedure. This may be done in a meeting or by teleconference.

3. The chairperson of the board authorizes the Office of Facility Planning and Control to advertise the special project under these procedures. The advertisement shall contain:

a. the deadline for applications;

b. the date of the meeting;

c. the proposed interview meeting date;

d. the information required under R.S. 38:2312(A).

4. The selection procedure (§127) will be followed from §127.A and B.1, 2, 3, 4, and 5. However, if an applicant is not selected unanimously on the first ballot, the following procedure will be implemented:

a. After the results of the weighted ballot are reported, the board secretary will list all applicants receiving one or more points. They will be listed in order, ranked by number of points from highest to lowest.

b. After the list is prepared, there will be a roll call vote on each applicant starting with the first applicant on the list. Voting for each applicant will take place in the order that he/she is listed. Each applicant on the list will receive a "yes" or "no" vote from each board member. Each applicant that receives a majority of "yes" votes will be invited to be interviewed.

c. Voting will end when there are a minimum of two, but not more than five applicants to be invited to be interviewed or when the end of the list is reached, whichever comes first.

d. In the event that the end of the list is reached before there are at least two applicants to be interviewed, the board may begin voting again by the method of their choice.

e. All applicants selected by the foregoing process will be invited to an interview meeting.

5. The interview meeting will be held in accordance with criteria that the board sets forth in a letter to the applicants that have been selected to be interviewed.

6. At the interview meeting, the board will begin in an open meeting and vote to go into executive session to conduct the interviews in accordance with the criteria set forth in §128.A.5 and pursuant to R.S. 42:16 and 42:17.

7. After all the interviews have been conducted, the board will return to a public meeting.

8. At this time, the selection procedure will resume according to procedures outlined in §127.B.5, 7, 8, and 9.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2310 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Architects Selection Board, LR 17:1206 (December 1991), amended LR 24:331 (February 1998), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1191 (September 2019).

§129. Emergency Procedures

A. The emergency procedures of the board are as follows:

1. The Office of Facility Planning and Control receives the notification of emergency from the user agency.

2. The Office of Facility Planning and Control may, after a review of the agency's notification of emergency, notify the chairperson of the board that an emergency does exist.

3. The chairperson of the board then:

a. authorizes the advertisement;

b. directs the secretary to set the date and time for the emergency meeting for selection. The meeting shall be scheduled to occur not later than 72 hours after the advertisement is printed, not including Saturdays, Sundays and holidays.

4. The emergency meeting will convene at the date and time designated pursuant to §129.A.3.b to receive applications.

5. Applications will be distributed to present board members as the first order of business.

6. The meeting will then adjourn and, after a review of the applications by board members, reconvene at a time designated by the chairperson at which time selections shall be made in accordance with §127.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2313.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Architects Selection Board, LR 7:408 (August 1981), amended LR 10:455 (June 1984), LR 24:332 (February 1998), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1192 (September 2019).

§133. Information

A. Any person may obtain information concerning the board, its rules, regulations and procedures from the board's secretary at the Office of Facility Planning and Control, P.O. Box 94095, Baton Rouge, LA 70804. Requests for information shall be made in writing. There may be a nominal fee charged to defray the cost of information furnished. Said fee shall be set by the Office of Facility Planning and Control, with the approval of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2312.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Architects Selection Board, LR 4:495 (December 1978), repromulgated LR 10:455 (June 1984), amended LR 15:263 (April 1989), repromulgated LR 24:332 (February 1998), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1192 (September 2019).

§139. Severability

A. If any provision or item of these rules or the application thereof is held invalid, such invalidity shall not affect other provisions, items, or applications of these rules that can be given effect without the invalidated provision, item, or application and, to this end, the invalidated provision, item, or application of these rules is hereby declared severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Architects Selection Board, LR 4:495 (December 1978), repromulgated LR 10:455 (June 1984), amended LR 24:332 (February 1998), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1192 (September 2019).

Chapter 3. Engineers Selection Board

Subchapter A. Organization

§303. Authority

A. The Louisiana Engineers Selection Board shall be organized in accordance with the provisions of R.S. 38:2310 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Engineers Selection Board, LR 1:217 (May 1975), amended LR 6:10 (January 1980), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1192 (September 2019).

§305. Objective

A. The objective of this board is to provide a system for the selection of professional services rendered by engineers, licensed to practice in the state of Louisiana, that is impartial, equitable, and in the best public interest of the citizens of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Engineers Selection Board, LR 1:217 (May 1975), amended LR 6:10 (January 1980), amended by the Office of the

Governor, Office of Facility Planning and Control, LR 45:1192 (September 2019).

§307. Members

A. The board shall be composed of six members, appointed or elected, serving terms in accordance with the provisions of the authority set forth in §303.

B. Any member desiring to resign from the board shall submit his/her resignation, in writing by registered mail, to the American Council of Engineering Companies of Louisiana (formerly Consulting Engineers Council of Louisiana, Inc.) and the Louisiana Engineering Society, with a copy addressed to the chairperson of the board. The effective date of resignation shall be the date of registered mailing to the American Council of Engineering Companies of Louisiana (formerly Consulting Engineers Council of Louisiana, Inc.) and the Louisiana Engineering Society.

C. The filling of a board vacancy for the unexpired term due to resignation, death, or removal from office by just cause, shall be made in accordance with the provisions of the authority stated in §303.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Engineers Selection Board, LR 1:218 (May 1975), amended LR 6:11 (January 1980), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1193 (September 2019).

§309. Officers

A. The officers of this board shall be a chairperson and a vice-chairperson. These officers shall perform the duties prescribed in §303 and by these rules.

B. The chairperson shall:

1. be the presiding officer at meetings of the board;
2. have the authority to order a special meeting of the board;
3. be responsible for coordinating the activities of the board;
4. appoint all committees and serve as an ex-officio member thereof;
5. authenticate by his/her signature, when necessary, all acts, orders, and proceedings of the board;
6. be responsible for implementing all orders and resolutions of the board.

C. In the event of absence or incapacity of the chairperson, the vice-chairperson shall assume the duties of the chairperson as outlined above. In the absence of the secretary, the duties of the secretary shall be delegated to the vice-chairperson.

D. Nomination and election of chairperson and vice-chairperson of the board shall be held and conducted at the first regularly scheduled meeting after January 1 of each year.

E. The chairperson and vice-chairperson shall begin their terms in office immediately upon election. They shall serve a maximum of one year, unless re-elected for one additional term (see §309.G).

F. In the event that the term of office of the chairperson and vice-chairperson expires in accordance with §309.E, and a meeting is called at a time when there is no duly elected chairperson and vice-chairperson, upon convening, the first order of business of the board shall be the selection of a temporary chairperson who shall serve merely for the purpose of conducting the nomination and election of chairperson and vice-chairperson. Upon election, the temporary chairpersonship automatically dissolves, and the newly elected officers begin their terms in office. Nothing in this section shall prevent the temporary chairperson from either voting or being nominated for or elected to the office of chairperson or vice-chairperson.

G. No member shall hold more than one office at a time. A member may serve consecutive terms in accordance with R.S. 38:2311(B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Engineers Selection Board, LR 1:218 (May 1975), amended LR 6:11 (January 1980), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1193 (September 2019).

§311. Secretary

A. The office of secretary shall be furnished to the board by the Office of Facility Planning and Control, subject to approval by the board.

B. The secretary shall:

1. be under the general supervision of the board;
2. give notice of all meetings of the board and its committees to the board and general public;
3. attend all meetings of the board and committees and record the minutes of all proceedings and make the minutes and records available upon request;
4. keep on file all committee reports;
5. receive and conduct the general correspondence of the board; that is, correspondence which is not a function proper to the officers, or to the committees;
6. cause the official advertisement to be advertised in accordance with R.S. 38:2312(A) and the rules of selection procedure as adopted by the board;
7. maintain and be the custodian of a file of all applications for projects, as well as all data submitted by applicants selected by the board to furnish engineering services for state projects as provided for in the rules of selection procedure;
8. perform such other duties as may be prescribed by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Engineers Selection Board, LR 1:218 (May 1975), amended LR 6:11 (January 1980), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1193 (September 2019).

§313. Meetings

A. A regular meeting of the board shall be held on the second Wednesday in the months of January, April, July, and October of each year unless such meeting is waived by the chairperson as unnecessary.

B. Special meetings may be called by the chairperson or shall be called upon the written request of a minimum of four members of the board. Special meetings may be held at any place provided that the time, the place, and the purpose of the meeting shall be stated in the call and made public in accordance with applicable laws. Except in cases of emergency, at least three days' notice shall be given for special meetings.

C. A minimum of four members of the board shall be present to constitute a quorum.

D. All meetings shall be held in public, except as provided in §339.A.6.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Engineers Selection Board, LR 1:218 (May 1975), amended LR 6:11 (January 1980), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1193 (September 2019).

§315. Committees

A. Committees, standing or special, shall be appointed by the chairperson of the board, as he/she shall deem necessary to carry on the work of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Engineers Selection Board, LR 1:219 (May 1975), amended LR 6:11 (January 1980), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1194 (September 2019).

§319. Voting

A. Only the votes of members present at the meeting shall be counted in the board's official actions. Proxy votes on behalf of elected members are not allowed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Facility Planning and Control, LR 45:1194 (September 2019).

§321. Amendments to Rules

A. These rules of organization may be amended at any regular or special called meeting of the board by an affirmative vote of a simple majority of the attending board, provided that the proposed amendment has been submitted, in writing, at the previous regular or special meeting, and is in full compliance with the Louisiana Administrative Procedure Act and other applicable laws. Upon receipt of a proposed written amendment, the chairperson, before the next regular or special meeting, shall cause to give at least 20 days' notice of the board's intended action as provided in the Louisiana Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Engineers Selection Board, LR 1:219 (May 1975), amended LR 6:11 (January 1980), LR 9:550 (August 1983), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1194 (September 2019).

§323. Severability

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Engineers Selection Board, LR 1:219 (May 1975), repromulgated LR 6:11 (January 1980), repealed by the Office of the Governor, Office of Facility Planning and Control, LR 45:1194 (September 2019).

Subchapter B. Selection Procedure

§329. Information

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2312.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Engineers Selection Board, LR 1:270 (June 1975), amended LR 6:12 (January 1980), LR 9:550 (August 1983), repealed, LR 45:1194 (September 2019).

§331. Public Notification

A. Upon being advised by the Office of Facility Planning and Control, that an agency intends to contract for professional services, the chairperson shall request the official advertisement to be published by the Office of Facility Planning and Control. There shall be a minimum seven-business day application period, commencing with the day of the first publication of the official advertisement and ending on the day of the deadline for receiving applications. During this period, the official advertisement shall be published in the official state journal one time. A copy of the official advertisement shall be provided to the American Council of Engineering Companies of Louisiana (formerly Consulting Engineers Council of Louisiana, Inc.) and the Louisiana Engineering Society.

B. The official advertisement specified above shall include all information required under R.S. 38:2312(A) and the tentative date and time of the board meeting at which applications will be considered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2312.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Engineers Selection Board, LR 1:270 (June 1975), amended LR 6:12 (January 1980), LR 9:550 (August 1983), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1194 (September 2019).

§335. Application

A. Any applicant (proprietorship, partnership, corporation, or joint venture of any of these) meeting the requirements of R.S. 38:2310 et seq., may submit an application for selection consideration for a particular project upon which official advertisement has been published. The applicant shall submit data concerning its experience, previous projects undertaken, present state projects now being performed, scope and amount of work on hand, and any other information that the board deems appropriate.

B.1. The Louisiana Engineers Selection Board hereby adopts the use of the LSB-1 Form as the format for submitting an application to the board.

2. The board will accept only those applications submitted on the current edition of the LSB-1 Form. Any special information requested in the advertisement shall be submitted with the required LSB-1 Form. Any submittal not following this format will be deemed non-responsive and not considered.

3. In the LSB-1 Form, the term *prime professional* is as defined in R.S. 38:2310(9).

4. The board has the right to require proof of compliance with the above definition.

C. Consultants, if applicable, shall be listed on the submitted application form and shall possess the necessary qualifications and expertise to satisfactorily provide the services required for this project.

D. All applications shall be received on behalf of the board at the Office of Facility Planning and Control during the time prescribed in the advertisement. The secretary shall date, when received, all applications. The burden for timely and complete submittal lies solely with the applicant.

E. The submission of an application on a particular project shall be considered by the board to mean that based on all publicly available information:

1. the applicant is aware of the scope of work of the project;

2. the applicant has the necessary qualifications and expertise to satisfactorily provide the services required for the project;

3. the applicant can perform the work within the time frame stated;

4. the applicant concurs that the project budget is reasonable;

5. the fee is equitable;

6. the engineering contract shall contain a prohibition against contingent fees;

7. the applicant is familiar with the terms and conditions set forth in the current *Louisiana Capital Improvement Projects Procedure Manual for Design and Construction*, and will comply therewith;

8. should an applicant determine that any of the above items are incomplete, inadequate, or insufficient, the applicant is invited to submit a letter stating in detail the applicant's findings, and the board will consider this information in the selection process. No unsolicited additional information shall be considered. The board reserves the right to reject all applications for selection consideration and to re-advertise any official advertisement.

F. The board may, at its option and with the concurrence of the Office of Facility Planning and Control and the user agency, conduct design competitions in accordance with nationally accepted professional standards. Final selection of the applicant from among the competition submissions will be made within 30 days of deadline date of receipt of the entries. No closed competitions will be allowed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2312.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Engineers Selection Board, LR 1:270 (June 1975), amended LR 6:12 (January 1980), LR 9:550 (August 1983), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1194 (September 2019).

§337. Selection Procedure [Formerly 341]

A. After the deadline for applications, the Office of Facility Planning and Control shall forward copies of the applications, together with any available description of the job, to the board members.

B. The selection procedure shall be as follows.

1. The user agency shall present the scope of the project and make its recommendations, with supporting data, of an applicant or applicants for the project under consideration.

2. The board shall discuss the applications and user agency recommendations.

3. a. The board shall then take a weighted vote with points awarded as follows:

i. first choice—three points;

ii. second choice—two points;

iii. third choice—one point.

b. Each board member present shall, by written ballot vote for his/her first, second, and third choice of applicants for each project.

c. A ballot without all three choices shall not be considered, however:

i. where fewer than six applicants have applied, board members may vote for only a first and second choice of applicants;

ii. where there are three or fewer applicants, board members may vote for only one applicant;

iii. in all cases, board members may abstain from voting entirely.

4. The secretary shall tabulate these ballots aloud and report to the board the results of the balloting.

5. If, as a result of the weighted vote, an applicant receives a majority of first place votes, the selection shall be awarded to that applicant and a second ballot will not be required.

6.a. If, as a result of the weighted vote, the first place choice does not receive a majority of first place votes, the two applicants receiving the most points as a result of the weighted vote shall be considered nominated, and will then be voted on by written ballot with each board member having one vote. The results of this balloting shall be announced by the secretary. The applicant selected must receive a majority vote.

b. In case of a tie for nomination under §337.B.6.a, there shall be a runoff election to reduce the nominees to two in accordance with procedures prescribed in §337.B.6.a.

7. In the event no applicant receives a majority vote for selection under §337.B.6.a, a discussion will be held, and new balloting for selection shall take place by written ballot with each board member having one vote.

8. In the event no applicant receives a majority vote for selection by a third ballot, the selected applicant shall then be decided by a coin toss conducted by the chairperson.

9. The selection of an applicant by the board shall be final unless formal charges of having submitted false information required by R.S. 38:2313 are made against the selected applicant by the Office of Facility Planning and Control, in writing, with proper accompanying documentation, to the board members and the selected applicant within seven days of the selection. When a formal charge is made, the board shall, within 10 calendar days, hold a hearing at which time the evidence of false information shall be presented and the selected applicant shall be given the opportunity to present rebuttal. If the board determines that the charges of false information are not sufficiently documented, the selection shall become final. If the board determines that the information was false, the application will be rejected and the project re-advertised. The applicant shall be allowed to reapply.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2313.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Engineers Selection Board, LR 1:271 (June 1975), amended LR 6:12 (January 1980), amended LR 9:551 (August 1983), LR 11:1077 (November 1985), LR 17:661 (July 1991), LR 22:345 (May 1996), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1195 (September 2019).

§339. Interview Procedures for Special Projects

A. The interview procedures of the board are as follows:

1. The user agency notifies the Office of Facility Planning and Control, or the Office of Facility Planning and Control may determine on its own that the proposed project is of a special nature and should be considered under the interview procedure.

2. The user agency, the Office of Facility Planning and Control, and the chairperson of the board (vice-chairperson in the absence of a chairperson) shall decide if

the nature of the project warrants utilizing the interview procedure. This may be done in a meeting or by teleconference.

3. The chairperson of the board authorizes the Office of Facility Planning and Control to advertise the special project under these procedures. The advertisement shall contain:

a. the deadline for applications;

b. the date of the meeting;

c. the proposed interview meeting date;

d. the information required under R.S. 38:2312(A).

4. The selection procedure (§337) will be followed from §337.A, and B.1, 2, 3, 4, and 5. However, if an applicant is not selected unanimously on the first ballot, the following procedure will be implemented:

a. After the results of the weighted ballot are reported, the board secretary will list all applicants receiving one or more points. They will be listed in order, ranked by number of points from highest to lowest.

b. After the list is prepared, there will be a roll call vote on each applicant starting with the first applicant on the list. Voting for each applicant will take place in the order that he/she is listed. Each applicant on the list will receive a "yes" or "no" vote from each board member. Each applicant that receives a majority of "yes" votes will be invited to be interviewed.

c. Voting will end when there are a minimum of two, but not more than five applicants to be invited to be interviewed, or when the end of the list is reached, whichever comes first.

d. In the event that the end of the list is reached before there are at least two applicants to be interviewed, the board may begin voting again by the method of their choice.

e. All applicants selected by the foregoing process will be invited to an interview meeting.

5. The interview meeting will be held in accordance with criteria that the board sets forth in a letter to the applicants that have been selected to be interviewed.

6. At the interview meeting, the board will begin in an open meeting and vote to go into executive session to conduct the interviews in accordance with the criteria set forth in §339.A.5, and pursuant to R.S. 42:16 and 42:17.

7. After the interviews have been conducted, the board will return to a public meeting.

8. At this time, the selection procedure will resume according to procedures outlined in §337.B.5, 7, 8, and 9.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Facility Planning and Control, LR 45:1195 (September 2019).

§341. Emergency Procedures

A. The emergency procedures of the board are as follows:

1. The Office of Facility Planning and Control receives the notification of emergency from the user agency.

2. The Office of Facility Planning and Control may, after a review of the user agency's notification of emergency, notify the chairperson of the board that an emergency does exist.

3. The chairperson of the board then:

a. authorizes the advertisement;

b. directs the secretary to set the date and time for the emergency meeting for selection. The meeting shall be scheduled to occur not later than 72 hours after the advertisement is printed, not including Saturdays, Sundays, and holidays.

4. The emergency meeting will convene at the date and time designated pursuant to §339.A.3.b, to receive applications.

5. Applications will be distributed to present board members as the first order of business.

6. The meeting will then adjourn and, after a review of the applications by board members, reconvene at a time designated by the chairperson at which time selections shall be made in accordance with §327.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Facility Planning and Control, LR 45:1196 (September 2019).

§343. Information [Formerly §329]

A. Any person may obtain information concerning the board, its rules, regulations, and procedures from the board's secretary at the Office of Facility Planning and Control, P.O. Box 94095, Baton Rouge, LA 70804. Requests for information shall be made in writing. There may be a nominal fee charged to defray the cost of information furnished. Said fee shall be set by the Office of Facility Planning and Control, with the approval of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2312.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Engineers Selection Board, LR 1:270 (June 1975), amended LR 6:12 (January 1980), LR 9:550 (August 1983), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1196 (September 2019).

§345. Severability [Formerly §343]

A. If any provision or item of these rules or the application thereof is held invalid, such invalidity shall not affect other provisions, items, or applications of these rules that can be given effect without the invalidated provision, item, or application, and to this end, the invalidated provision, item, or application of these rules is hereby declared severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Engineers Selection Board, LR 1:271 (June 1975), amended LR 6:13 (January 1980), repromulgated LR 9:551 (August 1983), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1196 (September 2019).

Chapter 5. Landscape Architects Selection Board

Subchapter A. Organization

§503. Authority

A. The Louisiana Landscape Architects Selection Board shall be organized in accordance with the provisions of R.S. 38:2310, et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Architects Selection Board, LR 1:311 (July 1975), amended LR 5:78 (April 1979), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1196 (September 2019).

§505. Objective

A. The objective of this board is to provide a system for the selection of professional services rendered by landscape architects, licensed to practice in the state of Louisiana, that is impartial, equitable, and in the best public interest of the citizens of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Landscape Architects Selection Board, LR 1:311 (July 1975), amended LR 5:78 (April 1979), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1197 (September 2019).

§507. Members

A. The board shall be composed of six members, appointed or elected, serving terms in accordance with the provisions of the authority stated in §503.

B. Any member desiring to resign from the board shall submit his/her resignation, in writing by registered mail, to The Louisiana Chapter of the American Society of Landscape Architects, Inc., with a copy addressed to the chairperson of the board. The effective date of resignation shall be the date of registered mailing to The Louisiana Chapter of the American Society of Landscape Architects, Inc.

C. The filling of a board vacancy for the unexpired term due to resignation, death, or removal from office by just cause, shall be made in accordance with the provisions of the authority stated in §503.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Landscape Architects Selection Board, LR 1:312 (July 1975), amended LR 5:78 (April 1979), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1197 (September 2019).

§509. Officers

A. The officers of this board shall be a chairperson and a vice-chairperson. These officers shall perform the duties prescribed in §503 and by these rules.

B. The chairperson shall:

1. be the presiding officer at meetings of the board;
2. have the authority to order a special meeting of the board;
3. be responsible for coordinating the activities of the board;
4. appoint all committees and serve as an ex officio member thereof;
5. authenticate by his/her signature, when necessary, all acts, orders and proceedings of the board;
6. be responsible for implementing all orders and resolutions of the board.

C. In the event of absence or incapacity of the chairperson, the vice-chairperson shall assume the duties of the chairperson as outlined above. In the absence of the secretary, the duties of the secretary shall be delegated to the vice-chairperson.

D. Nomination and election of chairperson and vice-chairperson of the board shall be held and conducted at the first regularly scheduled meeting after January 1 of each year.

E. The chairperson and vice-chairperson shall begin their terms in office immediately upon election. They shall serve a maximum of one year unless re-elected for one additional term (see §509.G).

F. In the event that the term of office of the chairperson and vice-chairperson expires in accordance with §509.E, and a meeting is called at a time when there is no duly elected chairperson and vice-chairperson, upon convening, the first order of business of the board shall be the selection of a temporary chairperson who shall serve merely for the purpose of conducting the nomination and election of chairperson and vice-chairperson. Upon election, the temporary chairpersonship automatically dissolves and the newly elected officers begin their terms in office. Nothing in this section shall prevent the temporary chairperson from either voting or being nominated for or elected to the office of chairperson or vice-chairperson.

G. No member shall hold more than one office at a time. A member may serve consecutive terms in accordance with R.S. 38:2311(B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Landscape Architects Selection Board, LR 1:312 (July 1975), amended LR 5:78 (April 1979), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1197 (September 2019).

§510. Secretary

A. The office of secretary shall be furnished to the board by the Office of Facility Planning and Control, subject to approval by the board.

B. The secretary shall:

1. be under the general supervision of the board;
2. give notice of all meetings of the board and its committees to the board and general public;
3. attend all meetings of the board and committees and record the minutes of all proceedings and make the minutes and records available upon request;
4. keep on file all committee reports;
5. receive and conduct the general correspondence of the board; that is, correspondence which is not a function proper to the officers, or to committees;
6. cause the official advertisement to be advertised in accordance with R.S. 38:2312(A) and the rules of selection procedure as adopted by the board;
7. maintain and be the custodian of a file of all applications for projects, as well as all data submitted by applicants selected by the board to furnish landscape architectural services for state projects as provided for in the rules of selection procedure;
8. perform such other duties as may be prescribed by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Facility Planning and Control, LR 45:1197 (September 2019).

§511. Meetings

A. A regular meeting of the board shall be held on the last Wednesday of January and July of each year unless such meeting is waived by the chairperson as unnecessary.

B. Special meetings may be called by the chairperson or shall be called upon the written request of a minimum of four members of the board. Special meetings may be held at any place provided that the time, the place, and the purpose

of the meeting shall be stated in the call and made public in accordance with applicable laws. Except in cases of emergency, at least three days' notice shall be given for special meetings.

C. A minimum of four members of the board shall be present to constitute a quorum.

D. All meetings shall be held in public, except as provided in §528.A.6.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Landscape Architects Selection Board, LR 1:313 (July 1975), amended LR 5:78 (April 1979), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1197 (September 2019).

§513. Committees

A. Committees, standing or special, shall be appointed by the chairperson of the board as he/she shall deem necessary to carry on the work of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Landscape Architects Selection Board, LR 1:313 (July 1975), amended LR 5:78 (April 1979), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1198 (September 2019).

§515. Parliamentary Authority

A. The rules contained in the current edition of *Robert's Rules of Order, Newly Revised*, shall govern the board in all cases to which they are applicable and in which they are not inconsistent with these rules of organization and any special rules of order that the board may adopt.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Landscape Architects Selection Board, LR 1:313 (July 1975), amended LR 5:78 (April 1979), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1198 (September 2019).

§517. Voting

A. Only the votes of members present at the meeting shall be counted in the board's official actions. Proxy votes on behalf of elected members are not allowed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Landscape Architects Selection Board, LR 5:78 (April 1979), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1198 (September 2019).

§519. Amendment to Rules

A. These rules of organization may be amended at any regular or special called meeting of the board by an affirmative vote of a simple majority of the attending board provided the proposed amendment has been submitted, in writing, at the previous regular or special meeting, and is in full compliance with the Louisiana Administrative Procedure Act and other applicable laws. Upon receipt of a proposed written amendment, the chairperson, before the next regular or special meeting, shall cause to give at least 20 days' notice of the board's intended action as provided in the Louisiana Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Landscape Architects Selection Board, LR 1:313 (July 1975), amended LR 5:78 (April 1979), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1198 (September 2019).

Subchapter B. Selection Procedure

§521. Public Notification

A. Upon being advised by the Office of Facility Planning and Control that an agency intends to contract for professional services, the chairperson shall request the official advertisement to be published by the Office of Facility Planning and Control. There shall be a minimum seven business day application period, commencing with the day of the first publication of the official advertisement and ending on the day of the deadline for receiving applications. During this period, the official advertisement shall be published in the official state journal one time. A copy of the official advertisement shall be provided to The Louisiana Chapter of the American Society of Landscape Architects, Inc.

B. The official advertisement specified above shall include all information required under R.S. 38:2312(A) and the tentative date and time of the board meeting at which applications will be considered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Facility Planning and Control, LR 45:1198 (September 2019).

§523. Communication with Applicant Firms

A. No member of the board shall communicate in any manner concerning a project application with any representative of an applicant firm or anyone communicating on behalf of an applicant firm. This restriction shall apply from the time advertisement of a project begins until the opening of the board meeting at which the project application will be considered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Facility Planning and Control, LR 45:1198 (September 2019).

§525. Application

A. Any applicant (proprietorship, partnership, corporation, or joint venture of any of these) meeting the requirements of R.S. 38:2310 et seq., may submit an application for selection consideration for a particular project upon which official advertisement has been published. The applicant shall submit data concerning its experience, previous projects undertaken, present state projects now being performed, scope and amount of work on hand, and any other information that the board deems appropriate.

B.1. The Louisiana Landscape Architects Selection Board hereby adopts the use of the LSB-1 Form as the format for submitting an application to the board.

2. The board will accept only those applications submitted on the current edition of the LSB-1 Form. Any special information requested in the advertisement shall be submitted with the required LSB-1 Form. Any submittal not following this format will be deemed non-responsive and not considered.

3. In the LSB-1 Form, the term *prime professional* is as defined in R.S. 38:2310(9).

4. The board has the right to require proof of compliance with the above definition.

C. Consultants, if applicable, shall be listed on the submitted application form and shall possess the necessary qualifications and expertise to satisfactorily provide the services required for this project.

D. All applications shall be received on behalf of the board at the Office of Facility Planning and Control Department during the time prescribed in the advertisement. The secretary shall date, when received, all applications. The burden for timely and complete submittal lies solely with the applicant.

E. The submission of an application on a particular project shall be considered by the board to mean that based on all publicly available information:

1. the applicant is aware of the scope of work of the project;

2. the applicant has the necessary qualifications and expertise to satisfactorily provide the services required for this project;

3. the applicant can perform the work within the time frame stated;

4. the applicant concurs that the project budget is reasonable;

5. the fee is equitable;

6. the landscape architect contract shall contain a prohibition against contingent fees;

7. the applicant is familiar with the terms and conditions set forth in the current *Louisiana Capital Improvement Projects Procedure Manual for Design and Construction*, and will comply therewith;

8. should an applicant determine that any of the above items are incomplete, inadequate, or insufficient, the applicant is invited to submit a letter stating in detail the applicant's findings, and the board will consider this information in the selection process. No unsolicited additional information shall be considered. The board reserves the right to reject all applications for selection consideration and to re-advertise any official advertisement.

F. The board may, at its option and with the concurrence of the Office of Facility Planning and Control and the user agency, conduct design competitions in accordance with nationally accepted professional standards. Final selection of the applicant from among the competition submissions will be made within 30 days of deadline date of receipt of the entries. No closed competitions will be allowed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Landscape Architects Selection Board, LR 1:314 (July 1975), amended LR 5:78 (April 1979), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1198 (September 2019).

§527. Selection Procedure [Formerly §529]

A. After the deadline for applications, the Office of Facility Planning and Control shall forward copies of the applications, together with any available description of the job, to the board members.

B. The selection procedure shall be as follows:

1. The user agency shall present the scope of the project and make its recommendations, with supporting data, of an applicant or applicants for the project under consideration.

2. The board shall discuss the applications and user agency recommendation.

3.a. The board shall then take a weighted vote with points awarded as follows:

i. first choice—three points;

ii. second choice—two points;

iii. third choice—one point.

b. Each board member present shall, by written ballot, vote for his/her first, second, and third choice of applicants for each project.

c. A ballot without all three choices shall not be counted, however:

i. where fewer than six applicants have applied, board members may vote for only a first and second choice of applicants;

ii. where there are three or fewer applicants, board members may vote for only one applicant;

iii. in all cases, board members may abstain from voting entirely.

4. The secretary shall tabulate these ballots aloud and report to the board the results of the balloting.

5. If, as a result of the weighted vote, an applicant receives a majority of first place votes, the selection shall be awarded to that applicant and a second ballot will not be required.

6.a. If, as a result of the weighted vote, the first place choice does not receive a majority of first place votes, the two applicants receiving the most points as a result of the weighted vote shall be considered nominated, and will then be voted on by written ballot with each board member having one vote. The results of this balloting shall be announced by the secretary. The applicant selected must receive a majority vote.

b. In case of a tie for nomination under §527.B.6.a, there shall be a runoff election to reduce the nominees to two in accordance with procedures prescribed in §527.B.6.a.

7. In the event no applicant receives a majority vote for selection under §527.B.6.a, a discussion will be held, and new balloting for selection shall take place by written ballot with each board member having one vote.

8. In the event no applicant receives a majority vote for selection by a third ballot, the selected applicant shall then be decided by a coin toss conducted by the chairperson.

9. The selection of an applicant by the board shall be final unless formal charges of having submitted false information required under R.S. 38:2313 are made against the selected applicant by the Office of Facility Planning and Control, in writing, with proper accompanying documentation, to the board members and the selected applicant within seven days of the selection. When a formal charge is made, the board shall, within 10 calendar days, hold a hearing at which time the evidence of false information shall be presented and the selected applicant shall be given the opportunity to present rebuttal. If the board determines that the charges of false information are not sufficiently documented, the selection shall become final. If the board determines that the information was false, the application will be rejected and the project re-advertised. The applicant shall be allowed to reapply.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of Governor, Landscape Architects Selection Board, LR 1:311 (July 1975), LR 1:314 (July 1975), amended LR 5:79 (April 1979), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1199 (September 2019).

§528. Interview Procedures for Special Projects

A. The interview procedures of the board are as follows:

1. The user agency notifies the Office of Facility Planning and Control, or the Office of Facility Planning and Control may determine on its own that the proposed project is of a special nature and should be considered under the interview procedure.

2. The user agency, the Office of Facility Planning and Control, and the chairperson of the board (vice-chairperson in the absence of the chairperson) shall decide if the nature of the project warrants utilizing the interview procedure. This may be done in a meeting or by teleconference.

3. The chairperson of the board authorizes the Office of Facility Planning and Control to advertise the special project under these procedures. The advertisement shall contain:

a. the deadline for applications;

b. the date of the meeting;

c. the proposed interview meeting date;

d. the information required under R.S. 38:2312(A).

4. The selection procedure (§527) will be followed from §527.A, and B.1, 2, 3, 4, and 5. However, if an applicant is not selected unanimously on the first ballot, the following procedure will be implemented:

a. After the results of the weighted ballot are reported, the board secretary will list all applicants receiving one or more points. They will be listed in order, ranked by number of points from highest to lowest.

b. After the list is prepared, there will be a roll call vote on each applicant starting with the first applicant on the list. Voting for each applicant will take place in the order that he/she is listed. Each applicant on the list will receive a "yes" or "no" vote from each board member. Each applicant that receives a majority of "yes" votes will be invited to an interview meeting.

c. Voting will end when there are a minimum of two, but not more than five applicants to be interviewed, or when the end of the list is reached, whichever comes first.

d. In the event that the end of the list is reached before there are at least two applicants to be interviewed, the board may begin voting again by the method of their choice.

e. All applicants selected by the foregoing process will be invited to an interview meeting.

5. The interview meeting will be held in accordance with criteria that the board sets forth in a letter to the applicants that have been selected to be interviewed.

6. At the interview meeting, the board will begin in an open meeting and vote to go into executive session to conduct the interviews in accordance with the criteria set forth in §528.A.5, and pursuant to R.S. 42:16 and 42:17.

7. After all interviews have been conducted, the board will return to a public meeting.

8. At this time, the selection procedure will resume according to procedure outlined in §527.B.5, 6.a, 8, and 9.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Facility Planning and Control, LR 45:1200 (September 2019).

§529. Emergency Procedures

A. The emergency procedures of the board are as follows:

1. The Office of Facility Planning and Control receives the notification of emergency from the user agency.

2. The Office of Facility Planning and Control may, after a review of the user agency's notification of emergency, notify the chairperson of the board that an emergency does exist.

3. The chairperson of the board then:

a. authorizes the advertisement;

b. directs the secretary to set the date and time for the emergency meeting for selection. The meeting shall be scheduled to occur not later than 72 hours after the advertisement is printed, not including Saturdays, Sundays, and holidays.

4. The emergency meeting will convene at the date and time designated pursuant to §529.A.3.b to receive applications.

5. Applications will be distributed to present board members as the first order of business.

6. The meeting will then adjourn and, after a review of the applications by the board members, reconvene at a time designated by the chairperson at which time selections shall be made in accordance with §527.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Facility Planning and Control, LR 45:1200 (September 2019).

§533. Information

A. Any person may obtain information concerning the board, its rules, regulations, and procedures from the board's secretary at the Office of Facility Planning and Control, P.O. Box 94095, Baton Rouge, LA 70804. Requests for information shall be made in writing. There may be a nominal fee charged to defray the cost of information furnished. Said fee shall be set by the Office of Facility Planning and Control, with the approval of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Facility Planning and Control, LR 45:1200 (September 2019).

§535. Severability

A. If any provision or item of these rules or the application thereof is held invalid, such invalidity shall not affect other provisions, items, or applications of these rules that can be given effect without the invalidated provision, item, or application, and to this end, the invalidated provision, item, or application of these rules is hereby declared severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2311.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Landscape Architects Selection Board, LR 1:315 (July

1975), repromulgated LR 5:79 (April 1979), amended by the Office of the Governor, Office of Facility Planning and Control, LR 45:1200 (September 2019).

Mark A. Moses
Director

1909#008

RULE

Department of Health
Board of Nursing

Advanced Practice Registered Nurses
(LAC 46:XLVII.Chapter 45)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 37:917-918, the Louisiana State Board of Nursing (LSBN) has amended Title 46, Professional and Occupational Standards, Part XLVII Chapter 45, Advanced Practice Registered Nurses §4507 Licensure as Advanced Practice Registered Nurse and §4513 Authorized Practice and §4516 Continuing Education Requirement for APRNs Prescribing Controlled Substances. This Rule provides for revisions to Chapter 45 to comply with §978.3 ("Continuing education for the prescribing of controlled substances") in Section 2 of Act 76 of Louisiana's 2017 regular legislative session. Act 76 mandates that prescribers of controlled substances in Louisiana with a CDS license must obtain three credit hours of continuing education (CE) as a prerequisite of license renewal. Content of the CE must include drug diversion training, best practices for the prescribing of controlled substances, appropriate treatment for addiction, and any other content deemed appropriate by the regulatory agency. This is a one-time requirement under Act 76. CEs obtained for this purpose may be utilized to meet the usual CE requirements of the agency. Currently, APRNs with prescriptive authority have an annual CE requirement as do grandfathered APRNs upon renewal of licensure under commensurate requirements.

In addition, a clarification to Chapter 45 that the practice requirement for renewal for grandfathered APRNs be aligned to consider the newly implemented biennial renewal in that the practice requirement is annual rather than the previous language of "within a 12 month period".

Three technical changes to clarify references to citations including LAC 46:XLVII. 4507.A.1.b.h, which references LAC 46:XLVII.4507.A.1.a–d and should be revised to refer to LAC 46:XLVII.4507.A.1.a–e. Previous rule changes published in 2016 resulted in renumbering of sections of §4507 that inadvertently were not adjusted in subsequent sections. Prior to 2016, §4507.A.1.a.–d referred to and required national certification to be licensed as an APRN in an additional specialty, thus the revised reference includes §4507.A.1.a-e in order to include national certification. Secondly, LAC 46:XLVII.4507.D.1.c. which references LAC 46:XLVII.4507.A.1.b and d and should be revised to refer to LAC 46:XLVII.4507.A.1.e and e. Previous rule changes published in 2016 resulted in renumbering of sections of §4507 that inadvertently were not adjusted in subsequent sections. Prior to 2016, §4507.A.1.b and d referred to and required national certification to be licensed as an APRN via endorsement, thus the revised reference includes §4507.A.1.b and e in order to include national certification. Thirdly, LAC 46:XLVII.4507.F.2. which references Subparagraphs F.1.a; b; and e and should be revised to refer to Subparagraphs F.1.a., c; and e. Prior to 2016, §4507.F.1.a, b, and e referred to and required national certification to be licensed as an APRN via reinstatement, thus the revised reference includes §4507.F.1.a, c, and e in order to include national certification. In summary, all technical changes clarify the reference to and inadvertent omission of the previous and ongoing requirement for national certification when APRNs are applying for licensure in an additional specialty, for reinstatement, and for endorsement. This Rule is hereby adopted on the day of promulgation.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XLVII. Nurses: Practical Nurses and Registered Nurses
Subpart 2. Registered Nurses
Chapter 45. Advanced Practice Registered Nurses
§4507. Licensure as Advanced Practice Registered Nurse

A. Initial Licensure

1. The applicant shall meet the following requirements:

a. - g. …

h. after initial licensure, applicants seeking licensure for advanced practice in an additional specialty and/or functional role shall meet the requirements stated in LAC 46:XLVII.4507 A.1.a.-e;

A.1.i. - C.4. …

D. Temporary Permit: Endorsement Applicants

1. - 1.b. …

c. evidence of meeting the educational and certification requirements specified in LAC 46:XLVII.4507. A.1.b and e; or

2. - 3. …

E. Renewal of Licenses by Certification or Commensurate Requirements

1. – 2. …

a. a minimum of 300 hours of practice annually in advanced practice registered nursing, as defined in R.S. 37:913.a.; and

2.b. - 4. …

F. Reinstatement of an APRN License

1. - 1.e. …

2. Reinstatement of an APRN license for an applicant seeking to meet §4507.F.1.c or d, in addition to meeting the above requirements in Subparagraphs F.1.c, and e, the applicant shall:

2.a. - 4. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 22:281 (April 1996), amended LR 27:724 (May 2001), LR 29:580 (April 2003), LR 31:1340 (June 2005), LR 31:2015 (August 2005), LR 32:247 (February 2006), LR 37:3027 (October 2011), LR 40:61 (January 2014), LR 42:406 (March 2016), LR 45:1201 (September 2019).

§4513. Authorized Practice

A. - D.2.a.v. …

b. Controlled Substances. The board may authorize an APRN with prescriptive authority to prescribe or distribute controlled substances as defined, enumerated or included in federal or state statues or regulations 21 CFR 1308.11-15, R.S. 40:964, on an individual practice basis. Upon initial application with the board and request for approval to prescribe controlled substances, the APRN must provide evidence of successful completion of three hours of continuing education approved by the board on controlled substance prescribing practices as delineated in LAC 46:XLVII.4516. Such board approved continuing education shall include instruction relating to drug diversion training, best practices regarding prescribing of controlled substances, and appropriate treatment for addiction. An APRN who is so authorized shall provide their Drug Enforcement Administration registration number on all written, electronic, oral, or faxed prescriptions for controlled substances and shall comply with all scheduled drug prescription requirements in accordance with LAC 46:LIII.2511:

2.b.i. - 5.d. …

6. Continued Competency for Prescriptive Authority. Each year an APRN with prescriptive authority shall obtain six contact hours of continuing education in pharmacotherapeutics in their advanced nursing role and population foci. Documentation of completion of the continuing education contact hours required for prescriptive authority shall be submitted at the request of the board in a random audit procedure at the time of the APRN's license renewal. Continuing education completed to meet the requirements of LAC 46:XLVII.4516, Continuing Education Requirement for APRNs Prescribing Controlled Substances, shall be applied to the aforementioned required continuing education related to Continued Competency for Prescriptive Authority for the year in which the continuing education related to controlled substance prescribing was completed. In order for the continuing education program to be approved by the board, the program shall:

6.a. - 17.b. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K) and R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 10:598 (August 1984), amended by the Department of Health and Hospitals, Board of Nursing, LR 22:283 (April 1996), amended by the Department of Health and Hospitals, Board of Nursing and Board of Medical Examiners, LR 22:981 (October 1996), LR 25:1245 (July 1999), LR), amended by the Department of Health and Hospitals, Board of Nursing, 27:727 (May 2001), amended by the Department of Health and Hospitals, Board of Nursing and Board of Medical Examiners, LR 28:487 (March 2002), repromulgated LR 28:1205 (June 2002), amended by the Department of Health and Hospitals, Board of Nursing, LR 31:2023 (August 2005), LR 33:1870 (September 2007), LR 40:63 (January 2014), LR 40:2249 (November 2014), LR 42:572 (April 2016), amended by the Department of Health, Board of Nursing, LR 44:276 (February 2018), LR 45:1202 (September 2019).

§4516. Continuing Education Requirement for APRNs Prescribing Controlled Substances.

A. Every APRN with both active prescriptive authority and who holds an active controlled dangerous substance (CDS) license prior to promulgation of this section and who is seeking the renewal of the APRN license and renewal of the prescriptive authority credential, shall, as part of the continuing education required by this Part, and as a one-time prerequisite to licensure renewal, successfully complete three hours of continuing education approved by the board on controlled substance prescribing practices. After promulgation of this section, successful completion of three hours of continuing education approved by the board on controlled substance prescribing practices shall be provided upon application and request for approval for controlled substance privileges with the board and will meet the requirements for subsequent renewal relative to controlled substance prescribing. Such continuing education shall include instruction relating to drug diversion training, best practices regarding prescribing of controlled substances, and appropriate treatment for addiction. The continuing education requirement may be satisfied by completing a three-hour continuing education program, three one-hour continuing education programs, or any other combination of continuing education programs totaling three hours.

B. Approved Continuing Education. In order for the continuing education program to be approved by the board, the program shall:

1. be provided by a board approved national certifying body, a board approved accrediting organization, a provider approved by the board, or be provided by the board;

2. adequately address the topics of required instruction at the advanced practice level with the focus and objectives of the continuing education program on content relevant to drug diversion training, best practices regarding prescribing of controlled substances, and appropriate treatment for addiction;

C. Documentation.

1. Continuing education certificate(s) must be provided as evidence of completion of the program(s) and as requested by the board. The certificate must contain:

a. title of the continuing education program;

b. quantification of credit hours awarded;

c. attendee's name;

d. date(s) of continuing education program;

e. name of accrediting organization, certifying body, or approved provider; and

f. sponsoring organization (if applicable)

2. Information on how to access approved, qualifying continuing education courses will be maintained by the board and made available on its website.

D. Noncompliance. The license of an APRN:

1. Who fails to comply with the continuing education requirement of this part shall not be renewed by the board, and the RN and APRN licenses and prescriptive authority credential shall become inactive. The individual will not be authorized to practice and prescribe until the licenses and prescriptive authority have been reinstated;

2. Which has not been renewed for failure to satisfy the continuing education requirement, may be reinstated upon application for reinstatement submitted to the board, in addition to all applicable fees and costs, and evidence of completion of the continuing education required by this section.

E. Exception. An APRN renewing his/her license may be exempt from the continuing education requirement upon the submission of certification, in a form and manner specified by the board, attesting that he/she has not prescribed,

administered or dispensed any controlled substance during the entire period covered by the APRN's expiring APRN license. The certification shall be verified by the board through the Louisiana Prescription Monitoring Program Act, R.S. 40:1001 et seq. An exempted individual who subsequently prescribes, administers or dispenses any controlled substance shall satisfy the continuing education requirement as a condition to license renewal for the renewal period immediately following that in which the controlled substance was prescribed, administered or dispensed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K) and R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Nursing, LR 45:1202 (September 2019).

Dr. Karen C. Lyon
Executive Director

1909#019

RULE

Department of Health
Bureau of Health Services Financing

Termination of Radiology Utilization Management Services
(LAC 50:V.6105 and XIX.4501)

The Department of Health, Bureau of Health Services Financing has repealed LAC 50:V.6105 and XIX.4501 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:950, et seq. This Rule is hereby adopted on the day of promulgation.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part V. Hospital Services
Subpart 5. Outpatient Hospital Services
Chapter 61. Other Outpatient Hospital Services
Subchapter A. General Provisions
§6105. Radiology Utilization Management

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 36:67 (January 2010), amended LR 36:1782 (August 2010), repealed by Department of Health, Bureau of Health Services Financing, LR 45:1203 (September 2019).

Part XIX. Other Services
Subpart 3. Laboratory and Radiology Services
Chapter 45. Radiology Utilization Management
§4501. General Provisions

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2758 (December 2009), amended LR 36:1781 (August 2010), repealed by Department of Health, Bureau of Health Services Financing, LR 45:1203 (September 2019).

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.

Rebekah E. Gee MD, MPH
Secretary

1909#071

RULE

Department of Health
Licensed Professional Counselors
Board of Examiners

Definitions, Requirements, and Clarification
(LAC 46:LX.3105 and Chapter 33)

In accordance with the applicable provisions of the Louisiana Administrative Procedures Act (R.S.49:950 et seq.) and through the authority of the Mental Health Counselor Licensing Act (R.S. 37:1101 et seq.), the Louisiana Licensed Professional Counselors Board of Examiners amends definitions, supervisor requirements and academic requirements.

The Louisiana Licensed Professional Counselors Board of Examiners hereby amends chapters 31 and 33 for publication in the September 20, 2019 edition of the Louisiana Register. This Rule is hereby adopted on the day of promulgation.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS REVISED
Part LX. Licensed Professional Counselors Board of Examiners
Subpart 2. Professional Standards for Licensed Marriage and Family Therapists and Provisional Licensed Marriage and Family Therapists
Chapter 31. License of Title for Marriage and Family Therapy
§3105. Definitions for Licensed Marriage and Family Therapists and Provisional Licensed Marriage and Family Therapists

Active Supervision—the process by which a supervisee receives one hour of face-to-face supervision with his/her board-approved supervisor for every 20 hours of direct client contact. The supervisor and supervisee must meet at least one hour within a three-month period. Active Supervision is based on direct client contact hours. Supervision hours shall be adjusted if the PLMFT has less than 20 hours of direct contact, or more than 20 hours of direct client contact.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:154 (February 2003), amended LR 29:2784 (December 2003), LR 41:741 (April 2015), amended by the Department of Health, Licensed Professional Counselors Board of Examiners, LR 43:1981 (October 2017), LR 45:1203 (September 2019).

Chapter 33. Requirements for Licensure and Provisional Licensure

§3309. Academic Requirements for MFT Licensure or Provisional Licensure

[Formerly §3311]

A. The board, upon recommendation of the advisory committee, shall provisionally license a person for postgraduate clinical experience who applies on the required application forms, completed as the board prescribes and accompanied by the required fee. Additionally, applicants must meet one of the four following academic options:

1. a master's or doctoral degree in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) in a regionally accredited educational institution or a certificate in marriage and family therapy from a post-graduate training institute accredited by COAMFTE:

a. a minimum of 60 semester hours of coursework;

b. a minimum of 500 supervised direct client contact hours, with a minimum of 250 hours of these 500 hours with couples and/or families;

c. a minimum of 100 hours of face-to-face supervision. The training of the supervisor must be substantially equivalent to that of an AAMFT approved supervisor as determined by the advisory committee.

2. a master's or doctoral degree in marriage and family therapy or marriage and family counseling or a related clinical mental health field from a program accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP) in a regionally-accredited educational institution with a minimum of six courses in marriage and family therapy, including coursework on the AAMFT code of ethics. The degree must include:

a. a minimum of 60 semester hours of coursework;

b. a minimum of 500 supervised direct client contact hours, with a minimum of 250 of these 500 hours with couples and/or families;

c. a minimum of 100 hours of face to face supervision. The training of the supervisor shall be substantially equivalent to that of an AAMFT approved supervisor as determined by the advisory committee;

3. a master's or doctoral degree in marriage and family therapy or a related clinical mental health field from a regionally accredited institution of higher education or a certificate from a postgraduate training institute in marriage and family therapy. Applicants with a school counseling degree would need to meet the requirements in §3311. The qualifying degree or certificate program must include coursework, practicum, and internship in marriage and family therapy that is determined by the advisory committee to be substantially equivalent to a graduate degree or post-graduate certificate in marriage and family therapy from a program accredited by COAMFTE. To be considered substantially equivalent, qualifying degrees or post graduate certificates must include:

a. a minimum of 60 semester hours of coursework;

b. a minimum of 500 supervised direct client contact hours, with a minimum of 250 of these 500 hours with couples and/or families;

c. a minimum of 100 hours of face to face supervision. The training of the supervisor shall be substantially equivalent to that of an AAMFT approved supervisor as determined by the advisory committee;

4. - C. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:156 (February 2003), amended LR 29:2785 (December 2003), LR 35:1113 (June 2009), LR 37:1602 (June 2011), repromulgated LR 37:2163 (July 2011), amended LR 38:1965 (August 2012), repromulgated LR 41:741 (April 2015), amended by the Department of Health, Licensed Professional Counselors Board of Examiners, LR 43:1982 (October 2017), LR 45:1204 (September 2019).

§3315. Application, Practice, and Renewal Requirements for Provisional Licensed Marriage and Family Therapists

A. - B. …

* * *

C. PLMFT Supervision Requirements for Licensure

1. A PLMFT must complete qualified postgraduate clinical experience under the supervision of a board-approved supervisor or registered supervisor candidate that consists of work experience in marriage and family therapy and that includes at least 3,000 hours of clinical services to individuals, couples, families, or groups. An out-of-state applicant may transfer up to 2100 hours of supervised experience towards licensure (a maximum of 1200 direct client contact hours, a maximum of 815 indirect hours, and a maximum of 85 hours of face-to-face supervision). The aforementioned hours must have been accrued under the clinical supervision of an approved supervisor within their state who meets the qualifications of a supervisor of PLMFTs set forth by the advisory committee. The decision to approve transfer of direct and indirect hours and supervision from out of state shall be made at the discretion of the advisory committee.

C.a. - 2. …

a. Up to 100 hours of face-to-face supervisor contact received during the completion of the applicant's qualifying academic experience graduate program that is systemically oriented as determined by the advisory committee may be counted toward the required 200 hours of qualified supervision. Of these 100 hours, 50 hours must be counted as individual supervision. Up to 25 % of the 100 face-to-face supervision hours may be conducted via synchronous videoconferencing.

3. …

4. The supervisee may begin accruing client- and supervisor-contact hours only after the supervisee has received an official letter of approval as a provisional licensed marriage and family therapist from the board.

a. Supervision experience hours for PLPC and PLMFT may be accrued concurrently, after receiving notification of approval from the board, certifying that all the requirements for both provision licensed professional counselor and the provisional licensed marriage and family therapist have been met. If approval was not obtained on the same date for each provisional license, then concurrent

accrual of hours cannot begin until the second provisional license has been approved. Retroactive supervision experience hours are not permitted.

C.5. – F.4. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:158 (February 2003), amended LR 29:2787 (December 2003), LR 35:1114 (June 2009), LR 38:1966 (August 2012), LR 39:1806 (July 2013), LR 41:742 (April 2015), amended by the Department of Health, Licensed Professional Counselors Board of Examiners, LR 43:1983 (October 2017), LR 45:1204 (September 2019).

§3317. Qualifications of the LMFT-Approved Supervisor, LMFT-Registered Supervisor Candidate, Board-Approved Supervisor, and Registered Supervisor Candidate

A. - 2. …

3. A person who wishes to become an LMFT-approved supervisor must be a Louisiana licensed marriage and family therapist and must submit a completed application that documents that he or she meets the requirements. in one of two ways.

a. - D.1.a.i. …

ii. at least 90 hours of supervision of approved supervisees. These 90 hours of supervision must be completed in no less than one year with the oversight of his or her designated board-approved supervisor.

D.1.b. – 3.f. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 38:1969 (August 2012), amended LR 41:746 (April 2015), amended by the Department of Health, Licensed Professional Counselors Board of Examiners, LR 43:1984 (October 2017), LR 45:1205 (September 2019).

§3319. Responsibilities of the Provisional Licensed Marriage and Family Therapist

A. - C.3. …

4. The board-approved supervisor shall attend a LMFT board-approved supervisor's orientation approved by the advisory committee within one year of the board-approved supervisor's date of certification. This orientation may also be counted as continuing education toward the board-approved supervisor's licensure renewal as a marriage and family therapist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 38:1970 (August 2012), amended LR 41:748 (April 2015), LR 45:1205 (September 2019).

Jamie S. Doming
Executive Director

1909#020

RULE

Department of Health
Physical Therapy Board

Licensing and Certification (LAC 46:LIV.Chapters 1-5)

The Louisiana Physical Therapy board, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 37:2405, has amended Professional and Occupational Standards: Physical Therapy Board, LAC 46:LIV.123, 311, 337, 339, and 501.

The changes to the language found in Louisiana Administrative Code (LAC) 46:LIV.123 are strictly meant to clean-up language in the definition section of Rules. The first change is to the definition of Continuous Supervision. In the Rule language, prior to the amendment, the definition lists those whom the definition of continuous supervision applies. The board voted to amend the language to delete the list of those whom the definition of continuous supervision applies for two reasons. First, the list is incorrect because PT students do not require continuous supervision. Secondly, the applicability to whom the supervision applies can be addressed in the rules that directly relate to supervision. By having the list in the definition, as well, when a change occurs in Rule the change must be made in two different places, which uses more resources when a change must occur in Rule and there is more room for an oversight and inconsistency if the definition is not updated when the supervision rule is updated.

The board voted to change the definition of HIPDB Healthcare Integrity and Protection Data Bank to simply state "see National Practitioner Databank (NPDB)." The Healthcare Integrity and Protection Data Bank (HIPDB) was established by the *Health Insurance Portability and Accountability Act of 1996*, Public Law 104-191, (HIPDB's authorizing statute is also referred to as Section 1128E of the *Social Security Act*). The HIPDB is no longer operational; however, information previously collected and disclosed by the HIPDB is now collected and disclosed by the National Practitioner Data Bank (NPDB). The Healthcare Integrity and Protection Data Bank (HIPDB) officially became part of the National Practitioner Data Bank (NPDB) May 6, 2013. The board considered removing HIPDB from the definitions altogether; however, the board determined that the definition should simply refer to the NPDB because some historical documents of the board reference the HIPDB.

The change to the language found in LAC 46:LIV.311.B. is simply to strike out the requirement that licensees provide documentation to the executive director that he has successfully completed a board-approved course of study for dry needling education and training. The requirements for education and training will not change, but the change will be that the licensee does not need to provide documentation to the executive director.

Regarding the change to LAC 46:LIV.337, the board is correcting the language as it relates to PT student supervision, which is on-premises and not continuous supervision. This has been the practice historically and the change to Rule reflects what is occurring in practice.

Regarding the change to LAC 46:LIV.339.C(2), the board voted to allow PTAs to supervise at least two PTA students in their supervision ratio. The total number of individuals that a PTA can supervise is two according to the Rule and the language currently states that of those two only one can be a PTA student. The PTA programs have expressed the need for clinical instructors and the limited availability of supervisors. Prior to December 2018, the Rules were silent on the PTA supervision ratio and PTAs were supervising PTA students.

Regarding the change to LAC 46:LIV.501, the board voted to include two fees in Rule: the Mailing List Fee and the Compact State Fee.

These amendments are in response to the decision made by the majority of members at the board meetings held January 31, 2019. The basis and rationale for the rules are to comply with R.S. 37:2405. This Rule is hereby adopted on the day of promulgation.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LIV. Physical Therapy Examiners
Subpart 1. Licensing and Certification

Chapter 1. Physical Therapists and Physical Therapists Assistants

Subchapter B. General Provisions

§123. Definitions
[Formerly §§103, 113, 119, 303, and 305]

* * *

A. …

* * *

Continuous Supervision—observation and supervision of the procedures, functions, and practice by a supervisor who is physically within the same treatment area.

* * *

HIPDB—Healthcare Integrity and Protection Data Bank, See National Practitioner Databank (NPDB).

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2407(A) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744, 745, 748 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 17:662, 666 (July 1991), LR 19:208 (February 1993), LR 21:394 (April 1995), LR 21:1243 (November 1995), LR 24:39, 40 (January 1998), LR 26:1447 (July 2000), LR 28:1980 (September 2002), LR 34:1908 (September 2008), amended by the Physical Therapy Board, LR 37:3033 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:2170 (December 2018), LR 45:1206 (September 2019).

Subpart 2. Practice

Chapter 3. Practice

Subchapter A. General Provisions

§311. Treatment with Dry Needling

A. …

B. Dry needling is a physical therapy treatment which requires specialized physical therapy education and training for the utilization of such techniques. Prior to utilizing dry needling techniques in patient treatment, a PT shall successfully complete a board-approved course of study consisting of no fewer than 50 hours of face-to-face instruction in intramuscular dry needling treatment and safety. Online and other distance learning courses will not satisfy this requirement. Practicing dry needling without compliance with this requirement constitutes unprofessional conduct and subjects a licensee to appropriate discipline by the board.

C. - E. …

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2405.A (8) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3049 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:2180 (December 2018), LR 45:1206 (September 2019).

Subchapter C. Supervised Practice

§337. Clinical Instruction of Student PTs and PTAs
[Formerly §321]

A. A clinical instructor shall provide on-premises supervision to a PT student in all practice settings. A clinical instructor shall provide continuous supervision to a PTA student in all practice settings. A PTA may act as a clinical instructor for a PTA student in all practice settings provided that the PT supervisor of the PTA is available by telephone or other communication device.

B. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2418(F) and Act 139 of 2010.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:750 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 19:208 (February 1993), LR 24:41 (January 1998), LR 26:1447 (July 2000), LR 28:1980 (September 2002), LR 34:1910 (September 2008), amended by the Physical Therapy Board, LR 37:3053 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:2183 (December 2018), LR 45:1206 (September 2019).

§339. Limitation on Supervision Ratios
[Formerly §321]

A. - C.1. …

2. no more than two PTA students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2418(F) and Act 139 of 2010.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:750 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 19:208 (February 1993), LR 24:41 (January 1998), LR 26:1447 (July 2000), LR 28:1980 (September 2002), LR 34:1910 (September 2008), amended by the Physical Therapy Board, LR 37:3053 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:2183 (December 2018), LR 45:1206 (September 2019).

Subpart 3. Fees

Chapter 5. Fees

§501. Fees

A. - A.10. …

11. mailing list—$250 maximum;
12. compact state fee—$95.

B. - D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(A)(1) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744 (December 1987), amended by the Department of Health and Hospital, Board of Physical Therapy Examiners, LR 15:392 (May 1989), LR 17:667 (July 1991), LR 18:963 (September 1992), LR 21:396 (April 1995), LR 28:1982 (September 2002), amended by the Physical Therapy Board, LR 37:3063 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 42:1301 (August 2016), LR 44:2189 (December 2018), LR 45:1206 (September 2019).

Charlotte Martin
Executive Director

1909#007

RULE

Department of Insurance
Office of the Commissioner

Regulation 100—Coverage of Prescription Drugs through a Drug Formulary (LAC 37:XIII.Chapter 41)

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 100 to provide clarification in regards to the requirement of obtaining approval from the commissioner whenever a health insurance issuer implements a modification affecting drug coverage in accordance with Act No. 316 in the 2012 Regular Session. This Rule is hereby adopted on the day of promulgation.

Title 37
INSURANCE
Part XIII. Regulations

Chapter 41. Regulation 100—Coverage of Prescription Drugs through a Drug Formulary

§14101. Purpose

A. ...

B. The purpose of the amendment to Regulation 100 is to provide clarification set forth in R.S. 22:1068(F) and R.S. 22:1074(F) in regards to the requirement of obtaining approval from the commissioner whenever a health insurance issuer modifies health insurance coverage offered in the group and individual markets.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, R.S. 1068(F) and R.S. 22:1074 (F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:1028 (April 2012), amended LR 45:1207 (September 2019).

§14111. Requirements for the Modification Affecting Drug Coverage

A. - A5. …

B. A health insurance issuer shall notify the commissioner in writing of a modification affecting drug coverage 120 days prior to the renewal date of the policy form as to those modifications enumerated in R.S. 22:1061(5) and set forth in § 14111.A herein. A health insurance issuer shall provide the notice of modification affecting drug coverage as provided for in R.S. 22:1068(D)(3) and R.S. 22:1074(D)(3) and shall only modify the policy or contract of insurance at the renewal of the policy or contract of insurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, R.S. 22:1068(F) and R.S. 22:1074(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:1028 (April 2012), amended LR 45:1207 (September 2019).

§14115. Requirements for Modifying a Group Insurance Product

A. 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. The modification occurs at the time of coverage renewal.

2. The modification is approved by the commissioner. However, modification affecting drug coverage as defined in R.S. 22:1061(5)(y) and found in §14111.A. of this regulation shall not require approval by the commissioner.

3. The modification is consistent with state law.

4. The modification is effective on a uniform basis among all small or large employers covered by that group health plan.

5. The health insurance issuer, on the form approved by the Department of Insurance, notifies the small or large employer group and each enrollee therein of the modification no later than the sixtieth day before the date the modification is to become effective.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, R.S. 22:1068(F) and R.S. 22:1074(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:1028 (April 2012), amended LR 45:1207 (September 2019).

§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. The modification occurs at the time of coverage renewal.

2. The modification is approved by the commissioner. However, modification affecting drug coverage as defined in R.S. 22:1061(5)(y) and found in §14111.A. of this regulation shall not require approval by the commissioner.

3. The modification is consistent with state law.

4. The modification is effective on a uniform basis among all individuals with that policy form.

5. The health insurance issuer, on a form approved by the Department of Insurance, notifies each affected individual of the modification no later than the sixtieth day before the date the modification is to become effective.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, R.S. 22:1068(F) and R.S. 22:1074(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:1028 (April 2012), amended LR 45:1207 (September 2019).

§14119. Modification Affecting Drug Coverage

A. To facilitate the ability of the commissioner to comply with his statutory duty, the commissioner shall have the authority to enter into a contract with any person or entity he deems applicable, relevant and/or appropriate to provide advice and/or make a recommendation to the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, R.S. 22:1068(F) and R.S. 22: 1074(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:1028 (April 2012), amended 45:1207 (September 2019).

§141120. Effective Date

A. This regulation shall be effective upon final publication in the Louisiana Register.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, R.S. 22:1068(F) and R.S. 22:1074(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 45:1208 (September 2019).

James J. Donelon
Commissioner

1909#011

RULE

Department of Insurance
Office of the Commissioner

Regulation 112—Adoption of NAIC Handbooks, Guidelines, Forms and Instructions
(LAC 37:XIII.Chapter 161)

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 adopted Regulation 112.

The purpose of Regulation 112 is to identify and to incorporate by reference the current edition of handbooks, guidelines, forms, and instructions adopted by the National Association of Insurance Commissioners (NAIC) and referenced in the *Louisiana Insurance Code*. This Rule is hereby adopted on the day of promulgation.

Title 37
INSURANCE
Part XIII. Regulations
Chapter 161. Regulation 112—Adoption of NAIC Handbooks, Guidelines, Forms, and Instructions

§16101. NAIC Handbooks, Guidelines, Forms, and Instructions Incorporated by Reference

A. The purpose of this regulation is to identify and to incorporate by reference the current edition of handbooks, guidelines, forms, and instructions adopted by the National Association of Insurance Commissioners (NAIC) and referenced in the *Louisiana Insurance Code*.

B. The following NAIC handbooks, guidelines, forms, and instructions are hereby adopted and incorporated by reference:

1. the *Financial Condition Examiner's Handbook*, 2018 edition;
2. the *Annual and Quarterly Statement Instructions, Property and Casualty*, 2018 edition;
3. the *Annual and Quarterly Statement Instructions, Life, Accident, and Health*, 2018 edition;
4. the *Annual and Quarterly Statement Instructions, Health*, 2018 edition;
5. the *Annual and Quarterly Statement Instructions, Title*, 2018 edition;
6. the *Annual and Quarterly Statement Instructions, Fraternal*, 2018 edition;
7. the *Annual and Quarterly Statement Blanks, Property and Casualty*, 2018 edition;
8. the *Annual and Quarterly Statement Blanks, Life, Accident, and Health*, 2018 edition;
9. the *Annual and Quarterly Statement Blanks, Health*, 2018 edition;
10. the *Annual and Quarterly Statement Blanks, Title*, 2018 edition;
11. the *Annual and Quarterly Statement Blanks, Fraternal*, 2018 edition;
12. the *Accounting Practices and Procedures Manual*, 2018 edition;
13. the *Financial Analysis Handbook*, 2018 edition;
14. the *Own Risk and Solvency Assessment Guidance Manual*, 2018 edition;
15. the *Purposes and Procedures Manual of the NAIC Investment Analysis Office*, 2018 edition;
16. the *Risk-Based Capital Forecasting and Instructions*, 2018 edition;
17. the *Market Regulation Handbook*, 2018 edition.

C. The commissioner of insurance shall utilize the handbooks, guidelines, forms, and instructions incorporated by reference as necessary for the administration of the provisions of the *Louisiana Insurance Code*, so long as the provisions of those publications are consistent with the *Louisiana Insurance Code*.

D. A copy of these handbooks, guidelines, forms, and instructions may be obtained from:

1. the National Association of Insurance Commissioners, at http://www.naic.org;
2. the Louisiana Department of Insurance, Poydras Building, 1702 N. Third Street, Baton Rouge, LA 70802; or
3. the Louisiana Office of the State Register, 1201 N. Third Street, Baton Rouge, LA 70802.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 258, 586(G), 619(B), 640(B), 675, 661(A), 691.11, 691.54, and 1804.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 45:1208 (September 2019).

§16103. Effective Date

A. Regulation 112 shall become effective upon final promulgation in the *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 258, 586(G), 619(B), 640(B), 675, 661(A), 691.11, 691.54, and 1804.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 45:1208 (September 2019).

§16105. Severability

A. If any Section or provision of Regulation 112 or the application to any person or circumstance is held invalid, such invalidity or determination shall not affect other Sections or provisions or the application of Regulation 112 to any persons or circumstances that can be given effect without the invalid Section or provision or application, and, for these purposes, the Sections and provisions of Regulation 112 and the application to any persons or circumstances are severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 258, 586(G), 619(B), 640(B), 675, 661(A), 691.11, 691.54, and 1804.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 45:1208 (September 2019).

James J. Donelon
Commissioner

1909#010

RULE

Department of Treasury
Board of Trustees of the Louisiana State Employees' Retirement System

Actuarial Equivalent and Ballots, Count, Tabulation, Posting, Oath of Office (LAC 58:XVII.103 and 303)

In accordance with R.S. 49:950 et seq., the Administrative Procedures Act, the Board of Trustees for the Louisiana Registrars of Voters Employees' Retirement System has approved this Rule for the issuance of ballots to employees enrolled in the system and for the determination of the actuarial equivalent under R.S. 11:2031(2). The Rule has been adopted pursuant to R.S. 49:950 et seq. which provides this agency the authority to promulgate rules that facilitate the proper functioning of this system. A preamble to this action has not been prepared. This Rule is hereby adopted on the day of promulgation.

Title 58
RETIREMENT
Part XVII. Registrars of Voters Employees' Retirement System
Chapter 1. Procedures for Election of Registrars of Voters Employees' Retirement System Trustees
§103. Ballots, Count, Tabulation, Posting, Oath of Office

A. The director shall compile a ballot for each office to be filled. Ballots shall be mailed to the membership at their home address beginning the first Tuesday through the second Friday of September. The ballots shall be issued to members who were active employees as of June 30 of that year. In addition, the director shall issue a ballot to any active employee who is hired and enrolled in ROVERS after June 30 and prior to the first Tuesday of September if that employee makes a request in writing to the director. The member must be an active employee as of the date the system counts the ballot in order for that member's ballot to be counted. In addition to the ballot the director shall mail an affidavit as specified by the board of trustees, a return envelope and instructions. The director shall inform each member in this mailing that results of the vote shall be promulgated on the system's website prior to January. Voted ballots shall be accepted through the first Friday in October at 4:30 p.m. A date and time shall be placed on each ballot envelope received by the director across the envelope flap.

B. Ballots shall be held inviolate by the director. The chairman of the board shall call a special meeting to count and tabulate ballots between the first day of November and the last day of December. At this special meeting the board of trustees shall promulgate the returns and announce the results.

1. …

2. The director shall issue to the elected trustee an oath of office. The trustee shall take the oath at the next board meeting and file a copy with their respective clerk of court. A copy of said oath shall be forwarded to the director. The oath shall contain a term of office effective January 1st of the year that the trustee takes office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:2091(B) and (C) et seq.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Registrars of Voters Employees' Retirement System, LR 38:1029 (April 2012), amended LR 45:1209 (September 2019).

Chapter 3. Final Average Compensation
§303. Actuarial Equivalent

A. As provided under R.S. 11:2031(2), actuarial equivalent shall be defined using the following assumptions.

1. Interest shall be compounded annually at the rate of 7.50 percent per annum.

2. Annuity rates shall be determined on the basis of RP-2000 Combined Healthy table set back three years for males and two years for females.

B. Effective July 1, 2016, as provided by R.S. 11:2031(2) actuarial equivalent shall be defined by using the following assumptions.

1. Interest shall be compounded annually at the rate of 7.00 percent per annum (except as provided below).

2. For Single Life option factors, mortality rates shall be based on the RP-2000 Combined Healthy tables set forward 1 year for males and unadjusted for females, unisexed based on 15 percent males and 85 percent females.

3. For Joint Life option factors, mortality rates shall be based on the RP-2000 Combined Healthy tables set forward 1 year for males and unadjusted for females, unisexed based on 15 percent males and 85 percent females for retirees and 85 percent males and 15 percent females for beneficiaries.

4. For disability award lifetime equivalences, mortality rates shall be based on the RP-2000 Disabled Lives tables unisexed based on 15 percent males and 85 percent females.

5. For DROP Account Balance lifetime annuity conversions, mortality rates shall be based on the RP-2000 Healthy Annuitant Tables set forward 1 year for males and unadjusted for females and projected with mortality improvement to 2030 using Scale AA, unisexed based on 15 percent males and 85 percent females with interest at 6 percent per annum.

C. Effective July 1, 2018, as provided by R.S. 11:2031(2) actuarial equivalent shall be defined by using the following assumptions.

1. Interest shall be compounded annually at the rate of 6.75 percent per annum (except as provided below).

2. For Single Life option factors, mortality rates shall be based on the RP-2000 Combined Healthy tables set forward 1 year for males and unadjusted for females, unisexed based on 15 percent males and 85 percent females.

3. For Joint Life option factors, mortality rates shall be based on the RP-2000 Combined Healthy tables set forward 1 year for males and unadjusted for females, unisexed based on 15 percent males and 85 percent females for retirees and 85 percent males and 15 percent females for beneficiaries.

4. For disability award lifetime equivalences, mortality rates shall be based on the RP-2000 disabled lives tables unisexed based on 15 percent males and 85 percent females.

5. For DROP Account Balance lifetime annuity conversions, mortality rates shall be based on the RP-2000 Healthy Annuitant Tables set forward 1 year for males and unadjusted for females and projected with mortality improvement to 2030 using Scale AA, unisexed based on 15 percent males and 85 percent females with interest at 5.75 percent per annum.

D. Effective July 1, 2019, as provided by R.S. 11:2031(2) actuarial equivalent shall be defined by using the following assumptions.

1. Interest shall be compounded annually at the rate of 6.50 percent per annum (except as provided below).

2. For Single Life option factors, mortality rates shall be based on the RP-2000 Combined Healthy tables set forward 1 year for males and unadjusted for females, unisexed based on 15 percent males and 85 percent females.

3. For Joint Life option factors, mortality rates shall be based on the RP-2000 Combined Healthy tables set forward 1 year for males and unadjusted for females, unisexed based on 15 percent males and 85 percent females for retirees and 85 percent males and 15 percent females for beneficiaries.

4. For disability award lifetime equivalences, mortality rates shall be based on the RP-2000 disabled lives tables unisexed based on 15 percent males and 85 percent females.

5. For DROP Account Balance lifetime annuity conversions, mortality rates shall be based on the RP-2000 Healthy Annuitant Tables set forward 1 year for males and unadjusted for females and projected with mortality improvement to 2030 using Scale AA, unisexed based on 15 percent males and 85 percent females with interest at 5.5 percent per annum.

E. Thereafter, these assumptions shall be adopted by resolution of the board, based on recommendations of its actuary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:2031(2).

HISTORICAL NOTE: Promulgated by the Department of Treasury, Registrars of Voters Employees' Retirement System, LR 45:1209 (September 2019).

Kathy Bourque
Director

1909#042

Notices of Intent

NOTICE OF INTENT

Department of Agriculture and Forestry
Office of Agricultural and Environmental Sciences
Advisory Commission on Pesticides

Certification of Commercial Applicators (LAC 7:XXIII.711)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority set forth in R.S. 3:3203, notice is hereby given that the Department of Agriculture and Forestry ("department"), through the Office of Agricultural and Environmental Sciences, intends to amend LAC 7:XXIII.711. The proposed amendment to LAC 7:XXIII.711 will require that to maintain their certification, all certified pesticide applicators, as opposed to the previous requirement of only commercial aerial applicators, must attend an off-target training course if the certified pesticide applicator has been found to be in violation of the Louisiana Pesticide Law or rules and regulations pertaining to drift, or has received a "warning letter" from the department pertaining to drift prior to making an application in the following calendar year. Additionally, clarifying language is added to LAC 7:XXIII.711 to specify that the violations must be related to drift. This proposed amendment would ensure that all certified pesticide applicators that have violated Louisiana Pesticide Law, rules or regulations pertaining to drift are educated about the potential dangers of drift and how to avoid drift in future applications.

Title 7
AGRICULTURE AND ANIMALS
Part XXIII. Pesticides
Chapter 7. Examinations, Certification and Licensing
Subchapter B. Certification
§711. Certification of Commercial Applicators

A. - A.3.b. …

4. All certified pesticide applicators, with the single exception of aerial mosquito pest control applicators, who have been found to have violated a provision of the Louisiana Pesticide Law related to drift or any of the rules or regulations adopted pursuant to that law by the commission or the commissioner related to drift, or who received a "warning letter" from the department during the past calendar year related to drift, shall attend a department-approved off-target training course prior to making any application in the following year, in order to maintain their certification as a certified applicator.

A.5. - G. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203, R.S. 3:3242 and R.S. 3:324.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:179 (April 1983), amended LR 10:193 (March 1984), amended by the Department of Agriculture and Forestry, Office of Agriculture and Environmental Sciences, LR 18:953 (September 1992), LR 19:735 (June 1993), LR 20:641 (June 1994), LR 21:928 (September 1995), amended by the Department of Agriculture and Forestry, Office of Agriculture and Environmental Sciences, Advisory Commission on Pesticides, LR 23:193 (February 1997), LR 24:280 (February 1998), LR 28:39 (January 2002), LR 32:794 (May 2006), repromulgated LR 32:1011 (June 2006), amended LR 35:627 (April 2009), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3471 (December 2011), LR 44:2126 (December 2018), LR 45:

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 Statement

The proposed Rule should have no adverse impact on small businesses as defined in the Regulatory Flexibility Act.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments, data, opinions and arguments regarding the proposed Rule. Written submissions must be directed to Kevin Wofford,

Director of the Advisory Commission on Pesticides, Department of Agriculture and Forestry, 5825 Florida Blvd., Baton Rouge, LA 70806 and must be received no later than 4 p.m. on the 10th day of October, 2019.

Mike Strain, DVM
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Certification of Commercial Applicators

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 government units. The proposed changes require all certified pest control applicators, with the single exception of aerial mosquito pest control applicators, who have been found to have violated a provision of the Louisiana Pesticide Law related to drift, or any of the rules or regulations related to drift, or who have received a "warning letter" from the department during the past calendar year related to drift, to attend a department-approved off-target training course prior to making any application the following year in order to maintain certification as an applicator.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change may result in a nominal increase in SGR collections for the LSU AgCenter. Individuals found to be in violation of the Louisiana Pesticide law, rules or regulations pertaining to drift, or who have received a "warning letter" from the department pertaining to a drift related incident, will be required to attend an off-target training course prior to making an application in the following calendar year. To the extent the proposed rule results in an increase in course attendance above baseline levels of 12-15 individuals annually, the LSU AgCenter would realize an increase of $25 per person.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

All certified pesticide applicators, with the exception of aerial mosquito pest control applicators, who have been found to be in violation of the Louisiana Pesticide Law or rules and regulations pertaining to drift, or has received a "warning letter" from the Department pertaining to a drift related incident will be directly affected by the proposed rule. These persons will be required to attend an off-target training course prior to making an application in the following calendar year. The course will cost the certified pesticide applicator $25 and will be payable to the LSU AgCenter.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is not anticipated that the proposed rule change will not have an effect on competition and employment.

Dane Morgan
Assistant Commissioner
1909#067

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Agriculture and Forestry
Office of Agro Consumer Services
Agricultural Commodities Commission

Number of Commission Meetings and Recordkeeping for Excessive Deduction
(LAC 7:XXVII.103 and 141)

In accordance with the Administrative Procedure Act, R.S. 49:950, et seq., and pursuant to the authority set forth in R.S. 3:3405(A)(1), notice is hereby given that the Department of Agriculture and Forestry ("Department") intends to revise LAC 7:XXVII.103 and 141. The proposed action will amend LAC 7:XXVII.103 to eliminate the regulatory requirement that the Agricultural Commodities Commission meet at least once per quarter as R.S. 3:3403 was recently amended to require that the commission meet three times per calendar year, but may meet more frequently upon the call of the chairman. The proposed rule change simply eliminates language that is inconsistent with current law. The proposed change to §141 clarifies language regarding one category of records that licensees must maintain, modifying it from excessive damage of 7.5 percent to language that tracks the federal guidelines set forth in the U.S. Department of Agriculture's Grain Inspection Handbook.

Title 7
AGRICULTURE AND ANIMALS
Part XXVII. Agricultural Commodity Dealer and Warehouse
Chapter 1. Agricultural Commodities Commission
Subchapter A. General Provisions
§103. Administration of the Affairs of the Commission

A. The officers of the commission shall be a chairman and a vice-chairman, who shall serve for terms concurrent with the commissioner, but may be elected for an indefinite number of terms.

B. After the initial election of officers, the chairman and vice-chairman shall be elected at the commission's regular meeting during the first quarter of each year.

C. In the abnumsence of the chairman at any meeting of the commission, the vice-chairman shall preside.

D. Meetings of the commission shall normally be held in its domicile but may be held at other locations upon the determination of the chairman or the will of the commission.

E. There shall be no voting by proxy.

F. The chairman shall designate a hearing officer, who may or may not be a member of the commission, to preside at all adjudicatory proceedings of the commission. The chairman may, if he so desires, serve as hearing officer at any adjudicatory proceeding.

G. The commission shall serve as the hearing body in all adjudicatory proceedings and shall make the final

determination with regard to the disposition of all matters coming to adjudication.

H. The director shall provide clerical and other support services as may be required by the commission and shall maintain and distribute appropriate minute records of the commission.

I. No member of the commission shall participate in any discussion or vote concerning any matter before the commission in which such member has a personal or commercial interest.

J. No member of the commission or the staff shall disclose any financial information pertaining to any licensee or applicant for license.

K. The commission may, from time to time, delegate any of its responsibilities to subcommittees appointed by the chairman. Such subcommittees may perform such specific duties as may be assigned by the chairman but all actions of such subcommittees shall be subject to ratification by the full commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3403 and R.S. 3:3405.

HISTORICAL NOTE: Promulgated by the Department of Agricultural, Agricultural Commodities Commission, LR 9:287 (May 1983), amended 12:287 (May 1986), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:624 (April 1998), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:494 (February 2011), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 42:1498 (September 2016), LR 45:

Subchapter I. Records and Reports

§141. Records Required to be Maintained

A. Each grain dealer, cotton merchant and warehouse shall maintain the following records, when applicable to the commodity stored or traded, on a current basis in the company's principal office in this state at all times:

1. current financial statement;
2. bank statements;
3. bank reconciliations;
4. broker's statements;
5. current listing of unpriced commodities;
6. sequential record of all scale tickets;
7. sequential record of all warehouse receipts;
8. settlement or distribution sheets;
9. weight sheets;
10. perpetual inventory record;
11. insurance file, including copies of monthly reports to the carrier;
12. record of all assessments collected and remitted;
13. copies of all outstanding contracts;
14. copies of all outstanding notes and mortgages affecting the business;
15. a sample of each lot of grain, which contains grade factors equal to the level set forth for U.S. Sample Grade for each grain as published by the U.S. Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, shall be:
    a. maintained for five days from the original grade date; and
    b. maintained in separate containers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405, R.S. 3:3419 and R.S. 3:3414.3.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:309 (May 1983), amended LR 12:288 (May 1986), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:625 (April 1998), LR 35:2311 (November 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:508 (February 2011), LR 45:

Family Impact Statement

The proposed Rule does 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 does 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 Statement

The proposed Rule will have no adverse impact on small businesses as defined in the Regulatory Flexibility Act.

Provider Impact Statement

The proposed Rule does not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments, data, opinions and arguments regarding the proposed Rule. Written submissions must be directed to Kyra Fitzgerald, Louisiana Department of Agriculture & Forestry, 5825 Florida Blvd., Suite 3002, Baton Rouge, LA 70806 and must be received no later than 12:00 p.m. on October 20, 2019. No preamble is available.

Mike Strain, DVM
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Number of Commission Meetings and Recordkeeping for Excessive Deduction

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule changes will not result in implementation costs to state or local governmental units. The proposed action will amend LAC 7:XXVII.103 to eliminate language that is presently inconsistent with current law, as R.S. 3:4721 was recently amended to require only three meetings of the Agricultural Commodities Commission per year. The reduction of the number of meetings from four per year to three per year will result in estimated savings to LDAF in the amount of $489.25 in mileage reimbursements that would have been paid out to Commission members.

The proposed change to Section 141 will not result in costs or savings as it merely clarifies language regarding one category of records that licensees must maintain, modifying it from, "excessive damage of 7.5%," to language that more closely tracks the federal guidelines set forth in the U.S. Department of Agriculture's Grain Inspection Handbook.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule changes will not effect revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no costs and/or economic benefits to directly affected persons or non-governmental groups. The proposed change to §103 codifies current law. Specifically, R.S. 3:4721 was recently amended to require that the commission meet three times per calendar year, but may meet more frequently upon the call of the chairman. The proposed rule change simply eliminates language that is inconsistent with current law and has no bearing on costs or economic benefits to directly affected persons.

The proposed change to §141 clarifies language regarding one category of records that licensees must maintain, modifying it from, "excessive damage of 7.5%," to language that more closely tracks the federal guidelines set forth in the U.S. Department of Agriculture's Grain Inspection Handbook. The exact level for excessive damage specific to each type of grain is expressly set forth in the federal guidelines. The proposed rule change incorporates the federal guideline language by reference, as if expressly stated herein. This change has no financial effects as it merely modifies one of 15 categories of records that licensees are required to maintain and therefore has no impact on costs/benefits to directly affected persons.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will not have an effect on competition and employment.

Dane K. Morgan	Gregory V. Albrecht
Assistant Commissioner	Chief Economist
1909#065	Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 111—The Louisiana School, District, and State Accountability System—Urgent and Comprehensive Interventions (LAC 28:XI.911)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 17:6(A)(10), the Board of Elementary and Secondary Education proposes to amend LAC 28:XI, *Bulletin 111—The Louisiana School, District, and State Accountability System*. Proposed amendments require that academic improvement plans for schools identified as "urgent intervention required" or "comprehensive intervention required" be developed in consultation with parents of students enrolled in such schools and be presented to parents within the first 60 days of the school year, pursuant to Act 236 of the 2019 Regular Legislative Session.

Title 28
EDUCATION
Part XI. Accountability/Testing
Subpart 1. Bulletin 111—The Louisiana School, District, and State Accountability System
Chapter 9. Urgent Intervention and Comprehensive Intervention

§911. Required Interventions

A. In accordance with Louisiana's approved consolidated State plan under the Every Student Succeeds Act (ESSA), each LEA shall develop a plan that describes the goals, strategies, and monitoring processes that will be used to address the challenges of each school labeled "urgent intervention required" or "comprehensive intervention required" for approval according to timelines and procedures developed by the LDE. Such plan shall be developed in consultation with parents of students enrolled in such schools and shall remain in effect until such time as the school achieves established exit criteria set forth in §907 and §909 of this Part, or until an amended plan is required.

B. - E. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 44:457 (March 2018), amended LR 45:

Family Impact Statement

In accordance with section 953 and 974 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Family Impact Statement on rules proposed for adoption, repeal, or amendment. All Family Impact Statements will be kept on file in the state board office which has adopted, amended, or repealed rules in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Poverty Impact Statement

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on rules proposed for adoption, amendment, or repeal. All Poverty Impact Statements will be in writing and kept on file in the state agency which has adopted, amended, or repealed rules in accordance with the applicable provisions of the law relating to public records. For the purposes of this section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial authority? No.

2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.

3. Will the proposed Rule affect employment and workforce development? No.

4. Will the proposed Rule affect taxes and tax credits? No.

5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No.

Small Business Analysis

The impact of the proposed Rule on small businesses as defined in R.S. 49:965.6, the Regulatory Flexibility Act, has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental, and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the staffing level requirements or qualifications required to provide the same level of service;

2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or

3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 12 p.m. (noon), October 10, 2019 to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064. Written comments may be hand-delivered to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, Suite 5-190, 1201 North Third Street, Baton Rouge, LA 70802 and must be date-stamped by the BESE office on the date received. Public comments must be dated and include the original signature of the person submitting the comments.

Shan N. Davis
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 111—The Louisiana School, District, and State Accountability System Urgent and Comprehensive Interventions

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There could be increased costs to local school districts and charter schools as a result of the revisions. The proposed amendments require that academic improvement plans for schools identified as "urgent intervention required" or "comprehensive intervention required" be developed in consultation with parents of students enrolled in such schools and be presented to parents within the first 60 days of the school year, pursuant to Act 236 of 2019. Districts and other public schools could incur costs to accommodate parental consultation in the time frame required. This will vary by district and depend upon the method used to communicate and solicit such consultation and are indeterminable at this time.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no estimated impacts on revenue collections as a result of the proposed policy revisions.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups as a result of the proposed policy revisions.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no estimated effects on competition and employment as a result of the proposed revisions.

Beth Scioneaux	Evan Brasseaux
Deputy Superintendent	Staff Director
1909#060	Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 118—Statewide Assessment Standards and Practices—LEAP 2025—Science and Biology
(LAC 28:XI.6115 and 6813)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education has amended *Bulletin 118—Statewide Assessment Standards and Practices.* The proposed revisions provide performance level cut scores for five achievement levels for the LEAP 2025 science assessments in grades 3-8 and high school biology assessments. Results will be incorporated into the 2018-2019 school performance scores, which will be released this fall.

Title 28
EDUCATION
Part XI. Accountability/Testing
Subpart 3. Bulletin 118—Statewide Assessment Standards and Practices
Chapter 61. Louisiana Educational Assessment Program 2025 (LEAP 2025)
Subchapter B. Achievement Levels and Performance Scores
§6115. Performance Standards [Formerly LAC 28:CXI.1115]

A. Performance standards for LEAP English language arts, mathematics, science, and social studies tests are finalized in scaled-score form. The scaled scores range between 650 and 850 for English language arts, mathematics, science, and social studies.

1. English Language Arts

English Language Arts						
Achievement Level	**Grade 3**	**Grade 4**	**Grade 5**	**Grade 6**	**Grade 7**	**Grade 8**
Advanced	810-850	790-850	799-850	790-850	785-850	794-850
Mastery	750-809	750-789	750-798	750-789	750-784	750-793
Basic	725-749					
Approaching Basic	700-724					
Unsatisfactory	650-699					

2. Mathematics

Mathematics						
Achievement Level	**Grade 3**	**Grade 4**	**Grade 5**	**Grade 6**	**Grade 7**	**Grade 8**
Advanced	790-850	796-850	790-850	788-850	786-850	801-850
Mastery	750-789	750-795	750-789	750-787	750-785	750-800
Basic	725-749					
Approaching Basic	700-724					
Unsatisfactory	650-699					

3. Science

Science						
Achievement Level	**Grade 3**	**Grade 4**	**Grade 5**	**Grade 6**	**Grade 7**	**Grade 8**
Advanced	773-850	778-850	781-850	782-850	790-850	782-850
Mastery	750-772	750-777	750-780	750-781	750-789	750-781
Basic	725-749	725-749	725-749	725-749	725-749	725-749
Approaching Basic	698-724	704-724	698-724	701-724	702-724	694-724
Unsatisfactory	650-697	650-703	650-697	650-700	650-701	650-693

4. Social Studies

Social Studies						
Achievement Level	**Grade 3**	**Grade 4**	**Grade 5**	**Grade 6**	**Grade 7**	**Grade 8**
Advanced	777-850	783-850	782-850	773-850	777-850	780-850
Mastery	750-776	750-782	750-781	750-772	750-776	750-779
Basic	725-749	725-749	725-749	725-749	725-749	725-749
Approaching Basic	695-724	696-724	700-724	698-724	704-724	700-724
Unsatisfactory	650-694	650-695	650-699	650-697	650-703	650-699

B. - C.1. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and 17:391.4(A).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1536 (July 2005), amended LR 32:235 (February 2006), LR 42:225 (February 2016), LR 43:2475 (December 2017), LR 44:468 (March 2018), repromulgated LR 44:1424 (August 2018), amended LR 45:

Chapter 68. LEAP 2025 Assessments for High School
Subchapter B. Achievement Levels and Performance Standards
§6813. Performance Standards [Formerly LAC 28:CXI.1813]

A. - B.4. …

* * *

5. Biology Scaled-Score Ranges

Biology	
Achievement Level	**Scale Score Ranges**
Advanced	772-850
Mastery	750-771
Basic	725-749
Approaching Basic	707-724
Unsatisfactory	650-706

6. …

* * *

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:215 (February 2009), amended LR 36:478 (March 2010), LR 37:820 (March 2011), repromulgated LR 37:1123 (April 2011), amended LR 38:35 (January 2012), LR 39:76 (January 2013), LR 39:2444 (September 2013), LR 44:470 (March 2018), LR 44:2129 (December 2018), LR 45:

Family Impact Statement

In accordance with section 953 and 974 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Family Impact Statement on rules proposed for adoption, repeal, or amendment. All Family Impact Statements will be kept on file in the state board office which has adopted, amended, or repealed rules in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Poverty Impact Statement

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on rules proposed for adoption, amendment, or repeal. All Poverty Impact Statements will be in writing and kept on file in the state agency which has adopted, amended, or repealed rules in accordance with the applicable provisions of the law relating to public records. For the purposes of this section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial authority? No.

2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.

3. Will the proposed Rule affect employment and workforce development? No.

4. Will the proposed Rule affect taxes and tax credits? No.

5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No.

Small Business Analysis

The impact of the proposed Rule on small businesses as defined in R.S. 49:965.6, the Regulatory Flexibility Act, has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental, and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the staffing level requirements or qualifications required to provide the same level of service;

2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or

3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 12 p.m. (noon), October 10, 2019 to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064. Written comments may be hand-delivered to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, Suite 5-190, 1201 North Third Street, Baton Rouge, LA 70802 and must be date-stamped by the BESE office on the date received. Public comments must be dated and include the original signature of the person submitting the comments.

Shan N. Davis
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES: Bulletin 118

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed revisions will not have a fiscal impact to state or local governmental units. Performance standards for LEAP English Language Arts, Mathematics, Science, and Social Studies tests are finalized in scaled-score form. The proposed revisions update the science scaled score range.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no estimated impacts on revenue collections as a result of the proposed policy revisions.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups as a result of the proposed policy revisions.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no estimated effects on competition and employment as a result of the proposed revisions.

Beth Scioneaux
Deputy Superintendent

Evan Brasseaux
Staff Director

1909#056

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 139—Louisiana Child Care and Development Fund Programs—CCAP Household Eligibility
(LAC 28:CLXV.319 and 515)

In accordance with R.S. 17:6 and R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education proposes to amend *Bulletin 139—Louisiana Child Care and Development Fund Programs*. The proposed amendments add an exception to the existing prohibition for caregivers to receive CCAP payments for children in their custody for a caregiver who serves as an eligible CCAP provider, in order for such provider to receive CCAP payments for the foster child who is cared for through the program. The proposed amendments also establish separate rates for the care of infants and toddlers, recognizing increased costs for infant care, and provide for a special needs rate above the base rate.

Title 28
EDUCATION
Part CLXV. Bulletin 139—Louisiana Child Care and Development Fund Programs
Chapter 3. CCAP Provider Certification
§319. Caregiver's Ineligibility for CCAP Payments

A. A caregiver, even if certified to receive CCAP, may not receive CCAP payments for the caregiver's own children or other children in the caregiver's custody.

1. Exception. A caregiver may receive CCAP payments for foster children in the caregiver's custody.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR part 98 and R.S. 17:6 and 17:407.26.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:2114 (October 2015), amended LR 45:

Chapter 5. CCAP Household Eligibility
§515. Payments Made on Behalf of Households

A. The state maximum daily rates for CCAP care are as follows.

Child Care Provider Type	Regular Care	Regular Care for Toddlers	Regular Care for Infants	Special Needs Care Incentive	Special Needs Care Incentive for Toddlers	Special Needs Care Incentive for Infants
Type III Early Learning Center	$22.00	$23.75	$25.00	$27.72	$29.93	$31.50
School Child Care Center	$16.50	$16.50	$16.50	$20.79	$20.79	$20.79
Family Child Care Provider	$17.00	$18.00	$18.00	$21.42	$22.68	$22.68
In-Home Provider	$17.50	$17.50	$17.50	$22.05	$22.05	$22.05
Military Child Care Centers	$22.00	$23.75	$25.00	$27.72	$29.93	$31.50

B. - G. …

AUTHORITY NOTE: Promulgated in accordance with 45 CFR parts 98 and 99 and R.S. 17:6 and 17:407.28.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:2116 (October 2015), amended LR 42:44 (January 2016), LR 42:1870 (November 2016), LR 44:801 (April 2018), LR 45:

Family Impact Statement

In accordance with section 953 and 974 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Family Impact Statement on rules proposed for adoption, repeal, or amendment. All Family Impact Statements will be kept on file in the state board office which has adopted, amended, or repealed rules in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Poverty Impact Statement

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on rules proposed for adoption, amendment, or repeal. All Poverty Impact Statements will be in writing and kept on file in the state agency which has adopted, amended, or repealed rules in accordance with the applicable provisions of the law relating to public records. For the purposes of this section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial authority? No.
2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.
3. Will the proposed Rule affect employment and workforce development? No.
4. Will the proposed Rule affect taxes and tax credits? No.
5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No.

Small Business Analysis

The impact of the proposed Rule on small businesses as defined in R.S. 49:965.6, the Regulatory Flexibility Act, has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental, and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 12 p.m. (noon), October 10, 2019 to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064. Written comments may be hand-delivered to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, Suite 5-190, 1201 North Third Street, Baton Rouge, LA 70802 and must be date-stamped by the BESE office on the date received. Public comments must be dated and include the original signature of the person submitting the comments.

Shan N. Davis
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 139—Louisiana Child Care and Development Fund Programs—CCAP Household Eligibility

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be increased costs to the Department of Education (LDE) as a result of the proposed changes to child care assistance program (CCAP) base reimbursement rates and eligibility for foster caregivers. The amount of any such

increase is indeterminable at this time. In addition to base rate increases, the proposed changes also establish higher reimbursement rates for infants and special needs incentives for infants.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no estimated impacts on revenue collections as a result of the proposed policy revisions.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Caregivers receiving CCAP payments for foster children in the caregiver's custody may realize economic benefits as a result of the eligibility revisions. Individuals with children in the CCAP program may benefit in stable or lower child care payments to the extent the rate increases prevent providers from implementing higher co-payment amounts for parents.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed policy revisions will have no effect on competition and employment.

Shan N. Davis Executive Director 1909#057	Evan Brasseaux Staff Director Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—High School Crisis Management and Response Plans; Suicide Prevention; and Student Financial Management
(LAC 28:CXV.339, 1127, 2305, and 2319)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 17:6(A)(10), the Board of Elementary and Secondary Education proposes to amend LAC 28:CXV, *Bulletin 741—Louisiana Handbook for School Administrators*. Proposed amendments require student input in the annual review of high school crisis management and response plans in accordance with Act 44 of the 2019 Regular Legislative Session; update suicide prevention training requirements for school teachers, school counselors, principals, and other school administrators, in accordance with Act 93 of the 2019 Regular Legislative Session; require information relative to student borrowing for postsecondary education as a required component of instruction in personal financial management, in accordance with Act 116 of the 2019 Regular Legislative Session; and make technical edits to policy approved by BESE in June 2019 to career diploma and TOPS university diploma.

Title 28
EDUCATION
Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 3. Operation and Administration

§339. Emergency Planning and Procedures

A. Each public school principal or school leader shall have written policies and procedures developed jointly with local law enforcement, fire, public safety, and emergency preparedness officials, that address the immediate response to emergency situations that may develop in the schools and comply with the requirements in R.S. 17:416.16. The principal or school leader shall:

1. …

2. annually review and possibly revise the crisis management and response plan:

a. when conducting the annual review of the crisis management and response plan for a high school, the school principal shall seek and consider input from the students enrolled in the school who shall be represented by either the president of the senior class or the president of the student council and at least one other responsible student selected by the principal; and

3. within 30 days of each school year, conduct a safety drill to rehearse the plan.

B. - J. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6, 17:154.1, and 17:416.16.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1262 (June 2005), amended LR 39:3258 (December 2013), LR 41:372 (February 2015), LR 45:36 (January 2019), LR 45:

Chapter 11. Student Services

§1127. Preventive Programs

A. - C. …

D. Teachers, school counselors, principals and certain other school administrators in public elementary and secondary schools shall receive two hours of annual in-service training in suicide prevention. The training shall address the following:

1. increasing awareness of risk factors, including, but not limited to the following:

a. mental health and substance abuse conditions;

b. childhood abuse, neglect, and trauma;

c. potential causes of stress, such as bullying, harassment, and relationship problems;

d. secondary trauma from a suicide or sensationalized or graphic accounts of suicide in media; and

e. history of suicide attempts and related family history;

2. responding to suspicious behavior or warning signs exhibited by students;

3. responding to crisis situations in which a student is an imminent danger to himself;

4. policies and protocol for communication with parents, including specifications for circumstances in which parental notification is not in the best interest of the student;

5. counseling services available within the school for students and their families related to suicide prevention;

6. information concerning crisis intervention, suicide prevention, and mental health services in the community for students and their families and school employees;

7. community organizations and agencies for referral of students to health, mental health, substance abuse, and social support services, including development of at least one memorandum of understanding between the school system and such an entity in the community or region.

E. By no later than the 2020-2021 school year, the governing authority of each public secondary school that issues student identification cards shall have printed on the cards the following information:

1. the National Suicide Prevention Lifeline hotline number; and

2. a local suicide prevention hotline number, if available.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:6, 17:13.1, 17:283, and 17:403.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1278 (June 2005), amended LR 39:2208 (August 2013), LR 45:

Chapter 23. Curriculum and Instruction

Subchapter A. Standards and Curricula

§2305. Ancillary Areas of Instruction

A. …

B. Each public school student shall receive age- and grade-appropriate instruction in personal financial management based on the concept of achieving financial literacy through the teaching of personal management skills and the basic principles involved with income, money management, spending and credit, saving and investing, and the process and responsibilities, including repayment and default, of borrowing money to fund postsecondary education opportunities. Such instruction may be integrated into an existing course of study.

C. - M. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6, 17:81, 17:154, 17:261 et seq., 17:263, 17:270, 17:280, 17:281 et seq., 17:404, and17:405 et seq., and 36 USC 106.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1288 (June 2005), amended LR 33:2353 (November 2007), LR 39:2214 (August 2013), LR 39:3259 (December 2013), LR 40:2531 (December 2014), LR 44:1443 (August 2018), LR 44:1868 (October 2018), LR 45:36 (January 2019), LR 45:

§2319. The Career Diploma

A. - C.1.h. …

2. The minimum course requirements for a career diploma for incoming freshmen in 2014-2015 and beyond shall be the following:

a. English—4 units:

i. one of the following:

(a). English I;

(b). English language part 1: Cambridge IGCSE; or

(c). English literature part 1: Cambridge IGCSE.

ii. one of the following:

(a). English II;

(b). English language part 2: Cambridge IGCSE; or

(c). English literature part 2: Cambridge IGCSE.

iii. the remaining units shall come from the following:

(a). - (c). …

(d). English language part 1: Cambridge AICE—AS (honors);

(e). literature in English part 1: Cambridge AICE—AS (honors);

(f). English IV;

(g).any AP or IB English course;

(h). English language part 2: Cambridge AICE—AS (honors);

(i). Literature in English part 1: Cambridge AICE—AS (honors); or

(j). comparable Louisiana technical college courses offered by Jump Start regional teams as approved by BESE;

b. - b.ii.(n). …

(o). additional math—Cambridge IGCSE; or

(p). math 1 (pure math): Cambridge AICE—AS (honors);

c. - c.ii.(e).…

(f). PLTW principles of engineering;

(g). any AP or IB science course;

(h). physics I: Cambridge IGCSE;

(i). biology II: Cambridge AICE—AS (honors);

(j). chemistry II: AICE—AS (honors); or

(k). physics II: Cambridge AICE—AS (honors);

2.d. - 4.…

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6, 17:7, 17:24.4, 17:183.2, 17:183.3, 17:274, 17:274.1, and 17:395.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1291 (June 2005), amended LR 31:2211 (September 2005), LR 31:3070 (December 2005), LR 31:3072 (December 2005), LR 32:1414 (August 2006), LR 33:429 (March 2007), LR 33:432 (March 2007), LR 33:2050 (October 2007), LR 33:2354 (November 2007), LR 33:2601 (December 2007), LR 34:1607 (August 2008), LR 35:1230 (July 2009), LR 35:1876 (September 2009), LR 35:2321 (November 2009), LR 35:2750 (December 2009), LR 36:1490 (July 2010), LR 37:548 (February 2011), LR 37:1130 (April 2011), LR 37:2130 (July 2011), LR 37:3197 (November 2011), LR 38:761 (March 2012), LR 38:1005 (April 2012), LR 40:2522 (December 2014), LR 41:1482 (August 2015), LR 41:2594 (December 2015), LR 42:232 (February 2016), LR 43:1287 (July 2017), LR 43:2132 (November 2017), LR 43:2484 (December 2017), LR 44:1868 (October 2018), LR 45:

Family Impact Statement

In accordance with section 953 and 974 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Family Impact Statement on rules proposed for adoption, repeal, or amendment. All Family Impact Statements will be kept on file in the state board office which has adopted, amended, or repealed rules in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Poverty Impact Statement

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on rules proposed for adoption, amendment, or repeal. All Poverty Impact Statements will be in writing and kept on file in the state agency which has adopted, amended, or repealed rules in accordance with the applicable provisions of the law relating to public records. For the purposes of this section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial authority? No.

2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.

3. Will the proposed Rule affect employment and workforce development? No.

4. Will the proposed Rule affect taxes and tax credits? No.

5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No.

Small Business Analysis

The impact of the proposed Rule on small businesses as defined in R.S. 49:965.6, the Regulatory Flexibility Act, has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental, and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the staffing level requirements or qualifications required to provide the same level of service;

2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or

3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 12 p.m. (noon), October 10, 2019 to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064. Written comments may be hand-delivered to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, Suite 5-190, 1201 North Third Street, Baton Rouge, LA 70802 and must be date-stamped by the BESE office on the date received. Public comments must be dated and include the original signature of the person submitting the comments.

Shan N. Davis
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 741—Louisiana Handbook for School Administrators—High School Crisis Management and Response Plans; Suicide Prevention; and Student Financial Management

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no estimated implementation costs to the Department of Education (LDE) or local school districts as a result of the proposed policy revisions. The changes are necessary to reflect legislation enacted in 2019 as follows: Act 44 requires student representation in the development of school crisis management and response plans; Act 93 specifies instructional requirements for suicide prevention in-service training; and Act 116 expands the financial management curriculum requirements.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no estimated impacts on revenue collections as a result of the proposed policy revisions.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups as a result of the proposed revisions.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no estimated effects on competition and employment as a result of the proposed revisions.

Beth Scioneaux	Evan Brasseaux
Deputy Superintendent	Staff Director
1909#058	Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators
Suicide Prevention (LAC 28:LXXIX.1309)

Under the authority granted in R.S. 17:6 and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education proposes to amend *Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators*. The proposed amendments update suicide prevention training requirements for school teachers, school counselors, principals, and other school administrators, in accordance with Act 93 of the 2019 Regular Legislative Session.

Title 28
EDUCATION
Part LXXIX. Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators
Chapter 13. Preventive Programs
§1309. Suicide Prevention

A. Teachers, school counselors, principals and certain other school administrators in approved nonpublic elementary and secondary schools will receive two hours of

annual in-service training in suicide prevention. Instruction may be provided by self-review of suitable materials. The training shall address the following:

1. increasing awareness of risk factors, including, but not limited to the following:

a. mental health and substance abuse conditions;

b. childhood abuse, neglect, and trauma;

c. potential causes of stress, such as bullying, harassment, and relationship problems;

d. secondary trauma from a suicide or sensationalized or graphic accounts of suicide in media; and

e. history of suicide attempts and related family history;

2. responding to suspicious behavior or warning signs exhibited by students;

3. responding to crisis situations in which a student is an imminent danger to himself;

4. policies and protocol for communication with parents, including specifications for circumstances in which parental notification is not in the best interest of the student;

5. counseling services available within the school for students and their families related to suicide prevention;

6. information concerning crisis intervention, suicide prevention, and mental health services in the community for students and their families and school employees;

7. community organizations and agencies for referral of students to health, mental health, substance abuse, and social support services, including development of at least one memorandum of understanding between the school system and such an entity in the community or region.

B. By no later than the 2020-2021 school year, the governing authority of each public secondary school that issues student identification cards shall have printed on the cards the following information:

1. The National Suicide Prevention Lifeline hotline number; and

2. A local suicide prevention hotline number, if available.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), 17:391.1-391.10, 17:411, and 17:437.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 45:38 (January 2019), amended LR 45:

Family Impact Statement

In accordance with section 953 and 974 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Family Impact Statement on rules proposed for adoption, repeal, or amendment. All Family Impact Statements will be kept on file in the state board office which has adopted, amended, or repealed rules in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Poverty Impact Statement

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on rules proposed for adoption, amendment, or repeal. All Poverty Impact Statements will be in writing and kept on file in the state agency which has adopted, amended, or repealed rules in accordance with the applicable provisions of the law relating to public records. For the purposes of this section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial authority? No.

2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.

3. Will the proposed Rule affect employment and workforce development? No.

4. Will the proposed Rule affect taxes and tax credits? No.

5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No.

Small Business Analysis

The impact of the proposed Rule on small businesses as defined in R.S. 49:965.6, the Regulatory Flexibility Act, has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental, and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the staffing level requirements or qualifications required to provide the same level of service;

2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or

3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 12 p.m. (noon), October 10, 2019 to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064. Written comments may be hand-delivered to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, Suite 5-190, 1201 North Third Street, Baton Rouge, LA 70802 and must be date-stamped by the BESE office on the date received. Public comments must be dated and include the original signature of the person submitting the comments.

Shan N. Davis
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators—Suicide Prevention

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no estimated implementation costs to the Department of Education (LDE) or local school districts as a result of the proposed policy revisions. The changes are necessary to reflect legislation enacted in Act 93 of 2019 which specifies instructional requirements for suicide prevention in-service training.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no estimated impacts on revenue collections as a result of the proposed policy revisions.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no anticipated costs to non-public schools to expand the scope of annual in-service training in suicide prevention, as required under the proposed changes.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no estimated effects on competition and employment as a result of the proposed revisions.

Beth Scioneaux
Deputy Superintendent
1909#059

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Certifications and Endorsements
(LAC 28:CXXXI.203)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 17:6(A)(10), the Board of Elementary and Secondary Education proposes to amend LAC 28:CXXXI, *Bulletin 746—Louisiana Standards for State Certification of School Personnel*. Proposed amendments include the adoption of the new PRAXIS core academic skills for educators: reading (5713), writing (5723), and mathematics (5733); and adoption of the new PRAXIS school superintendent assessment (6991).

Title 28
EDUCATION
Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel
Chapter 2. Initial Teacher Certification
Subchapter B. Testing Required for Certification Areas
§203. Certification Exams and Scores (Formerly §243)

A. …

1. Core Academic Skills for Educators[2]. Teacher applicants in all content areas must pass all three Praxis core academic skills tests for educators.

Pre-Professional Skills Test "Paper or Computer Administrations"	Test #	Score	Effective Date
PPST:R—Pre-Professional Skills Test: Reading	0710/5710	176	Effective 7/1/10 to 12/31/13
PPST:W—Pre-Professional Skills Test: Writing	0720/5720	175	
PST:M—Pre-Professional Skills Test: Mathematics	0730/5730	175	

Core Academic Skills for Educators	Test #	Score	Effective Date
Reading	5712	156	Effective 1/1/14 to 7/31/2020
Writing	5722	162	
Mathematics	5732	150	

Core Academic Skills for Educators	Test #	Score	Effective Date
Reading	5713	156	Effective 9/1/2019
Writing	5723	162	
Mathematics	5733	150	

[1]To differentiate the computer delivered tests, the Educational Testing Service has placed the number "5" or "6" preceding the current test code. The department will accept computer delivered passing test scores for licensure.

[2]NOTE: An ACT composite score of 22 or an SAT combined verbal and math score of 1100 or higher (new SAT) or 1030 or higher (pre-March 2016 SAT) may be used in lieu of Praxis 1 PPST exams or core academic skills for educators in reading, writing and math by prospective teachers in Louisiana.

A.2. - D. …

* * *

E. Administrative and Instructional Support Areas

Certification Area	Name of Test	Area Test Score
Educational Leader—Level 1	School Leaders Licensure Assessment (1011 or 6011)	166
	School Leaders Licensure Assessment (6990) Effective 9/1/2019	151 (Effective 9/1/2019)
Educational Leader—Level 3	School Superintendent Assessment (6021)	160 (Effective until 8/31/2019)
	School Superintendent Assessment (6991)	162 (Effective 9/1/2019)
Guidance Counselor K-12	Professional School Counselor (0421 or 5421)	156
School Librarian	Library Media Specialist (0311 or 5311)	136

All Praxis scores used for certification must be sent directly from ETS to the state Department of Education electronically, or the original PRAXIS score report from ETS must be submitted with the candidate's application.

F. …

* * *

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1833 (October 2006), amended LR 36:485 and 488 (March 2010), LR 36:2265 (October 2010), LR 37:551 (February 2011), repromulgated LR 37:556 (February 2011), amended LR 37:3210 (November 2011), LR 39:1461 (June 2013), LR 40:277 (February 2014), LR 40:1680

(September 2014), LR 41:645 (April 2015), LR 41:916 (May 2015), LR 42:233 (February 2016), LR 43:1292 (July 2017), LR 44:264 (February 2018), LR 44:1999 (November 2018), LR 45:228, 230 (February 2019), repromulgated LR 45:403 (March 2019), LR 45:

Family Impact Statement

In accordance with section 953 and 974 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Family Impact Statement on rules proposed for adoption, repeal, or amendment. All Family Impact Statements will be kept on file in the state board office which has adopted, amended, or repealed rules in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Poverty Impact Statement

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on rules proposed for adoption, amendment, or repeal. All Poverty Impact Statements will be in writing and kept on file in the state agency which has adopted, amended, or repealed rules in accordance with the applicable provisions of the law relating to public records. For the purposes of this section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial authority? No.
2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.
3. Will the proposed Rule affect employment and workforce development? No.
4. Will the proposed Rule affect taxes and tax credits? No.
5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No.

Small Business Analysis

The impact of the proposed Rule on small businesses as defined in R.S. 49:965.6, the Regulatory Flexibility Act, has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental, and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 12 p.m. (noon), October 10, 2019 to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064. Written comments may be hand-delivered to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, Suite 5-190, 1201 North Third Street, Baton Rouge, LA 70802 and must be date-stamped by the BESE office on the date received. Public comments must be dated and include the original signature of the person submitting the comments.

Shan N. Davis
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 746—Louisiana Standards for State Certification of School Personnel Certifications and Endorsements

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no anticipated impacts to the Department of Education or local school districts as a result of the proposed changes to the Praxis test references which align rules with changes to the Praxis exam effective September 2019.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no estimated impacts on revenue collections as a result of the proposed policy revisions.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits for directly affected persons or non-governmental groups as a result of the proposed revisions.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed revisions could impact the number of individuals receiving certification based on certain Praxis test results, but any such impact is indeterminable at this time.

Beth Scioneaux
Deputy Superintendent
1909#061

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Certifications and Endorsements
(LAC 28:CXXXI.Chapter 3, 803, and 904)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 17:6(A)(10), the Board of Elementary and Secondary Education proposes to amend LAC 28:CXXXI, *Bulletin 746—Louisiana Standards for State Certification of School Personnel*. Proposed amendments update requirements for certification, hiring, and dismissal of teacher and other school employees with respect to criminal history determinations, in accordance with Act 387 of the 2019 Regular Legislative Session. The proposed amendments also update certification requirements for applicants who complete an approved teacher education program in Louisiana, in accordance with Act 388 of the 2019 Regular Legislative Session.

Title 28
EDUCATION
Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel
Chapter 3. Teaching Authorizations and Certifications
Subchapter A. Standard Teaching Authorizations

Editor's Note: The name of the Division of Student Standards and Assessments has been changed to The Division of Student Standards, Assessments, and Accountability.

§305. Professional Level Certificates

A. - A.1.a.i.(a). …

(b). have a minimum 2.50 undergraduate grade point average (GPA) on a 4.00 scale;

(c). an applicant who does not meet the requirement of Subparagraph b of this Paragraph may be certified if he meets the following requirements in an alternate teacher preparation program:

i. satisfactorily complete a personal interview by the program's admissions officer;

ii. if the program awards credit hours, the applicant shall achieve a minimum grade point average (GPA) of 3.00 in alternate teacher preparation program courses by the end of the first 12 credit hours and successfully complete the program;

iii. if the program does not award credit hours, the applicant shall demonstrate mastery of competencies as required by the program administrator and by the school system in which the applicant completes required clinical practice;

iv. satisfactory completion all program requirements as set forth by BESE, including any requirements for clinical practice, at graduation;

(d). present appropriate scores on the NTE core battery (common exams) or the corresponding Praxis exams (core academic skills for educators in reading, writing, and mathematics); the principles of learning and teaching (PLT) or other pedagogy exam required for the area(s) of certification as specified in §203 of this Part; and the specialty area exam in the certification area in which the teacher preparation program was completed or in which the initial certificate was; and

(e). be recommended by a state-approved university or private program provider for certification;

A.1.b. - E.6. …

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1797 (October 2006), amended LR 33:433 (March 2007), LR 34:233 (February 2008), LR 34:1611 (August 2008), LR 35:222 (February 2009), LR 37:558 (February 2011), LR 38:1951 (August 2012), LR 40:279 (February 2014), LR 41:2128 (October 2015), LR 43:1304 (July 2017), LR 44:745 (April 2018), LR 45:525 (April 2019), LR 45:

§313. Practitioner Licenses

A. - B.1.a. …

b. 2.50 or higher undergraduate grade point average (GPA) on a 4.00 scale to enter a non-university provider program; or a 2.20 or higher undergraduate grade point average (GPA) on a 4.00 scale to enter a college or university program; or be granted conditional admittance into an alternate teacher preparation program following a satisfactory personal interview by the program admission officer; and

1.c. - 4.b. …

c. an applicant who does not meet the requirement of Subparagraph b of this Paragraph may be certified if he meets the following requirements in an alternate teacher preparation program:

i. satisfactory completion a personal interview by the program admissions officer;

ii. if the program awards credit hours, the applicant shall achieve a minimum grade point average (GPA) of 3.00 in alternate teacher preparation program courses by the end of the first 12 credit hours and successfully complete the program;

iii. if the program does not award credit hours, the applicant shall demonstrate mastery of competencies as required by the program administrator and by the school system in which the applicant completes required clinical practice;

iv. satisfactory completion all program requirements as set forth by BESE, including any requirements for clinical practice, at graduation;

d. demonstrated proficiency in reading and literacy competencies through successfully completing the required number of credit or contact hours in reading and literacy as specified in LAC 28:XLV (Bulletin 996) or passing a reading competency assessment. The reading competency assessment for early childhood PK-3, elementary 1-5, and special education candidates is the Praxis teaching reading exam (#0206 or #5206). The current required score is 156. (Middle grades 4-8 and secondary grades 6-12 will be required to take the required reading course credit hours or equivalent contact hours until an appropriate reading competency assessment is developed and adopted.); and

e. completed prescriptive plans, if need was determined by the preparation provider.

C. - C.1.a. …

b. 2.50 or higher grade point average (GPA) on a 4.00 scale to enter a non-university provider program; or a 2.20 or higher grade point average (GPA) on a 4.00 scale to enter a college or university program; or be granted conditional admittance into a preparation program following

a satisfactory personal interview by the program admission officer; and

1.c. - 4.b. …

c. an applicant who does not meet the requirement of Subparagraph b of this Paragraph may be certified if he meets the following requirements in an alternate teacher preparation program:

i. satisfactory completion a personal interview by the program admissions officer;

ii. if the program awards credit hours, the applicant shall achieve a minimum grade point average (GPA) of 3.00 in alternate teacher preparation program courses by the end of the first 12 credit hours and successfully complete the program;

iii. if the program does not award credit hours, the applicant shall demonstrate mastery of competencies as required by the program administrator and by the school system in which the applicant completes required clinical practice;

iv. satisfactory completion all program requirements as set forth by BESE, including any requirements for clinical practice, at graduation;

d. demonstrated proficiency in reading and literacy competencies through successfully completing the required number of credit or contact hours in reading and literacy as specified in LAC 28:XLV (Bulletin 996) or passing a reading competency assessment. The reading competency assessment for early childhood PK-3, elementary 1-5, and special education candidates is the Praxis Teaching Reading exam (#0206 or #5206). The current required score is 156 (Middle grades 4-8 and secondary grades 6-12 will be required to take the required reading course credit hours or equivalent contact hours until an appropriate reading competency assessment is developed and adopted.);

D. - D.1.a. …

b. 2.50 GPA on a 4.00 scale or be granted conditional admittance into a preparation program following a satisfactory personal interview by the program's admission officer; and

1.b. - 4.b. …

c. an applicant who does not meet the requirement of subparagraph (b) of this paragraph may be certified if he meets the following requirements in an alternate teacher preparation program:

i. satisfactory completion a personal interview by the program admissions officer.

ii. if the program awards credit hours, the applicant shall achieve a minimum grade point average (GPA) of 3.00 in alternate teacher preparation program courses by the end of the first 12 credit hours and successfully complete the program.

iii. if the program does not award credit hours, the applicant shall demonstrate mastery of competencies as required by the program administrator and by the school system in which the applicant completes required clinical practice.

iv. satisfactory completion all program requirements as set forth by BESE, including any requirements for clinical practice, at graduation.

d. demonstrated proficiency in reading and literacy competencies through successfully completing the required number of credit or contact hours in reading and literacy as specified in LAC 28:XLV (Bulletin 996) or passing a reading competency assessment. The reading competency assessment for early childhood PK-3, elementary 1-5, and special education candidates is the Praxis teaching reading exam #0206 or #5206). The current required score is 156. (Middle grades 4-8 and secondary grades 6-12 will be required to take the required reading course credit hours or equivalent contact hours until an appropriate reading competency assessment is developed and adopted.)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1800 (October 2006), amended LR 35:221 (February 2009), LR 38:1952 (August 2012), LR 40:280 (February 2014), LR 43:1307 (July 2017), LR 45:

Subchapter B. Nonstandard Teaching Autthorizations

§323. Temporary Authority to Teach (TAT)

A. - B.3.a. …

4. The applicant must have at least a 2.20 GPA.

C. - D.1.d. …

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1803 (October 2006), amended LR 36:2547 (November 2010), LR 40:280 (February 2014), LR 44:2000 (November 2018), LR 45:

Chapter 8. Certification Appeal Process

§803. Appeal Process

A. - A.3.a. …

b. lack a minimum grade point average of 2.50 for initial certification and who did not meet the conditional admittance and program requirements as outlined in R.S. 17:7.1(A)(3); or

A.3.c. - A.4. …

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1829 (October 2006), amended LR 36:487 (March 2010), LR 38:3140 (December 2012), LR 43:1314 (July 2017), LR 44:2002 (November 2018), LR 45:

Chapter 9. Actions Related to the Suspension/Denial and Revocation of Louisiana Certificates

§904. Criminal History Reporting [Formerly §903.B-C]

A. - A.1. …

2. misdemeanor and felony offenses which include, but are not limited to, offenses defined in the following table;

Criminal Offenses	
R.S. 40:966(A)	Penalty for Distribution or Possession with intent to Distribute Narcotic Drugs Listed in Schedule I; Manufacture; Distribution
R.S. 40:967(A)	Prohibited Acts; Schedule II, Penalties; Manufacture; Distribution
R.S. 40:968(A)	Prohibited Acts; Schedule III; Penalties; Manufacture; Distribution
R.S. 40:969(A)	Prohibited Acts; Schedule IV; Penalties; Manufacture; Distribution
R.S. 40:970(A)	Prohibited Acts; Schedule V; Penalties; Manufacture; Distribution

3. misdemeanor and felony offenses which include, but are not limited to, offenses defined in the following table, for which issuance or reinstatement of a certificate will never be considered;

Prohibited Criminal Offenses	
R.S. 14:2(B)	Crimes of Violence
R.S. 14:30	First Degree Murder
R.S. 14:30.1	Second Degree Murder
R.S. 14:31	Manslaughter
R.S. 14:32.6	First Degree Feticide
R.S. 14:32.7	Second Degree Feticide
R.S. 14:32.8	Third Degree Feticide
R.S. 14:41	Rape
R.S. 14:42	1st Degree Rape
R.S. 14:42.1	2nd Degree Rape
R.S. 14:43	3rd Degree Rape
R.S. 14:43.1	Sexual battery
R.S. 14:43.1.1	Misdemeanor Sexual Battery
R.S. 14:43.2	2nd degree Sexual Battery
R.S. 14:43.3	Oral Sexual Battery
R.S. 14:43.4	Female Genital Mutilation
R.S. 14:43.5	Intentional Exposure to the AIDS Virus
R.S. 14:44	Aggravated Kidnapping
R.S. 14:44.1	Second Degree Kidnapping
R.S. 14:44.2	Aggravated Kidnapping of a Child
R.S. 14:45	Simple Kidnapping
R.S. 14:46.2	Human Trafficking
R.S. 14:46.3	Trafficking of Children for Sexual Purposes
R.S. 14:46.4	Rehoming of a Child
R.S. 14:74	Criminal Neglect of Family
R.S. 14:79.1	Criminal Abandonment
R.S. 14:80	Felony Carnal Knowledge of a Juvenile
R.S. 14:80.1	Misdemeanor Carnal Knowledge of a Juvenile
R.S. 14:81	Indecent Behavior with a Juvenile
R.S. 14:81.1	Pornography Involving Juveniles
R.S. 14:81.2	Molestation of a Juvenile or a Person with a Physical or Mental Disability
R.S. 14:81.3	Computer-aided Solicitation of a Minor
R.S. 14:81.4	Prohibited Sexual Conduct between Educator and Student
R.S. 14:82	Prostitution
R.S. 14:82.1	Prostitution; Persons under 17; Additional Offenses
R.S. 14:82.1.1	Sexting
R.S. 14:82.2	Purchase of Commercial Sexual Activity
R.S. 14:83	Soliciting for Prostitutes
R.S. 14:83.1	Inciting Prostitution
R.S. 14:83.2	Promoting Prostitution
R.S. 14:83.3	Prostitution by Massage
R.S. 14:83.4	Massage; sexual Content Prohibited
R.S. 14:84	Pandering
R.S. 14:85	Letting Premises for Prostitution
R.S. 14:86	Enticing Persons into Prostitution
R.S. 14:89	Crime Against Nature
R.S. 14:89.1	Aggravated Crime against Nature
R.S. 14:89.2	Crime against Nature by Solicitation
R.S. 14:92	Contributing to the Delinquency of Juveniles
R.S. 14:93	Cruelty to Juveniles
R.S. 14:93.2.1	Child Desertion
R.S. 14:93.3	Cruelty to the Infirm
R.S. 14:93.5	Sexual Battery of Persons with Infirmities
R.S. 14:106	Obscenity
R.S. 14:282	Operation of Places of Prostitution
R.S. 14:283	Video Voyerism
R.S. 14:283.1	Voyeurism
R.S. 14:284	Peeping Tom
R.S. 14:286	Sale of Minor Children
R.S. 15:541	Sex Offenses

4. in accordance with R.S. 17:7, certification issuance or reinstatement may be considered, where not prohibited in other statute, for a person who was employed as a school administrator, teacher, or substitute teacher and whose final conviction or plea of *nolo contendere* to any misdemeanor or felony offense provided in the following table occurred on or before August 1, 2019.

Criminal Offenses	
R.S. 14:2(B)	Crimes of Violence
R.S. 14:74	Criminal Neglect of Family
R.S. 14:79.1	Criminal Abandonment
R.S. 14:82.1.1	Sexting
R.S. 14:82.2	Purchase of Commercial Sexual Activity
R.S. 14:83	Soliciting for Prostitutes
R.S. 14:83.1	Inciting Prostitution
R.S. 14:83.2	Promoting Prostitution
R.S. 14:83.3	Prostitution by Massage
R.S. 14:83.4	Massage; sexual Content Prohibited
R.S. 14:85	Letting Premises for Prostitution
R.S. 14:89.2	Crime against Nature by Solicitation
R.S. 14:93.2.1	Child Desertion
R.S. 14:282	Operation of Places of Prostitution
R.S. 14:283.1	Voyeurism
R.S. 14:284	Peeping Tom
R.S. 15:541	Sex Offenses

B. - C. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.1, 17:6, and 17:15.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 45:0000 (August 2019), amended LR 45:

Family Impact Statement

In accordance with section 953 and 974 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Family Impact Statement on rules proposed for adoption, repeal, or amendment. All Family Impact Statements will be kept on file in the state board office which has adopted, amended, or repealed rules in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Poverty Impact Statement

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on rules proposed for adoption, amendment, or repeal. All Poverty Impact Statements will be in writing and kept on file in the state agency which has adopted, amended, or repealed rules in accordance with the applicable provisions of the law relating to public records. For the

purposes of this section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial authority? No.

2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.

3. Will the proposed Rule affect employment and workforce development? No.

4. Will the proposed Rule affect taxes and tax credits? No.

5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No.

Small Business Analysis

The impact of the proposed Rule on small businesses as defined in R.S. 49:965.6, the Regulatory Flexibility Act, has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental, and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the staffing level requirements or qualifications required to provide the same level of service;

2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or

3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 12 p.m. (noon), October 10, 2019 to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064. Written comments may be hand-delivered to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, Suite 5-190, 1201 North Third Street, Baton Rouge, LA 70802 and must be date-stamped by the BESE office on the date received. Public comments must be dated and include the original signature of the person submitting the comments.

Shan N. Davis
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 746—Louisiana Standards for State Certification of School Personnel Certifications and Endorsements

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There is no anticipated impact to the costs or savings of the Department of Education or state or local school districts. The proposed changes implement the provisions of Act 388 of 2019 which revise the eligibility and program requirements for Practioner licenses and alternate teacher certification, including conditional admission, university and non-university preparation coursework, credit hours, grade point averages, and Praxis exam scores. Further implements Act 387 of 2019 which update requirements for certification, hiring, and dismissal of teacher and other school employees with respect to criminal history determinations.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no estimated impacts on revenue collections as a result of the proposed policy revisions.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Individuals seeking alternate certification may benefit from the revisions which would make them eligible for conditional admission to, and completion of such programs. Changes to criminal history determinations may affect prospective employees but are indeterminable at this time.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There could be an increase in the number of individuals eligible for admission to, and completing alternative teacher preparation programs. This would serve to increase the number of certified teachers available to teach in traditional public schools. Furthermore, changes to the criminal history determinations may affect prospective employee hiring. However, the extent of any such impacts are indeterminable at this time.

Beth Scioneaux	Evan Brasseaux
Deputy Superintendent	Staff Director
1909#063	Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 996—Standards for Approval of Teacher and/or Educational Leader Preparation Programs
Quality Rating Calculation (LAC 28:XLV.745)

Under the authority granted in R.S. 17:6 and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education proposes to amend *Bulletin 996—Standards for Approval of Teacher and/or Educational Leader Preparation Programs*. The proposed amendments update certification requirements for applicants who complete an approved teacher education program in Louisiana, in accordance with Act 388 of the 2019 Regular Legislative Session.

Title 28
EDUCATION
Part XLV. Bulletin 996—Standards for Approval of Teacher and/or Educational Leader Preparation Programs
Chapter 7. Louisiana State Standards for Educator Preparation Programs
Subchapter C. Teacher Preparation Programs
§745. Minimum Requirements for Alternate Teacher Preparation Programs

A. - E.3. …

F. To be admitted into an alternate teacher preparation program, candidates must meet the following requirements:

1. possess a non-education baccalaureate degree from a regionally-accredited university;

2. meet minimum GPA requirements:

a. 2.50 or higher undergraduate grade point average (GPA) on a 4.00 scale to enter a non-university program;

b. 2.20 or higher undergraduate GPA on a 4.00 scale to enter a college or university program;

c. an applicant who does not meet the requirements of Subparagraph a or b of this Paragraph may be certified if he meets the following requirements in an alternate teacher preparation program:

i. satisfactory completion a personal interview by the program admissions officer;

ii. if the program awards credit hours, the applicant shall achieve a minimum grade point average (GPA) of 3.00 in alternate teacher preparation program courses by the end of the first 12 credit hours and successfully complete the program;

iii. if the program does not award credit hours, the applicant shall demonstrate mastery of competencies as required by the program administrator and by the school system in which the applicant completes required clinical practice;

iv. satisfactory completion all program requirements as set forth by BESE, including any requirements for clinical practice, at graduation;

3. …

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:1331 (July 2017), amended LR 43:2492 (December 2017), LR 45:

Family Impact Statement

In accordance with section 953 and 974 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Family Impact Statement on rules proposed for adoption, repeal, or amendment. All Family Impact Statements will be kept on file in the state board office which has adopted, amended, or repealed rules in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Poverty Impact Statement

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on rules proposed for adoption, amendment, or repeal. All Poverty Impact Statements will be in writing and kept on file in the state agency which has adopted, amended, or repealed rules in accordance with the applicable provisions of the law relating to public records. For the purposes of this section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial authority? No.

2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.

3. Will the proposed Rule affect employment and workforce development? No.

4. Will the proposed Rule affect taxes and tax credits? No.

5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No.

Small Business Analysis

The impact of the proposed Rule on small businesses as defined in R.S. 49:965.6, the Regulatory Flexibility Act, has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental, and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the staffing level requirements or qualifications required to provide the same level of service;

2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or

3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 12 p.m. (noon), October 10, 2019 to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064. Written comments may be hand-delivered to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, Suite 5-190, 1201 North Third Street, Baton Rouge, LA 70802 and must be date-stamped by the BESE office on the date received. Public comments must be dated and include the original signature of the person submitting the comments.

Shan N. Davis
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 996—Standards for Approval of Teacher and/or Educational Leader Preparation Programs Quality Rating Calculation

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed revisions will not have an impact on costs to state or local governmental units. The proposed changes

implement the provisions of Act 388 of 2019 which revise the eligibility and program requirements for alternate teacher certification.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed revisions will not have an impact on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Individuals seeking to enroll in alternate teacher preparation programs may be impacted to the extent they satisfy updated requirements relative to admission into, and completion of alternate teacher preparation programs.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There may be an increase in the number of certified teachers as a result of the proposed changes which would serve to increase the number of certified teachers available to teach in traditional public schools. However, the extent of any such impacts are indeterminable at this time.

Beth Scioneaux	Evan Brasseaux
Deputy Superintendent	Staff Director
1909#062	Legislative Fiscal Office

NOTICE OF INTENT

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

Industrial Radiography
(LAC 33:XV.102, and Chapter 5)(RP063)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Radiation Protection regulations, LAC 33:XV.102. 503, 542, 547, 550, 551, 573, 575, 576, 579, 587, 588, 590, and 599 (RP063).

This Rule makes revisions to the industrial radiographer regulations. Presently, the department lists industrial radiographer instructors on each radioactive materials license issued. The revisions will allow the department to issue industrial radiographer cards, which indicate instructor status on the card. This revision will negate the requirement to amend a license every time a radiographer attains instructor status. These revisions will be made to more closely align Louisiana with the Nuclear Regulatory Commission regulations. These changes were prompted by informal requests received from the industrial readiography industry. The basis and rationale for this Rule are to enable the state to issue industrial radiographer instructor cards and maintain an adequate agreement state program. 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.

Title 33
ENVIRONMENTAL QUALITY
Part XV. Radiation Protection

Chapter 1. General Provisions

§102. Definitions and Abbreviations

A. As used in these regulations, these terms have the definitions set forth below. Additional definitions used only in a certain chapter may be found in that Chapter.

* * *

Sealed Source—any byproduct material that is encased in a capsule designed to prevent leakage or escape of the byproduct material.

* * *

Sievert (Sv)—the SI unit of any of the quantities expressed as dose equivalent; it is equal to one Joule per kilogram. One Rem is equal to 0.01 Sievert. The dose equivalent in sieverts is equal to the absorbed dose in grays multiplied by the quality factor (1 Sv = 100 rems).

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), LR 19:1421 (November 1993), LR 20:650 (June 1994), LR 22:967 (October 1996), LR 24:2089 (November 1998), repromulgated LR 24:2242 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2563 (November 2000), LR 26:2767 (December 2000), LR 30:1171, 1188 (June 2004), amended by the Office of Environmental Assessment, LR 31:44 (January 2005), LR 31:1064 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:811 (May 2006), LR 32:1853 (October 2006), LR 33:1016 (June 2007), LR 33:2175 (October 2007), LR 34:982 (June 2008), LR 36:1771 (August 2010), amended by the Office of the Secretary, Legal Division, LR 38:2748 (November 2012), LR 40:283 (February 2014), LR 40:1338 (July 2014), LR 40:1926 (October 2014), LR 41:1276 (July 2015), LR 41:2321 (November 2015), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:2137 December 2018), LR 45:

Chapter 5. Radiation Safety Requirements for Industrial Radiographic Operations

§501. Purpose

A. The regulations in this Chapter establish radiation safety requirements for persons utilizing sources of radiation for industrial radiography. The requirements of this Chapter are in addition to, and not in substitution for, applicable requirements of LAC 33:XV.Chapters 1, 2, 3, 4, 10, 15, and 16.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:

§503. Definitions

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

* * *

Collimator—a radiation shield that is placed on the end of the guide tube or directly onto a radiographic exposure device to restrict the size of the radiation beam when the sealed source is cranked into position to make a radiographic exposure.

* * *

Industrial Radiography—the examination of the structure of materials by nondestructive methods utilizing ionizing radiation to produce radiographic images.

* * *

Radiographer—any individual who performs or who, in attendance at the site where the sealed source or sources are being used, is responsible to the licensee for assuring compliance with the requirements of the department's regulations and the conditions of the license, and has successfully completed the training, testing, and documentation requirements contained in LAC 33:XV.575.A.

Radiographer Certification—written approval received from a certifying entity stating that an individual has satisfactorily met certain established radiation safety, testing, and experience criteria.

* * *

Shielded Position—the location within the radiographic exposure device or source changer where the sealed source is secured and restricted from movement.

* * *

Storage Container—a container in which one or more sealed sources are secured and stored.

Temporary Job Site—any location where radiographic operations are conducted and where licensed material may be stored other than those location(s) of use authorized on the license or registration certificate for non-licensed sources of radiation.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), LR 23:1138 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2581 (November 2000), LR 26:2772 (December 2000), LR 27:1231 (August 2001), LR 29:34 (January 2003), LR 30:1189 (June 2004), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:

Subchapter A. Equipment Control

§542. Storage and Transportation Precautions

A. …

B. The licensee may not use a source changer or a container to store licensed material unless the source changer or the storage container has securely attached to it a durable, legible, and clearly visible label bearing the standard trefoil radiation caution symbol conventional colors, (i.e., magenta, purple, or black on a yellow background) having a minimum diameter of 25 mm, and the wording

CAUTION*
RADIOACTIVE MATERIAL
NOTIFY CIVIL AUTHORITIES (or "NAME OF COMPANY")
*_____ or "DANGER".

Radiographic exposure devices, source changers, or transport containers that contain radioactive material shall not be stored in residential locations. This requirement does not apply to storage of radioactive material in a vehicle in transit for use at temporary job sites, if the licensee complies with Subsection C of this Section, and if the vehicle does not constitute a permanent storage location as described in Subsection D of this Section.

C. - D.3. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:1232 (August 2001), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:

§547. Inspection and Maintenance of Radiographic Exposure Devices and Storage Containers

A. The licensee or registrant shall perform visual and operability checks on survey meters, radiation machines, radiographic exposure devices, transport and storage containers, source changers, and associated equipment prior to each day's use, or work shift, to ensure that:

1. the equipment is in good working condition;
2. - 3. …

B. Each licensee or registrant shall have written procedures for and perform inspections at intervals not to exceed three months, or before first use thereafter, and routine maintenance of radiation machines, radiographic exposure devices, source changers, transport and storage containers, and associated equipment to ensure proper functioning of components important to safety. All appropriate parts shall be maintained in accordance with manufacturer's specifications. The licensee's inspection and maintenance program must include procedures to ensure that Type B packages are shipped and maintained in accordance with the certificate of compliance or other approval.

C. …

D. Survey instrument operability shall be performed using check sources or other appropriate means. If equipment problems are found, the equipment shall be removed from service until repaired.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2582 (November 2000), LR 27:1234 (August 2001), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:

§550. Performance Requirements for Radiography Equipment

A. Equipment serviced, maintained, or repaired by a licensee or registrant or used in industrial radiographic operations shall meet the following minimum criteria:

1. each radiographic exposure device, source assembly, or sealed source, and all associated equipment shall meet the requirements specified in American National Standard Institute (ANSI) N432-1980 Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography, (published as *NBS Handbook 136*, issued January 1981). This publication has been approved for incorporation by reference by the director of the *Federal Register* in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This publication may be purchased from the American National Standards Institute, Inc., 25 West 43rd Street, New York, New York 10036; telephone: (212) 642-4900. Copies of the document are available for inspection at the Nuclear Regulatory Commission Library, 11545 Rockville Pike, Rockville, Maryland 20852. A copy of the document is also on file at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. Engineering analyses may be submitted by an applicant or licensee to demonstrate the applicability of previously performed testing on similar individual radiography equipment components. Upon review, the department may find this an acceptable alternative to actual testing of the component in accordance with the referenced standard;

2. in addition to the requirements specified in Paragraph A.1 of this Section, the following requirements apply to radiographic exposure devices, source changers, source assemblies, associated equipment, and sealed sources:

a. the licensee shall ensure that each radiographic exposure device has attached to it, a durable, legible, clearly visible label bearing the following:

i. - ii. …

iii. model number (or product code) and serial number of the sealed source;

iv. manufacturer's identity of the sealed source; and

v. …

b. radiographic exposure devices intended for use as Type B transport containers shall meet the applicable requirements of LAC 33:XV.Chapter 15; and

c. modification of radiographic exposure devices, source changers, source assemblies, and associated equipment is prohibited, unless the design of any replacement component, including source holder, source assembly, controls, or guide tubes would not compromise the design safety features of the system;

3. in addition to the requirements specified in Paragraphs A.1 and 2 of this Section, the following requirements apply to radiographic exposure devices, source assemblies, and associated equipment that allow the source to be moved out of the device for radiographic operations or to source changers:

a. the coupling between the source assembly and the control cable shall be designed in such a manner that the source assembly will not become disconnected if extended outside the guide tube. The coupling shall be such that it cannot be unintentionally disconnected under normal and reasonably foreseeable abnormal conditions;

b. the device shall automatically secure the source assembly when it is retracted back into the fully shielded position within the device. This securing system may only be released by means of a deliberate operation on the exposure device;

c. the outlet fittings, lock box, and drive cable fittings on each radiographic exposure device shall be equipped with safety plugs or covers which shall be installed during storage and transportation to protect the source assembly from water, mud, sand, or other foreign matter;

d. each sealed source or source assembly shall have attached to it or engraved on it, a durable, legible, visible label with the words: "DANGER-RADIOACTIVE." The label shall not interfere with the safe operation of the exposure device or associated equipment;

e. the guide tube must have passed the crushing tests for the control tube as specified in ANSI N432 and shall be able to withstand a crushing test that closely approximates the crushing forces that are likely to be encountered during use, and be able to withstand a kinking resistance test that closely approximates the kinking forces likely to be encountered during use;

f. guide tubes shall be used when moving the source out of the device;

g. an exposure head or similar device designed to prevent the source assembly from passing out of the end of the guide tube shall be attached to the outermost end of the guide tube during industrial radiographic operations;

h. the guide tube exposure head connection shall be able to withstand the tensile test for control units specified in ANSI N432-1980;

i. source changers shall provide a system for ensuring that the source will not be accidentally withdrawn from the changer when connecting or disconnecting the drive cable to or from a source assembly;

j. - k. …

4. all newly manufactured radiographic exposure devices and associated equipment acquired by licensees or registrants after the effective date of these regulations shall comply with the requirements of LAC 33:XV.550; and

5. all radiographic exposure devices and associated equipment in use after January 10, 1996, shall comply with the requirements of LAC 33:XV.550.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended LR 21:554 (June 1995), LR 23:1138 (September 1997), LR 24:2100 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2583 (November 2000), amended by the Office of the Secretary, Legal Division, LR 40:1928 (October 2014), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:

§551. Notifications

A. Each licensee or registrant shall provide a written report to the Office of Environmental Compliance within 30 days of the occurrence of any of the following incidents involving radiographic equipment:

1. unintentional disconnection of the source assembly from the control cable;

2. inability to retract the source assembly to its fully shielded position and secure it in this position; or

3. failure of any component (critical to safe operation of the device) to properly perform its intended function.

B. The licensee or registrant shall include the following information in each report required by Subsection D of this Section and in each report of overexposure submitted under LAC 33:XV.487 that involves failure of safety components of radiography equipment:

1. a description of the equipment problem;

2. cause of each incident, if known;

3. manufacturer and model number of equipment involved in the incident;

4. place, time, and date of the incident;

5. actions taken to establish normal operations;

6. corrective actions taken or planned to prevent recurrence; and

7. qualifications of personnel involved in the incident.

C. Any licensee conducting radiographic operations or storing radioactive material at any location not listed on the license for a period in excess of 180 days in a calendar year, shall notify the Office of Environmental Compliance prior to exceeding the 180 days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:

Subchapter B. Personal Radiation Safety Requirements for Radiographers

§573. Conducting Industrial Radiographic Operations

A. - D. …

E. A radiation safety officer (RSO) shall be designated for every industrial radiography license and certificate of registration, or license condition specifying such, issued by the department. The RSO's minimum qualifications, training, and experience shall include:

1. …

2. completion of the training and testing requirements of LAC 33:XV.575;

3. two years of documented radiation protection experience, including knowledge of industrial radiographic operations, with at least 2000 hours of hands-on experience as a qualified radiographer in industrial radiographic operations; and

4. formal training in the establishment and maintenance of a radiation protection program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:1234 (August 2001), amended LR 28:1951 (September 2002), LR 29:34 (January 2003), amended by the Office of the Secretary, Legal Division, LR 40:1342 (July 2014), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:

§575. Training and Testing

A. …

1. The individual shall receive training in the subjects outlined in LAC 33:XV.599.Appendix A, in addition to a minimum of two months of on-the-job training, and shall be certified through a radiographer certification program by a certifying entity in accordance with the criteria specified in LAC 33:XV.599.Appendices A, B, and C.

2. The individual shall demonstrate understanding of the licensee's license, and operating and emergency procedures by successful completion of a written or oral examination covering this material.

a. The hours of on-the-job training do not include safety meetings or classroom training or the use of a cabinet X-ray unit.

b. The current Form DRC-20, available from the department or the department's website, must be submitted to the Office of Environmental Compliance documenting the on-the-job training.

3. The individual shall receive copies of and instruction in the regulations contained in this Chapter and the applicable sections of LAC 33:XV.Chapters 4, 10, 15, and 16, the license(s) under which the radiographer will perform industrial radiography, and the licensee's or registrant's operating and emergency procedures.

4. The individual shall receive training in the use of the licensee's radiographic exposure devices, sealed sources, and radiation survey instruments, and in the daily inspection of devices and associated equipment that may be employed in his assignment.

5. The individual shall demonstrate understanding of the use of radiographic exposure devices, sources, survey instruments, and associated equipment described in Paragraphs A.3 and 4 of this Section by successful completion of a practical examination covering this material.

6. …

7. The individual shall have in his or her possession a valid radiographer certification card issued by the department, another agreement state, the U.S. Nuclear Regulatory Commission, or the American Society of Non-Destructive Testing (ASNT).

B. …

1. The individual shall receive:

a. copies of and instruction in the regulations contained in this Chapter and the applicable sections of LAC 33:XV.Chapters 4, 10, 15, and 16;

b. the license(s) under which the radiographer trainee will perform industrial radiography; and

c. the licensee's or registrant's operating and emergency procedures.

2. The individual shall develop competence to use, under the personal supervision of the radiographer instructor:

a. the radiographic exposure devices;

b. sealed sources, associated equipment; and

c. radiation survey instruments that may be employed in his assignment.

3. The individual shall demonstrate understanding of the instructions provided under Paragraph B.1 of this Section by successfully completing a company-specific written examination on the subjects, and shall demonstrate competence in the use of hardware described in Paragraph B2 of this Section by successful completion of a practical examination on the use of such hardware.

4. The current Form DRC-20, available from the department or the department's website, must be submitted to the Office of Environmental Compliance documenting the on-the-job training, instruction in the subjects outlined in Appendix A in this Chapter, and successful completion of a company-specific written examination.

5. The individual shall have in his or her possession, a valid radiographer trainee certification card issued by the department or equivalent certification recognized by another agreement state or the U.S. Nuclear Regulatory Commission.

6. Each radiographer trainee certification card does not expire, unless revoked or suspended in accordance with LAC 33:XV.579.

C. Each licensee or registrant shall maintain, for inspection by the department, the following records for three years for each radiographer and radiographer trainee.

1. - 2. …

D. Each licensee or registrant shall conduct a program of internal audits, not to exceed every six months, to ensure that the Radiation Protection Regulations (LAC 33:XV), Louisiana radioactive material license conditions, and the licensee's or registrant's operating and emergency procedures are followed by each radiographer and radiographer trainee. Records of internal audits shall be maintained for review by the department for two consecutive years from the date of the audit. The internal audit program shall include observation of the performance of each radiographer and radiographer trainee during actual industrial radiographic operations at intervals not to exceed six months and provide that, if a radiographer or a radiographer trainee has not participated in an industrial radiographic operation for more than six months since the last inspection, the radiographer shall demonstrate knowledge of the training requirements of LAC 33:XV.575.A.4 and the radiographer trainee shall redemonstrate knowledge of the training requirements of LAC 33:XV.575.B.2 by a practical examination before these individuals can next participate in a radiographic operation. The department may consider alternatives in those situations where the individual serves as both radiographer and RSO. (e.g., in those operations where a single individual serves as both radiographer and RSO, and performs all radiography operations, an internal audit program is not required.)

E. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), LR 20:999 (September 1994), LR 23:1138 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2583 (November 2000), LR 27:1235 (August 2001), LR 28:1951 (September 2002), LR 29:34 (January 2003), LR 29:1470 (August 2003), amended by the Office of Environmental Assessment, LR 30:2029 (September 2004), LR 31:54 (January 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2531 (October 2005), LR 33:2183 (October 2007), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:

§576. Operating and Emergency Procedures

A. …

1. the handling and use of licensed sealed sources and radiographic exposure devices to be employed such that no individual is likely to be exposed to radiation doses in excess of the limits established in LAC 33:XV.Chapter 4;

2. - 3. …

4. methods and occasions for locking and securing radiographic exposure devices, transport and storage containers, and sealed sources;

5. …

6. transportation of sealed sources to field locations, including packing of radiographic exposure devices and storage containers in the vehicles, placarding of vehicles when needed, and control of sealed sources during transportation (See 49 CFR Part 171-3);

7. - 9. …

10. the daily inspection, maintenance, and operability checks of radiographic exposure devices, radiation machines, associated equipment, survey meters, transport containers, storage containers, and personnel monitoring devices; and

A.11. - B. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:1235 (August 2001), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:

§579. Certification Cards for Radiographers or Radiographer Trainees

A. Issuance

1. An industrial radiographer or industrial radiographer trainee certification card shall be issued to each person who successfully completes the requirements of LAC 33:XV.575.A or B, respectively.

2. An industrial radiographer certification card shall contain the radiographer's photograph. The department will take the photograph at the time the examination is administered. The radiographer trainee certification card does not require a photograph.

3. A certification card remains the property of the state of Louisiana and may be revoked or suspended under the provisions of this Section.

4. Any individual who wishes to replace his/her certification card shall submit to the Office of Environmental Compliance a written request for a replacement certification card, stating the reason a replacement certification card is needed. A non-refundable fee of $29 shall be paid to the department for each replacement of an certification card. The prescribed fee shall be submitted with the written request for a replacement certification card. The individual shall maintain a copy of the request in his/her possession while performing industrial radiographic operations until a replacement certificaton card is received from the department.

B. Expiration of Certification Card. Each industrial radiographer certification card is valid for a period of five years, unless revoked or suspended in accordance with LAC 33:XV.579. Each industrial radiographer certification card expires at the end of the day indicated on the certification card.

C. Renewal of a Radiographer Certification Card

1. Applications for examination to renew an industrial radiographer certification card shall be filed in accordance with LAC 33:XV.575.A.

2. The examination for renewal of an industrial radiographer certification card shall be administered in accordance with LAC 33:XV.575.

3. A renewal industrial radiographer certification card shall be issued in accordance with this Section.

D. Revocation or Suspension of a Certification Card

1. Any radiographer or radiographer trainee who violates these Rules may be required to show cause at a formal hearing why his or her certification card should not be revoked or suspended in accordance with these regulations.

2. When a department order has been issued for an industrial radiographer or radiographer trainee to cease and desist from the use of sources of radiation or the department revokes or suspends his or her certification card, the industrial radiographer or radiographer trainee shall surrender the certification card to the department until the order is changed or the suspension expires.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:1000 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2584 (November 2000), LR 29:36 (January 2003), LR 29:691 (May 2003), LR 29:2053 (October 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2531 (October 2005), LR 33:2184 (October 2007), amended by the Office of the Secretary, Legal Division, LR 43:951 (May 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:

Subchapter C. Precautionary Procedures in Radiographic Operations

§587. Radiation Surveys and Survey Records

A. …

B. A physical radiation survey shall be made after each radiographic exposure utilizing radiation machines or sealed sources to determine that the machine is "off" or that the sealed source has been returned to its shielded position immediately upon completion of exposure and before exchanging films, repositioning the exposure head, or dismantling equipment. The entire circumference or perimeter of the radiographic exposure device shall be surveyed. If the radiographic exposure device has a source guide tube, the survey shall also include the entire length of the guide tube.

C. - E. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2584 (November 2000), LR 27:1236 (August 2001), LR 28:1952 (September 2002), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:

§588. Documents and Records Required at Temporary Job Sites and Applicable Field Stations

A. Each licensee or registrant shall maintain copies of records required by this Chapter at the location specified in LAC 33:XV.326.E.1.k. Also, each licensee or registrant conducting industrial radiography at a temporary job site or applicable field station shall have the following documents and records available at that job site or field station for inspection by the department:

1. - 6. …

7. a copy of the card issued by the department granting radiographer trainee status to any radiographer trainee performing industrial radiography at the temporary job site;

8. a copy of the card issued by the department granting radiographer instructor status to any radiographer instructor performing industrial radiography at the temporary job site;

9. a copy of the current Form DRC-20 for persons possessing industrial radiographer cards indicating instructor or trainer status issued from an agreement state, the NRC, or an independent certifying organization;

10. records of equipment problems identified in daily checks of equipment as required in LAC 33:XV.577;

11. records of alarm system and entrance control checks required by LAC 33:XV.548.A.2;

12. utilization records for each radiographic exposure device dispatched from that location as required by LAC 33:XV.546;

13. evidence of the latest calibration of alarming ratemeters and operability checks of dosimeters as required by LAC 33:XV.577;

14. the shipping papers for the transportation of radioactive materials as required by LAC 33:XV.1502; and

15. when operating under reciprocity in accordance with LAC 33:XV.390, a copy of the applicable state license or registration or Nuclear Regulatory Commission license authorizing the use of sources of radiation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2772 (December 2000), LR 27:1236 (August 2001), LR 28:1952 (September 2002), amended by the Office of Environmental Assessment, LR 31:54 (January 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 36:2555 (November 2010), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:

§590. Specific Requirements for Radiographic Personnel Performing Industrial Radiography

A. - E.2. …

3. has been issued a radiographer certification card with instructor status by the department.

F. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended LR 23:1139 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2584 (November 2000), LR 27:1237 (August 2001), LR 28:1952 (September 2002), LR 29:36 (January 2003), LR 29:1816

(September 2003), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:

§599. Appendices A, B, and C

Appendix A
Subjects to be Covered during the Instruction of Radiographers

A. Training provided to qualify individuals as radiographers in compliance with LAC 33:XV.575.A shall be presented on a formal basis. Subjects to be covered during instruction shall include the following topics.

1. Fundamentals of Radiation Safety
   a. Characteristics of radiation, especially gamma radiation
   b. Units of radiation dose and quantity of radioactivity
   c. Significance of radiation dose and hazards of exposure to radiation
      i. Radiation protection standards
      ii. Biological effects of radiation dose
      iii. Case histories of radiography accidents
   d. Levels of radiation from licensed material
   e. Methods of controlling radiation dose
      i. Working time
      ii. Working distances
      iii. Shielding
2. Radiation Detection Instrumentation to be Used
   a. Use of radiation survey instruments
      i. Operation and daily inspection
      ii. Calibration
      iii. Limitations
   b. Survey techniques
   c. Use of personnel monitoring equipment
      i. Film badges
      ii. Thermoluminescent dosimeters (TLD)
      iii. Pocket dosimeters
      iv. Alarm ratemeters
3. Requirements of Pertinent Federal and State Regulations
4. Licensee's or Registrant's Written Operating and Emergency Procedures
5. Radiographic Equipment to be Used
   a. Inspection and maintenance of equipment
   b. Operation and control of radiographic exposure equipment, remote handling equipment, and storage containers, including pictures or models of source assemblies (pigtails)
   c. Storage, control, and disposal of licensed material
   d. Operation and control of X-ray equipment
   e. Collimators

* * *

Appendix C
Requirements for an Independent Certifying Organization

A. An independent certifying organization shall:

1. be an organization such as a society or association, whose members participate in, or have an interest in, the fields of industrial radiography;
2. make its membership available to the general public nationwide that is not restricted because of race, color, religion, sex, age, national origin, or disability;
3. have a certification program open to nonmembers, as well as members;
4. be an incorporated, nationally recognized organization, that is involved in setting national standards of practice within its fields of expertise;
5. have an adequate staff, a viable system for financing its operations, and a policy and decision making review board;
6. have a set of written organizational bylaws and policies that provide adequate assurance of lack of conflict of interest and a system for monitoring and enforcing those bylaws and policies;
7. have a committee, whose members can carry out their responsibilities impartially, to review and approve the certification guidelines and procedures, and to advise the organization's staff in implementing the certification program;
8. have a committee, whose members can carry out their responsibilities impartially, to review complaints against certified individuals and to determine appropriate sanctions;
9. have written procedures describing all aspects of its certification program;
10. maintain records of the current status of each individual's certification and the administration of its certification program;
11. have procedures to ensure that certified individuals are provided due process with respect to the administration of its certification program, including the process of becoming certified and any sanctions imposed against certified individuals;
12. have procedures for proctoring examinations, including qualifications for proctors. These procedures shall ensure that the individuals proctoring each examination are not employed by the same company, corporation, or a wholly-owned subsidiary of such company or corporation as any of the examinees;
13. exchange information about certified individuals with the Nuclear Regulatory Commission and other independent certifying organizations and/or agreement states and allow periodic review of its certification program and related records; and
14. provide a description to the Nuclear Regulatory Commission of its procedures for choosing examination sites and for providing an appropriate examination environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:1237 (August 2001), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:

Family Impact Statement

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Impact Statement

This Rule has no known impact on poverty as described in R.S. 49:973.

Small Business Analysis

This Rule has no known impact on small business as described in R.S. 49:965.2 - 965.8.

Provider Impact Statement

This Rule has no known impact on providers as described in HCR 170 of 2014.

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by RP063. Such comments must be received no later than November 6, 2019, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Affairs and Criminal Investigations Division, P.O. Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to DEQ.reg.dev.comments@la.gov. Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of RP063. These proposed regulations are available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

Public Hearing

A public hearing will be held on October 30, 2019, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals

with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson
General Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Industrial Radiography

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be increased costs to the Department of Environmental Quality (DEQ) to issue new instructor certification cards pursuant to the proposed rule. These costs are indeterminable. However, since cards are produced internally, additional costs are not anticipated to be material. Technical amendments include corrections and additions to more closely align Louisiana's industrial radiographer regulations with U.S. Nuclear Regulatory Commission regulations.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be an inderterminable increase in revenues to DEQ. New instructor certification cards will be issued to individuals who have successfully completed the certification requirements. In 2019, DEQ issued 90 amendments to licensees however, some amendments were for multiple individuals. Smaller companies may only have one or two instructor, whereas larger companies may have as many as 200. These new instructors will now receive a new card at the cost of $29 each. Future revenues will depend upon the number of individuals who achieve certification and are indeterminable at this time.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be an increase in costs for industrial radiography companies affected by this proposed action. At the request of the regulated companies, DEQ Radiation Section licensing staff will change the licensing process for industrial radiographer instructor status; DEQ will create and issue instructor certification cards instead of completing license amendments. The $29 cost of each certification card will be borne by the company. Smaller companies may not realize a significant increase however, larger companies which employ a higher number of instructors could experience higher costs.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment as a result of the rule change.

Herman Robinson
General Cousel
1909#038

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

MACT Determinations for Non-HON Sources
(Equipment Leaks)
(LAC 33:III.5130 and 5132)(AQ373)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the air regulations, LAC 33:III.5130 and 5132 (AQ373).

This Rule will codify the following leak detection and repair (LDAR) programs in Louisiana's Air Quality regulations (LAC 33:III):

• Louisiana MACT Determination for Non-HON Sources, and

• Louisiana MACT Determination for Non-HON Sources with Consent Decree Enhancements.

These LDAR programs represent the department's maximum achievable control technology (MACT) determinations under LAC 33:III.5109.A for fugitive emissions from components such as pumps, compressors, valves, and connectors at certain process units within chemical manufacturing facilities.

Appendix B of LAC 33:III.2199 addresses the Louisiana Consolidated Fugitive Emissions Program. Table 9 therein (Stringency Table) lists potentially applicable LDAR programs in order of decreasing stringency, including the two identified above. However, unlike most of the other LDAR programs identified in the table, the subject Louisiana MACT Determinations have not been codified.

Codification of these LDAR programs is needed to ensure that their provision remain uniform and to facilitate the department's assessment of how any future revisions to leak definitions, monitoring methods, or monitoring frequencies might impact their position in Table 9.

Further, codification would require any future revisions to be effected through the rulemaking process in accordance with the Administrative Procedure Act 9R.S. 49:950 et seq.), thus ensuring transparency and providing an opportunity for affected sources and the public to submit comments. The basis and rationale for this Rule are to codify the aforementioned LDAR programs in Louisiana's Air Quality regulations. 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.

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 51. Comprehensive Toxic Air Pollutant Control Program

Subchapter D. Louisiana Maximum Achievable Control Technology (MACT) Determinations for Equipment Leaks

§5130. Louisiana MACT Determination for Non-HON Sources

A. Applicability and Designation of Affected Sources

1. The leak detection and repair (LDAR) provisions of this Section apply only when referenced by the terms and conditions of an air permit issued in accordance with LAC 33:III.Chapter 5.

2. The provisions of this Section apply to each of the following sources that are intended to operate in volatile organic toxic air pollutant (VOTAP) service in excess of 300 hours during a calendar year:

a. pumps;
b. compressors;
c. pressure relief devices;
d. instrumentation systems;
e. sampling connection systems;
f. open-ended valves or lines;
g. valves;
h. flanges and other connectors;
i. bottoms receivers;
j. surge control vessels;
k. agitators; and
l. control devices or systems.

B. Definitions. The terms used in this MACT determination are defined in LAC 33:III.111, with the exception of those terms specifically defined in LAC 33:III.5103.A, or herein as follows.

Bottoms Receiver—a tank that collects distillation bottoms before the stream is sent for storage or for further downstream processing.

Closed-Loop System—an enclosed system that returns process fluid to the process.

Closed-Purge System—a system or combination of systems and portable containers to capture purged liquids. Containers for purged liquids must be covered or closed when not being filled or emptied.

Closed-Vent System—a system that is not open to the atmosphere and that is composed of piping, connections, and if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device or back to a process.

Connector—flanged, screwed, or other joined fittings used to connect two pipe lines or a pipe line and a piece of equipment. A common connector is a flange. Joined fittings welded completely around the circumference of the interface are not considered connectors for the purpose of this MACT determination.

Control Device—an enclosed combustion device, vapor recovery system, or flare.

Double Block and Bleed System—two block valves connected in series with a bleed valve that can vent the line between the two block valves.

Equipment—each pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, valve, flange or other connector, agitator, bottoms receiver, surge control vessel, and instrumentation system in VOTAP service; and any control devices or systems required by this MACT determination.

First Attempt at Repair—to take action within 5 days of determining the equipment is leaking for the purpose of stopping or reducing leakage of VOTAP to the atmosphere using best practices.

In Gas/Vapor Service—that a piece of equipment in VOTAP service contains a gas or vapor at operating conditions.

In Heavy Liquid Service—that a piece of equipment in VOTAP service is not in gas/vapor service and is not in light liquid service.

In Light Liquid Service—the equipment contacts a fluid which meets the following conditions:

a. the vapor pressure of one or more of the components is greater than 0.3 kPa at 20°C. (Vapor pressure may be obtained from standard reference texts or may be determined by ASTM D-2879);

b. the total concentration of the pure components having a vapor pressure greater than 0.3 kPa at 20°C is equal to or greater than 20 percent by weight; and

c. the fluid is a liquid at operating conditions.

In Liquid Service—that a piece of equipment in VOTAP service is not in gas/vapor service.

In-Situ Sampling Systems—nonextractive samples or in-line samplers.

Instrumentation System—a group of equipment, including valves, connectors, and/or other components, used to condition and convey a sample of the process fluid to analyzers and instruments for the purpose of determining process operating conditions (e.g., composition, pressure, flow, etc.). Only valves nominally 0.5 inches and smaller and connectors nominally 0.75 inches and smaller in diameter are considered instrumentation systems for the purposes of this MACT determination. Valves greater than nominally 0.5 inches and connectors greater than nominally 0.75 inches associated with instrumentation systems are not considered part of instrumentation systems and must be monitored individually.

In Vacuum Service—that equipment is operating at an internal pressure, which is at least 20 inches of water below ambient pressure.

In VOC Service—for the purposes of this MACT determination, that:

a. the piece of equipment contains or contacts a process fluid that is at least 10 percent VOC by weight; and

b. the piece of equipment is not in heavy liquid service.

In VOTAP Service—that a piece of equipment either contains or contacts a volatile fluid (liquid or gas) that is at least 5 percent by weight the sum of Class I and Class II organic toxic air pollutants listed in Table 51.1 of LAC 33:III.5112.

Light Liquid—a fluid with a vapor pressure greater than 0.3 kPa at 20°C.

New Source Performance Standards (NSPS)—standards of performance for new stationary sources promulgated under Section 111 of the Clean Air Act.

Open-Ended Valve or Line—any valve, except pressure relief valves, having one side of the valve seat in contact with process material and one side open to atmosphere, either directly or through open piping.

Pressure Release—the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

Process Unit—equipment assembled to produce a VOTAP or its derivatives as intermediates or final products, or equipment assembled to use a VOTAP in the production of a product. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient product storage facilities.

Process Unit Shutdown—a work practice or operational procedure that stops production from a process unit, or part of a process unit. An unscheduled work practice or operational procedure that stops production from a process unit, or part of a process unit, for less than 24 hours is not a process unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping production are not process unit shutdowns.

Pseudorandom—of, pertaining to, or being random numbers generated by a definite, nonrandom computational process.

Repaired—equipment is adjusted, or otherwise altered, to eliminate a leak as indicated by one of the following:

a. an instrument reading of less than 1000 ppm for valves and connectors, less than 1000 ppm for instrumentation systems and pressure relief devices in heavy liquid service, less than 2000 ppm for pumps, less than 5000 ppm for compressors, less than 10,000 for agitators in heavy liquid service, less than 500 ppm for pressure relief devices in gas/vapor service and closed-vent systems, and less than 500 for compressors that are designated as no detectable emissions for equipment required to be monitored;

b. for equipment listed in Subsections D and K of this Section, there is no indication of liquids dripping; or

c. for equipment equipped with a leak detection sensor(s), there is no indication by a sensor(s) that a seal or barrier fluid system has failed.

Quarterly—a three-month period.

Semiannual—a six-month period.

Sensor—a device that measures a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

Surge Control Vessel—feed drums, recycle drums, and intermediate vessels. Surge control vessels serve several purposes including equalization of load, mixing, recycle, and emergency supply.

Volatile—any fluid which has a vapor pressure of 1.5 pounds per square inch absolute or greater under actual flow or storage conditions.

Volatile Organic Toxic Air Pollutant or VOTAP—any Class I, Class II, or Class III volatile organic air pollutant in Table 51.1 of LAC 33:III.5112.

C. General

1. Each owner or operator subject to the provisions of this MACT determination shall demonstrate compliance with the requirements of Subsections C-O of this Section for each new and existing source.

2. Compliance with this MACT determination will be determined by review of records, review of performance test results, and/or inspection using the methods and procedures specified in Subsection P of this Section.

3. Each piece of equipment in a process unit to which this MACT determination applies shall be identified such that it can be readily distinguished from equipment that is not subject this MACT determination. Identification of the equipment does not require physical tagging of the equipment. For example, the equipment may be identified on a plant site plan, in log entries, or by designation of process unit boundaries by some form of weatherproof identification.

4. Equipment that is in vacuum service is excluded from the requirements of Subsections D-O of this Section if it is identified as required in Subparagraph Q.5.d of this Section.

5. Any equipment that has been physically removed from service, disassembled or dismantled must be monitored to determine if it is leaking within 90 days of placing the equipment back in service. A record of the monitoring must be maintained in the log required in Paragraph Q.5 of this Section. Repair of any equipment found leaking must be performed in accordance with the appropriate subsection for that type of equipment monitored.

D. Pumps in Light Liquid Service

1. Monitoring

a. Each pump shall be monitored quarterly to detect leaks by the method specified in Paragraph P.2 of this Section, except as provided in Paragraphs C.4, D.4, and D.5 of this Section.

b. Each pump shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal. If there are indications of liquids dripping from the pump seal, the pump shall be monitored within 5 days by the method specified in Paragraph P.2 of this Section.

2. If an instrument reading of 2000 ppm or greater is measured, a leak is detected.

3. Repairs

a. When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in Subsection M of this Section.

b. A first attempt at repair shall be made no later than five calendar days after each leak is detected.

4. Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of Paragraph D.1 of this Section, provided the following requirements are met.

a. Each dual mechanical seal system is:

i. operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure;

ii. equipped with a barrier fluid degassing reservoir that is connected by a closed-vent system to a control device that complies with the requirements of Subsection N of this Section; or

iii. equipped with a system that purges the barrier fluid into a process stream with zero VOTAP emissions to the atmosphere.

b. The barrier fluid is not in VOTAP service and, if the pump is covered by standards under NSPS, is not in VOC service.

c. Each barrier fluid system is equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

d. Each pump is checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.

e. Sensors

i. Each sensor as described in Subparagraph D.4.c of this Section is checked daily or is equipped with an audible alarm; and

ii. The owner or operator determines, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

f. If there are indications of liquids dripping from the pump seal or the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined in Clause D.4.e.ii of this Section, a leak is detected and shall be repaired in accordance with Subparagraphs D.3.a and b of this Section.

5. If any pump is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a control device that complies with the requirements of Subsection N of this Section, it is exempt from the requirements of Paragraphs D.1-4 of this Section.

E. Compressors

1. In lieu of complying with Paragraphs E.2-7 of this Section, compressor seals may be monitored quarterly to detect leaks by method specified in Paragraph P.2 of this Section. A leak is detected if an instrument reading of 5000 ppm is measured.

2. Each compressor shall be equipped with a seal system that includes a barrier fluid system and that prevents leakage of process fluid to the atmosphere, except as provided for in Paragraphs C.4, E.9, and E.10 of this Section.

3. Each compressor seal system as required in Paragraph E.2 of this Section shall be:

a. operated with the barrier fluid at a pressure that is greater than the compressor stuffing box pressure;

b. equipped with a barrier fluid system that is connected by a closed-vent system to a control device that complies with the requirements of Subsection N of this Section; or

c. equipped with a system that purges the barrier fluid into a process stream with zero VOTAP emissions to atmosphere.

4. The barrier fluid shall not be in VOTAP service and, if the compressor is covered by a standard under NSPS, shall not be in VOC service.

5. Each barrier fluid system as described in Paragraphs E.2-4 of this Section shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both.

6. Failure Determination

a. Each sensor as required in Paragraph E.5 of this Section shall be checked daily or shall be equipped with an audible alarm.

b. The owner or operator shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

7. If the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined under Subparagraph E.6.b of this Section, a leak is detected.

8. Repairs

a. When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in Subsection M of this Section.

b. A first attempt at repair shall be made no later than five calendar days after each leak is detected.

9. A compressor is exempt from the requirements of Paragraphs E.1-7 of this Section if it is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal to a control device that complies with the requirements of Subsection N of this Section.

10. Any compressor that is designated for no detectable emissions is exempt from the requirements of Paragraphs E.2-7 of this Section, if the compressor:

a. is demonstrated to be operating with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in Paragraph P.3 of this Section; and

b. is tested for compliance with Paragraph E.10 of this Section initially upon designation, annually, and at other times requested by the department.

F. Pressure Relief Devices in Gas/Vapor Service

1. Except during pressure releases, each pressure relief device in gas/vapor service shall be operated with no leakage, as indicated by an instrument reading of less than 500 ppm, as measured by the method specified in Paragraph P.3 of this Section.

2. Monitoring

a. After each pressure release, the pressure relief device shall be returned to a condition of no leakage, as indicated by an instrument reading of less than 500 ppm, as soon as practicable, but no later than five calendar days after each pressure release, except as provided in Subsection M of this Section.

b. No later than five calendar days after the pressure release, the pressure relief device shall be monitored to confirm the condition of no leakage, as indicated by an instrument reading of less than 500 ppm, as measured by the method specified in Paragraph P.3 of this Section.

3. Any pressure relief device that is equipped with a closed-vent system capable of capturing and transporting leakage from the pressure relief device to a control device as described in Subsection N of this Section is exempt from the requirements of Paragraphs F.1 and 2 of this Section.

G. Sampling Connection Systems

1. Each sampling connection system shall be equipped with a closed-loop system, closed-purge system, or closed-vent system, except as provided for in Paragraph C.4 of this Section. This system shall collect or capture the sample purge for return to the process. Gases displaced during filling of the sample container are not required to be collected or captured.

2. Each closed-loop system, closed-purge system, or closed-vent system as required in Paragraph G.1 of this Section shall:

a. return the purged process fluid directly to the process line with zero VOTAP emissions to the atmosphere;

b. collect and recycle the purged process fluid with zero VOTAP emissions to the atmosphere; or

c. be designed and operated to capture and transport all the purged process fluid to a control device that complies with the requirements of Subsection N of this Section.

3. In-situ sampling systems are exempt from the requirements of Paragraph G.1 of this Section.

H. Open-Ended Valves or Lines

1. Line Sealing

a. Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve, except as provided in Paragraph C.4 of this Section.

b. The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations

requiring process fluid flow through the open-ended valve or line or during maintenance and repair.

2. Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the process fluid end is closed before the second valve is closed.

3. When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with Paragraph H.1 of this Section at other times.

4. Opened-ended valves and lines shall be monitored and repaired in accordance with Subsection I of this Section.

5. Open-ended valves or lines in an emergency shutdown system that are designed to open automatically in the event of a process upset are exempt from the requirements of Paragraphs H.1-3 of this Section.

I. Valves in Gas/Vapor Service and in Light Liquid Service

1. Monitoring. Each valve shall be monitored quarterly to detect leaks by the method specified in Paragraph P.2 of this Section and shall comply with Paragraphs I.2-4, except as provided in Paragraphs C.4, I.5, I.6, and I.7 of this Section.

2. If an instrument reading of 1000 ppm or greater is measured, a leak is detected.

3. Repairs

a. When a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in Subsection M of this Section.

b. A first attempt at repair shall be made no later than five calendar days after each leak is detected.

4. First attempts at repair include, but are not limited to, the following best practices where practicable:

a. tightening of bonnet bolts;

b. replacement of bonnet bolts;

c. tightening of packing gland nut; and

d. injection of lubricant into a lubricated packing.

5. Any valve that is designated as an unsafe-to-monitor valve and identified in accordance with Subparagraph Q.6.a of this Section is exempt from the requirements of Paragraph I.1 of this Section if:

a. the owner or operator of the valve demonstrates that the valve is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with Paragraph I.1 of this Section; and

b. the owner or operator of the valve has a written plan that requires monitoring of the valve as frequently as practicable during safe-to-monitor times.

6. Any valve that is designated as a difficult-to-monitor valve and identified in accordance with Subparagraph Q.6.b of this Section is exempt from the requirements of Paragraph I.1 of this Section if:

a. the owner or operator of the valve demonstrates that the valve cannot be monitored without elevating the monitoring personnel more than 2 meters above a support surface;

b. the process unit within which the valve is located is in an existing process unit; and

c. the owner or operator of the valve follows a written plan that requires monitoring of the valve at least once per calendar year.

7. If the percent of leaking valves in a process unit equals or exceeds 4.0, then all valves in the process unit must be monitored monthly. The monthly monitoring must be initiated within 60 days of the previous monitoring. The monthly monitoring of valves shall continue until the percent of leaking valves is less than 4.0. Once the percent of leaking valves is less than 4.0, monitoring can be performed in accordance with Paragraph I.1 of this Section.

8. The leak percentage shall be determined by dividing the number of valves in VOTAP service for which leaks are detected, including the number of unrepairable valves, by the number of valves in VOTAP service monitored, then multiplying by 100.

J. Valves in VOTAP Service - Skip Period Leak Detection and Repair

1. An owner or operator:

a. may elect for all valves within a process unit to comply with one of the alternative work practices specified in Subparagraphs J.2.a and b of this Section; and

b. must notify the Office of Environmental Services at least 30 days before implementing one of the alternative monitoring schedules.

2. Alternate Monitoring

a. After two consecutive quarterly leak detection periods performed in accordance with Subsection I of this Section with the percent of valves leaking equal to or less than 2.0 or if the process unit has an existing monitoring program prescribed by its air permit that is currently operating with a leak rate of less than or equal to 2 percent using a leak definition of 10,000 ppm or less for valves, an owner or operator may monitor semiannually.

b. After two consecutive semiannual leak detection periods with the percentage of valves leaking equal to or less than 2.0, an owner or operator may begin to monitor annually.

c. If the percentage of valves leaking is greater than 2.0 for any monitoring period, the owner or operator shall comply with the requirements as described in Subsection I of this Section.

3. Monitoring shall be performed in accordance with the test method in Paragraph P.2 of this Section.

4. The leak percentage shall be determined by dividing the number of valves in VOTAP service for which leaks are detected, including unrepairable valves, by the number of valves in VOTAP service monitored, then multiplying by 100.

K. Instrumentation Systems and Pressure Relief Devices in Liquid Service; and Pumps, Valves, Connectors, and Agitators in Heavy Liquid Service

1. Instrumentation systems and pressure relief devices in liquid service and pumps, valves, connectors, and agitators in heavy liquid service shall be monitored within five days by the method specified in Paragraph P.2 of this Section if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method. If a potential leak in an instrumentation system is repaired as required in Subparagraph K.3.a and b of this Section, it is

not necessary to monitor the system for leaks by the method specified in Paragraph P.2 of this Section.

2. A leak is detected if an instrument reading of 10,000 ppm or greater for agitators, 2000 ppm or greater for pumps, or 1000 ppm or greater for valves, connectors, instrumentation systems, and pressure relief devices is measured.

3. Repairs

a. When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in Subsection M of this Section.

b. The first attempt at repair shall be made no later than five calendar days after each leak is detected.

c. For instrumentation systems that are not monitored by the method specified in Paragraph P.2 of this Section, repaired shall mean that the visual, audible, olfactory, or other indications of a leak have been eliminated; that no bubbles are observed at potential leak sites during a leak check using soap solution; or that the system will hold a test pressure.

4. First attempts at repair include, but are not limited to, the best practices described under Paragraph I.4 of this Section.

L. Surge Control Vessels and Bottoms Receivers. Each surge control vessel and bottoms receiver that is not routed back to the process shall be equipped with a closed-vent system that routes the organic vapors vented from the vessel back to the process or to a control device that complies with the requirements in Subsection N of this Section or to an alternate method of control which has been approved by the department.

M. Delay of Repair

1. Delay of repair of equipment for which leaks have been detected will be allowed if the repair is technically infeasible without a process unit shutdown. Repair of this equipment shall occur before the end of the next process unit shutdown.

2. Delay of repair of equipment for which leaks have been detected will be allowed for equipment that is isolated from the process and that does not remain in VOTAP service.

3. Delay of repair for valves, connectors, and agitators will be allowed if:

a. the owner or operator demonstrates that emissions of purged material resulting from immediate repair are greater than the fugitive emissions likely to result from delay of repair; and

b. when repair procedures are effected, the purged material is collected and destroyed, or recovered in a control device complying with Subsection N of this Section.

4. Delay of repair for pumps will be allowed if:

a. repair requires the use of a dual mechanical seal system that includes a barrier fluid system; and

b. repair is completed as soon as practicable, but not later than six months after the leak was detected.

5. Equipment placed on the repair list are exempt from further monitoring until they have been repaired.

N. Closed-Vent Systems and Control Devices

1. Owners or operators of closed-vent systems and control devices used to comply with provisions of this MACT determination shall comply with the provisions of this Section, except as provided in Paragraph C.4 of this Section.

2. Vapor recovery systems (e.g., condensers and absorbers) shall be designed and operated to recover the VOTAP vapors vented to them with an efficiency of 95 percent or greater.

3. Enclosed combustion devices shall be designed and operated to reduce the VOTAP emissions vented to them with an efficiency of 95 percent or greater or to provide a minimum residence time of 0.5 seconds at a minimum temperature of 760°C (1400°F).

4. Flares

a. Flares shall be designed for and operated with no visible emissions as determined by the method specified in Paragraph P.5 of this Section, except for periods not to exceed a total of five minutes during any two consecutive hours.

b. Flares shall be operated with a flame present at all times, as determined by the method specified in Paragraph P.5 of this Section.

c. Flares shall be used only with the net heating value of the gas being combusted being 11.2 MJ/scm (300 Btu/scf) or greater if the flare is steam-assisted or air-assisted, or with the net heating value of the gas combusted being 7.45 MJ/scm (200 Btu/scf) or greater if the flare is nonassisted. The net heating value of the gas being combusted shall be determined by the method specified in Paragraph P.5 of this Section.

d. Steam-assisted and nonassisted flares shall be designed for and operated with an exit velocity, as determined by the method specified in Subparagraph P.5.d of this Section, less than 18 m/sec (60 ft/sec).

e. Air-assisted flares shall be designed for and operated with an exit velocity less than the velocity (Vmax) as determined by the method specified in Subparagraph P.5.e of this Section.

f. Flares used to comply with this Paragraph shall be steam-assisted, air-assisted, or nonassisted.

5. Owners or operators of control devices that are used to comply with the provisions of this MACT determination shall monitor these control devices to ensure that they are operated and maintained in conformance with their design.

6. No Detectable Emissions

a. Closed-vent systems shall be designed for and operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background and by visual inspections, as determined by the method specified in Paragraph P.3 of this Section.

b. Closed-vent systems shall be monitored to determine compliance with this Subsection initially, annually, and at other times requested by the department.

c. Leaks, as indicated by an instrument reading greater than 500 ppm and visual inspection, shall be repaired as soon as practicable, but not later than 15 calendar days after the leak is detected.

d. A first attempt at repair shall be made no later than five calendar days after the leak is detected.

7. Delay of repair of a closed-vent system for which leaks have been detected is allowed if the repair is technically infeasible without a process unit shutdown or if the owner or operator demonstrates that emissions resulting

from immediate repair would be greater than the fugitive emissions likely to result from delay of repair. Repair of such equipment shall be complete by the end of the next process unit shutdown.

8. Any parts of the closed-vent system that are designated, as described in Subparagraphs Q.6.a and b of this Section, as unsafe to inspect are exempt from the inspection requirements of Paragraph N.6 of this Section if:

a. the owner or operator determines that the equipment is unsafe to inspect because inspecting personnel would be exposed to an imminent or potential danger as a consequence of complying with Paragraph N.6 of this Section; and

b. the owner or operator has a written plan that requires inspection of the equipment as frequently as practicable during safe-to-inspect times.

9. Closed-vent systems and control devices used to comply with provisions of this Section shall be operated at all times when emissions may be vented to them.

O. Connectors in Gas/Vapor Service and in Light Liquid Service

1. The owner or operator of an affected process unit shall monitor connectors in gas/vapor and light liquid service, at the intervals specified in Paragraphs O.2-6 of this Section.

a. The connectors shall be monitored to detect leaks by the method specified in Paragraph P.2 of this Section.

b. If an instrument reading greater than or equal to 1000 parts per million is measured, a leak is detected. All leaks shall be repaired in accordance with Paragraph O.9 of this Section except as provided in Subsection M of this Section.

2. The owner or operator shall monitor the connectors in accordance with the following requirements.

a. Initially, 200 (or 10 percent, whichever is less) of the process connectors shall be monitored. The connectors to be monitored shall be selected in accordance with a sampling plan approved by the Office of Environmental Services. A connector selection method, including but not limited to those listed below, shall be proposed for approval:

i. computer randomly or pseudorandomly generated;

ii. monitoring of every n^{th} connector in relation to an identified equipment with n varying for subsequent monitoring periods;

iii. monitoring of every n^{th} connector along an established pathway, with the starting point varying for subsequent monitoring periods; or

iv. other random or pseudorandom statistical method.

b. The connector selection method shall require that at least 66 percent of the connectors to be monitored during the monitoring period have not been previously monitored until all connectors within the process unit have been monitored.

3. After conducting the initial monitoring required by Paragraph O.2 of this Section, the owner or operator shall perform all subsequent monitoring of connectors at the frequencies specified in Paragraphs O.4-6 of this Section.

4. If good performance (i.e., the percent of leaking connectors is less than or equal to 2.0 for the process unit) is obtained, monitoring shall be performed annually. The monitoring must be performed within one year from the previous monitoring.

5. If the percent of leaking connectors is greater than 2.0 for the process, monitoring must be performed quarterly until good performance is obtained or until four quarterly monitorings have been performed. The level of performance shall be determined by using the equation in Paragraph O.12 of this Section and all the monitoring data obtained over the quarterly monitoring periods performed since good performance was not obtained.

6. If good performance has not been obtained after four quarters of monitoring, then the remaining unchecked connectors in the process unit must be monitored within six months of the last quarterly monitoring period.

a. If monitoring of the remaining connectors indicates good performance, then monitoring shall be performed in accordance with Paragraph O.4 of this Section.

b. If monitoring of the remaining connectors indicates that good performance has not been obtained, then monitoring shall be performed in accordance with Paragraph O.5 of this Section.

7. If an owner or operator eliminates a connector subject to monitoring under Paragraph O.2 of this Section either by welding it completely around the circumference of the interface or by physically removing the connector and welding the pipe together, the owner or operator shall check the integrity of the weld by monitoring it within three months after being welded according to the procedure in Paragraph P.2 of this Section or by testing using X-ray, acoustic monitoring, hydrotesting, or other applicable method. If an inadequate weld is found or the connector is not welded completely around the circumference, the connector is not considered a welded connector and is therefore not exempt from the provisions of this MACT determination.

8. Except as provided in Paragraph O.13 of this Section, each connector that has been opened or has otherwise had the seal broken shall be monitored for leaks within the first 90 days after being returned to VOTAP service, including those determined to be unrepairable prior to process unit shutdown. If the follow-up monitoring detects a leak, it shall be repaired according to the provisions of Paragraph O.9 of this Section, unless it is determined to be unrepairable, in which case it is counted as unrepairable for the purposes of this Subsection.

9. When a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in Paragraph O.8 of this Section. A first attempt at repair shall be made no later than 5 calendar days after the leak is detected. If a leak is detected, the connector shall be monitored for leaks within the first 90 days after its repair.

10. Any connector that is designated as an unsafe-to-monitor connector and identified in accordance with Paragraph Q.8 of this Section is exempt from the requirements of Paragraphs O.1 of this Section if:

a. the owner or operator determines that the connector is unsafe to monitor because personnel would be exposed to an immediate danger as a result of complying with Paragraphs O.2-6 of this Section; and

b. the owner or operator has a written plan that requires monitoring of the connector as frequently as practicable during safe to monitor periods.

11. Inaccessible or Glass or Glass-Lined Connectors

a. Any connector that is designated as inaccessible or is glass or glass-lined is exempt from the monitoring requirements of Paragraphs O.2-6 of this Section and from the recordkeeping and reporting requirements. An inaccessible connector is one that:

i. is buried;

ii. is insulated in a manner that prevents access to the connector by a monitor probe;

iii. is obstructed by equipment or piping that prevents access to the connector by a monitor probe;

iv. is unable to be reached from a wheeled scissor-lift or hydraulic-type scaffold, which would allow access to connectors up to 7.6 meters (25 feet) above the ground;

v. would require elevating the monitoring personnel more than 2 meters above a permanent support surface for access;

vi. would require the erection of scaffold for access; or

vii. is not able to be accessed at any time in a safe manner to perform monitoring. (Unsafe manners include, but are not limited to, the use of a wheeled scissor-lift on unstable or uneven terrain, the use of a motorized manlift basket in areas where an ignition potential exists, or where access would require near proximity to hazards such as electrical lines or would risk damage to equipment.)

b. If any inaccessible or glass or glass-lined connector is observed by visual, audible, olfactory, or other means to be leaking, the leak shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in Paragraph O.8 of this Section.

c. A first attempt at repair shall be made no later than five calendar days after the leak is detected.

12. For use in determining the monitoring frequency, as specified in Paragraphs O.2-6 of this Section, the percent leaking connectors shall be calculated as follows:

$$\% C_L = [C_L/C_T] \times 100$$

where:

$\% C_L$ = percent leaking connectors in process unit.

C_L = number of connectors measured at 1000 parts per million or greater, including unrepairable connectors, in the process unit.

C_T = total number of monitored connectors in the process unit.

13. As an alternative to the requirements of Paragraph O.2 of this Section, each screwed connector 1 inch in diameter or less installed in a process unit before January 1, 1995, may:

a. comply with the requirements of Subsection K of this Section; and

b. be monitored for leaks within the first 90 days after being returned to VOTAP service after having been opened or otherwise had the seal broken. (If the follow-up monitoring detects a leak, it shall be repaired according to the provisions of Paragraph O.9 of this Section.)

P. Test Methods and Procedures

1. Each owner or operator subject to the provisions of this MACT determination shall comply with the test methods and procedures provided in this Subsection.

2. Monitoring as required in Subsections C-O of this Section shall comply with the following requirements:

a. Monitoring shall comply with an appropriate reference method in 40 CFR 60, 61, or 63 or an alternative method approved by the department.

b. The detection instrument shall meet the performance criteria of an appropriate reference method.

c. The instrument shall be calibrated before use on each day of its use by the procedures specified in an appropriate reference method.

d. Calibration gases shall be:

i. zero air (less than 10 ppm of hydrocarbon in air); and

ii. a mixture of methane or n-hexane and air at a concentration of approximately, but less than, 1000 ppm methane or n-hexane.

e. The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in an appropriate reference method.

3. When equipment is tested for compliance with no emissions, as required in Paragraphs E.10, F.1, and N.6 of this Section, the test shall comply with the following requirements:

a. The requirements of Subparagraphs P.2.a-d of this Section shall apply.

b. The background level shall be determined, as set forth in an appropriate reference method.

c. The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible, as described in an appropriate reference method.

d. The arithmetic difference between the maximum concentration indicated by the instrument and the background level shall be compared to the concentration of the leak definition for determining compliance.

4. VOTAP Service

a. Each piece of equipment in a process unit that can conceivably contain equipment in VOTAP service is presumed to be in VOTAP service unless an owner or operator demonstrates that the piece of equipment is not in VOTAP service. For a piece of equipment to be considered not in VOTAP service, it must be determined that the content can be reasonably expected never to exceed 5 percent by weight the sum of Class I and Class II VOTAPs. For purposes of determining the percent VOTAP content of the process material that is contained in or contacts equipment, procedures that conform to the methods described in ASTM Method D-2267 shall be used.

b. An owner or operator may use engineering judgment rather than the procedures in Subparagraph P.4.a of this Section to document that the percent VOTAP content does not exceed the percentage requirements, provided that the engineering judgment demonstrates that the VOTAP content clearly does not exceed the percentage limit. When the owner or operator and the department do not agree on whether a piece of equipment is not in VOTAP service, the

procedures in Subparagraph P.4.a of this Section shall be used to resolve the disagreement.

c. If an owner or operator determines that a piece of equipment is in VOTAP service, the determination can be revised only after following the procedures in Subparagraph P.4.a of this Section.

d. Samples used in determining the percent VOTAP content shall be representative of the process fluid that is contained in or contacts the equipment.

5. Flares

a. Reference Method 22 of 40 CFR 60, Appendix A, shall be used to determine compliance of flares with the visible emission provisions of this MACT determination.

b. The presence of a flare pilot flame shall be monitored using a thermocouple or any other equivalent device to detect the presence of a flame.

c. The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

$$H_T = K\left(\sum_{i=1}^{n} C_i H_i\right)$$

where:

H_T = net heating value of the sample, MJ/scm, where the net enthalpy per mole of offgas is based on combustion at 25°C and 760 mm Hg, but the standard temperature for determining the volume corresponding to one mole is 20°C;

K = constant, 1.740 x 10^{-7} (1/ppm) (g mole/scm) (MJ/kcal) where standard temperature for (g mole/scm) is 20°C;

C_i = concentration of sample component *i* in ppm, as measured by Reference Method 18 of 40 CFR 60, Appendix A; and

H_i = net heat of combustion of sample component *i*, Kcal/g mole. The heats of combustion may be determined using ASTM D2382-76 if published values are not available or cannot be calculated.

d. The actual exit velocity of a flare shall be determined by dividing the volumetric flow rate (in units of standard temperature and pressure), as determined by Reference Method 2, 2A, 2C, or 2D of 40 CFR 60, Appendix A, as appropriate, by the unobstructed (free) cross-sectional area of the flare tip.

e. The maximum permitted velocity, V max, for air-assisted flares shall be determined by the following equation:

$$Vmax = 8.76 + 0.7084(H_T)$$

where:

Vmax = maximum permitted velocity, m/sec; and

H_T = the net heating value as determined in Subparagraph P.5.c of this Section.

Q. Recordkeeping Requirements

1. Records

a. Each owner or operator subject to the provisions of this MACT determination shall comply with the recordkeeping requirements of this Subsection.

b. An owner or operator of more than one process unit subject to the provisions of this MACT determination may comply with the recordkeeping requirements for these process units in one recordkeeping system if the system identifies each record by each process unit.

2. When each leak is detected as specified in Subsections D-K, N, and O of this Section, the following requirements apply:

a. A weatherproof and readily visible identification, marked with the equipment identification number, shall be attached to the leaking equipment.

b. The identification on equipment which identifies it as leaking equipment may be removed after it has been repaired.

3. When each leak is detected as specified in Subsections D-K, N, and O of this Section, the following information shall be recorded in a log and shall be kept for five years in a readily accessible location:

a. the instrument, operator, and equipment identification;

b. the date the leak was detected and the dates of each attempt to repair the leak;

c. repair methods applied in each attempt to repair the leak;

d. above 1000 (or above the applicable definition of leak) if the maximum instrument reading measured by the method specified in Paragraphs P.2 or P.3 of this Section after each repair attempt is equal to or greater than 1000 ppm (or above the applicable definition of leak);

e. repair delayed and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak;

f. the signature of the owner or operator, or designee, whose decision it was that repair could not be effected without a process shutdown;

g. the expected date of successful repair of the leak if a leak is not repaired within 15 calendar days;

h. dates of process unit shutdowns that occur while the equipment is unrepaired; and

i. the date of successful repair of the leak.

4. The following information pertaining to the design requirements for closed-vent systems and control devices described in Subsection N of this Section shall be recorded and kept in a readily accessible location:

a. detailed schematics, design specifications, and piping and instrumentation diagrams;

b. the dates and descriptions of any changes in the design specifications;

c. a description of the parameter or parameters monitored, as required in Paragraph N.5 of this Section, to ensure that control devices are operated and maintained in conformance with their design and an explanation of why that parameter or parameters was selected for the monitoring;

d. periods when the closed-vent systems and control devices required in Subsections D, E, F, G, and L of this Section are not operated as designed, including periods when a flare pilot light does not have a flame; and

e. dates of start-ups and shutdowns of the closed-vent systems and control devices required in Subsections D, E, F, G, and L of this Section.

5. The following information pertaining to all equipment subject to the requirements in Subsections D-O of this Section shall be recorded in a log that is kept in a readily accessible location:

a. a list of equipment identification, except welded fittings, subject to the requirements of this MACT determination;

b. a list of equipment identification for pressure relief devices required to comply with Paragraph F.1 of this Section;

c. for the monitoring required in Paragraph F.2 of this Section:

i. the dates of each test;

ii. the background level measured during each test; and

iii. the maximum instrument reading measured at the equipment during each test; and

d. a list of equipment identification for equipment in vacuum service.

6. The following information pertaining to all valves subject to the requirements of Paragraphs I.5 and 6 of this Section shall be recorded in a log that is kept in a readily accessible location:

a. a list identifying the valves that are designated as unsafe to monitor, an explanation for each valve stating why the valve is unsafe to monitor, and the plan for monitoring each valve; and

b. a list identifying the valves that are designated as difficult to monitor, an explanation for each valve stating why the valve is difficult to monitor, and the planned schedule for monitoring each valve.

7. The following information shall be recorded for valves complying with Subsections I and J of this Section:

a. a schedule of monitoring; and

b. the percentage of valves found leaking during each monitoring period.

8. A list identifying the connectors that are designated as unsafe-to-monitor, an explanation for each connector stating why the connector is unsafe-to-monitor, and the plan for monitoring each connector shall be recorded in a log that is kept in a readily accessible location.

9. The following information shall be recorded for connectors complying with Subsection O of this Section:

a. a schedule of monitoring; and

b. the percentage of connectors found leaking during each monitoring period.

10. The following information shall be recorded in a log that is kept in a readily accessible location:

a. design criteria required in Clause D.4.e.ii and Subparagraph E.6.b of this Section and an explanation of the design criteria; and

b. any changes to this criteria and the reasons for the changes.

11. Information and data used to demonstrate that a piece of equipment is not in VOTAP service shall be recorded in a log that is kept in a readily accessible location.

12. The operator shall retain the required records for 5 years and make the records available to the department upon request.

R. Reporting Requirements

1. An owner or operator of any piece of equipment to which this MACT determination applies shall submit a statement in writing by 90 days after the approval of the Compliance Plan/Certificate of Compliance, if applicable, or within 90 days of becoming subject to the provisions of this Section, notifying the department of the following information for each source:

a. equipment identification and process unit identification;

b. type of equipment (e.g., a pump or pipeline valve);

c. percent by weight VOTAP in the fluid at the equipment;

d. process fluid state at the equipment (i.e., gas/vapor or liquid); and

e. method of compliance with the MACT determination (e.g., quarterly leak detection and repair, or equipped with dual mechanical seals).

2. A report shall be submitted to the Office of Environmental Compliance semiannually starting six months after the initial report required in Paragraph R.1 of this Section that includes the following information for each process unit:

a. identification of process;

b. for each monitoring period during the semiannual reporting period:

i. number of valves monitored in accordance with Subsection I of this Section and determined to be leaking;

ii. number of leaking valves monitored in accordance with Subsection I of this Section and not repaired;

iii. number of valves monitored in accordance with Subsection I of this Section;

iv. percent valves monitored in accordance with Subsection I of this Section and determined to be leaking;

v. number of valves monitored in accordance with Subsection J of this Section and determined to be leaking;

vi. number of leaking valves monitored in accordance with Subsection J of this Section and not repaired;

vii. number of valves monitored in accordance with Subsection J of this Section;

viii. percent valves monitored in accordance with Subsection J of this Section and determined to be leaking;

ix. number of valves monitored in accordance with Subsection K of this Section and determined to be leaking;

x. number of leaking valves monitored in accordance with Subsection K of this Section and not repaired;

xi. number of valves monitored in accordance with Subsection K of this Section;

xii. number of pumps for which leaks were detected which were monitored in accordance with Subsection D of this Section;

xiii. number of pumps for which leaks were not repaired as required in Subsection D of this Section;

xiv. number of compressors for which leaks were detected which were monitored in accordance with Subsection E of this Section;

xv. number of compressors for which leaks were not repaired as required in Subsection E of this Section;

xvi. number of connectors monitored in accordance with Subsection K of this Section and determined to be leaking;

xvii. number of leaking connectors monitored in accordance with Subsection K of this Section and not repaired;

xviii. number of connectors monitored in accordance with Subsection K of this Section;

xix. percent connectors monitored in accordance with Subsection K of this Section and determined to be leaking;

xx. number of connectors monitored in accordance with Subsection O of this Section and determined to be leaking;

xxi. number of leaking connectors monitored in accordance with Subsection O of this Section and not repaired;

xxii. number of connectors monitored in accordance with Subsection O of this Section;

xxiii. percent connectors monitored in accordance with Subsection O of this Section and determined to be leaking; and

xxiv. the facts that explain any delay of repairs and, where appropriate, why a process unit shutdown was technically infeasible;

c. dates of process unit shutdowns, which occurred within the semiannual reporting period;

d. revisions to items reported according to Paragraph R.1 of this Section if changes have occurred since the initial report or subsequent revisions to the initial report; and

e. the results of all of the tests to determine compliance with Paragraphs E.10, F.1, and N.6 of this Section conducted within the semiannual reporting period.

3. In the first report submitted as required in Paragraph R.1 of this Section, the report shall include a reporting schedule stating the months that semiannual reports shall be submitted. Subsequent reports shall be submitted according to that schedule unless a revised schedule has been submitted in a previous semiannual report.

4. An owner or operator electing to comply with the provisions of Subsection J of this Section shall notify the Office of Environmental Services of the alternate provision selected 30 days before implementing any of the provisions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 and 2060 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:

§5132. Louisiana MACT Determination for Non-HON Sources with Consent Decree Enhancements

A. Applicability. The leak detection and repair (LDAR) provisions of this Section apply only when referenced by the terms and conditions of an air permit issued in accordance with LAC 33:III.Chapter 5.

B. The owner or operator of a subject facility or process unit shall comply with the provisions of the Louisiana MACT Determination for Non-HON Sources as set forth in LAC 33:III.5130, except as modified below.

1. For valves in gas/vapor service, if an instrument reading of 200 ppm or greater is measured, a leak is detected.

2. For valves in light liquid service, if an instrument reading of 500 ppm or greater is measured, a leak is detected.

3. Each pump in light liquid service shall be monitored monthly to detect leaks by the method specified in LAC 33:III.5130.P.2, except as provided in LAC 33:III.5130.C.4, D.4, and D.5.

4. The owner or operator may not comply with the alternate monitoring provisions for valves in VOTAP service (i.e., skip periods) under LAC 33:III.5130.J.

5. The owner or operator shall monitor leaking components by the method specified in LAC 33:III.5130.P.2 or P.3, as applicable, following the first attempt at repair as described in LAC 33:III.5130.D.3.b, E.8.b, I.3.b, K.3.b, N.6.d, O.9, and O.11.c no later than five calendar days after the leak is detected; and

6. Delay of Repair

a. For valves, other than control valves and pressure relief devices, leaking at 10,000 ppm or greater which cannot be repaired using the techniques described in LAC 33:III.5130.I.4.a-d, the owner or operator shall attempt repair using the drill and tap method, or an equivalent repair method, for each leaking valve unless the valve is isolated from the process and does not remain in VOTAP service, prior to placing the valve on the delay of repair list, unless the owner or operator can demonstrate that there is a safety, mechanical, or major environmental concern posed by repairing the leak in this manner. If not repaired within 15 days by other means, the owner or operator shall perform the first drill and tap, or equivalent repair method, within 15 days after the leak is detected and a second attempt, if necessary, within 30 days after the leak is detected. After two unsuccessful attempts to repair a leaking valve through the drill and tap method, or equivalent repair method, the owner or operator may place the leaking valve on its delay of repair list. The requirement to make two attempts to repair a leaking valve by the drill and tap method may be satisfied by making two sealant injection attempts rather than by making multiple taps into the valve body.

b. Notwithstanding the exemption provided by LAC 33:III.5130.M.5, the owner or operator must continue to monitor equipment placed on the delay of repair list in accordance with the applicable provisions of LAC 33:III.5130.

c. Within 30 days of identifying that a piece of equipment is leaking at a rate greater than the applicable leak definition, the supervisor of the subject facility or process unit shall certify in writing that such equipment qualifies for delay of repair under LAC 33:III.5130.M. These records shall be maintained with the records required by LAC 33:III.5130.Q.3.e-h.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 and 2060 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45

Family Impact Statement

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Impact Statement

This Rule has no known impact on poverty as described in R.S. 49:973.

Small Business Analysis

This Rule has no known impact on small business as described in R.S. 49:965.2 - 965.8.

Provider Impact Statement

This Rule has no known impact on providers as described in HCR 170 of 2014.

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ373. Such comments must be received no later than November 6, 2019, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Affairs and Criminal Investigations Division, P.O. Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to DEQ.Reg.Dev.Comments@la.gov. Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ373. These proposed regulations are available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

Public Hearing

A public hearing will be held on October 30, 2019, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson
General Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: MACT Determinations for Non-HON Sources (Equipment Leaks)

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no estimated implementation costs or savings to the Department of Environmental Quality (DEQ) or local governmental units as a result of the proposed rule changes which codify the leak detection and repair (LDAR) programs in the state's air regulations. This will impact facilities subject to the Maximum Achievable Control Technology (MACT) determinations for Non-Hazardous Organic NESHAP (Non-HON) sources and for non-HON sources with Consent Decree Enhancements.

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 rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Owners or operators of process units at chemical manufacturing facilities that are subject to the Louisiana MACT Determination for Non-HON Sources or the Louisiana MACT Determination for Non-HON Sources with Consent Decree Enhancements will be directly affected by the proposed action. There will be no costs, including workload adjustments or additional paperwork, or economic benefits to affected entities as a result of the proposed codification of current practice.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition or employment in the public or private sector as a result of the proposed rule.

Herman Robinson	Evan Brasseaux
General Counsel	Staff Director
1909#037	Legislative Fiscal Office

NOTICE OF INTENT

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

Medical Event Reporting
(LAC 33:XV.613)(RP066)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the radiation protection regulations, LAC 33:XV.613.A.2 (RP066).

This Rule makes corrections to the medical event reporting regulations. Dose limits are being corrected in the regulations to lessen the burden on the regulated community and the department. The changes in the state regulations were prompted by mistakes made by the department when promulgating the original Rule, RP064. Immediate action is being taken to rectify these errors. The basis and rationale for this Rule are to enable the state to provide clarification to the medical community on when they need to report medical events to the department. 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.

Title 33
ENVIRONMENTAL QUALITY
Part XV. Radiation Protection
Chapter 6. X-Rays in the Healing Arts
§613. Notifications, Reports, and Records of Medical Events

A. - A.2. …

a. five times the facility's established protocol, and > 0.5 Gy (50 rad) to any organ, or

b. five times the facility's established protocol, and > 0.02 Sv (2 rem) effective dose;

A.3. - E. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 et seq. and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:1064 (May 2005), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:751 (June 2019), LR 45:

Family Impact Statement

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Impact Statement

This Rule has no known impact on poverty as described in R.S. 49:973.

Small Business Analysis

This Rule has no known impact on small business as described in R.S. 49:965.2 - 965.8.

Provider Impact Statement

This Rule has no known impact on providers as described in HCR 170 of 2014.

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by RP066. Such comments must be received no later than November 6, 2019, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Affairs and Criminal Investigations Division, P.O. Box 4302, Baton Rouge, LA 70821-4302, by fax (225) 219-4068, or email to DEQ.Reg.Dev.Comments@la.gov. Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of RP066. These proposed regulations are available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

Public Hearing

A public hearing will be held on October 30, 2019, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson
General Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Medical Event Reporting

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There may be workload adjustments for the Department of Environmental Quality (DEQ). The proposed rule clarifies when certain medical events associated with x-rays in the healing arts must be reported to the department, and will limit reporting requirements to only those events which meet the specified radiation dose limits, thereby reducing the number of events that must be reported to the department. However, since these investigations represent a small portion of investigator activities, this will not result in the reduction of positions, rather will allow investigators to devote more time to other required activities.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no anticipated increase or decrease in revenue collections of state or local governmental units from the proposed action.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

While there will be a reduction in the level of reports submitted by medical facilities and practitioners, the rules further specify such events must be investigated, evaluated, documented and addressed internally. Since this requirement is already specified elsewhere in rule, it is not anticipated to have a material impact on affected entities.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed action will have no impact on competition or employment.

Herman Robinson
General Counsel
1909#039

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health
Board of Dentistry

Anesthesia/Analgesia Administration
(LAC 46:XXXIII.1503)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the Dental Practice Act, R.S. 37:751, et seq., and particularly R.S. 37:760 (8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry intends to amend LAC 46:XXXIII.1503.

The Louisiana State Board of Dentistry is amending LAC 46:XXXIII.1503 to bring Louisiana in line with the guidelines of the American Dental Association for nitrous oxide education, as our neighboring states have done and revises the requirement to 14 hours of didactic instruction and 6 clinically oriented experiences.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XXXIII. Dental Health Profession
Chapter 15. Anesthesia/Analgesia Administration
§1503. Personal Permits for Sedation/Anesthesia

A. - B. …

1. In order to receive personal permit to administer nitrous oxide sedation, the dentist must show proof to the board of completion of a course on nitrous oxide sedation that consists of a minimum of 14 hours of didactic instruction, plus six clinically-oriented experiences during

which competency in nitrous oxide sedation techniques is demonstrated.

B.2. - F. …

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 42:53 (January 2016), amended by the Department of Health, Board of Dentistry, LR 43:955 (May 2017), LR 45:

Family Impact Statement

There will be no family impact in regard to issues set forth in R.S. 49:972.

Poverty Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973. 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

In accordance with R.S. 49:965.6, the Board of Dentistry has conducted a Regulatory Flexibility Analysis and found that the proposed amending of this Rule will have negligible impact on small businesses.

Provider Impact Statement

The proposed rulemaking should not have any know or foreseeable impact on providers as defined by HCR 170 of 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 of 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 Comment

Interested persons may submit written comments on these proposed Rule changes to Arthur Hickham, Jr., Executive Director, Louisiana State Board of Dentistry, P.O. Box 5256, Baton Rouge, Louisiana, 70821. Written comments must be submitted to and received by the Board within 20 days of the date of the publication of this notice. A request pursuant to R.S. 49:953 (A)(2) for oral presentation, argument, or public hearing must be made in writing and received by the Board within 20 days of the date of the publication of this notice.

Public Hearing

A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument, or public hearing must be in writing and received by the board within 20 days of the date of the publication of this notice.

Arthur Hickham, Jr.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Anesthesia/Analgesia Administration

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change will result in a one-time SGR expenditure of $500 in FY 19 for the LA State Board of Dentistry (LSBD) to publish the notice of intent and proposed rule change in the Louisiana Register. The proposed rule change will not affect expenditures of local governmental units.

The proposed rule changes revise requirements LSBD licensees must meet prior to receiving a permit to administer nitrous oxide sedation.

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 OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule change will directly affect dentists, as they will only have to complete 14 hours of didactic instruction for a nitrous oxide sedation course rather than the 16 required hours needed in order for a dentist to receive a permit. In addition, the proposed rule change will require a dentist to demonstrate competency in nitrous oxide sedation techniques in 6 clinically-oriented experiences in order to receive a permit. For reference, demonstrating clinical competency in nitrous oxide sedation techniques is currently required of licensees prior to receiving a permit, but there is no minimum amount of clinical experiences required prior to permitting.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will not affect competition or employment.

Arthur Hickham, Jr.	Evan Brasseaux
Executive Director	Staff Director
1909#050	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health
Board of Dentistry

Continuing Education Requirements
(LAC 46:XXXIII.1607)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the Dental Practice Act, R.S. 37:751, et seq., and particularly R.S. 37:760 (8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry intends to amend LAC 46:XXXIII.1607.

The Louisiana State Board of Dentistry is amending LAC 46:XXXIII.1607 to not require continuing education for all licensee's first renewal cycle, regardless of when the license was first obtained, but will require the licensees to complete the three-hour opioid management course and to maintain their CPR training.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XXXIII. Dental Health Profession
Chapter 16. Continuing Education Requirements
§1607. Exemptions

A. Continuing education requirements, other than the three-hour opioid management course listed in §1611.A.3 and the cardiopulmonary resuscitation course listed in §1611.F, shall not apply to:

1. - 2. …

3. dentists renewing their license for the first time;

4. dental hygienists renewing their license for the first time.

B. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and (13).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:661 (June 1994), amended LR 24:1117 (June 1998), LR 26:1613 (August 2000), repromulgated LR 27:1894 (November 2001), amended LR 41:1284 (July 2015), amended by the Department of Health, Board of Dentistry, LR 44:46 (January 2018), LR 45:

Family Impact Statement

There will be no family impact in regard to issues set forth in R.S. 49:972.

Poverty Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973. 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

In accordance with R.S. 49:965.6, the Board of Dentistry has conducted a Regulatory Flexibility Analysis and found that the proposed amending of this Rule will have negligible impact on small businesses.

Provider Impact Statement

The proposed rulemaking should not have any know or foreseeable impact on providers as defined by HCR 170 of 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 of 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 Comment

Interested persons may submit written comments on these proposed Rule changes to Arthur Hickham, Jr., Executive Director, Louisiana State Board of Dentistry, P.O. Box 5256, Baton Rouge, Louisiana, 70821. Written comments must be submitted to and received by the Board within 20 days of the date of the publication of this notice. A request pursuant to R.S. 49:953 (A)(2) for oral presentation, argument, or public hearing must be made in writing and received by the Board within 20 days of the date of the publication of this notice.

Public Hearing

A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument, or public hearing must be in writing and received by the board within 20 days of the date of the publication of this notice.

Arthur Hickham, Jr.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Continuing Education Requirements

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change will result in a one-time SGR expenditure of $500 in FY 19 for the LA State Board of Dentistry (LSBD) to publish the notice of intent and proposed rule change in the Louisiana Register. The proposed rule change will not affect expenditures of local governmental units.

The proposed rule change provides an exception to continuing education requirements for practitioners licensed by the LSBD renewing licensure for the first time.

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 OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule change provides an exception for dentists and dental hygienists who are renewing licensure for the first time. With the proposed rule change, such practitioners will not be required to obtain continuing education for their first renewal cycle, regardless of when the license was first obtained, but they will be required to complete the three-hour opioid management course and to maintain their CPR training.

For reference, licensees currently renew every two years, with licensees whose surnames start with the letters A-L renewing in odd-numbered years and M-Z renewing in even-numbered years. As an example, the exception would apply when a licensee whose name begins with a letter in the A-L range first receives their license in an odd-numbered year must renew their license prior to the end of the year, even if they have held a license for only a few months. Licensees in this situation would be exempt from continuing education requirements, save the three-hour opioid management course and CPR training, for their first renewal.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will not affect competition or employment.

Arthur Hickham, Jr.
Executive Director
1909#049

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health
Board of Dentistry

Continuing Education Requirements
(LAC 46:XXXIII.1615)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry intends to amend LAC 46:XXXIII.1615.

The Louisiana State Board of Dentistry is amending LAC 46:XXXIII.1615 to add the American Academy of Dental Hygiene (AADH) to the list of organizations that the Board will accept for licensee continuing education credit.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XXXIII. Dental Health Profession
Chapter 16. Continuing Education Requirements
§1615. Approved Courses

A.1. - A.3. …

4. American Academy of Dental Hygiene courses when set forth on official documentation;

5. National Dental Association and its affiliate societies;

6. colleges and universities with dental programs which are accredited by the Commission on Dental Accreditation of the American Dental Association when continuing education courses are held under their auspices;

7. armed services and veterans administration dental departments;

8. national, state and district associations and/or societies of all specialties in dentistry recognized by the board, and study clubs approved by said specialty societies;

9. American Heart Association as a provider of cardiopulmonary resuscitation courses (Course "C" Basic Life Support for the Health Care Provider);

10. the American Red Cross as a provider of the cardiopulmonary resuscitation course Red Cross professional rescue course;

11. the Accreditation Council for Continuing Medical Education (ACCME).

B. - C. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8), and (13).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:662 (June 1994), amended LR 22:24 (January 1996), LR 24:1118 (June 1998), LR 35:1238 (July 2009), LR 38:817 (March 2012), LR 45:

Family Impact Statement

There will be no family impact in regard to issues set forth in R.S. 49:972.

Poverty Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973. 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

In accordance with R.S. 49:965.6, the Board of Dentistry has conducted a Regulatory Flexibility Analysis and found that the proposed amending of this Rule will have negligible impact on small businesses.

Provider Impact Statement

The proposed rulemaking should not have any know or foreseeable impact on providers as defined by HCR 170 of 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 of 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 Comment

Interested persons may submit written comments on these proposed Rule changes to Arthur Hickham, Jr., Executive Director, Louisiana State Board of Dentistry, P.O. Box 5256, Baton Rouge, Louisiana, 70821. Written comments must be submitted to and received by the board within 20 days of the date of the publication of this notice. A request pursuant to R.S. 49:953 (A)(2) for oral presentation, argument, or public hearing must be made in writing and received by the Board within 20 days of the date of the publication of this notice.

Public Hearing

A request pursuant to R.S. 49:953 (A)(2) for oral presentation, argument, or public hearing must be in writing and received by the board within 20 days of the date of the publication of this notice.

Arthur Hickham, Jr.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Continuing Education Requirements

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change will result in a one-time SGR expenditure of $500 in FY 19 for the LA State Board of Dentistry (LSBD) to publish the notice of intent and proposed rule revision in the Louisiana Register. The proposed rule change will not affect expenditures of local governmental units.

The proposed rule change adds continuing education courses approved or sponsored by the American Academy of Dental Hygiene (AADH) to the list of approved courses for providers licensed by the LSBD.

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 OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule change will benefit persons licensed by the LA State Board of Dentistry, as they will now be allowed to receive continuing education credits for completing courses approved or sponsored by the American Academy of Dental Hygiene (AADH).

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will not affect competition or employment.

Arthur Hickham, Jr.	Evan Brasseaux
Executive Director	Staff Director
1909#051	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health
Board of Speech-Language Pathology and Audiology

Speech-Pathology and Audiology
(LAC 46:LXXV.103, 107, 109,121, 125, 127, and 501)

Notice is hereby given in accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., and through the authority granted in R.S. 37:3085, that the Board of Speech-Language Pathology and Audiology proposes to amend its current regulations to make technical changes and clarifications, repeal a definition, remove the clinical practicum hour requirement for audiologists, add a waiver for audiology applicants, revise the duties of speech-language pathology assistant license and provisional speech-language pathology assistant licenses, as well as, revise the procedural rules for investigation of complaints.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LXXV. Speech Pathology and Audiology
Chapter 1. General Rules
§103. Definitions

A. …

* * *

On-Site In-View Observation—repealed.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 14:705 (October 1988), amended LR 22:346 (May 1996), LR 27:197 (February 2001), LR 28:1781 (August 2002), LR 30:2307 (October 2004), LR 33:2192 (October 2007), LR 37:2392 (August 2011), amended by the Department of Health, Board of Speech-Language Pathology and Audiology, LR 42:1665 (October 2016), LR 45:249 (February 2019), LR 45:

§107. Qualifications for Licensure

A. - H.2. …

a. The program or clinical director from an accredited educational institution must verify that the individual has met the breadth and depth of clinical experiences;

H.2.b. - L.1.c. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 14:706 (October 1988), amended LR 22:346 (May 1996), LR 27:197 (February 2001), repromulgated LR 27:1690 (October 2001), amended LR 28:1781 (August 2002), LR 30:2308 (October 2004), LR 33:2192 (October 2007), LR 37:2393 (August 2011), LR 39:1042 (April 2013), amended by the Department of Health, Board of Speech-Language Pathology and Audiology, LR 42:1666 (October 2016), LR 45:250 (February 2019), LR 45:

§109. Licensure Application Procedures

A. - D. …

E. The initial license fee shall be submitted to this board with the application form and shall be paid by check, money order, or credit card.

F. - G. …

H. Documentation of 36 weeks of postgraduate professional employment/experience, a passing score on the Educational Testing Service's specialty area examination, and verification of supervised clinical practicum hours may be waived for individuals who submit verification that they hold the Certificate of Clinical Competence from the American Speech-Language-Hearing Association or proof of certification from the American Board of Audiology (ABA) with proof of passing the national exam. Documentation must be submitted with the application form.

I. - S.4. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 14:707 (October 1988), amended LR 22:352 (May 1996), LR 27:199 (February 2001), LR 28:1974 (September 2002), LR 30:2311 (October 2004), LR 33:2193 (October 2007), LR 37:2393 (August 2011), repromulgated LR 37:2623 (September 2011), LR 39:1043 (April 2013), amended by the Department of Health, Board of Speech-Language Pathology and Audiology, LR 42:1666 (October 2016), LR 45:251 (February 2019), LR 45:

§121. Duties: Speech-Language Pathology Assistant License and Provisional Speech-Language Pathology Assistant License

A.1. …

a. conduct speech-language screenings. All screening reports shall be cosigned and interpreted by the supervising speech-language pathologist;

b. - g. …

h. with permission and guidance of the supervising speech-language pathologist, speech-language pathology assistants may participate in parent conferences, individual education program meetings (IEP), case conferences, interdisciplinary team conferences, and research projects. Provisional speech-language pathology assistants may participate in these activities only with the supervising speech-language pathologist present.

2. - 2.a.xii. …

xiii. Provisional speech-language pathology assistants may not participate in parent conferences, Individualized Educational Program (IEP), Individualized Family Service Plan (IFSP) meetings, case conferences, interdisciplinary team conferences, and research projects only when the supervising speech-language pathologist is present.

3. - 4. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 30:2312 (October 2004), amended LR 33:2194 (October 2007), LR 37:2394 (August 2011), amended by the Department of Health, Board of Speech-Language Pathology and Audiology, LR 45:255 (February 2019), LR 45:

§125. Renewals

A. - K. …

1. Delinquent requests for renewals will be accepted by the board through July 31, provided the delinquent renewal fee is paid in accordance with §123 and the continuing education requirements have been met.

K.2. - L.6. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 14:707 (October 1988), amended LR 22:351 (May 1996), LR 27:198 (February 2001), LR 28:1972 (September 2002), LR 30:2314 (October 2004), LR 33:2195 (October 2007), LR 37:2395 (August 2011), LR 39:1043 (April 2013), amended by the Department of Health, Board of Speech-Language Pathology and Audiology, LR 42:1667 (October 2016), LR 45:256 (February 2019), LR 45:

§127. Continuing Education Requirements

A. - L. …

1. Pre-approval is required for continuing education events that do not meet the requirements as listed under 127.K.1-11, and pre-approval of continuing education events is required in those situations where it is unclear whether the topic is relevant to the profession or will further a professional's expertise in a particular area.

L.2. - M.4. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 22:351 (May 1996), amended LR 27:199 (February 2001), LR 28:1973 (September 2002), LR 30:2314 (October 2004), LR 33:2196 (October 2007), LR 37:2395 (August 2011), LR 39:1043 (April 2013), amended by the Department of Health, Board of Speech-Language Pathology and Audiology, LR 42:1667 (October 2016), LR 45:257 (February 2019), LR 45:

Chapter 5. Procedural Rules

§501. Investigation of Complaints

A. The board is authorized to receive from any person, a complaint or complaints against licensees, registrants, applicants, or other persons engaging in practices which violate or are alleged to violate the provisions of R.S. 37:2650 et seq.

B. …

C. Once a written complaint is received, the board shall initiate a review of the allegations contained therein. The board may dispose of the complaint informally through correspondence or conference with the licensee, registrant, and/or the complainant, which may result in a private letter of concern or a consent agreement and order. If the licensee or registrant stipulates to the complaint and waives his/her right to a formal hearing, the board may impose appropriate sanctions without delay. If the board finds that a complaint cannot be resolved informally, the written complaint shall be forwarded to the board's designated investigator for investigation. The board shall at that time notify the licensee or registrant, by certified mail, return receipt requested, of the investigation.

D. The board's designated investigator shall have authority to investigate the nature of the complaint through conference, correspondence, and other investigative procedures, directed to those parties or witnesses involved. The board's designated investigator shall send the involved licensee or registrant notice by certified mail, return receipt requested, of the investigation containing a short summary of the complaint. All subsequent letters to the involved licensee or registrant, all letters to the complainant, or any other witness, shall be sent with a designation "personal and confidential" clearly marked on the outside of the envelope.

E. The designated investigator shall conclude the investigation as quickly as possible, without compromising thoroughness. Unless good cause is shown by the designated investigator satisfactory to the board, which may extend the time for the investigation, the investigation and recommendations shall be delivered to the board within 60 days of the date that the designated investigator first received the assignment from the board.

F. Following an investigation, the designated investigator shall report the board and make a recommendation for either dismissal of the complaint or proceeding to an informal hearing, consent agreement and order, or formal hearing.

G. The designated investigator may determine that the licensee or registrant's explanation satisfactorily answers the complaint and may recommend to the board that the matter be dismissed.

H. If the designated investigator's recommendation for an informal hearing is accepted by the board, the designated investigator shall notify the licensee or registrant of the time, date, and place of the informal hearing and of the issues to be discussed. The licensee or registrant shall appear on a voluntary basis. The licensee or registrant shall be advised that the hearing will be informal, no attorneys will be present, and no transcript of the hearing will be made. Any witnesses who testify will not be placed under oath, and no subpoenas will be issued. The licensee or registrant shall be informed that any statements made at the informal hearing will not be used or introduced at a formal hearing, unless all parties consent. If the licensee or registrant notifies the designated investigator that s/he does not wish an informal hearing, or if the licensee or registrant fails or refuses to attend an informal hearing, the informal hearing shall not be held. In that event, the board shall initiate a formal disciplinary hearing.

I. A complaint may be resolved by:

1. a private letter of concern to the licensee, registrant, or other appropriate parties.

2. a consent agreement and order approved by the board and entered into by the licensee or registrant.

J. The designated investigator shall recommend to the board the initiation of a formal disciplinary hearing if the investigation discloses any of the following: the complaint is sufficiently serious to require a formal adjudication; the licensee or registrant fails to respond to the correspondence by the designated investigator concerning the complaint; the licensee or registrant's response to the designated

investigator discloses that further action is necessary; an informal hearing is held but does not resolve all of the issues; or the licensee or registrant refuses to comply with the recommended remedial action.

K. The designated investigator shall submit any recommended action to the board in brief, concise language, without any reference to the particulars of the investigation, to any findings of fact or any conclusions of law arrived at during the investigative process.

L. The board shall have the authority to delegate to the designated investigator any alleged violations of the Speech-Language Pathology and Audiology Act, R.S. 37:2650 et seq., and any alleged violations of any and all rules and regulations adopted by the board pursuant thereto, prior to board action on those alleged violations. If requested by the board, the designated investigator shall submit to the board the complete investigatory file. Final authority for appropriate action rests solely with the board including formal notification to the complainant, the licensee, or registrant.

M. At no time shall the designated investigator investigate any case as authorized by the board where the investigator has any personal or economic interest in the outcome of the investigation, or is personally related to or maintains a close friendship with the complainant, the licensee, the registrant, or any of the witnesses involved. In such event, the designated investigator shall immediately notify the board, who shall appoint a substitute investigator for disposition of that particular case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 17:373 (April 1991), amended LR 22:356 (May 1996), LR 30:2320 (October 2004), LR 33:2200 (October 2007), LR 37:2398 (August 2011), amended by the Department of Health, Board of Speech-Language Pathology and Audiology, LR 42:1668 (October 2016), LR 45:264 (February 2019), LR 45:

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 accordance with R.S. 49:965.6, the Louisiana Board of Examiners for Speech-Language Pathology and Audiology has conducted a Regulatory Flexibility Analysis and found that the proposed amending of this Rule will have negligible 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 services, 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 Jolie Jones, Executive Director, Louisiana Board of Examiners for Speech-Language Pathology and Audiology, 37283 Swamp Road, Suite 3B, Prairieville, LA 70769. Mrs. Jones is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the day prior to the hearing.

Public Hearing

A public hearing on this proposed Rule is scheduled for Monday, October 28, 2019 from 12 -1 p.m. in the Webster Room at the University Center at Louisiana State University Shreveport, One University Place, Shreveport, LA 71115. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Jolie Jones
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Speech-Pathology and Audiology

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule changes will result in an estimated one-time SGR expenditure of $1,600 in FY 19 for the Louisiana Board of Examiners for Speech-Language Pathology and Audiology (LBESPA) to publish the proposed rule changes in the Louisiana Register and upload the rule revisions to the LBESPA website.

The proposed rule changes delete the definition for "on-site in-view observation," remove the clinical practicum requirement of 1,820 hours for audiologists, add the ability for audiology licensure applicants who are certified by the American Board of Audiology (ABA) to use their certification along with proof of passage of the national certification exam for licensure in lieu of providing documentation of their clinical practicum hours revise the duties of speech-language pathology assistant and provisional speech-language pathology assistant licenses, as well as revise the procedural rules for the investigation of complaints. These changes fall within the current regulatory scope of the LBESPA and are not anticipated to carry any additional costs for the board.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule changes will not affect revenue collections for state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule changes clarify and specify standards for application, and standard of practice for all licenses administered by the LBESP A.

The proposed rule changes may benefit audiologists certified by the American Board of Audiology (ABA) by expediting the licensure process. ABA-certified audiologists

may now be licensed in Louisiana by presenting their certification with proof of passing the national exam, in lieu of providing documentation of their clinical practicum hours and passage of the national certification exam, which is the current practice.

The proposed rule changes remove a clinical practicum requirement of 1,820 hours for audiologists. The proposed rule changes clarify duties of speech-language pathology assistants and provisional speech-language pathology assistants, stating that they may only participate in parent conferences, individualized education program (IEP) meetings, case conferences, interdisciplinary team conferences, and research projects only when a supervising speech-language pathologist is present.

The proposed rule changes remove the ability of the LBESPA to initiate a complaint against a practitioner of its own volition, which may result in fewer complaints against practitioners licensed by the board.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change is not anticipated to affect competition and employment.

Jolie Jones	Evan Brasseaux
Executive Director	Staff Director
1909#040	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health
Bureau of Health Services Financing

Disproportionate Share Hospital Payments
Major Medical Centers
(LAC 50:V.2503 and 2719)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:V.2503 and adopt §2719 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 to establish a qualification criteria and disproportionate share hospital (DSH) payment methodology for major medical centers located in the southeastern area of Louisiana.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part V. Hospital Services
Subpart 3. Disproportionate Share Hospital Payments
Chapter 25. Disproportionate Share Hospital Payment Methodologies
§2503. Disproportionate Share Hospital Qualifications

A. In order to qualify as a disproportionate share hospital, a hospital must:

1. - 9. ...

10. effective June 29, 2016, be a major medical center located in the central and northern areas of the state as defined in §2715.A;

11. be a major medical center with a specialized care unit located in the southwestern area of the state as defined in §2717.A;

12. be a major medical center located in the southeastern area of the state as defined in §2719.A; and

13. effective July 1, 1994, must also have a Medicaid inpatient utilization rate of at least 1 percent.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:655 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3294 (December 2013), amended by the Department of Health, Bureau of Health Services Financing, LR 43:962 (May 2017), LR 45:

Chapter 27. Qualifying Hospitals
§2719. Major Medical Centers Located in the Southeastern Area of the State

A. Effective for dates of service on or after January 1, 2020, hospitals qualifying for payments as major medical centers located in the southeastern area of the state shall meet the following criteria:

1. be a private, non-rural hospital located in Department of Health administrative region 1;

2. have at least 175 inpatient beds as reported on the Medicare/Medicaid cost report, Worksheet S-3, column 2, lines 1-18, for the state fiscal year ending June 30, 2018. For qualification purposes, inpatient beds shall exclude nursery and Medicare-designated distinct part psychiatric unit beds;

3. is certified as an advanced comprehensive stroke center by the Joint Commission as of June 30, 2018;

4. does not qualify as a Louisiana low-income academic hospital under the provisions of §3101; and

5. does not qualify as a party to a low income and needy care collaboration agreement with the Department of Health under the provisions of §2713.

B. Payment Methodology. Effective for dates of service on or after January 1, 2020, each qualifying hospital shall be paid a DSH adjustment payment which is the pro rata amount calculated by dividing their hospital specific allowable uncompensated care costs by the total allowable uncompensated care costs for all hospitals qualifying under this category and multiplying by the funding appropriated by the Louisiana Legislature in the applicable state fiscal year for this category of hospitals.

1. Costs, patient specific data and documentation that qualifying criteria is met shall be submitted in a format specified by the department.

2. Reported uncompensated care costs shall be reviewed by the department to ensure compliance with the reasonable costs definition in the Medicare Provider Reimbursement Manual, Part l, Chapter 21, Section2102.1, Revision 454. Allowable uncompensated care costs must be calculated using the Medicare/Medicaid cost report methodology.

3. Aggregate DSH payments for hospitals that receive payment from this category, and any other DSH category, shall not exceed the hospital's specific DSH limit. If payments calculated under this methodology would cause a hospital's aggregate DSH payment to exceed the limit, the payment from this category shall be capped at the hospital's specific DSH limit.

4. A pro rata decrease, necessitated by conditions specified in §2501.B.1 above for hospitals described in this

Section, will be calculated based on the ratio determined by dividing the hospital's uncompensated costs by the uncompensated costs for all of the qualifying hospitals described in this Section, then multiplying by the amount of disproportionate share payments calculated in excess of the federal DSH allotment.

a. If additional payments or recoupments are required based on the results of the mandated DSH audit report, they shall may be made within one year after the final report for the state fiscal year is submitted to the Centers for Medicare and Medicaid Services (CMS).

b. Additional payments shall be limited to the aggregate amount recouped from the qualifying hospitals described in this section, based on the reported DSH audit results.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 45:

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 Statement

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses, as described in R.S. 49:965.2 et seq.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, but may reduce the total direct and indirect cost to the provider to provide the same level of service, and may enhance the provider's ability to provide the same level of service as described in HCR 170 since this proposed Rule increases payments to providers.

Public Comments

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821—9030. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 30, 2019.

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 October 10, 2019. 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 October 30, 2019 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 October 10, 2019. 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.

Rebekah E. Gee MD, MPH
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Disproportionate Share Hospital Payments—Major Medical Centers

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that implementation of this proposed Rule will result in estimated state general fund programmatic costs of approximately $6,849,832 for FY 19-20, $6,929,939 for FY 20-21 and $6,929,939 for FY 21-22. It is anticipated that $864 ($432 SGF and $432 FED) will be expended in FY 19-20 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 66.86 percent in FY 19-20 and 67.57 percent in FYs 20-21 and 21-22.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed Rule will increase federal revenue collections by approximately $13,819,106 for FY 19-20, $14,399,513 for FY 20-21 and $14,399,513 for FY 21-22. It is anticipated that $432 will be collected in FY 19-20 for the federal share of the expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 66.86 percent in FY 19-20 and 67.57 percent in FYs 20-21 and 21-22.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule adopts provisions to establish a qualification criteria and disproportionate share hospital (DSH) payment methodology for major medical centers located in the southeastern area of Louisiana. This rule will increase DSH payments for inpatient hospital services insuring that hospitals receiving these payments will remain financially viable and continue to provide these critical services. It is anticipated that implementation of this Rule will increase Medicaid programmatic expenditures by approximately $20,668,074 for

FY 19-20, $21,329,452 for FY 20-21 and $21,329,452 for FY 21-22.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Jen Steele	Evan Brasseaux
Medicaid Director	Staff Director
1909#073	Legislative Fiscal Office

NOTICE OF INTENT

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

Home and Community-Based Services Waivers
Residential Options Waiver
(LAC 50:XXI.Chapters 161, 163, and §16901)

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:Chapters 161, 163 and §16901 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities (OCDD) propose to amend the provisions governing the Residential Options Waiver (ROW) in order to restore the minimum age for access to the ROW and delete the grandfather clause for participants under age 21, add the monitored in-home caregiving service, change units for specific services to a 15-minute rate and clarify and align provisions of the ROW with other OCDD home and community-based services waivers.

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. ...

B. The goal of the Residential Options Waiver is to promote independence through strengthening the individual's capacity for self-care, self-sufficiency and community integration utilizing a wide array of services, supports and residential options, which best meets the individual's needs and preferences, while supporting the dignity, quality of life, and security in the everyday life of the individual as he/she is a member of his/her 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:

§16103. Program Description

A. The ROW is designed to utilize the principles of self-determination and to supplement the family and/or community supports that are available to maintain the individual in the community 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, ROW includes a self-direction option, which allows for greater flexibility in hiring, training and general service delivery issues. ROW services are meant to enhance, not replace existing informal networks.

B. ROW offers an alternative to institutional care that:

1. utilizes a wide array of services, supports and residential options, which best meet the individual's needs and preferences;

B.2. - D. ...

E. The total expenditures available for each waiver participant is established through an assessment of individual support needs and may not exceed the approved ICF/ID ICAP rate/ROW budget level established for that individual except as approved by Office for Citizens with Developmental Disabilities' (OCDD's) assistant secretary, deputy assistant secretary or his/her designee to prevent institutionalization.

1. When the department determines that it is necessary to adjust the ICF/ID ICAP rate, each waiver participant's annual service budget may be adjusted to ensure that the participant's total available expenditures do not exceed the approved ICAP rate.

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 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:

§16104. Settings for Home and Community Based Services

A. ROW participants 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 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, Subpart 1 or any subsequent 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:

§16105. Participant Qualifications

A. In order to qualify for Residential Options Waiver (ROW), individuals of all ages must meet all of the following criteria:

1. - 8. ...

B. Individuals age 18 through 20 may be offered a funded ROW opportunity if the results of the uniform needs-based assessment and person-centered planning discussion determine that the ROW is the most appropriate waiver. These offers are subject to the approval of the OCDD assistant secretary/designee.

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 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:

§16107. Programmatic Allocation of Waiver Opportunities

A. - B.2. ...

3. Individuals on the registry who have the highest level of need and the earliest registry date shall be notified in writing when a funded OCDD waiver opportunity is available and that he/she is next in line to be evaluated for a possible waiver assignment. Participants shall have justification, based on a uniform needs-based assessment and a person-centered planning discussion that the ROW is the OCDD waiver that will meet the needs of the individual.

B.4. - C. ...

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), 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 43:2530 (December 2017), LR 45:

§16109. Admission, Denial or Discharge Criteria

A. Admission to the ROW Program shall be denied if one of the following criteria is met.

1. - 7. ...

8. The individual does not have justification, based on a uniform needs-based assessment and a person-centered planning discussion that the ROW is the OCDD waiver that will meet the needs of the individual.

B. - B.10. ...

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:

Chapter 163. Covered Services

§16303. Community Living Supports

A. - E.6. ...

7. Community living supports services are not available to individuals receiving the following services:

a. ...

b. home host;

c. companion care; or

d. monitored in-home caregiving.

8. Community living supports cannot be billed or provided for during the same hours on the same day that the participant is receiving the following services:

a. - c. ...

d. respite out-of-home services;

e. transportation-community access;

f. monitored in-home caregiving; or

g. adult day health care.

F. - F.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, 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:

§16305. Companion Care

A. - F. ...

1. Companion care is not available to individuals receiving the following services:

a. - b. ...

c. community living supports;

d. host home; or

e. monitored in-home caregiving.

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:

§16307. Day Habilitation Services

A. - A.3. ...

B. Day habilitation services shall:

1. - 3. ...

4. be furnished on a regularly scheduled basis for 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 participant;

b. services shall not exceed 32 units of service on any given day or 160 units in any given week in a plan of care;

c. any time less than the 15 minute unit of service is not billable or payable; and

d. no rounding up of hours is allowed.

e. Repealed.

C. - E.2. ...

3. Day habilitation services cannot be billed or provided during the same hours on the same day as any of the following services:

a. ...

b. professional services, except those direct contacts needed to develop a behavioral management plan or any other type of specialized assessment/plan;

c. respite care services—out of home;

d. adult day health care; or

e. monitored in-home caregiving.

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 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:

§16313. Host Home

A. - I.1. ...

2. Separate payment will not be made for the following residential service models if the participant is receiving host home services:

a. - b. ...

c. shared living-conversion;

d. companion care; or

e. monitored in-home caregiving.

I.3. - J.2....

3. Agencies serving adults must be licensed by the Department of Health as a provider of substitute family care 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, Office for Citizens with Developmental Disabilities, LR 33:2447 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2160 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 45:

§16319. One Time Transitional Services

A. One-time transitional services are one-time, set-up services to assist individuals in making the transition from an institution to their own home or apartment in the community of their choice.

B. - 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:

§16323. Prevocational Services

A. Prevocational services are time limited with employment at the individual's highest level of work in the most integrated community setting, with the job matched to the individual's interests, strengths, priorities, abilities and capabilities, with integrated competitive employment as the optimal outcome. Individuals receiving prevocational services may choose to pursue employment opportunities at any time. Career planning must be a major component of prevocational services.

1. - 2.b.Repealed.

B. 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 be focused on preparing the participant for paid employment or a volunteer opportunity in the community. These services are operated through a provider agency that is licensed by the appropriate state licensing agency. Services are furnished one or more hours per day on a regularly scheduled basis for one or more days per week.

1. - 1.c.Repealed.

C. Participants receiving services must have an employment related goal in their plan of care, and the general habilitation activities must be designed to support such employment goals. Prevocational services are designed to create a path to integrated community-based employment for which a participant 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 can include assistance in personal care and with activities of daily living. Choice of this service and staff ratio needed to support the participant must be documented on the plan of care.

1. - 3. Repealed.

E. All transportation costs are included in the reimbursement for prevocational services. The participant must be present to receive this service. If a participant needs transportation, the provider must physically provide, arrange, or pay for appropriate transport to and from a central location that is convenient for the participant and agreed upon by the team. The participant's transportation needs and this central location shall be documented in the plan of care.

1. - 5. Repealed.

F. Service Limitations

1. Services shall not exceed 8,320 units of service in a plan of care.

2. Prevocational services are not available to participants who are eligible to participate in programs funded under the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act.

3. Multiple vocational/habilitative services cannot be provided or billed for during the same hours on the same day as the following services:

a. community living supports;

b. professional services, except those direct contacts needed to develop a behavioral management plan or other type of specialized assessment/plan;

c. respite care services-out of home;

d. adult day healthcare; or

e. monitored-in-home caregiving.

4. Transportation to and from the service site is only payable when a vocational/habilitative service is provided on the same day.

a. Time spent in traveling to and from the prevocational program site shall not be included in the calculation of the total number of service hours provided per day.

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 shall not be used to transport ROW participants to any prevocational services

G. Restrictions.

1. Participants receiving prevocational services may also receive day habilitation or individualized supported employment services, but these services cannot be provided during the same time period 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.

H. There must be documentation in the participant's file that this service is not 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 [230 U.S.C. 1401 (16 and 71)] and those covered under the state plan.

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:

§16327. Respite Care Services-Out of Home

A. - C.1. ...

2. Respite care services-out of home may not be billed for participants receiving the following services:

a. ...

b. companion care;

c. host home; or

d. monitored in-home caregiving.

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:

§16329. Shared Living Services

A. - D.5. ...

6. The following services are not available to participants receiving shared living services:

a. - c. ...

d. host home;

e. personal emergency response system; or

f. monitored in-home caregiving.

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:

§16335. Supported Employment

A. Supported employment services consists of intensive, ongoing supports and services necessary for a participant to achieve the desired outcome of employment in a community setting in the state of Louisiana where a majority of the persons employed are without disabilities. Participants utilizing these services may need long-term supports for the life of their employment due the nature of their disability, and natural supports would not meet this need.

B. Supported employment services provide supports in the following areas:

1. individual job, group employment or self-employment;

2. job assessment, discovery and development; and

a. - a.iv. Repealed.

3. initial job support and job retention, including assistance in personal care with activities of daily living in the supported employment setting and follow-along.

4. - 5. Repealed.

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 participants 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.

1. - 4. Repealed.

D. Transportation is included in supported employment services, but whenever possible, family, neighbors, friends, coworkers or community resources that can provide needed transportation without charge should be utilized.

1. - 8. Repealed.

E. These services are also available to those participants 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. the services furnished are not part of the normal duties of the coworker or other job-site personnel; and

2. these individuals meet the pertinent qualifications for the providers of service.

G. Service Limits. Participants may receive more than one vocational or habilitative service per day as long as the service and billing requirements for each service are met.

1. Services for individual/micro-enterprise job assessment, discovery and development in individual jobs and self-employment shall not exceed 2,880 units of service in a plan of care year.

2. Services for group job assessment, discovery and development in group employment shall not exceed 480 units of service in a plan of care year.

3. Services for initial job support, job retention and follow-along for individual/micro-enterprise shall not exceed 1280 quarter hour units of service in a plan of care year.

4. Services for initial job support, job retention and follow-along in group employment shall not exceed 8,320 quarter hour units of service in a plan of care year.

H. Service Exclusions/Restrictions. Participants 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. Participants receiving group supported employment services may also receive prevocational or day habilitation services; however, these services cannot be provided in the same service day.

1. Payment will only be made for the adaptations, supervision and training required by individuals receiving waiver services, and will not include payment for the supervisory activities rendered as a normal part of the business setting.

2. Any time less than one hour for individual placement and micro-enterprise is not billable or payable.

3. Supported employment services cannot be billed for the same time as any of the following services:

a. community living supports;

b. professional services except direct contacts needed to develop a behavioral management plan; or

c. respite care services-out of home,;

d. adult day health care; or

e. monitored in-home caregiving.

4. Any time less than fifteen minutes for enclaves and mobile crews is not billable or payable.

5. Time spent in traveling to and from the prevocational program site shall not be included in the calculation of the total number of service hours provided per day.

a. Travel training for the purpose of teaching the participant 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.

6. The following incentive payments, subsidies or unrelated vocational training expenses are excluded from coverage in supported employment services:

a. incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment program;

b. payments that are passed through to users of supported employment programs; or

c. payments for vocational training that is not directly related to an individual's supported employment program.

7. There must be documentation in the participant's file that these services are not available from programs funded under the Rehabilitation Act of 1973 or sections 602 (16) or (17) of the Individuals with Disabilities Education Act [230 U.S.C. 1401 (16 and 17)] and those covered under the State Plan.

8. No rounding up of service units is allowed.

I. Provider Qualifications. In order to enroll in the Medicaid Program, providers must have a compliance certificate from the Louisiana Rehabilitation Services as a community rehabilitation program or a current, valid license as an adult day care center.

F. Choice of this service and staff ratio needed to support the participant 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 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:

§16337. Transportation-Community Access

A. - C.1. ...

2. Separate payment will not be made for transportation-community access and the following services:

a. shared living services;

b. community living services;

c. companion care;

d. adult day health care; or

e. monitored in-home caregiving.

C.3. - 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 33:2454 (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:

§16343. Adult Day Health Care Services

A. ...

B. ADHC services include those core service requirements identified in the ADHC licensing standards (LAC 48.I.4243), in addition to:

1. medical care management;

2. transportation between the participant's place of residence and the ADHC (if the participant is accompanied by the ADHC staff);

3. assistance with activities of daily living;

4. health and nutrition counseling;

5. an individualized exercise program;

6. an individualized goal-directed recreation program;

7. health education;

8. individualized health/nursing services; and

9. meals.

B.9.a. - E. ...

F. The following services are not available to AFDC recipients:

1. respite care services-out of home;

2. shared living;

3. companion care, or

4. monitored in-home caregiving.

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:

§16345. Monitored In-Home Caregiving Services

A. Monitored in-home caregiving (MIHC) services are provided by a principal caregiver to a participant who lives in a private unlicensed residence. The principal caregiver shall be contracted by the licensed HCBS provider having a MIHC service module. The principal caregiver shall reside with the participant. Professional staff employed by the HCBS provider shall provide oversight, support and monitoring of the principal caregiver, service delivery, and participant outcomes through on-site visits, training, and daily, web-based electronic information exchange.

B. The principal caregiver is responsible for supporting the participant 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 participant;
4. supervision or assistance with health related tasks (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. Unless the individual is also the spouse of the participant, the following individuals are prohibited from being paid as a monitored in-home caregiving principal caregiver:

1. the participant's curator;
2. the participant's tutor;
3. the participant's legal guardian;
4. the participant's responsible representative; or
5. the person to whom the participant has given representative and mandate authority (also known as power of attorney).

D. Participants electing monitored in-home caregiving services shall not receive the following Residential Options waiver services during the period of time that the participant is receiving monitored in-home caregiving services:

1. community living supports;
2. companion care;
3. host home;
4. shared living (conversion or non-conversion); or
5. adult day health care services.

E. Monitored in-home caregiving providers must be licensed HCBS providers with a monitored in-home caregiving module who employ professional staff, including a registered nurse and a care manager, to support principal caregivers to perform the direct care activities performed in the home. The agency provider must assess and approve the home in which services will be provided, and shall enter into contractual agreements with caregivers who the agency has approved and trained. The agency provider will pay per diem stipends to caregivers.

F. The MIHC provider must use secure, web-based information collection from principal caregivers for the purposes of monitoring participant 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.

G. The department shall reimburse for monitored in-home caregiving services based upon a two-tiered model which is designed to address the participant's ROW acuity level.

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:

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 participant. 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.b....
5. professional services furnished by a/an:
   a. - d. ...
   e. social worker;
   f. ...
6. supported employment;
   a. individual placement;
   b. micro-enterprise;
7. adult day health care;
8. pre-vocational service; and
9. day habilitation.

* * *

B. - B.2. ...

C. The following services are reimbursed at a per diem rate:

1. ...
2. companion care services;
3. shared living services;
   a. per diem rates are established based on the number of individuals sharing the living service module for both shared living non-conversion and shared living conversion services; and
4. monitored in-home caregiving services.
   a. The per diem rate for monitored in-home caregiving services does not include payment for room and board, and federal financial participation is not claimed for room and board.

D. The reimbursement for transportation services is a flat fee based on a capitated rate.

1. - 3.b.Repealed.

E. Nursing services are reimbursed at either an hourly or per visit rate for the allowable procedure codes.

F. Installation of a personal emergency response system (PERS) is reimbursed at a one-time fixed rate and maintenance of the PERS is reimbursed at a monthly rate.

G. Transition expenses from an ICF/ID or nursing facility to a community living setting are reimbursed at the cost of the service(s) up to a lifetime maximum rate of $3,000.

H. Dental services are reimbursed at the Medicaid fee-for-service rate.

I. The assessment performed by the monitored in-home caregiving provider shall be reimbursed at the authorized rate or approved amount of the assessment when the service has been prior authorized by the plan of care.

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:

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 children currently served in ROW to continue access to those services, will allow individuals to transition to ROW without service interruption, allow participants to access the same amounts and duration of service as other waiver participants, and allow individuals to access additional supports which may prevent institution.

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 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 improve access to services.

Small Business Statement

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have a positive impact on small businesses, as described in R.S. 49:965.2 et seq.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, but may reduce the total direct and indirect cost to the provider to provide the same level of service, and may enhance the provider's ability to provide the same level of service as described in HCR 170 since this proposed Rule increases payments to providers.

Public Comments

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 30, 2019.

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 October 10, 2019. 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 October 30, 2019 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 October 10, 2019. 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.

Rebekah E. Gee MD, MPH
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Home and Community-Based Services Waivers—Residential Options Waiver

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that implementation of this proposed rule will result in estimated state general fund costs of approximately $41,578 for FY 19-20, $77,110 for FY 20-21 and $77,110 for FY 21-22. It is anticipated that $3,780 ($1,890 SGF and $1,890 FED) will be expended in FY 19-20 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 66.40 percent in FY 19-20 and 67.35 percent in FYs 20-21 and 21-22.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed Rule will increase federal revenue collections by approximately $80,287 for FY 19-20, $159,061 for FY 20-21 and $159,061 for FY 21-22. It is anticipated that $1,890 will be collected in FY 19-20 for the federal share of the expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 66.40 percent in FY 19-20 and 67.35 percent in FYs 20-21 and 21-22.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule amends the provisions governing the Residential Options Waiver (ROW) in order to restore the minimum age for access to the ROW and delete the grandfather clause for participants under age 21, add the monitored in-home caregiving service, change units for specific services to a 15 minute rate and clarify and align provisions of the ROW with other OCDD home and community-based services waivers. Implementation of this proposed Rule will broaden and increase ROW participant access to needed support services. ROW providers will benefit from implementation of this proposed Rule since the alignment of rates streamlines billing and service approval processes across OCDD waivers. It is anticipated that costs will increase as a result of the ability, on a case-by-case basis, to pay over and above the individual cap limit for recipients the department determines may require extended service hours. It is anticipated that implementation of this Rule will increase Medicaid programmatic expenditures by approximately $118,085 for FY 19-20, $236,171 for FY 20-21 and $236,171 for FY 21-22.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This Rule has no known effect on competition and employment.

Jen Steele	Evan Brasseaux
Medicaid Director	Staff Director
1909#074	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health
Bureau of Health Services Financing

Inpatient Hospital Services
Non-Rural, Non-State Hospitals
Reimbursement Rate Adjustment
(LAC 50:V.Chapters 5 and 9)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:V.Chapters 5 and 9 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.

House Concurrent Resolution (HCR) 5 of the 2019 Regular Session of the Louisiana Legislature required the Department of Health, Bureau of Health Services Financing to adjust the reimbursement rates for inpatient hospital services. In compliance with the requirements of HCR 5, the department proposes to amend the provisions governing the reimbursement methodology for inpatient hospital services in order to adjust the reimbursement rates.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part V. Hospitals
Subpart 1. Inpatient Hospital Services

Chapter 5. State Hospitals
Subchapter B. Reimbursement Methodology
§551. Acute Care Hospitals

A. - F.2. ...

G. Effective for dates of service on or after January 1, 2020, the inpatient per diem rate paid to state-owned acute care hospitals, excluding inpatient psychiatric services, shall be calculated based on allowable costs per the latest filed cost report. Final reimbursement determined based on the allowable costs per the finalized Medicare/Medicaid cost report.

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 38:1241 (May 2012), amended LR 38:2772 (November 2012), LR 40:312 (February 2014), LR 40:1941 (October 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 45:

§553. Inpatient Psychiatric Services for State Owned Hospitals

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 45:

Chapter 9. Non-Rural, Non-State Hospitals
Subchapter B. Reimbursement Methodology
§953. Acute Care Hospitals

A. - V.2. ...

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

1. Small rural hospitals as defined in R.S. 40:1300 and public-private partnership hospitals as defined in LAC 50:V.1701-1703 shall be exempt from this rate increase.

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended LR 34:877 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895, 1896 (September 2009), repromulgated LR 35:2182 (October 2009), amended LR 36:1552 (July 2010), LR 36:2561 (November 2010), LR 37:2161 (July 2011), LR 39:3095 (November 2013), LR

39:3297 (December 2013), LR 40:312 (February 2014), repromulgated LR 40:1939, 1940 (October 2014), LR 41:133 (January 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:963 (May 2017), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1389 (July 2017), repromulgated LR 43:1757 (September 2017), amended LR 43:2533 (December 2017), repromulgated LR 44:1445 (August 2018), LR 45:

§955. Long-Term Hospitals

A. - L. ...

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

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

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

§959. Inpatient Psychiatric Hospital Services

A. - N.2.…

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

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

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

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

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

§961. Inpatient Rehabilitation Hospital Services

A. ...

* * *

B. - B.2. ...

3. Effective for dates of service on or after January 1, 2020, the prospective per diem rate paid to non-rural, non-state free-standing rehabilitation hospitals shall be indexed to 37 percent of the small rural hospital prospective per diem rate in effect on January 1, 2019.

4. Rehabilitation hospitals whose per diem rates as of January 1, 2019, excluding the graduate medical education portion of the per diem, are greater than 37 percent of the January 1, 2019 small rural hospital rate shall not be increased.

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 43:2533 (December 2017), amended LR 44:1446 (August 2018), LR 45:

§967. Children's Specialty Hospitals

A. - M. ...

N. Effective for dates of service on or after January 1, 2020, the inpatient per diem rates paid to children's specialty hospitals for acute, neonatal intensive care units, pediatric intensive care units and burn units' services shall be increased by 3.2 percent of the per diem rate on file as of December 31, 2019.

O. Effective for dates of service on or after January 1, 2020, the prospective per diem rate paid to distinct part psychiatric units within children's specialty hospitals shall be increased by indexing to 32 percent of the small rural hospital prospective per diem rate in effect on January 1, 2019.

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 36:2562 (November 2010), amended LR 37:2162, 2162 (July 2011), LR 38:2773 (November 2012), LR 39:3097 (November 2013), LR 40:312 (February 2014), repromulgated LR 40:1940 (October 2014), amended LR 40:1941 (October 2014), LR 42:275 (February 2016), amended by the Department of Health, Bureau of Health Services Financing, LR 43:964 (May 2017), LR 45:

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 Statement

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is

anticipated that this proposed Rule will have no impact on small businesses, as described in R.S. 49:965.2 et seq.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, but may reduce the total direct and indirect cost to the provider to provide the same level of service, and may enhance the provider's ability to provide the same level of service as described in HCR 170 since this proposed Rule increases payments to providers.

Public Comments

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821—9030. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 30, 2019.

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 October 10, 2019. 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 October 30, 2019 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 October 10, 2019. 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.

Rebekah E. Gee MD, MPH
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Inpatient Hospital Services—Non-Rural, Non-State Hospitals—Reimbursement Rate Adjustment

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will result in estimated state programmatic costs of approximately $4,421,253 for FY 19-20, $10,309,609 for FY 20-21 and $10,309,609 for FY 21-22. It is anticipated that $1,188 ($594 SGF and $594 FED) will be expended in FY 19-20 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 66.40 percent in FYs 19-20 and 67.35 percent for FYs 20-21 and 21-22.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will increase statutory dedicated revenue collections by approximately $4,420,659 for FY 19-20, $10,309,609 for FY 20-21 and $10,309,609 for FY 21-22. In addition, it is anticipated that the implementation of this proposed Rule will increase federal revenue collections by approximately $8,736,659 for FY 19-20, $21,266,528 for FY 20-21 and $21,266,528 for FY 21-22. It is anticipated that $594 will be collected in FY 19-20 for the federal share of the expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 66.40 percent in FYs 19-20 and 67.35 percent for FYs 20-21 and 21-22.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule, in compliance with House Concurrent Resolution 5 of the 2019 Regular Session of the Louisiana Legislature, amends the provisions governing the reimbursement methodology for inpatient hospital services in order to adjust the reimbursement rates. Inpatient hospital providers will benefit from implementation of this proposed Rule as it increases reimbursement rates. It is anticipated that implementation of this Rule will increase Medicaid programmatic expenditures by approximately $13,156,724 for FY 19-20 $31,576,137 for FY 20-21 and $31,576,137 for FY 21-22.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This Rule has no known effect on competition and employment.

Jen Steele	Evan Brasseaux
Medicaid Director	Staff Director
1909#075	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health
Bureau of Health Services Financing

Medicaid Eligibility
Medicare Savings Programs
(LAC 50:III.10703 and 10705)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:III.10703 and §10705 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Bureau of Health Services Financing currently utilizes the income and asset methodologies of the Supplemental Security Income (SSI) Program to determine Medicaid eligibility of aged, blind and disabled individuals applying for coverage under the Medicare Savings Programs (MSP). Under Section 1902(r)(2) of the Social Security Act, states are allowed to use less restrictive income and asset methodologies in determining eligibility for most Medicaid eligibility groups than are used by the cash assistance program. The department proposes to amend the provisions governing financial eligibility in the Medical Assistance Program in order to disregard all resources of aged, blind and disabled individuals in all MSP eligibility determinations.

TITLE 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part III. Eligibility
Subpart 5. Financial Eligibility

Chapter 107. Resources

§10703. General Provisions

A. - C.1.b. ...

2. - 2.a. 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 36:2867 (December 2010), amended by the Department of Health, Bureau of Health Services Financing, LR 45:

§10705. Resource Disregards

A. - B.1. ...

C. All resources shall be disregarded in eligibility determinations for all Medicare Savings Programs.

1. - 2. Repealed.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:1899 (September 2009), amended LR 36:2867 (December 2010), LR 41:949 (May 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 45:

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 Act 820 of the 2008 Regular Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses, as described in R.S. 49:965.2 et seq.

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 Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821—9030. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 30, 2019.

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 October 10, 2019. 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 October 30, 2019 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 October 10, 2019. 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.

Rebekah E. Gee MD, MPH
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Medicaid Eligibility
Medicare Savings Programs

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will result in estimated state programmatic costs of approximately $57,767 for FY 19-20, $351,103 for FY 20-21 and $676,090 for FY 21-22. It is anticipated that $540 ($270 SGF and $270 FED) will be expended in FY 19-20 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 66.40 percent in FY 19-20, 67.35 percent in FY 20-21 and 67.35 percent FY 21-22.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed Rule will increase federal revenue collections by approximately $113,896 for FY 19-20, $724,250 for FY 20-21 and $1,394,630 for FY 21-22. It is anticipated that $270 will be collected in FY 19-20 for the federal share of the expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 66.40 percent in FY 19-20, 67.35 percent in FY 20-21 and 67.35 percent FY 21-22.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule amends the provisions governing financial eligibility in the Medical Assistance Program in order to disregard all resources of aged, blind and disabled individuals in eligibility determinations for all Medicare Savings Programs (MSP), as provided for under Section 1902(r)(2) of the Social Security Act. Individuals that meet the criteria for MSP coverage will benefit from implementation of this proposed Rule since none of their resources will be considered in the eligibility determination process. It is anticipated that implementation of this proposed rule will result in programmatic costs to the Medicaid program of $171,123 in FY 19-20, $1,075,352 in FY 20-21 and $2,070,720 in FY 21-22.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This Rule has no known effect on competition and employment.

Jen Steele	Evan Brasseaux
Medicaid Director	Staff Director
1909#077	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health
Bureau of Health Services Financing

Outpatient Hospital Services
Non-Rural, Non-State Hospitals
Reimbursement Rate Adjustment
(LAC 50:V.Chapters 53-61)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:V.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 proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

House Concurrent Resolution (HCR) 5 of the 2019 Regular Session of the Louisiana Legislature directed the Department of Health, Bureau of Health Services Financing to adjust the reimbursement rates for outpatient hospital services. In compliance with the requirements of HCR 5, the department proposes to amend the provisions governing the reimbursement methodology for outpatient hospital services in order to adjust the reimbursement rates.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part V. Hospitals
Subpart 5. Outpatient Hospitals
Chapter 53. Outpatient Surgery
Subchapter B. Reimbursement Methodology
§5313. Non-Rural, Non-State Hospitals

A. - K.1….

L. Effective for dates of service on or after January 1, 2020, the reimbursement rates paid to non-rural, non-state hospitals for outpatient surgery shall be increased by 3.2 percent of the rates on file as of December 31, 2019.

1. Hospitals participating in public-private partnerships as defined in §6701 shall be exempted from this rate increase.

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, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), LR 36:2041 (September 2010), LR 37:3266 (November 2011), LR 40:313 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:964 (May 2017), LR 43:2534 (December 2017), LR 44:2166 (December 2018), LR 45:

§5317. Children's Specialty Hospitals

A. - I.1. ...

J. Effective for dates of service on or after January 1, 2020, the reimbursement rates paid to children's specialty hospitals for outpatient surgery shall be increased by 3.2 percent of the rates on file as of December 31, 2019.

1. Final reimbursement shall be 100 percent of allowable cost as calculated through the cost report settlement process.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2042 (September 2010), amended LR 37:3266 (November 2011), LR 40:313 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:965 (May 2017), LR 43:2534 (December 2017), LR 44:2167 (December 2018), LR 45:

§5319. State-Owned Hospitals

A. - B. ...

C. Effective for dates of service on or after January 1, 2020, the reimbursement rates paid to state-owned hospitals for outpatient surgery shall be increased by 14.67 percent of the fee schedule rates on file as of December 31, 2019.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:2773 (November 2012), amended LR 40:314 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 45:

Chapter 55. Clinic Services
Subchapter B. Reimbursement Methodology
§5513. Non-Rural, Non-State Hospitals

A. - K.1….

L. Effective for dates of service on or after January 1, 2020, the reimbursement rates paid to non-rural, non-state hospitals for outpatient clinic services shall be increased by 3.2 percent of the rates on file as of December 31, 2019.

1. Hospitals participating in public-private partnerships as defined in §6701 shall be exempted from this rate increase.

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, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), LR 36:2042 (September 2010), LR 37:3266 (November 2011), LR 40:313 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:965 (May 2017), LR 43:2535 (December 2017), LR 44:2167 (December 2018), LR 45:

§5517. Children's Specialty Hospitals

A. - I. ...

J. Effective for dates of service on or after January 1, 2020, the reimbursement rates paid to children's specialty hospitals for outpatient hospital clinic services shall be

increased by 3.2 percent of the rates on file as of December 31, 2019.

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 36:2042 (September 2010), amended LR 37:3266 (November 2011), LR 40:313 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:965 (May 2017), LR 43:2535 (December 2017), LR 44:2167 (December 2018), LR 45:

§5519. State-Owned Hospitals

A. - B. ...

C. Effective for dates of service on or after January 1, 2020, the reimbursement rates paid to state-owned hospitals for outpatient clinic services shall be increased by 14.67 percent of the fee schedule rates on file as of December 31, 2019.

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 38:2774 (November 2012), amended LR 40:314 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 45:

Chapter 57. Laboratory Services

Subchapter B. Reimbursement Methodology

§5713. Non-Rural, Non-State Hospitals

A. - K.2....

L. Effective for dates of service on or after January 1, 2020, the reimbursement rates paid to non-rural, non-state hospitals for outpatient laboratory services shall be increased by 3.2 percent of the rates on file as of December 31, 2019.

1. In accordance with Section 1903(i)(7) of the Social Security Act, payments for Medicaid clinical diagnostic laboratory services shall be limited to the amount that Medicare pays on a per test basis. If this or any other rate adjustment causes the Medicaid calculated rate to exceed the Medicare payment rate for a clinical laboratory test, the rate shall be adjusted to the lower Medicare payment rate.

2. Hospitals participating in public-private partnerships as defined in §6701 shall be exempted from this rate increase.

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, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), LR 36:2042 (September 2010), LR 37:3266 (November 2011), LR 40:313 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:965 (May 2017), LR 43:2535 (December 2017), LR 44:2167 (December 2018), LR 45:

§5719. Children's Specialty Hospitals

A. - I.1. ...

J. Effective for dates of service on or after January 1, 2020, the reimbursement rates paid to children's specialty hospitals for outpatient clinical diagnostic laboratory services shall be increased by 3.2 percent of the rates on file as of December 31, 2019.

1. In accordance with Section 1903(i)(7) of the Social Security Act, payments for Medicaid clinical diagnostic laboratory services shall be limited to the amount that Medicare pays on a per test basis. If this or any other rate adjustment causes the Medicaid calculated rate to exceed the Medicare payment rate for a clinical laboratory test, the rate shall be adjusted to the lower Medicare payment rate.

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 36:2043 (September 2010), amended LR 37:3267 (November 2011), LR 40:314 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:965 (May 2017), LR 43:2535 (December 2017), LR 44:2167 (December 2018), LR 45:

Chapter 59. Rehabilitation Services

Subchapter B. Reimbursement Methodology

§5913. Non-Rural, Non-State Hospitals

A. - E.1. ...

F. Effective for dates of service on or after January 1, 2020, the reimbursement rates paid to non-rural, non-state hospitals for outpatient rehabilitation services shall be increased by 3.2 percent of the rates on file as of December 31, 2019.

1. Hospitals participating in public-private partnerships as defined in §6701 shall be exempted from this rate increase.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), LR 36:2043 (September 2010), LR 44:2167 (December 2018), LR 45:

§5917. Children's Specialty Hospitals

A. - C.1. ...

D. Effective for dates of service on or after January 1, 2020, the reimbursement rates paid to children's specialty hospitals for outpatient rehabilitation services shall be increased by 3.2 percent of the rates on file as of December 31, 2019.

1. Final reimbursement shall be 100 percent of allowable cost as calculated through the cost report settlement process.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2043 (September 2010), amended by the Department of Health, Bureau of Health Services Financing LR 44:2168 (December 2018), LR 45:

§5919. State-Owned Hospitals

A. - A.2. ...

B. Effective for dates of service on or after January 1, 2020, the reimbursement rates paid to state hospitals for outpatient rehabilitation services shall be increased by 3.2 percent of the rates on file as of December 31, 2019.

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 38:2774 (November 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 45:

Chapter 61. Other Outpatient Hospital Services

Subchapter B. Reimbursement Methodology

§6115. Non-Rural, Non-State Hospitals

A. - K.1....

L. Effective for dates of service on or after January 1, 2020, the reimbursement rates paid to non-rural, non-state

hospitals for outpatient hospital services, other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services and outpatient hospital facility fees, shall be increased by 3.2 percent of the rates in effect as of December 31, 2019.

1. Final reimbursement shall be 85.84 percent of allowable cost as calculated through the cost report settlement process.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), LR 36:2043 (September 2010), LR 37:3267 (November 2011), LR 40:314 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:965 (May 2017), LR 43:2535 (December 2017), LR 44:2168 (December 2018), LR 45:

§6119. Children's Specialty Hospitals

A. - I.1. ...

J. Effective for dates of service on or after January 1, 2020, the reimbursement fees paid to children's specialty hospitals for outpatient hospital services, other than rehabilitation services and outpatient hospital facility fees, shall be increased by 3.2 percent of the rates in effect as of December 31, 2019.

1. Final reimbursement shall be 100 percent of allowable cost as calculated through the cost report settlement process.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2044 (September 2010), amended LR 37:3267 (November 2011), LR 40:314 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:965 (May 2017), LR 43:2535 (December 2017), LR 44:2168 (December 2018), LR 45:

§6127. State-Owned Hospitals

A. - C. ...

D. Effective for dates of service on or after January 1, 2020, the reimbursement rates paid to state hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services and outpatient hospital facility fees shall be increased by 11 percent of the rates in effect on December 31, 2019. Final reimbursement shall be at 100 percent of allowable cost through the cost settlement process.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:957 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:2774 (November 2012), LR 40:315 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 45:

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 Statement

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses, as described in R.S. 49:965.2 et seq.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, but may reduce the total direct and indirect cost to the provider to provide the same level of service, and may enhance the provider's ability to provide the same level of service as described in HCR 170 since this proposed Rule increases payments to providers.

Public Comments

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821—9030. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 30, 2019.

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 October 10, 2019. 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 October 30, 2019 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 October 10, 2019. 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.

Rebekah E. Gee MD, MPH
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Outpatient Hospital Services
Non-Rural, Non-State Hospitals
Reimbursement Rate Adjustment

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will result in estimated state programmatic costs of approximately $1,821,054 for FY 19-20, $4,245,069 for FY 20-21 and $4,245,069 for FY 21-22. It is anticipated that $1,620 ($810 SGF and $810 FED) will be expended in FY 19-20 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 66.40 percent in FYs 19-20 and 67.35 percent for FYs 20-21 and 21-22.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will increase statutory dedicated revenue collections by approximately $1,820,244 for FY 19-20, $4,245,069 for FY 20-21 and $4,245,069 for FY 21-22. In addition, it is anticipated that the implementation of this proposed Rule will increase federal revenue collections by approximately $3,597,149 for FY 19-20, $8,756,675 for FY 20-21 and $8,756,675 for FY 21-22. It is anticipated that $810 will be collected in FY 19-20 for the federal share of the expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 66.40 percent in FYs 19-20 and 67.35 percent for FYs 20-21 and 21-22.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule, in compliance with House Concurrent Resolution 5 of the 2019 Regular Session of the Louisiana Legislature, amends the provisions governing the reimbursement methodology for outpatient hospital services in order to adjust the reimbursement rates. Outpatient hospital providers will benefit from implementation of this proposed Rule as it increases reimbursement rates. It is anticipated that implementation of this Rule will increase Medicaid programmatic expenditures by approximately $5,417,393 for FY 19-20 $13,001,744 for FY 20-21 and $13,001,744 for FY 21-22.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This Rule has no known effect on competition and employment.

Jen Steele	Evan Brasseaux
Medicaid Director	Staff Director
1909#078	Legislative Fiscal Office

NOTICE OF INTENT

Department of Insurance
Office of the Commissioner

Regulation 107—Homeowner and Fire/Commercial Insurance Policy Disclosure Forms
(LAC 37:XIII.Chapter 153)

The Department of Insurance, pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby gives notice of its intent to amend Regulation 107—Homeowner and Fire/Commercial Insurance Policy Disclosure Forms by amending Appendices B and C and to repromulgate Appendix A.

The purpose of the amendment to Regulation 107 is to revise and repromulgate forms for homeowners' insurance policies that comply with the requirements of Act No. 194 of the 2019 Regular Session of the Louisiana Legislature, which enacted R.S. 22:1332(B)(8).

Title 37
INSURANCE
Part XIII. Regulations
Chapter 153. Regulation 107—Homeowner and Fire/Commercial Insurance Policy Disclosure Forms

§15301. Purpose

A. The purpose of Regulation 107 is to repromulgate the fire/commercial insurance policy disclosure form contained in Appendix A and to amend the homeowners insurance policy disclosure forms contained in Appendices B and C developed by the commissioner of insurance for use by all property and casualty insurers issuing, delivering or renewing homeowners and fire/commercial insurance policies that provide coverage for damages to property in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:1319 and 22:1332.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:530 (March 2017), amended LR 45:

§15303. Applicability and Scope

A. Regulation 107 shall be applicable to all property and casualty insurers for all new fire/commercial policies and homeowner policies and all renewals of existing fire/commercial policies and homeowner policies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:1319 and 22:1332.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:530 (March 2017), amended LR 45:

§15305. Disclosure Forms

A. - C. …

D. Appendix B contains the form that sets forth the disclosures required by R.S. 22:1332(B)(1)-(6) and (8) for use by all property and casualty insurers issuing homeowner policies covering property in Louisiana.

E. Appendix C contains the form that sets forth the disclosures required by R.S. 22:1332(B)(1)-(8) for use by all property and casualty insurers issuing homeowner policies covering property in Louisiana that use claims that do not exceed the policy deductible and that do not result in a payment either to the insured or on behalf of the insured to increase the cost of the policy premium in the future or as part of the basis for cancellation of a policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:1319 and 22:1332.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:531 (March 2017), amended LR 45:

§15307. Amendment

A. The commissioner of insurance reserves the right to amend, modify, alter or rescind all or any portion of Regulation 107.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:1319 and 22:1332.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:531 (March 2017), amended LR5 45:

§15309. Severability Clause

A. If any provision of Regulation 107, or the application thereof to any circumstance, is held invalid, such determination shall not affect other provisions or applications of Regulation 107 which can be given effect without the invalid provision or application, and to that end the provisions of Regulation 107 are severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:1319 and 22:1332.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:531 (March 2017), amended LR 45:

§15311. Effective Date

A. The forms previously promulgated in Appendices B and C shall continue in use until May 30, 2020.

B. The amendments to Appendices B and C shall be used for all new and renewal policies issued or renewed on or after May 30, 2020.

C. The form previously promulgated in Appendix A remains unchanged and shall continue in full force and effect until amended, modified, altered or rescinded by the commissioner of insurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:1319 and 22:1332.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:531 (March 2017), amended LR 45:

§15313. Appendices

A. Appendix A

Important Information Required by the Louisiana Department of Insurance

Fire Insurance Policy Coverage Disclosure Summary
(other than Homeowners)
Or
Commercial Insurance Policy Coverage Disclosure Summary
This form is promulgated pursuant to La. R.S. 22:1319

THIS IS ONLY A SUMMARY OF YOUR COVERAGE AND DOES NOT AMEND, EXTEND, OR ALTER THE COVERAGES OR ANY OTHER PROVISIONS CONTAINED IN YOUR POLICY. INSURANCE IS A CONTRACT. THE LANGUAGE IN YOUR POLICY CONTROLS YOUR LEGAL RIGHTS AND OBLIGATIONS.

READ YOUR INSURANCE POLICY FOR COMPLETE POLICY TERMS AND CONDITIONS

COVERAGE(S) FOR WHICH PREMIUM WAS PAID (La. R.S. 22:1319(B)(1))

[INSERT PROPERTY COVERAGES]

Deductibles (La. R.S. 22:1319(B)(3))
This policy sets forth certain deductibles that will be applied to claims for damages. When applicable, a deductible will be subtracted from your total claim and you will be paid the balance subject to applicable coverage limits.

You may be able to reduce your premium by increasing your deductible. Contact your producer (agent) or insurer for details.

NOTICE: This policy [does/does not] set forth a separate deductible for covered losses caused by [hurricane; wind; named storm] as defined in the policy.

Separate Deductible Examples—Hurricane, Wind or Named Storm Damage.

If applicable, the following illustrates how a separate deductible applying to hurricane, wind or named storm damage is applied under your policy:

The insurer shall comply with La. R.S. 22:1319 B(3) by selecting either option A or B below:

A. Developing its own standardized example to reflect how a hurricane, wind, or named storm damage loss will be adjusted under the policy. The standardized example shall set forth a separate loss for each coverage included in the policy for which a premium has been paid. The total of all losses combined shall exceed by at least ten percent (10%) the applicable deductible(s) so that the example demonstrates a net payment to the insured.

B. Utilizing the standardized example prepared by the LDI if this standardized example properly reflects how a separate deductible is applied to a hurricane, wind, or named storm damage loss under the policy:

The following assumes no co-insurance penalty and a 2% hurricane, wind, or named storm deductible. The amounts of loss to the damaged property are $50,000 (building) and $20,000 (business personal property).

Limits of insurance on building…….. $ 100,000
Total amount of building loss……$ 50,000
Less 2% deductible ($100,000 X .02).....……$ 2,000
Net payment to insured for building loss…….....$ 48,000
Limits of insurance on the business personal property……....$ 50,000
Total amount of business personal property loss….$ 20,000
Less 2% deductible ($50,000 X .02) …….$ 1,000
Net payment to insured for business personal property loss…….…..$ 19,000
Total net payment to insured for building and business personal property loss ($48,000 + $19,000)……. $ 67,000

TO SEE EXACTLY HOW YOUR SEPARATE HURRICANE, WIND OR NAMED STORM DEDUCTIBLE WILL APPLY, PLEASE REFER TO YOUR POLICY.

Limitations or Exclusions under this Policy (La. R.S. 22:1319(B)(2))

FLOOD—Flood damage [is/is not] covered, regardless of how caused, when flood is the peril that causes the loss. Flood water includes, but is not limited to, storm surge, waves, tidal water, overflow of a body of water, whether driven by wind or not.

Flood Insurance may be available through the National Flood Insurance Program (NFIP). NFIP flood insurance may provide coverage for damage to your dwelling or building and/or contents subject to the coverage limits and terms of the policy.

Excess Flood Insurance may be available under a separate policy, from this or another insurer, if the amount of the primary flood insurance is not enough to cover the value of your property.

You may contact your producer (agent) or insurer for more information on the NFIP and excess flood insurance.

MOLD—Damage caused solely by mold [is/is not] covered under this policy.

FOR ALL OTHER LIMITATIONS OR EXCLUSIONS REFER TO YOUR POLICY FOR COMPLETE DETAILS ON TERMS AND PROVISIONS

B. Appendix B

Important Information Required by the Louisiana Department of Insurance

Homeowners Insurance Policy Coverage Disclosure Summary

This form is promulgated pursuant to La. R.S. 22:1332(B)(1)-(6) and (8)

THIS IS ONLY A SUMMARY OF YOUR COVERAGE AND DOES NOT AMEND, EXTEND, OR ALTER THE COVERAGES OR ANY OTHER PROVISIONS CONTAINED IN YOUR POLICY. INSURANCE IS A CONTRACT. THE LANGUAGE IN YOUR POLICY CONTROLS YOUR LEGAL RIGHTS AND OBLIGATIONS.

READ YOUR INSURANCE POLICY FOR COMPLETE POLICY TERMS AND CONDITIONS

COVERAGE(S) FOR WHICH PREMIUM WAS PAID (La. R.S. 22:1332(B)(1))

[INSERT PERSONAL PROPERTY COVERAGES]

Example:
Coverage A Dwelling
Coverage B Other Structures
Coverage C Personal Property
Coverage D Loss of Use
Coverage E Personal Liability
Coverage F Medical Payments

Deductibles (La. R.S. 22:1332(B)(5) and (6))

This policy sets forth certain deductibles that will be applied to claims for damages. When applicable, a deductible will be subtracted from your total claim and you will be paid the balance subject to applicable coverage limits.

You may be able to reduce your premium by increasing your deductible. Contact your producer (agent) or insurer for details.

NOTICE: This policy [does/does not] set forth a separate deductible for covered losses caused by [hurricane; wind; named storm] as defined in the policy.

Separate Deductible Example—Hurricane, Wind or Named Storm Damage.

If applicable, the following illustrates how a separate deductible applying to hurricane, wind or named storm damage is applied under your policy:

The insurer shall comply with La. R.S. 22:1332(B)(6) by selecting and inserting either option A or B below:

A. Developing its own standardized example to reflect how a hurricane, wind, or named storm damage loss will be adjusted under the policy. The standardized example shall set forth a separate loss under each of Coverage A, B, C and D and the total of all losses combined shall exceed by at least ten percent (10%) the applicable deductible so that there shall be a net payment to the insured.

B. Utilizing the standardized example prepared by the LDI if this standardized example properly reflects how a separate deductible is applied to a hurricane, wind, or named storm damage loss under the policy:

If the total insured value of the dwelling or Coverage A is $200,000 and you have a 2% hurricane, wind, or named storm deductible, then your hurricane, wind or named storm deductible would be $200,000.00 X .02 = $4,000.00.

Losses:

Coverage A - Dwelling	$15,000
Coverage B - Other Structures	$ 2,500
Coverage C - Personal Property	$ 3,000
Coverage D - Loss of Use	$ 2,000
Total amount of all losses	$22,500
Less 2% hurricane, wind or named storm deductible	$ 4,000
Net payment to insured	$18,500

TO SEE EXACTLY HOW YOUR SEPARATE HURRICANE, WIND OR NAMED STORM DEDUCTIBLE WILL APPLY, PLEASE REFER TO YOUR POLICY.

Limitations or Exclusions under this Policy (La. R.S. 22:1332(B)(2))

FLOOD—Flood damage [is/is not] covered, regardless of how caused, when flood is the peril that causes the loss. Flood water includes but is not limited to storm surge, waves, tidal water, overflow of a body of water, whether driven by wind or not.

Flood Insurance may be available through the National Flood Insurance Program (NFIP). NFIP flood insurance may provide coverage for damage to your dwelling and/or contents subject to the coverage limits and terms of the policy.

Excess Flood Insurance may be available under a separate policy from this or another insurer if the amount of the primary flood insurance is not enough to cover the value of your property.

You may contact your producer (agent) or insurer for more information on the NFIP and excess flood insurance.

MOLD—Damage caused solely by mold [is/is not] covered under this policy.

FOR ALL OTHER LIMITATIONS OR EXCLUSIONS REFER TO YOUR POLICY FOR COMPLETE DETAILS ON TERMS AND PROVISIONS

Claim Filing Process (La. R.S. 22:1332(B)(3))

There may be time limitations for filing a claim and filing of a satisfactory proof of loss. There may also be time limitations for repairing and replacing damaged property that could cause you to not recover the replacement cost for the insured loss of your property, if applicable.

Payment of Claims (La. R.S. 22:1332(B)(3))

Depending on the terms of the insurance policy, some losses may be based on actual cash value (ACV) and other losses based on replacement cost (RC).

ACV is the amount needed to repair or replace the damaged or destroyed property, minus the depreciation.

RC involves the initial payment of actual cash value (ACV) of a loss, and the subsequent payment of the additional amount that is actually and necessarily expended to repair or replace the damaged or destroyed property.

**Refer to your policy for the terms and conditions describing how a particular loss is to be paid.

Payment and Adjustment of Claims (La. R.S. 22:1332(B)(4))

Pursuant to La. R.S. 22:1892 and 22:1973, except in the case of catastrophic loss, the insurer shall initiate loss adjustment of a property damage claim and/or a claim for reasonable medical expenses within fourteen (14) days after notification of loss by the claimant.

In the case of catastrophic loss, the insurer shall initiate loss adjustment of a property damage claim within thirty (30) days after notification of loss by the claimant unless the Commissioner of Insurance promulgates a rule to extend the time period for initiating a loss adjustment for damages arising from a presidentially declared emergency or disaster or a gubernatorially declared emergency or disaster for up to an additional thirty (30) days. Thereafter, one additional extension of the period of time for initiating a loss adjustment may be allowed by the Commissioner of Insurance if approved by the Senate Committee on Insurance and the House Committee on Insurance.

All insurers shall make a written offer to settle any property damage claim, including a third-party claim, within thirty (30) days after the receipt of satisfactory proof of loss of that claim.

Failure to make such payment within thirty (30) days after receipt of such satisfactory written proofs and demand thereof or failure to make a written offer to settle any property damage claim, including a third-party claim, within thirty (30) days after receipt of a satisfactory proof of loss of that claim may result in a late penalty against the insurer in addition to the payment of the claim.

If the insurer is found to be arbitrary, capricious, or without probable cause in settling any property damage claim, the insurer must pay the insured, in addition to the amount of the loss, fifty percent (50%) damages on the amount found to be due from the insurer to the insured, or one thousand dollars ($1,000.00), whichever is greater, as well as attorney fees and costs, if applicable.

Reduction in Premium for Improvements or Modifications to Property (La. R.S. 22:1332(B)(8))

Certain improvements or modifications to your property, such as adding storm shutters, modifying the roof design, and improving the roof covering, may reduce your premium. Contact your insurance producer or insurer for complete details on qualifying improvements or modifications. For further guidance and assistance, see Regulation 94—Premium Adjustments for Compliance with Building Codes and Damage Mitigation, found at LAC 37:XIII.Chapter 127.

C. Appendix C

Important Information Required by
the Louisiana Department of Insurance

Homeowners Insurance Policy Coverage Disclosure Summary

This form is promulgated pursuant to La. R.S. 22:1332 (B) (1)-(8)

THIS IS ONLY A SUMMARY OF YOUR COVERAGE AND DOES NOT AMEND, EXTEND, OR ALTER THE COVERAGES OR ANY OTHER PROVISIONS CONTAINED IN YOUR POLICY. INSURANCE IS A CONTRACT. THE LANGUAGE IN YOUR POLICY CONTROLS YOUR LEGAL RIGHTS AND OBLIGATIONS.

READ YOUR INSURANCE POLICY FOR COMPLETE POLICY TERMS AND CONDITIONS

COVERAGE(S) FOR WHICH PREMIUM WAS PAID (La. R.S. 22:1332(B)(1))

[INSERT PERSONAL PROPERTY COVERAGES]

Example:

Coverage A	Dwelling
Coverage B	Other Structures
Coverage C	Personal Property
Coverage D	Loss of Use
Coverage E	Personal Liability
Coverage F	Medical Payments

Deductibles (La. R.S. 22:1332(B)(5), (6) and (7))

This policy sets forth certain deductibles that will be applied to claims for damages. When applicable, a deductible will be subtracted from your total claim and you will be paid the balance subject to applicable coverage limits.

You may be able to reduce your premium by increasing your deductible. Contact your producer (agent) or insurer for details.

If you file a claim that does not exceed the policy deductible and that does not result in a payment either to you or on your behalf, that claim may be used to increase the cost of your policy's premium in the future or as part of the basis for cancellation of your policy.

NOTICE: This policy [does/does not] set forth a separate deductible for covered losses caused by [hurricane; wind; named storm] as defined in the policy.

Separate Deductible Example—Hurricane, Wind or Named Storm Damage.

If applicable, the following illustrates how a separate deductible applying to hurricane, wind or named storm damage is applied under your policy:

The insurer shall comply with La. R.S. 22:1332 B(6) by selecting and inserting either option A or B below:

A. Developing its own standardized example to reflect how a hurricane, wind, or named storm damage loss will be adjusted under the policy. The standardized example shall set forth a separate loss under each of Coverage A, B, C and D and the total of all losses combined shall exceed by at least ten percent (10%) the applicable deductible so that there shall be a net payment to the insured.

B. Utilizing the standardized example prepared by the LDI if this standardized example properly reflects how a separate deductible is applied to a hurricane, wind, or named storm damage loss under the policy:
If the total insured value of the dwelling or Coverage A is $200,000.00 and you have a 2% hurricane, wind, or named storm deductible, then your hurricane, wind or named storm deductible would be $200,000.00 X .02 = $4,000.00.

Losses:

Coverage A - Dwelling	$15,000
Coverage B - Other Structures	$ 2,500
Coverage C - Personal Property	$ 3,000
Coverage D - Loss of Use	$ 2,000
Total amount of all losses	$22,500
Less 2% hurricane, wind or named storm deductible	$ 4,000
Net payment to insured	$18,500

TO SEE EXACTLY HOW YOUR SEPARATE HURRICANE, WIND OR NAMED STORM DEDUCTIBLE WILL APPLY, PLEASE REFER TO YOUR POLICY.
Limitations or Exclusions under this Policy (La. R.S. 22:1332(B)(2))

FLOOD—Flood damage [is/is not] covered, regardless of how caused, when flood is the peril that causes the loss. Flood water includes but is not limited to storm surge, waves, tidal water, overflow of a body of water, whether driven by wind or not.

Flood Insurance may be available through the National Flood Insurance Program (NFIP). NFIP flood insurance may provide coverage for damage to your dwelling and/or contents subject to the coverage limits and terms of the policy.

Excess Flood Insurance may be available under a separate policy from this or another insurer if the amount of the primary flood insurance is not enough to cover the value of your property.

You may contact your producer (agent) or insurer for more information on the NFIP and excess flood insurance.

MOLD—Damage caused solely by mold [is/is not] covered under this policy.

FOR ALL OTHER LIMITATIONS OR EXCLUSIONS REFER TO YOUR POLICY FOR COMPLETE DETAILS ON TERMS AND PROVISIONS

Claim Filing Process (La. R.S. 22:1332(B)(3))

There may be time limitations for filing a claim and filing of a satisfactory proof of loss. There may also be time limitations for repairing and replacing damaged property that could cause you to not recover the replacement cost for the insured loss of your property, if applicable.

Payment of Claims (La. R.S. 22:1332(B)(3))

Depending on the terms of the insurance policy, some losses may be based on actual cash value (ACV) and other losses based on replacement cost (RC).

ACV is the amount needed to repair or replace the damaged or destroyed property, minus the depreciation.

RC involves the initial payment of actual cash value (ACV) of a loss, and the subsequent payment of the additional amount that is actually and necessarily expended to repair or replace the damaged or destroyed property.

** Refer to your policy for the terms and conditions describing how a particular loss is to be paid.

Payment and Adjustment of Claims (La. R.S. 22:1332(B)(4))

Pursuant to La. R.S. 22:1892 and 22:1973, except in the case of catastrophic loss, the insurer shall initiate loss adjustment of a property damage claim and/or a claim for reasonable medical expenses within fourteen (14) days after notification of loss by the claimant.

In the case of catastrophic loss, the insurer shall initiate loss adjustment of a property damage claim within thirty (30) days after notification of loss by the claimant unless the Commissioner of Insurance promulgates a rule to extend the time period for initiating a loss adjustment for damages arising from a presidentially declared emergency or disaster or a gubernatorially declared emergency or disaster for up to an additional thirty (30) days. Thereafter, one additional extension of the period of time for initiating a loss adjustment may be allowed by the Commissioner of Insurance if approved by the Senate Committee on Insurance and the House Committee on Insurance.

All insurers shall make a written offer to settle any property damage claim, including a third-party claim, within thirty (30) days after the receipt of satisfactory proof of loss of that claim.

Failure to make such payment within thirty (30) days after receipt of such satisfactory written proofs and demand thereof or failure to make a written offer to settle any property damage claim, including a third-party claim, within thirty (30) days after receipt of a satisfactory proof of loss of that claim may result in a late penalty against the insurer in addition to the payment of the claim.

If the insurer is found to be arbitrary, capricious, or without probable cause in settling any property damage claim, the insurer must pay the insured, in addition to the amount of the loss, fifty percent (50%) damages on the amount found to be due from the insurer to the insured, or one thousand dollars ($1,000.00), whichever is greater, as well as attorney fees and costs, if applicable.

Reduction in Premium for Improvements or Modifications to Property (La. R.S. 22:1332(B)(8))

Certain improvements or modifications to your property, such as adding storm shutters, modifying the roof design, and improving the roof covering, may reduce your premium. Contact your insurance producer or insurer for complete details on qualifying improvements or modifications. For further guidance and assistance, see Regulation 94—Premium Adjustments for Compliance with Building Codes and Damage Mitigation, found at LAC 37:XIII.Chapter 127.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:1319 and 22:1332.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:531 (March 2017), amended LR 45:

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.

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.

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.

Small Business Statement

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.

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, or by faxing comments to (225) 342-1632. Comments will be accepted through the close of business, 4:30 p.m., October 21, 2019.

James J. Donelon
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE:

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule changes will not result in additional costs or savings for state or local governmental units. The amendments to the administrative rules primarily make technical updates to forms for use with homeowners' insurance policies that provide coverage for damage to property and add disclosures stating that certain improvements to homes may result in reduced homeowners' insurance premiums. The addition of the disclosures regarding reduced premiums to the administrative rules is to comply with requirements enacted by Act 194 of 2019.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rules will not affect revenue collections for state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule changes will benefit consumers by revising homeowners' insurance policy forms to align with present practice. Furthermore, the proposed rule changes add disclosures to homeowners' insurance policy forms stating that insurers may reduce premiums if homeowners make certain improvements or modifications to the property such as adding storm shutters, modifying the roof design, and improving the roof covering.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rules will not affect competition or employment.

Nicholas Lorusso
Chief Deputy Commissioner
1909#048

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections
Corrections Services

Public Information Program and Media Access
(LAC 22:I.339)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950), the Department of Public Safety and Corrections, Corrections Services, hereby gives notice of its intent to amend the contents of §339, Public Information Program and Media Access.

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT
Part I. Corrections
Chapter 3. Adult Services
§339. Public Information Program and Media Access

A. Purpose—to state the general guidelines regarding department policies aimed at maintaining informative relationships with the public, the media and other agencies.

B. Applicability—deputy secretary, undersecretary, chief of operations, regional wardens, wardens, Director of Probation and Parole, Director of Prison Enterprises and communications director. Each unit head shall develop procedures to facilitate interaction with the public, the media, and other agencies and is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation and to inform employees and offenders of its contents.

C. Policy. It is the secretary's policy to maintain a cooperative and responsible relationship with and to inform the public, media and other agencies concerning department operations, accomplishments, challenges and critical incidents. News media inquiries shall be responded to in an accurate and timely manner, consistent with the security, public safety and the privacy interests of the department, its staff and offenders. All legitimate news media organizations shall be allowed reasonable access to the state's correctional facilities unless security considerations dictate otherwise.

D. Definitions

Commercial Production—freelance photographers, writers and film makers who intend to sell their work product (including uncommitted documentaries) for profit to other companies.

Credentials—for purposes of identification, both photo identification, such as a valid driver's license, and identification (ID) card issued by the reporter's place of employment shall be required. In the absence of employee ID cards, the department reserves the right to verify all identification and to refuse admittance when such identification is found to be suspect.

Designated Spokesperson—an individual employee that has been given permission to speak to the media on behalf of the department, institution, or Probation and Parole Office. These persons are granted permission to speak to the media by the unit head.

News Media—any accredited agency that gathers and reports news for a general circulation newspaper, news magazine, national or international news service or radio/television news program. This includes newspapers,

publications, television/radio stations and internet news services. Authors or freelance journalists who are researching and/or writing articles about corrections or criminal justice topics must provide credentials to verify their association with a legitimate news/media organization.

News Release—a written statement concerning an issue, event or situation for which the department wishes to make a permanent record-for widespread dissemination.

On Record Correspondence—official and quotable communication or information dissemination on behalf of the Department of Corrections with any media or news outlet.

E. Release of Information

1. The secretary shall have discretion to grant or deny an interview request.

2. Information regarding non-restrictive departmental operations, policies, procedures, etc. shall be released through the communications director.

3. Departmental news releases shall be disseminated through the communications director. Unit specific news releases shall be submitted to the communications director for review and approval prior to dissemination.

4. The unit head or his designee shall inform the communications director of any and all news media requests. The communications director shall advise and assist the unit head or designee in all matters, responses, and information dissemination related to such requests.

5. Any on record correspondence with local, state, national or international media, whether in person, telephone, or writing, must first be approved by the communications director, the secretary or the executive counsel.

6. The reporting of unusual occurrences shall be made in accordance with established policy and procedures. In addition, the secretary, chief of operations and communications director shall be made aware as soon as possible of any incidents involving offenders under the supervision of the Division of Probation and Parole.

7. Unless specifically assigned to do so by the unit head, other departmental employees shall not make statements on behalf of the unit or the department. Staff shall refer all media inquiries to the unit head or designee.

F. Release of Data

1. In conjunction with the secretary and communications director, and in accordance with the requirements of Section E, units will proactively communicate with the news media regarding escapes, incidents of serious violence, riots, or other disturbances which result in fatalities, major injuries, major property damage or any other serious disruption of prison operations.

2. Upon request from a news media representative, information regarding an offender shall be released in accordance with established policy and procedures.

3. Information regarding psychiatric, medical or juvenile criminal histories of offenders cannot be released. Additionally, pursuant to R.S. 46:1844(W)(1)(a), the name, address or identity of crime victims who, at the time of the commission of the offense were minors under 18 years of age, or who were victims of sex offenses, regardless of the date of commission of the offense, cannot be disclosed.

G. General Procedures

1. Unit procedures shall address emergency and non-emergency responses to the news media and include, at a minimum, the following:

a. identification of areas in the unit that are accessible to news media representatives;

b. contact person for routine requests for information;

c. identification of data and information protected by federal or state privacy laws, or federal and state freedom of information laws;

d. special events coverage;

e. news release policy; and

f. designated staff authorized to speak with the news media (which shall be submitted to the communications director each time the staff list is updated).

2. Inquiries from legislative and executive bodies shall be referred to the secretary's office.

H. General Population and Offender Interviews

1. News media wishing to interview an offender shall submit a request to the unit head indicating whom they want to interview and the nature of the story. The request shall be submitted on official letterhead. Such requests must be made within a reasonable time frame, considering the scope of the story and the unit's ability to adequately prepare for the visit. The unit head or designee shall submit all inmate interview requests to the communications director for consideration. The unit head or designee shall facilitate interview requests upon the approval of the communications director.

2. Interviews of offenders shall be considered on a case by case basis at the sole discretion of the communications director.

3. Offenders may be eligible to be interviewed by the media under the following conditions:

a. assigned to general population (not to include initial reception unless a pressing need request is approved by the secretary);

b. required to sign an offender media release form. Because interviews are voluntary, the offender has the right to refuse to be interviewed, photographed or recorded by the media. The written release or decision not to be interviewed shall be filed in the offender's master prison record;

c. receive no compensation or anything of value (monetary or through enhanced status) in exchange for, or as a result of, the interview.

4. In general, interviews with offenders housed in maximum custody areas for behavior problems and/or poor conduct records and offenders convicted of sexual offenses are strongly discouraged.

5. Any request to interview an offender may be denied on the basis of security, public safety, medical or other administrative reason including, but not limited to the following:

a. the news media representative or news organization which is represented does not agree to the conditions established by the department and the warden;

b. the news media representative or news organization has, in the past 12 months, failed to abide by any required conditions;

c. the offender is physically or mentally unable to participate;

d. the interview, in the opinion of the warden, would endanger the health or safety of the interviewer, media crew, facility, offender, or could cause serious unrest or disrupt the operation of the facility;

6. Telephone interviews with an offender are prohibited.

NOTE: Exceptions may be authorized and require the approval of both the communications director and the warden or designee.

I. Rules for Media in Prisons

1. All media representative must have prior approval to visit an institution.

2. Live broadcasts by television or radio (other than KLSP) are prohibited within correctional facilities, unless specifically authorized by the secretary.

3. Interviews shall take place on prison grounds in an area outside of offender living areas.

4. Interviews shall take place in view of a departmental employee for the safety of the media representative. The warden or designee reserves the right to terminate any interview or coverage within the facility should a disturbance or disruption occur.

5. All media visitors shall be provided with an escorting staff member for the duration of the visit.

6. Interviews may be recorded by video, audio, notes or other methods with prior approval of the warden and the offender to be interviewed.

7. Only one media organization may be allowed to interview an offender at any given time. News conferences are not permitted for offenders.

8. A media representative shall give written approval to allow the department the opportunity to respond to any allegations which might be published or broadcast prior to distribution.

9. The warden or designee may suspend all media visits during an institutional crisis or critical incident. The warden or designee shall periodically brief all media on the situation. A media briefing center may be established at a remote location.

10. Failure by a news media representative to comply with the rules of this regulation constitutes grounds for denying the representative and/or the representative's agency permission to conduct the interview or any other interviews for a 12-month period.

J. Death Row and Executions

1. Death Row offenders must have their attorney's written approval prior to an interview, photograph and/or audio or video recording.

2. Media access preceding and following an execution shall be in accordance with established policy and procedures.

K. Procedures for Commercial Productions or Non-News Media

1. Unit access by independent filmmakers, writers for non-news magazines and others may be permitted by special advance arrangement and with the approval of the secretary and unit head.

2. All commercial production staff are required to make a written request to the unit head for access. Written requests shall include, at a minimum, the following information, as applicable:

a. name, job title and employer of person requesting visit (if freelance, the organization represented);

b. topic of story, where it will be used and for what purpose;

c. name of individual(s) to be interviewed;

d. date and time of arrival and anticipated duration;

e. name of all persons accompanying requestor;

f. if applicable, a hold harmless clause: "I recognize a visit to a correctional facility may present certain risks/hazards. I agree to assume all ordinary and/or usual risks to my personal safety inherent in a visit to an institution of this type."

3. Written requests shall be forwarded to the secretary for final review prior to project commencement.

4. All commercial productions are required to read, understand and sign a commercial production location agreement form upon their arrival at the unit. The unit head or designee may require review of the material prior to distribution solely to insure that it comports with the agreement.

L. Exceptions

1. The secretary or designee may make exceptions to specific sections of this regulation. Requests for exceptions, and the reasons therefore, shall be directed to the secretary for consideration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49.950 and American Correctional Association (ACA) Standards 2-CO-1A-25 through 27-1 (Administration of Correctional Agencies) 4-4019 through 4-4021 (Adult Correctional Institutions).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 25:1260 (July 1999), amended LR 31:1100 (May 2005), repromulgated LR 31:1343 (June 2005), amended LR 36:1265 (June 2010), LR

Family Impact Statement

Amendment to the current Rule should not have any known or foreseeable impact on family formation, 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 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 the 2014 Regular Legislative Session.

Public Comments

Written comments may be addressed to Natalie LaBorde, Executive Counsel, Department of Public Safety and Corrections, P.O. Box 94304, Baton Rouge, LA 70804 until 4:30 p.m. on October 10, 2019.

James M. LeBlanc
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Public Information Program and Media Access

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule changes may result in an indeterminable, but likely nominal, impact on state governmental unit

expenditures as a result of potential workload increases in the office of the secretary to provide an additional level of review with regard to information requests. The department will absorb any such impact with existing budgetary and personnel resources. The proposed rule changes update the Department of Corrections general guidelines regarding department policies on public information and media requests, as well as information requests from other governmental entities.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units as a result of the proposed rule changes.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There is no estimated cost and/or economic benefit to directly affected persons or non-governmental groups as a result of the proposed rule changes.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment as a result of the proposed rule changes.

Thomas C. Bickham, III	Evan Brasseaux
Undersecretary	Staff Director
1909#052	Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections
Office of Motor Vehicles

Credit toward Suspension Time or Condition of Reinstatement Time (LAC 55:III.451)

Under the authority of R.S. 32:378.2(M), and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Public Safety and Corrections, Public Safety Services, Office of Motor Vehicles (Department), hereby gives notice of its intent to promulgate a rule regarding the granting of credit towards suspension time or a condition of reinstatement requirement. The existing Chapter 4 is being divided into Subchapters A and B. All of Subchapter B of Chapter 4 is new and implements the provisions of Act 396 of the 2019 Regular Session of the Louisiana Legislature. This proposed Section is intended to be adopted and effective on December 20, 2019.

Title 55
PUBLIC SAFETY
Part III. Motor Vehicles

Chapter 4. Ignition Interlock Devices

Subchapter A. Specifications for Electronic Reporting of Interlock Device Installation/Removal

Subchapter B. Credit for Suspension Time or Condition of Reinstatement Time for Installation of an Ignition Interlock Device

§451. Requirements to Receive Credit toward Suspension Time or Condition of Reinstatement Time

A. Effective August 1, 2019, an individual who had an ignition interlock device installed by an interlock manufacturer approved by Louisiana State Police, Applied Technology Unit, as a requirement of bail, a part of a pre-trial diversion program, or a term of suspended or deferred sentence pursuant to Code of Criminal Procedure Article 894, for an offense involving the operation of a motor vehicle while under the influence of alcohol, drugs, or a combination of alcohol and drugs and is arrested or subsequently convicted for such an offense, shall receive credit towards suspension time or any reinstatement requirement that may be imposed upon complying with the requirements of this Subchapter.

B. A person seeking to receive credit towards suspension time for having an approved and functioning ignition interlock device installed on the motor vehicle the person operates shall:

1. Make a request at your local Office of Motor Vehicle

2. Submit the completed Application for Ignition Interlock Restriction form signed by the applicant.

3. Submit documentation from the court having jurisdiction over the prosecution of the person for an offense involving the operation of a motor vehicle while under the influence of alcohol, drugs, or a combination of alcohol and drugs, or from the prosecutor administering the pre-trial diversion program, that the person is required to install an ignition interlock device on the motor vehicle as a requirement of the court or the prosecutor, as the case may be.

4. Submit the completed form from the Ignition Interlock Manufacturer verifying two or more of the following violations have not occurred within a 30 day period:

a. tampering with the ignition interlock device;

b. circumventing the ignition interlock device;

c. failure to bring the ignition interlock device in for required service;

d. failure to take or pass a re-test;

e. failure to pass a breath test;

f. use of the emergency override feature without justification;

g. unauthorized removal of the device.

C. Applicant may apply for a driver's license with the interlock restriction provided their record is valid status. They will be required to show the interlock installment/lease agreement, proof of registration and insurance, and will be required to pay a duplicate license fee to add the restriction to the driver's license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:378.2(M)

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 45:

§453. No Credit toward Suspension Time If Subsequently Charged or Arrested

A. If the individual is charged or arrested for any offense involving the operation of a motor vehicle while under the influence of alcohol, drugs, or a combination of alcohol and drugs, during the period in which the individual is required to have an ignition interlock device as a requirement of bail, a part of a pre-trial diversion program, or a term of a suspended or deferred sentence pursuant to Code of Criminal Procedure Article 894, then credit will not be given.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:378.2(M)

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 45:

§455. Credit Time Is Prospective Only from August 1, 2019

A. No credit for having an ignition interlock device will be given for any suspension time or condition of reinstatement requirement prior to August 1, 2019, the effective date of Act 396. Any credit for having an ignition interlock device will be given for any suspension time or condition of reinstatement requirement will only start from August 1, 2019.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:378.2(M)

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 45:

§457. CDL Disqualifications

A. No credit shall be given for any disqualification period on commercial driving privileges.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:378.2(M)

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 45:

Family Impact Statement

1. The effect of this Rule on the stability of the family. This Rule should not have any effect on the stability of the family.

2. The effect of this Rule on the authority and rights of parents regarding the education and supervision of their children. This Rule should not have any effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect of this Rule on the functioning of the family. This Rule should not have any effect on the functioning of the family.

4. The effect of this Rule on family earnings and family budget. This Rule should not have any effect on family earnings and family budget.

5. The effect of this Rule on the behavior and personal responsibility of children. This Rule should not have any effect on the behavior and personal responsibility of children.

6. The effect of this Rule on the ability of the family or local government to perform the function as contained in the proposed Rule. This Rule should not have any effect on the ability of the family or local government to perform the function as contained in the proposed Rule.

Small Business Impact

1. The impact of the proposed Rule on small businesses has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act.

2. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Poverty Statement

1. The impact of the proposed Rule on child, individual, or family poverty has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on poverty in relation to individual or community asset development as provided in the R.S. 49:973.

2. The agency has considered economic welfare factors and, where possible, utilized regulatory methods in the drafting of the proposed rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on poverty.

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 to Harrietta J. Bridges, Stephen Quidd, or Jennifer Del Murray, by mail at Post Office Box 66614, Baton Rouge, Louisiana 70896, by fax at (225) 925-4624. Written comments will be accepted through the close of business, October 15, 2019. A public hearing is tentatively scheduled for October 21, 2019 at 10:00 a.m. at 7979 Independence Blvd. Suite 301, Baton Rouge, LA 70806. Please call in advance to confirm the time and place of meeting, as the meeting will be cancelled if the requisite number of comments are not received.

Lt. Col Jason Starnes
Chief Administrative Office

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Credit toward Suspension Time or Condition of Reinstatement Time

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule will not result in any costs or savings to state or local governmental units. The proposed rule allows the Office of Motor Vehicles (OMV) to grant credit towards supsension time or any condition of reinstatement that may be imposed on a person pursant to La. R.S. 32:667, La. R.S. 32:667.1, or La. R.S. 32:414. The credit shall be available if the person installs a Department of Public Safety and Corrections approved ignition interlock device as a condition of bail, as part of a pre-trial diversion program, or as a requirement of probation. The person must submit the documentation establishing the installation of an approved and functioning ignition interlock device. The rule provides that the person must be in a valid status during the period the ignition interlock was installed to receive credit, and that no credit will be given if the person has two or more of the violations listed in La. R.S. 32:378.2(M)(2).

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule will have no effect on revenue collections for state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule will have no effect on costs to directly affected persons or non-governmental groups. Individuals may realize economic benefits if qualifying for the allowance of

credit as they will not be subsequently required to get an ignition interlock hardship license once the individual's DWI conviction is reported to the Department.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will have no effect on competition or employment.

Lt. Col. Jason Starnes	Evan Brasseaux
Chief Administrative Officer	Staff Director
1909#055	Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections
Office of State Police

Breath and Blood Alcohol Analysis
Methods and Techniques (LAC 55:I.583)

In accordance with the provisions of R.S. 32:663 relative to the authority of Louisiana Department of Public Safety to promulgate and enforce rules pursuant to approval of testing methods, the Louisiana Department of Public Safety, Louisiana State Police hereby proposes to amend rules under Title 55 Part I §583, in relation to Breath and Blood Alcohol Analysis to make a distinction between types of mass spectrometers used in toxicology analyses and provide identification criteria in addition to criteria already listed.

Title 55
PUBLIC SAFETY
Part I. State Police
Chapter 5. Breath and Blood Alcohol Analysis Methods and Techniques
Subchapter C. Analysis of Blood and Urine for Controlled Dangerous Substances
§583. Analytical Procedures

A. Analytical procedures shall include the use of at least two tests (a screening test and a confirmation test, or two confirmation tests) performed for each analyte present. If a screening test is used, the confirmation tests shall be based on a different physical or chemical principle from that of the screening test and offer a higher degree of specificity. All confirmation tests shall be performed using gas chromatography/mass spectrometry or liquid chromatography/mass spectrometry. Screening tests may include, but not be limited to, colorimetric, enzymatic, or chromatographic analysis. Confirmation of the identity of an analyte in a different specimen from that used for the first test (e.g., blood and urine) is acceptable, as is reconfirmation in a second aliquot of the same specimen.

B. Positive identification of an analyte shall at a minimum be based on the possible presence of the analyte or the analyte class in the screening test and its presence in the confirmatory test. Confirmation shall be based on the identification of at least three major ions with that of a reference analyte, unless otherwise specified below. When confirmation is made by selective ion monitoring in either gas or liquid chromatography procedures, correlation between ion ratios of the base peak and another major peak shall be within 20 percent for gas chromatography/mass spectrometry procedures and within 30 percent for liquid chromatography/mass spectrometry procedures. When confirmation is made by multiple reaction monitoring using either gas or liquid chromatography procedures, the presence of a characteristic precursor ion and two product ions shall have an ion ratio within + or - 30 percent to that of a calibrator, or the average of all calibrators for the run. When the confirmation is made by gas or liquid chromatography coupled to a Time-of-Flight (ToF) or other high-resolution mass spectrometer (HRMS), the presence of a characteristic precursor ion with overall mass accuracy shall be less than 15 parts-per-million or + or - 5 millimass units. At least one additional product ion compared to that of a reference analyte shall also be present. Retention times between the analyte in question and the reference analyte shall be "within + or = 2 percent" for gas chromatography/mass spectrometry procedures and "within + or - 6 seconds or + or - 10 percent" for liquid chromatography/mass spectrometry procedures. If a quantification result of a drug and/or metabolite is reported, the quantification result is prohibited from including a value range or measurement uncertainty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:663.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 26:2625 (November 2000), amended LR 37:1417 (May 2011), LR 44:1272 (July 2018), LR XX:XXXX (August 2019), LR XX:XXXX (September 2019).

Family Impact Statement

1. The Effect of this Rule on the Stability of the Family. This Rule will have no effect on the stability of the family.

2. The Effect of this Rule on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. This Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect of this Rule on the Functioning of the Family. This Rule will have no effect on the functioning of the family.

4. The Effect of this Rule on Family Earnings and Family Budget. This Rule will have no effect on family earning and family budget.

5. The Effect of this Rule on the Behavior and Personal Responsibility of Children. This Rule will have no effect on the behavior and personal responsibility of children.

6. The Effect of this Rule on the Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rules. This Rule will have no effect on the ability of the family or local government to perform the function as contained in the proposed Rules.

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.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. 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 Laura C. Hopes, Attorney, Louisiana State Police, 7979 Independence Blvd., Suite 307, Baton Rouge, Louisiana 70806. She is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

Requests for a public hearing must be submitted in writing either via email or written correspondence. Requests for a public hearing shall be sent to Laura.hopes@la.gov or to Laura C. Hopes, Attorney, Louisiana State Police, 7979 Independence Blvd., Suite 307, Baton Rouge, Louisiana 70806. The deadline for submitting a request for public hearing is October 10, 2019. All requests for a public hearing sent via written correspondence must be received by October 10, 2019. A public hearing will be held on Thursday, October 24, 2019 at 10:00 a.m. at 7979 Independence Boulevard, Suite 301, Baton Rouge, Louisiana 70806. If the requisite number of comments are not received, the hearing will be cancelled. Please call and confirm the hearing will be conducted before attending.

Lt. Col. Jason Starnes
Chief Administrative Officer

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Breath and Blood Alcohol Analysis Methods and Techniques

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 de minimis cost of promulgation for FY 19-20.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will not affect revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

It is anticipated that implementation of this proposed rule will not have economic cost or benefits to directly affected persons or non-governmental groups for FY 19-20, FY 20-21, and FY 21-22.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Lt. Col. Jason Starnes
Chief Administrative Officer
1909#018

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections
Office of State Fire Marshal
Uniform Construction Code Council

Uniform Construction Code (LAC 17:I.Chapter 1)

In accordance with the provisions of R.S. 40:1730.26 and R.S. 40:1730.28, relative to the authority of the Louisiana State Uniform Construction Code Council (LSUCCC) to promulgate and enforce rules and in accordance with R.S. 49:953(B), the Administrative Procedure Act, the Department of Public Safety and Corrections, Office of State Fire Marshal, Louisiana State Uniform Construction Code Council (LSUCCC) hereby gives notice that it proposes to amend and adopt the following rule. The purpose of adopting and amending the currently adopted construction codes is to replace them with the more recent technology, methods and materials for the 2015 editions of the *International Residential Code and International Plumbing Code*.

Title 17
CONSTRUCTION
Part I. Uniform Construction Code
Chapter 1. Adoption of the Louisiana State Uniform Construction Code
(Formerly LAC 55:VI.Chapter 3)
§103. *International Building Code*
(Formerly LAC 55:VI.301.A.1)

A. *International Building Code* (IBC), 2015 Edition, not including Chapter 1, Administration, Chapter 11, Accessibility, Chapter 27, Electrical. The applicable standards referenced in that code are included for regulation of construction within this state. Furthermore, IBC shall be amended as follows and shall only apply to the *International Building Code*.

Amend	Chapter 2, Definitions.	Mini-Storage Facility- a self-service storage facility which rents or leases individual storage space to occupants for the storage and/or removal of personal property.
Amend	Chapter 9	To adopt and amend 2015 International Building Code
Amend	Section 903.2.1.1, Group A-2.	
Amend	Item 2	Item (2). The fire area has an occupant load of 300 or more.
Adopt	Item 4	Item (4). Open-air pavilions on three sides or more, not exceeding 12,000 square feet, shall not be required to comply with 903.2.1.3(1) and 903.2.1.3(2) where each side has unobstructed access to a public way (10'-0" wide by 10'-0")' high). No fixed elements, equipment, seating, etc. are permitted within the 10'-0" by 10'-0" access.

Adopt	Exceptions	(a). The requirements of Sections 903.2.1.2(1) and 903.2.1.2(2) shall not apply to a single multi-purpose room less than 12,000 sf when all of the following conditions are met. (1.) The single multi-purpose room shall not be used for display or exhibition, bars or taverns. (2.) The single multi-purpose room shall not share exit access with other occupancies. Non-separated accessory uses that are incidental or ancillary to the single multi-purpose room shall be considered as part of the assembly occupancy. The accessory uses shall not be limited to 10 percent of the single multi-purpose room floor area and/or building, but shall be included and considered as part of the limited assembly room floor area. (3.) The single multi-purpose room shall not be part of a fire area containing other assembly occupancies. (4.) A single multi-purpose room with an occupant load greater than 300 persons shall be provided with a fire alarm system in accordance with Section 907.2.1. (5.) The single multi-purpose room with its accessory or ancillary uses shall be separated, when part of a multiple occupancy, in accordance with Table 508.4 and Section 707 from the remainder of the building. The single multi-purpose room fire area containing the single multi-purpose room and its accessory or ancillary uses shall be less than 12,000 sf. (6.) Provide system smoke detection in all areas in accordance with Section 907 throughout the entire building.
Amend	Section 903.2.1.3, Group A-3.	
Adopt	Item 4	4. Open air pavilions on three sides or more, not exceeding 12,000 square feet, shall not be required to comply with Section 903.2.1.3(2) where each side has unobstructed access to a public way (10'-0" wide by 10'-0" high). No fixed elements, equipment, seating, etc. are permitted within the 10'-0" by 10'-0" access.
Adopt	Exceptions	(a). The requirements of Sections 903.2.1.2(1) and 903.2.1.2(2) shall not apply to a single multi-purpose room less than 12,000 sf when all of the following conditions are met: (1.) The single multi-purpose room shall not be used for display or exhibition. (2.) The single multi-purpose room shall not share exit access with other occupancies. Non-separated accessory uses that are incidental or ancillary to the single multi-purpose room shall be considered as part of the assembly occupancy. The accessory uses shall not be limited to 10 percent of the single multi-purpose room floor area and/or building, but shall be included and considered as part of the limited assembly room floor area. (3.) The single multi-purpose room shall not be part of a fire area containing other assembly occupancies. (4.) A single multi-purpose room with an occupant load greater than 300 persons shall be provided with a fire alarm system in accordance with Section 907.2.1. (5.) The single multi-purpose room with its accessory or ancillary uses shall be separated, when part of a multiple occupancy, in accordance with Table 508.4 and Section 707 from the remainder of the building. The single multi-purpose room fire area containing the single multi-purpose room and its accessory or ancillary uses shall be less than 12,000 sf. (6.) Provide system smoke detection in all areas in accordance with Section 907 throughout the entire building.
Amend	Section 903.2.9, Group S-1.	
Adopt	Item (5.)	Item (5). A Group S-1 occupancy used for the storage of upholstered furniture or mattresses exceeds 2,500 sf (232 m^2).
Adopt	Exception	(1.) The requirement of Section 903.2.9(5) shall not apply to mini-storage facilities less than 12,000 sf. Mini-storage facilities, including mini-storage facilities which are climate-controlled, shall comply with 903.2.9(1) thru 903.2.9(4).
Amend	Section 903.2.7, Group M.	
Amend	Item (4.)	Item (4). A Group M occupancy used for the display and sale of upholstered furniture or mattresses where the floor area occupied by the upholstered furniture or mattresses exceeds 5,000 sf (464 m^2).
Amend	Section 903.2.8, Group R.	
Adopt	Exceptions	(a). An automatic sprinkler system is not required when not more than two dwelling or sleeping units are attached to a commercial or non-residential occupancy where all of the following conditions exist: (1.) The dwelling or sleeping units shall be separated vertically and/or horizontally from the non-residential occupancy as well as each other by two-hour construction in accordance with Sections 707 and 711. (2.) The entire building shall be smoke protected in accordance with Section 907. (3.) Egress from the dwelling or sleeping units shall not pass through the non-residential occupancy. (4.) The building shall not exceed two stories.
Adopt		(b.) An automatic sprinkler system is not required in Residential Group R-3, boarding houses (transient and nontransient) as defined by Section 310.5, where one of the following conditions exist: (1.) Every sleeping room has a door opening directly to the exterior at the street or finish grade. (2.) Every sleeping room has a door opening directly to the exterior which leads to an outside stair protected in accordance with Section 1027.
Amend	Section 1006	Amend and revise Tables 1006.3.2(1) and 1006.3.2(2).
Repeal		a. Delete from footnote "a": (1.) and provided with emergency escape and rescue openings in accordance with Section 1030.
Amend	Section 1010.1.9.6, Controlled Egress Doors in Groups I-1 and I-2.	
Amend	Section 1010.1.9.6	

Amend		(a.) Electric locking systems, including electromechanical locking systems and electromagnetic locking systems, shall be permitted to be locked in the means of egress in Group I-1 or I-2 occupancies where persons receiving care require their containment. Controlled egress doors shall be permitted in such occupancies where the building is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or an approved automatic smoke or heat detection system installed in accordance with Section 907, provided that the doors are installed and operate in accordance with all of the following: (1.) The door locks shall unlock on actuation of the automatic sprinkler system or automatic fire detection system. (2.) The door locks shall unlock on loss of power controlling the lock or lock mechanism. (3.) The door locking system shall be installed to have the capability of being unlocked by a switch located at the fire command center, a nursing station or other approved location. The switch shall directly break power to the lock. (4.) A means of manual mechanical unlocking must be provided at each door that is not in direct view of the remote release location required by Item 3. (5.) The procedures for unlocking the doors shall be described and approved as part of the emergency planning and preparedness required by Chapter 4 of the *International Fire Code*. (6.) All clinical staff shall have the keys, codes or other means necessary to operate the locking systems. (7.) Emergency lighting shall be provided at the door. (8.) The door locking system units shall be listed in accordance with UL 294.
Repeal	Exceptions 1and 2	Delete Exceptions 1 and 2.
Adopt		(9.) "Automatic" Re-Locking, after an emergency release as described above, shall be prohibited. A specific human action dedicated for re-locking doors must be provided at the remote control location or at each lock location. (10.) Document the "staff/patient ratio" for the occupants of the locked area to the authority having jurisdiction. The ratio shall be within state and federal licensing/certification guidelines. Please note that only "nurses" and "nurses' aides" assigned to the locked area shall be considered acceptable responsible staff in regard to this ratio documentation. (11.) Provide the reason for installing specialized security measures to the authority having jurisdiction. (12.) Documentation addressing each condition itemized above shall be provided to the authority having jurisdiction and shall include the signature of the building owner or the facility administrator.
Amend	Section 1010.1.9.7, Delayed Egress.	(a.) Delayed egress locking systems shall be permitted to be installed on doors serving any occupancy except the main entrance/exit for a Group A, and all exits for a Group H in buildings that are equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or an approved automatic smoke or heat detection system installed in accordance with Section 907. The locking system shall be installed and operated in accordance with all of the following: (1.) The delay electronics of the delayed egress locking system shall deactivate upon actuation of the automatic sprinkler system or automatic fire detection system, allowing immediate, free egress. (2.) The delay electronics of the delayed egress locking system shall deactivate upon loss of power controlling the lock or lock mechanism, allowing immediate free egress. (3.) The delayed egress locking system shall have the capability of being deactivated at the fire command center and other approved locations. (4.) An attempt to egress shall initiate an irreversible process that shall allow such egress in not more than 15 seconds when a force of not more than 15 pounds (67 N) is applied to the egress side door hardware for not more than 3 seconds. Initiation of the irreversible process shall activate an audible signal in the vicinity of the door. Once the delay electronics have been deactivated, rearming the delay electronics shall be by manual means only.
Amend	Exception	Where approved by the authority having jurisdiction, a delay of not more than 30 seconds is permitted on a delayed egress door.
		(5.) The egress path from any point shall not pass through more than one delayed egress locking system.
Repeal	Exception	In Group I-2 or I-3 occupancies, the egress path from any point in the building shall pass through no more than two delayed egress locking systems provided the combined delay does not exceed 30 seconds.
Amend		(6) A sign shall be provided on the door and shall be located above and within 12 inches (305 mm) of the door exit hardware. (6.1) For doors that swing in the direction of egress, the sign shall read: Push until alarm sounds. Door can be opened in 15 [30] seconds. (6.2) For doors that swing in the opposite direction of egress, the sign shall read: Pull until alarm sounds. Door can be opened in 15 [30] seconds. (6.3) (i). The sign shall comply with the visual character requirements in ICC A117.1. *Americans with Disabilities Act and Architectural Barriers Act—Accessibilities Guidelines (ADA/ABA-AG).*
Repeal	Exception	Where approved, in Group I occupancies, the installation of a sign is not required where care recipients who because of clinical needs require restraint or containment as part of the function of the treatment area.
Amend		(7.) Emergency lighting shall be provided on the egress side of the door. (8.) The delayed egress locking system units shall be listed in accordance with UL 294.
Amend	Section 1010.1.9.8, Sensor Release of Electrically Locked Egress Doors.	(a.) The electric locks on sensor released doors located in a required means of egress are permitted where installed and operated in accordance with all of the following criteria: (1.) The sensor shall be installed on the egress side, arranged to detect an occupant approaching the doors. The doors shall be arranged to unlock by a signal from or loss of power to the sensor. (2.) Loss of power to the lock or locking system shall automatically unlock the doors. (3.) Item 3 (a). The doors shall be arranged to unlock from a manual unlocking device located 40 inches to 48 inches (1016 mm to 1219 mm) vertically above the floor and within 5 feet (1524 mm) of the secured doors. Ready access shall be provided to the manual unlocking device and the device shall be clearly identified by a sign that reads "Push to Exit" When operated, the manual unlocking device shall result in direct interruption of power to the lock, independent of other electronics, and the doors shall remain unlocked for not less than 30 seconds. The sign shall comply with the visual character requirements in *Americans with Disabilities Act and Architectural Barriers Act—Accessibilities Guidelines (ADA/ABA-AG).* (4.) Activation of the building fire alarm system, where provided, shall automatically unlock the doors, and the doors shall remain unlocked until the fire alarm system has been reset.

Adopt	Item (5.)	(5.) The activation of manual fire alarm boxes that activate the fire alarm system shall not be required to unlock the doors.
Amend	Item (6.)	(6.) Activation of the building automatic sprinkler system or fire detection system, where provided, shall automatically unlock the doors. The doors shall remain unlocked until the fire alarm system has been reset.
Amend	Item (7.)	(7.) The door locking system units shall be listed in accordance with UL 294.
Adopt	Item (8.)	(8.) Doors in buildings with an occupancy in Group A shall not be secured from the egress side during periods that the building is open to the general public.
Adopt	Item (9.)	(9.) Doors in buildings with an occupancy in Group R-3 or Group I-3 shall not be equipped with this locking system.
Adopt	Item (10.)	(10.) Doors serving any Group M occupancy shall be permitted to be equipped with this locking system in buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or an approved automatic smoke or heat detection system installed in accordance with Section 907.
Adopt	Item (11.)	(11.) Emergency egress lighting shall be provided at the door.
Amend	Section 1010.1.9.9, Electromagnetically Locked Egress Doors.	(a.) a. Doors in the required means of egress shall be permitted to be locked with an electromagnetic locking system where equipped with hardware and where installed and operated in accordance with all of the following: (1.) The hardware that is affixed to the door leaf has an obvious method of operation that is readily operated under all lighting conditions. (2.) The hardware is capable of being operated with one hand. (3.) Operation of the hardware directly interrupts the power to the electromagnetic lock and unlocks the door immediately. (4.) Loss of power to the locking system automatically unlocks the door. (5.) Where panic or fire exit hardware is required by Section 1010.1.10, operation of the panic or fire exit hardware also releases the electromagnetic lock. (6.) The locking system units shall be listed in accordance with UL 294.
Amend	Section 1020.1, Construction.	
Amend	Exception	
Adopt	Item (6.)	(6). A fire-resistance rating is not required for corridors where the space or area served does not exceed the occupant load and common path of egress travel values, for each occupancy, listed in Table 1006.2.1. The travel distance to the exit from the space or area served shall not exceed the common path of travel.
Amend	Section 1020.5, Air Movement in Corridors.	Corridors that require protection under Table 1020.1—Corridor Fire-Resistance Rating, shall not serve as supply, return, exhaust, relief or ventilation air ducts.
Amend	Section 1027.6	
Amend	Exceptions	
Adopt	Item (4)	(4.) Exterior stairs or ramps which serve no more than one story above the level of exit discharge and constructed with non-combustible materials or constructed with fire retardant treated lumber, shall be allowed when the fire separation distance is between 5 and 10 feet measured from the exterior edge of the stairway or ramp.
Amend	Section 1030.1	
Amend	Exception	
Amend	Item (4.)	(4.) In other than Group R-3 occupancies, buildings equipped throughout with an approved automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2.

Amend	Section 1603.1.5, Earthquake Design Data.	The following information related to seismic loads shall be shown, regardless of whether seismic loads govern the design of the lateral-force-resisting system of the building:
		a. seismic importance factor, I, and occupancy category;
		b. mapped spectral response accelerations, SS and S1;
		c. site class;
		d. spectral response coefficients, SDS and SD1;
		e. seismic design category;
		f. basic seismic-force-resisting system(s);
		g. design base shear;
		h. seismic response coefficient(s), CS;
		i. response modification factor(s), R;
		j. analysis procedure used;

Adopt	Exceptions	
Adopt	Item (1.)	(1.) Construction documents that are not required to be prepared by a registered design professional;
Adopt	Item (2.)	(2.) Construction documents for structures that are assigned to Seismic Design Category A.
Amend	Section 1609.1.2, Protection of Openings.	In wind-borne debris regions, glazing in buildings shall be impact resistant or protected with an impact-resistant covering meeting the requirements of an approved impact-resistant standard or ASTM E 1996 and ASTM E 1886 referenced herein as follows: a. Glazed openings located within 30 feet (9144 mm) of grade shall meet the requirements of the large missile test of ASTM E 1996. b. Glazed openings located more than 30 feet (9144 mm) above grade shall meet the provisions of the small missile test of ASTM E 1996.
Amend	Exceptions	
Amend	Item (1.)	(1.) Wood structural panels with a minimum thickness of 7/16 inch (11.1 mm) and maximum panel span of 8 feet (2438 mm) shall be permitted for opening protection in one- and two-story buildings classified as Risk Category 2. Panels shall be precut so that they shall be attached to the framing surrounding the opening containing the product with the glazed opening. Panels shall be predrilled as required for the anchorage method and shall be secured with the attachment hardware provided. Attachments shall be designed to resist the components and cladding loads determined in accordance with the provisions of ASCE 7, with corrosion-resistant attachment hardware provided and anchors permanently installed on the building. Attachment in accordance with Table 1609.1.2 with corrosion-resistant attachment hardware provided and anchors permanently installed on the building is permitted for buildings with a mean roof height of 45 feet (13 716 mm) or less where V_{asd} determined in accordance with Section 1609.3.1 does not exceed 140 mph (63 m/s).
Amend	Item (2.)	(2.) Glazing in Risk Category I buildings as defined in Section 1604.5, including greenhouses that are occupied for growing plants on a production or research basis, without public access shall be permitted to be unprotected.

Amend	Item (3.)	(3.) Glazing in Risk Category II, III or IV buildings located over 60 feet (18 288 mm) above the ground and over 30 feet (9144 mm) above aggregate surface roofs located within 1,500 feet (458 m) of the building shall be permitted to be unprotected.
Amend	Section 1612.4, Design and Construction.	
Repeal	Referenced ASCE 24-14, Freeboard.	Delete Referenced ASCE 24-14 Freeboard requirements and Table 1-1, Flood Design Class of Buildings and Structures.
Amend	Section 1613.1, Scope.	Every structure, and portion thereof, including nonstructural components that are permanently attached to structures and their supports and attachments, shall be designed and constructed to resist the effects of earthquake motions in accordance with ASCE 7, excluding Chapter 14 and Appendix 11A. The seismic design category for a structure is permitted to be determined in accordance with Section 1613 or ASCE 7-10. Figure 1613.5(1) shall be replaced with ASCE 7-10 Figure 22-1. Figure 1613.5(2) shall be replaced with ASCE 7-10 Figure 22-2.
Amend	Exceptions	
Adopt	Item (5.)	(5.) Structures that are not required to have a registered design professional in responsible charge;
Adopt	Item (6.)	(6.) structures that are assigned to Seismic Design Category A.
Amend	Chapter 29, Plumbing Systems.	
Amend	Section 2901, Scope.	The provisions of this Chapter and the *International Plumbing Code* shall govern the erection, installation, alteration, repairs, relocation, replacement, addition to, use or maintenance of plumbing equipment and systems. Toilet and bathing rooms shall be constructed in accordance with Section 1210. Plumbing systems and equipment shall be constructed, installed and maintained in accordance with the *International Plumbing Code*.
Repeal	Section 2901, Scope.	Private Sewage disposal systems shall conform to the *International Private Sewage Disposal Code*.
Repeal	Section 2902	

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

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:291 (February 2007), amended LR 34:93 (January 2008), LR 34:883 (May 2008), LR 34:2205 (October 2008), LR 35:1904 (September 2009), LR 36:2574 (November 2010), effective January 1, 2011, LR 37:601 (February 2011), LR 37:913 (March 2011), repromulgated LR 37:2187 (July 2011), repromulgated LR 37:2726 (September 2011), LR 37:3065 (October 2011), LR 38:1994 (August 2012), amended by the Department of Public Safety and Corrections, Uniform Construction Code Council, LR 39:1825 (July 2013), LR 39:2512 (September 2013), LR 40:2609 (December 2014), amended by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 41:2380 (November 2015), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, Uniform Construction Code Council, LR 44:75 (January 2018), repromulgated LR 45:916 (July 2019), amended LR 45:

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

A.1. *International Residential Code*, 2015 Edition, not including Parts I-Administrative, and VIII-Electrical. The applicable standards referenced in that code are included for regulation of construction within this state. The enforcement of such standards shall be mandatory only with respect to new construction, reconstruction, additions to homes previously built to the *International Residential Code*, and extensive alterations. 2018 *International Residential Code*, Appendix Q, Tiny Houses, with inspections on site and or in the manufacturing plant as required by the LSUCCC regulations. Appendix J, Existing Buildings and Structures, may be adopted and enforced only at the option of a parish, municipality, or regional planning commission.

Amend	Chapter 2, Definitions	
Adopt	Human Consumption	The use of water by humans for drinking, cooking, bathing, showering, hand washing, dishwashing, or maintaining oral hygiene.
Adopt	Lead Free	(a). in general:
Adopt		1. not containing more than 0.2 percent lead when used with respect to solder and flux; and;
Adopt		2. not more than a weighted average of 0.25 percent lead when used with respect to the wetted surfaces of pipes, pipe fittings, plumbing fittings, and fixtures;
Adopt		B. calculation:
Adopt		1. the weighted average lead content of a pipe, pipe fitting, plumbing fitting, or fixture shall be calculated by using the following formula: a. for each wetted component, the percentage of lead in the component shall be multiplied by the ratio of the wetted surface area of that component to the total wetted surface area of the entire product to arrive at the weighted percentage of lead of the component. The weighted percentage of lead of each wetted component shall be added together, and the sum of these weighted percentages shall constitute the weighted average lead content of the product. The lead content of the material used to produce wetted components shall be used to determine compliance with Clause a.ii above. For lead content of materials that are provided as a range, the maximum content of the range shall be used.
Adopt	Section R302.1, Exterior Walls.	
Adopt	Exception	
Adopt	Item 1.	(1.) On lots that are 50 feet or less in width and that contain a one or two family dwelling or townhouse that was in existence prior to October 1, 2005, the following are permitted for rebuilding: (a.) a projection 2 feet from the property line with a 1 hour minimum fire-resistance rating on the underside; (b.) a wall 3 feet or more from the property with a 0 hour minimum fire-resistance rating.

Amend	2015 IRC Section 313.1, Townhouse Automatic Sprinkler System. Per Act No. 685 of the 2010 Regular Session of the Louisiana Legislature.	The council shall not adopt or enforce any part of the *International Residential Code* or any other code or regulation that requires a fire protection sprinkler system in one- or two-family dwellings. Further, no municipality or parish shall adopt or enforce an ordinance or other regulation requiring a fire protection sprinkler system in one- or two-family dwellings.
Amend	Exception	
	Item (1)	(1.) If an owner voluntarily chooses to install an automatic residential fire sprinkler system, it shall be installed per Section R313.1.
Amend	2015 IRC Section 313.2, One- and Two-Family Dwellings Automatic Fire Systems. Per Act No. 685 of the 2010 Regular Session of the Louisiana Legislature.	The council shall not adopt or enforce any part of the *International Residential Code* or any other code or regulation that requires a fire protection sprinkler system in one- or two-family dwellings. Further, no municipality or parish shall adopt or enforce an ordinance or other regulation requiring a fire protection sprinkler system in one- or two-family dwellings.
Amend	Exception	
	Item (1.)	(1.) If an owner voluntarily chooses to install an automatic residential fire sprinkler system, it shall be installed per Section R313.2.1, Design and Installation.
Amend	Section R322.2.1, Elevation Requirements.	
Amend		Buildings and structures in flood hazard areas including flood hazard areas designated as Coastal A Zones, shall have the lowest floors elevated to or above the base flood elevation or the design flood elevation.
Repeal		Delete plus 1 foot (305 mm) requirement.
Amend		In areas of shallow flooding (AO Zones), buildings and structures shall have the lowest floor (including basement) elevated to a height of not less than the highest adjacent grade as the depth number specified in feet (mm) on the FIRM or not less than 2 feet if a depth number is not specified.
Repeal		Delete plus 1 foot (305 mm) requirement.
Amend		Basement floor that are below grade on all sides shall be elevated to or above base flood elevation or the design flood elevation, whichever is higher.
Repeal		Delete plus 1 foot (305 mm) requirement.
Amend	Section R322.3.2, Enclosed Area Below Design Flood Elev.	
Repeal		Delete plus 1 foot (305 mm) requirement.
Amend	Section R 1006.1, Exterior Air.	Factory-built or masonry fireplaces covered in this chapter shall be equipped with an exterior air supply to assure proper fuel combustion.
Substitute	Chapter 11, Energy Efficiency.	Substitute Chapter 11, Energy Efficiency of the 2009 IRC, in lieu of Chapter 11, Energy Efficiency of the 2015 IRC.
Adopt	Section N1101.9.1, Louisiana Insulation Certificate requirement.	. A State of Louisiana Insulation Certificate shall be permanently posted in a utility area.
Adopt	Section N1101.9.2, Louisiana Insulation Certificate Template.	

State of Louisiana Insulation Certificate

Permanently attach this certificate in a utility area

Install Date

Permit Number

Area Insulated	R-Value		Thickness in Inches	Cell Density Open or Close	Ignition Barrier	Ignition Barrier
Attic under Sheathing		at				
Attic Ceiling		at				
Sloped Ceiling		at				
Walls		at				
Knee Walls		at				
Under First Floors		at				
Other		at				

Jobsite Address	
Contractor/License No.	
Insulation Contractor	
Installer/Applicator	
Manufacture Product Batch Number	

☐ One copy of packet to Home Owner

☐ Upload packet to permitting office

The Packet Contains

- Insulation Certificate
- Manufacturer's MSDS
- 3rd party Name and Performance Report
- Applicator's Manufacturer's Training Certificate.

Amend	Section N1102.2.1, Ceilings with attic spaces.	
Adopt	Exception	
	Item 1.	(1.) When the thermal covering at the roof line creates an unvented attic: (a.) Proper sizing or modification of the HVAC system to the current bond is required. (b.) Any insulation between the sealed, conditioned attic space and the living space must be removed. (c.) There shall be no outside attic ventilation and all openings must be blocked with rigid material and are sealed, in accordance with the ICC IRC Chapter 8 "Roof-Ceiling Construction". (d.) Exception: The space under appliances located in a sealed, conditioned attic may remain in place if sealed from the attic space. It is less than 10% of the total conditioned attic floor, and the appliances are approved for use in a sealed attic.
Amend	Section N1102.2.6, Floors.	Subfloor insulation shall provide or be installed in permanent contact with a rigid air barrier material. If the building is cooled with air conditioning, any vented crawl space shall be insulated with an airtight, class II vapor retarder insulation system (perm < 1.0).
Adopt	Exception	
Adopt	Item 1.	(1.) Plastic Spray Foam cannot be applied to finish flooring where no subfloor exists.
Amend	Section N1102.3, Access Hatches and Doors.	Access doors from conditioned spaces to unconditioned spaces shall be weather-stripped and have a minimum insulation value of an R-4.
Amend	Section N1102.4.2, Air Sealing and Insulation.	The air tightness demonstration method of compliance is to be determined by the contractor, design professional or homeowner.
Amend	Section N1102.4.2.1, Testing Option.	Tested air leakage is less than 7 ACH when tested with a blower door at a pressure of 50 pascals (0.007 psi). Testing shall occur after rough in and after installation of penetrations of the building envelope, including penetrations for utilities, plumbing, electrical, ventilation and combustion appliances. When the contractor, design professional or homeowner chooses the blower door testing option, blower door testing shall be performed by individuals certified to perform blower door tests by a nationally recognized organization that trains and provides certification exams for the proper procedures to perform such tests. The responsible BCEO shall accept written blower door test reports from these certified individuals to verify the minimum requirements of Section N1102.4.2.1 Testing Option are attained.
Amend	Section N1102.4.3, Fireplaces.	New wood-burning fireplaces shall have outdoor combustion air.
Adopt	Section N1102.4.6, Rooms containing fuel-burning appliances.	Where open combustion air ducts provide combustion air to open combustion fuel burning appliances, the appliances and combustion air openings shall be located outside the thermal envelope or enclosed in a room, isolated from inside the thermal envelope. Such rooms shall be sealed and insulated in accordance with the envelope requirements of N1102.1 (different from R402.12) where the walls, floors, and ceilings shall meet not less than the basement wall R-value requirement. The door into the room shall be fully gasketed and any water lines and ducts in the room insulated in accordance with Section N1103 (different than Section 403). The combustion air duct shall be insulated where it passes through conditioned space to a minimum of R-6.
Adopt	Exceptions	
Adopt	Item 1.	(1.) Direct vent appliances with both intake and exhaust pipes installed continuous to the outside.
Adopt	Item 2.	(2.) Fireplaces and stoves complying with Section R1006 of the *International Residential Code*.
Amend	Section N1103.2.1, Insulation.	Supply and return ducts in attics shall be insulated to a minimum of R-6.
Amend	Section N1103.2.2, Sealing.	Ducts, air handlers, filter boxes and building cavities used as ducts shall be sealed. Joints and seams shall comply with section M1601.4. Duct leakage testing shall be performed by individuals certified to perform duct leakage tests by a nationally recognized organization that trains and provides certification exams for the proper procedures to perform such tests. The responsible BCEO shall accept written duct leakage test reports from these certified individuals to verify the minimum requirements of Section N1103.2.2, Sealing, are attained.
Adopt	Exception	
Adopt	(1.) HVAC Contractors	(1.) HVAC contractors, who are not certified to perform duct leakage tests, may perform the test with the responsible BCEO visually verifying test procedures and results on site.
Amend	Section N1103.2.2, Sealing.	Joints and seams shall comply with section M1601.4. Duct tightness shall be verified by either for the following:
Amend	Post-Construction Test.	Leakage to outdoors shall be less than or equal to 8 cfm (3.78 L/s) per 100 ft2 (9.29 m2) of conditioned floor area or a total leakage less than or equal to 12 cfm (5.66 L/s) per 100 ft^2 (9.29 m^2) of conditioned floor area when tested at a pressure differential of 0.1 inch w.g. (25 Pa) across the entire system, including the manufacturer's air handler end closure. All register boots shall be taped or otherwise sealed during the test.
Amend	Rough-In Test.	Total leakage shall be less than or equal to 6 cfm (2.83 L/s) per 100 ft^2 9.29 m^2) of conditioned floor area when tested at a pressure differential of 0.1 inch w.g. (25 Pa) across the roughed in system, including the manufacturer's air handler enclosure. All register boots shall be taped or otherwise sealed during the test. If the air handler is not installed at the time of the test, total leakage shall be less than or equal to 4 cfm (1.89 L/s) per 100 ft^2 (9.29 m^2) of conditioned floor area.
Amend	Exception	
Amend	Item (1.)	(1.) Duct tightness test is not required if the air handler and all ducts are located within conditioned space.
Adopt	Section N1103.5.1, Bathroom Exhaust.	Homes utilizing insulation to create an unvented attic shall have bath fans properly sized and installed according to manufacturing recommendations, shall be vented to the outside and shall be performance verified after installation.
Amend	Section N1103.8.3, Pool Covers.	Pool covers shall not be required to meet the energy efficiency requirements of this Section.
Amend	Section M1307.3.1, Protection from Impact.	Appliances shall not be installed in a location subject to automobile or truck damage except where protected by approved barriers.
Amend	Section M1507.3.1, System Design.	The whole-house ventilation system shall consist of a combination of supply and exhaust fans, and associated ducts and controls. Local exhaust and supply fans are permitted to serve as such a system. Outdoor air ducts connected to the return side of an air handler shall be considered to provide supply ventilation.
Amend	Section M1507.3.2, System Controls.	The whole-house mechanical ventilation system shall be provided with controls that enable manual override and a method of air-flow adjustment.

Repeal	Section M1507.3.3, Mechanical Ventilation Rate.	
Amend	Section M1507.4, Minimum Required Local Exhaust.	Local exhaust systems shall be designed to have the capacity to exhaust the minimum air flow rate as follows:
Amend	Item (1.)	(1.) Kitchen: 100 cfm intermittent or 25 cfm continuous, a balanced ventilation system is required for continuous exhaust.
Amend	Item (2.)	(2.) Bathrooms: exhaust capacity of 50 cfm intermittent or 20 cfm continuous, a balanced ventilation system is required for continuous exhaust.
Amend	Section P2502.2	
Adopt	Exception	
Adopt	Repairs to Drainage System via Re-Route.	In the case where it is determined that there is a broken underground drain line including, but not limited to, broken drain lines under the slab of a building, and a drain line re-route is performed, the existing broken underground drain line shall be and sealed watertight and gastight using approved plumbing materials and joining/jointing methods, e.g., properly install an approved cap, plug, or cleanout on the cut or disconnected pipe.
Adopt	Section 2503.1, Drainage and Vent Testing.	An air test shall be made by forcing air into the system until there is a uniform gauge pressure of 5 psi (34.5 kPa) or sufficient to balance a 10-inch (254 mm) column of mercury. This pressure shall be held for a test period of not less than 15 minutes. Any adjustments to the test pressure required because of changes in ambient temperatures or the seating of gaskets shall be made prior to the beginning of the test period.
Amend	Section P2503.4, Building sewer testing.	The testing of building and public sewer systems shall be performed by the installer using a 10' water head.
Amend	Section P2503.6, Testing of Shower Receptacles.	Testing of shower receptacles shall be the responsibility of the installer.
Amend	Section P2603.5, Freezing.	In localities having a winter design temperature of 32°F (0°C) or lower as shown in Table R301.2(1) of this code, a water pipe and/or sanitary traps shall not be installed outside of a building, in exterior walls, in *attics* or crawl spaces, or in any other place subjected to freezing temperature unless adequate provision is made to protect it from freezing by insulation or heat or both. Water service pipe shall be installed not less than 12 inches (305 mm) deep and not less than 6 inches (152 mm) below the frost line.
Amend	Section P2706.1, General.	For other than hub drains that receive only clear-water waste and standpipes, a removable strainer or basket shall cover the waste outlet of waste receptors. Waste receptors shall not be installed in concealed spaces. Waste receptors shall not be installed in plenums or interstitial spaces above ceilings and below floors. Waste receptors shall be accessible.
Amend	Section P2725, Nonliquid Saturated Treatment Syatems..	
Amend	Section P2715.1	
Adopt	Exception	
Adopt	Item 1.	1. Compost toilets are prohibited.
Amend	Section P2804.6.1, Requirements for discharge pipe.	5. Discharge to the floor, a waste receptor, mop sinks or to the outdoors.
Amend	Section P2708.2, Shower Drain.	Any portion of the drainage system installed underground or below a basement or cellar shall not be less than 2-inch diameter.
Repeal	Section P2903.10, Hose bibb	
Adopt	Section P2902.5.6, Connections to swimming pools.	The potable water supply to swimming pools shall be protected against backflow by an air gap or reduced pressure principal backflow prevention assembly.
Adopt	Section P2902.5.7, Connections to animal watering troughs, ornamental fountains, or other similar equipment.	The potable water supply to animal watering troughs, ornamental fountains, or other similar fixtures shall be protected against backflow by an air gap.
Amend	Section P2905	The developed length of hot or tempered water piping, from the source of hot water to the fixtures that require hot or tempered water, shall not exceed 100 feet (15 240 mm). Recirculating system piping and heat-traced piping shall be considered to be sources of hot or tempered water.
Repeal	Section P2905.1, Heated Water circulation systems and heat trace systems.	
Repeal	Section P2905.2	
Amend	Section P2906.2.1, Lead content of water supply pipe and fittings used for human consumption.	Water Piping Quality. All potable water pipes, fittings, valves, and fixtures used to provide water for human consumption shall be lead free and shall be evaluated and listed as conforming with NSF/ANSI 372. Any solder or flux which is used in the installation or repair of any public water system or any plumbing in a residential or nonresidential facility providing water for human consumption shall be lead free. i. Exception: The lead free requirement above shall not apply to: (a.). leaded joints necessary for the repair of existing cast iron pipes; (b.). fire hydrants, pipes, pipe fittings, plumbing fittings, or fixtures, including backflow preventers, that are used exclusively for nonpotable services such as manufacturing, industrial processing, irrigation, outdoor watering, or any other uses where the water is not anticipated to be used for human consumption; or (c). toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower valves, service saddles, or water distribution main gate valves that are 2 inches in diameter or larger.

Amend	Section P2906.6, Fittings.	Pipe fittings shall be approved for installation with the piping material installed and shall comply with the applicable standards listed in Table P2905.6. All pipe fittings used in water supply systems shall also comply with NSF 61. All copper, brass and stainless steel joints below a building slab shall be brazed and/or welded in accordance with the requirements of this code, as appropriate. With the exception of heat fused polypropylene, all other joints and fittings for plastic pipe below a building slab are prohibited.
Amend	Table P2906.6	

Material	Standard
Acrylonitrile butadiene styrene (ABS)	ASTM D2468
plastic	
Brass	ASTM F1974
Cast-iron	ASME BI6.4; ASME B16.12
Chlorinated polyvinyl chloride (CPVC)	ASSE 1061; ASTM D2846;
plastic	ASTM F 437; ASTM F 438;
	ASTM F 439; CSA B137.6
Copper or copper alloy	ASSE 1061;ASMEBI6.15;
	ASME B 16.18; ASME
	B 16.22; AS ME B 16.26
Cross-linked	ASTM F 1986
polyethylene/aluminumlhigh-density	
polyethylene (PEX-AL-HDPE)	
Fittings for cross-linked polyethylene	ASSE 1061; ASTM F 877;
(PEX) plastic tubing	ASTM F 1807; ASTM F
	1960;
	ASTM F 2080; ASTM F
	2098; ASTM F 2 I 59; ASTM
	F 2434; ASTM F 2735; CSA
	B 137.5
Gray iron and ductile iron	AWWACIIO;AWWACI53
Malleable iron	ASMEBI6.3
Insert fittings for	ASTM F 1974; ASTM F
Polyethylene/aluminum/polyethylene	1281; ASTM F 1282; CSA
(pE-AL-PE) and cross-linked	BI37.9;
polyethylene/aluminum/polyethylene	CSA B137.10
(PEX-AL-PEX)	
Polyethylene (PE) plastic	CSA B137.1
Fittings for polyethylene of raised	ASTM F 1807; ASTM F2098;
temperature (PE-RT) plastic tubing	ASTM F 2159; ASTM F 2735
Polypropylene CPP) plastic pipe or tubing	ASTM F 2389; CSA B 137.11
Polyvinyl chloride (PYC) plastic	ASTM D 2464; ASTM D
	2466; ASTM D 2467; CSA
	B 137.2;
	CSA B137.3
Stainless steel (Type 304/304L) pipe	ASTM A 312; ASTM A 778
Stainless steel (Type 316/316L) pipe	ASTM A 312; ASTM A 778
Steel	ASME B 16.9; ASME BI6.11;
	ASMEBI6.28

Adopt	Section P2914, Separation of Water Service from Contamination.	
Adopt	Section P2914.1, Potable Water (Pressure) Lines Near Soil Absorption Trenches, Sand Filter Beds, Oxidation Ponds, and any Effluent Reduction Option (Effluent Reduction Fields, Rock Plant Filters, Spray Irrigation Systems, Overland Flow Systems, Mound Systems, or Subsurface Drip Disposal Systems).	Underground potable water (pressure) lines shall not be located within 25 feet (7.6 m) of any soil absorption trenches, sand filter beds, oxidation ponds, or any effluent reduction option including, but not limited to effluent reduction fields, rock plant filters, spray irrigation systems (from the edge of the spray and its drainage), overland flow systems (from the discharge point and field of flow), mound systems, or subsurface drip disposal systems which have been installed for either the disposal of septic tank effluent or mechanical treatment plant effluent.
Adopt	Section P2914.2, Potable Water (Pressure) Lines Near Septic Tanks, Mechanical Sewage Treatment Plants, and Pump Stations.	Underground potable water (pressure) lines shall not be located within 10 feet (3.0 m) of any septic tank, mechanical sewage treatment plant, or sewage pump station.

Adopt	Section P2914.3, Potable Water (Pressure) Lines Near Seepage Pit, Cesspool, or Sanitary Pit Privy.	Underground potable water (pressure) lines shall not be located within 50 feet (15.2m) of any seepage pit, cesspool, or sanitary pit privy.
Adopt	Section P2914.4, Reclaimed Water Lines.	Reclaimed water lines shall be considered and treated as though they are sewerage lines and shall be installed in accord with the spacing requirements of Section 2906.4.1 for the protection of potable water lines.
Amend	Chapter 30, Sanitary Drainage.	
Amend	Section P3005.2.2, Building sewers.	Building sewers smaller than 8 inches (203 mm) shall have cleanouts located at intervals of not more than 100 feet (30 480 mm). Building sewers 8 inches (203 mm) and larger shall have a manhole located not more than 80 feet from the junction of the building drain and building sewer and at intervals of not more than 400 feet (122 m). The interval length shall be measured from the cleanout or manhole opening, along the developed length of the piping to the next drainage fitting providing access for cleaning, a manhole or the end of the building sewer.
Adopt	Section 3005.9, Underground Drainage Piping.	Any portion of the drainage system installed underground or below a basement or cellar shall not be less than 2-inch diameter. In addition, any portion of the drainage system installed underground which is located upstream from a grease trap or grease interceptor as well as the underground horizontal branch receiving the discharge there from shall not be less than 3-inch diameter.
Amend	Section P3104.1, Connection.	Individual branch and circuit vents shall connect to a vent stack, stack vent or extend to the open air.
Repeal	Exception	Individual, branch and circuit vents shall be permitted to terminate at an air admittance valve in accordance with Section P3114.
Repeal	Item (1.)	(1.) Individual, branch and circuit vents shall be permitted to terminate at an air admittance valve in accordance with Section P3114.
Repeal	Section P3114, Air Admittance Valves.	

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

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:291 (February 2007), amended LR 34:93 (January 2008), LR 34:883 (May 2008), LR 34:2205 (October 2008), LR 35:1904 (September 2009), LR 36:2574 (November 2010), effective January 1, 2011, LR 37:601 (February 2011), LR 37:913 (March 2011), repromulgated LR 37:2187 (July 2011), repromulgated LR 37:2726 (September 2011), LR 37:3065 (October 2011), LR 38:1994 (August 2012), amended by the Department of Public Safety and Corrections, Uniform Construction Code Council, LR 39:1825 (July 2013), LR 39:2512 (September 2013), LR 40:2609 (December 2014), amended by the Department of Public Safety and Corrections, Office of State Fire Marshall, LR 41:2383 (November 2015), amended LR 42:1672 (October 2016), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, Uniform Construction Code Council, LR 44:79 (January 2018), amended LR 44:2218 (December 2018), repromulgated LR 45:919 (July 2019), amended LR 45:

§111. *The International Plumbing Code*

(Formerly LAC 55:VI.301.A.5)

A. The *International Plumbing Code*, 2015 Edition. The appendices of that code may be adopted as needed, but the specific appendix or appendices shall be referenced by name or letter designation at the time of adoption (per R.S. 40:1730.28, eff. 1/1/16).

Amend	Chapter 1	
Amend	Section [A] 101.2, Scope.	The provisions of this code shall apply to the erection, installation, alteration, repairs, relocation, replacement, addition to, use or maintenance of plumbing systems within this jurisdiction. The installation of fuel gas distribution piping and equipment, fuel-gas-fired water heaters and water heater venting systems shall be regulated by the *International Fuel Gas Code*. Provisions in the appendices shall not apply unless specifically adopted.
Adopt	Item (a.)	(a.) Nothing in this Part or any provision adopted pursuant to this Part shall prohibit the Department of Health from the following:
Adopt	Item (1.)	(1.) Regulating stored water temperatures through enforcement of the *Sanitary Code*;
Adopt	Item (2.)	(2.) Regulating medical gas and medical vacuum systems.
Amend	Exception	
Amend	Item (1.)	1. Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories high with separate means of egress and their accessory structures shall comply with the *International Residential Code*.
Amend	Chapter 2, Definitions.	
Adopt	*Adult Day Care Center*	Any place or facility, operated by any person for the primary purpose of providing care, supervision and guidance of 10 or more people 18 years and older, not related to the caregiver and unaccompanied by parent or guardian, on a regular basis, for a total of at least 20 hours in a continuous seven day week in a place other than the person's home.
Adopt	*Barometric Loop*	A fabricated piping arrangement rising at least 35 feet at its topmost point above the highest fixture it supplies. It is utilized in water supply systems to protect against backsiphonage backflow.
Amend	*Building Drain*	That part of the lowest piping of a drainage system that receives the discharge from soil, waste and other drainage pipes inside and that extends 30 inches (762 mm) in developed length of pipe beyond the exterior walls of the building and conveys the drainage to the building sewer:
Repeal		Delete definition *Combined—Building Drain*—"See building drain, combined".
Amend		*sanitary*—a building drain that conveys sewage only;
Amend		*storm*—a building drain that conveys storm water or other drainage, but not sewage
Amend	*Building Sewer*	that part of the drainage system that extends from the end of the building drain and conveys the discharge to a community sewerage system, commercial treatment facility, or individual sewerage system or other point of disposal:

Repeal		Delete definition *Combined Building Sewer*—"See *Building sewer, combined*".
Amend		1. *sanitary*—a building drain that conveys sewage only;
Amend		2. *storm*—a building drain that conveys storm water or other drainage, but not sewage.
Adopt	*By-Pass*	any system of piping or other arrangement whereby the water may be diverted around any part or portion of the water supply system including, but not limited to, around an installed backflow preventer
Adopt	*Child Day Care Center*	any place or facility, operated by any person for the primary purpose of providing care, supervision and guidance of seven or more children under the age of 18, not related to the care giver and supervision and guidance of seven or more children under the age of 18, not related to the care giver and unaccompanied by parent or guardian, on a regular basis, for a total of at least 20 hours in a continuous seven-day week in a place other than the children's home. A day care center that remains open for more than 20 hours in a continuous seven-day week, and in which no individual child remains for more than 24 hours in one continuous stay shall be known as a full-time day care center.
Adopt	*Commercial Treatment Facility*	any treatment facility which is required by the state health officer whenever the use of an individual sewerage system is unfeasible or not authorized.
Adopt	*Community Sewerage System*	any sewerage system which serves multiple connections and consists of a collection and/or pumping system/transport system and treatment facility.
Adopt	*Containment*	a method of backflow prevention which requires a backflow prevention device or method on the water service pipe to isolate the customer from the water main.
Adopt	*Continuous Water Pressure*	a condition when a backflow preventer is continuously subjected to the upstream water supply pressure for a period of 12 hours or more.
Adopt	*Day Care Centers*	includes adult and child day care centers.
Adopt	*Degree of Hazard*	an evaluation of the potential risk to public health if the public were to be exposed to contaminated water caused by an unprotected or inadequately protected cross connection.
Adopt	*Domestic Well*	a water well used exclusively to supply the household needs of the owner/lessee and his family. Uses may include human consumption, sanitary purposes, lawn and garden watering and caring for pets.
Adopt	*Dual Check Valve*	a device having two spring loaded, independently operated check valves without tightly closing shut-off valves and test cocks; generally employed immediately downstream of the water meter.
Adopt	*Fixture Isolation*	a method of backflow prevention in which a backflow preventer is located to protect the potable water of a water supply system against a cross connection at a fixture located within the structure or premises itself.
Adopt	*Grade* (*G*)	normally, this references the location of some object in relation to either the floor or ground level elevation.
Adopt	*Gravity Grease Interceptor*	plumbing appurtenances of not less than 125 gallons capacity that are installed in the sanitary drainage system to intercept free-floating fats, oils, and grease from waste water discharge. Separation is accomplished by gravity during a retention time of not less than 30 minutes.
Adopt	*Human Consumption*	the use of water by humans for drinking, cooking, bathing, showering, hand washing, dishwashing, or maintaining oral hygiene.
Adopt	*Individual Sewerage System*	any system of piping (excluding the building drain and building sewer), and/or collection and/or transport system which serves one or more connections, and/or pumping facility, and treatment facility, all located on the property where the sewage originates; and which utilizes the individual sewerage system technology which is set forth in LAC 51:XIII.Chapter 7, Subchapter B, or a commercial treatment facility which is specifically authorized for use by the state health officer.
Repeal		Delete definition *Individual Water Supply*—a water supply that serves one or more families, and that is not an approved public water supply.
Adopt	*Lead Free*	A. in general:
Adopt		1. not containing more than 0.2 percent lead when used with respect to solder and flux; and
Adopt		2. not more than a weighted average of 0.25 percent lead when used with respect to the wetted surfaces of pipes, pipe fittings, plumbing fittings, and fixtures;
Adopt		B. calculation:
Adopt		1. the weighted average lead content of a pipe, pipe fitting, plumbing fitting, or fixture shall be calculated by using the following formula:
Adopt		a. for each wetted component, the percentage of lead in the component shall be multiplied by the ratio of the wetted surface area of that component to the total wetted surface area of the entire product to arrive at the weighted percentage of lead of the component. The weighted percentage of lead of each wetted component shall be added together, and the sum of these weighted percentages shall constitute the weighted average lead content of the product. The lead content of the material used to produce wetted components shall be used to determine compliance with Clause a.ii above. For lead content of materials that are provided as a range, the maximum content of the range shall be used.
Adopt	*Master Meter*	a water meter serving multiple residential dwelling units or multiple commercial units. Individual units may or may not be sub-metered
Adopt	*Potable Water Supply*	a publicly owned or privately owned water supply system which purveys potable water.
Adopt	*Preschool*	any child less than five years of age
Adopt	*Private Water Supply*	a potable water supply that does not meet the criteria for a public water supply including, but not limited to a domestic well.
		Delete definition *Public Water Main*—a water supply pipe for public use controlled by public authority
Adopt	*Public Water Supply*	public water system.
Adopt	*Public Water System*	a particular type of water supply system intended to provide potable water to the public having at least 15 service connections or regularly serving an average of at least 25 individuals daily at least 60 days out of the year.
Adopt	*Putrescible Waste*	waste which is subject to spoilage, rot, or decomposition and may give rise to foul smelling, offensive odors and/or is capable of attracting or providing food for birds and potential disease vectors such as rodents and flies. It includes wastes from the preparation and consumption of food, vegetable matter, and animal offal and carcasses
Adopt	*Residential Facility*	any place, facility, or home operated by any person who receives therein four or more people who are not related to such person for supervision, care, lodging and maintenance with or without transfer of custody. This shall include, but not be limited to group homes, community homes, maternity homes, juvenile detention centers, emergency shelters, halfway homes and schools for the mentally retarded.
Note	*Sanitary Sewage*	see *sewage*

Amend	*Sewer*	a pipe or other constructed conveyance which conveys sewage, rainwater, surface water, subsurface water, or similar liquid wastes:
Amend		1. *building sewer*—see "*building sewer"*;
Amend		2. *public sewer*—a common sewer directly controlled by a public authority or utilized by the public;
Amend		3. *sanitary sewer*—a sewer that carries sewage and excludes storm, surface and ground water;
Amend		4. *storm sewer*—a sewer that conveys rainwater, surface water, subsurface water and similar liquid wastes.
Adopt	*Sewerage System*	any system of piping (excluding the building drain and building sewer) and/or collection and/or transport system and/or pumping facility and/or treatment facility, all for the purpose of collecting, transporting, pumping, treating and/or disposing of sanitary sewage.
Amend	*Water Main*	a water supply pipe or system of pipes installed and maintained by a city, township, county, public utility company or other public entity, on public property, in the street or in an approved dedicated easement of public or community use. This term shall also mean the principal artery (or arteries) used for the distribution of potable water to consumers by any water supplier including, but not limited to, those public water systems which are not owned by the public and which may not be on public property.
Adopt	*Water Supplier*	a person who owns or operates a water supply system including, but not limited to, a person who owns or operates a public water system.
Amend	*Water Supply System*	the water service pipe, water distribution pipes, and the necessary connecting pipes, fittings, control valves and all appurtenances in or adjacent to the structure or premise. This term shall also mean the system of pipes or other constructed conveyances, structures and facilities through which water is obtained, treated to make it potable (if necessary) and then distributed (with or without charge) for human consumption or other use.
Repeal	*Well-Bored*	a well constructed by boring a hole in the ground with an auger and installing a casing.
Repeal	*Well-Drilled*	a well constructed by making a hole in the ground with a drilling machine of any type and installing casing and screen.
Repeal	*Well-Driven*	a well constructed by driving a pipe in the ground. The drive pipe is usually fitted with a well point and screen.
Repeal	*Well-Dug*	a well constructed by excavating a large-diameter shaft and installing a casing.
Amend	Chapter 3, General Regulations.	
Amend	Section 312.1, Required Tests.	The permit holder shall make the applicable tests prescribed in Sections 312.2 through 312.10 to determine compliance with the provisions of this code. The permit holder shall give reasonable advance notice to the code official when the plumbing work is ready for tests. The code official shall verify the test results. The equipment, material, power and labor necessary for the inspection and test shall be furnished by the permit holder and the permit holder shall be responsible for determining that the work will withstand the test pressure prescribed in the following tests. All plumbing system piping shall be tested with either water or by air. After the plumbing fixtures have been set and their traps filled with water, the entire drainage system shall be submitted to final tests. The code official shall require the removal of any cleanouts if necessary to ascertain whether the pressure has reached all parts of the system.
Amend	Section 312.3, Drainage and Vent Test.	An air test shall be made by forcing air into the system until there is a uniform gauge pressure of 5 psi (34.5 kPa) or sufficient to balance a 10-inch (254 mm) column of mercury. This pressure shall be held for a test period of not less than 15 minutes. Any adjustments to the test pressure required because of changes in ambient temperatures or the seating of gaskets shall be made prior to the beginning of the test period.
Amend	Section 312.5, Water Supply System Test.	Upon completion of a section of or the entire water supply system, the system, or portion completed, shall be tested and proved tight under a water pressure not less than 1.5 times the working pressure of the system, but not less than 140 psi; or, for piping systems other than plastic, by an air test of not less than 50 psi (344 kPa). This pressure shall be held for not less than 15 minutes. The water utilized for tests shall be obtained from a potable source of supply. The required tests shall be performed in accordance with this section and Section 107.
Amend	Section 312.10 Installation, Inspection and Testing of Backflow Prevention Assemblies, Barometric Loops and Air Gaps.	Installation, inspection and testing shall comply with Sections 312.10.1 through 312.10.3.
Amend	Section 312.10.1, Inspections.	Annual inspections shall be made of all backflow prevention assemblies, barometric loops and air gaps to determine whether they are operable, properly installed and maintained, and meet testing/code requirements. Inspections of backflow prevention devices including barometric loops and air gaps used to protect high degree of hazard cross connections shall be documented in writing and the report provided to the owner of the backflow prevention device.
Amend	Section 312.10.2, Testing.	Reduced pressure principle, double-check, pressure vacuum breaker, reduced pressure detector fire protection, double check detector fire protection, and spill-resistant vacuum breaker backflow preventer assemblies shall be tested at the time of installation, immediately after repairs or relocation and at least annually. The testing procedure shall be performed in accordance with one of the following standards: ASSE 5013, ASSE 5015, ASSE 5020, ASSE 5047, ASSE 5048, ASSE 5052, ASSE 5056, CSA B64.10.1, USC's FCCC and HR's "Manual of Cross-Connection Control", or UFL's TREEO's "Backflow Prevention—Theory and Practice". Any backflow preventer which is found to be defective shall be repaired.
Adopt	Section 312.10.3, Owner Responsibilities.	The owner of the backflow prevention assemblies shall comply with the following:
Adopt		1. It shall be the duty of the owner of the backflow prevention assembly to see that these tests are made in a timely manner in accord with the frequency of field testing specified in 312.10.2 of this code.
Adopt		2. The owner shall notify the building official, and/or water supplier (for those devices associated with containment) in advance when the tests are to be undertaken so that the building official and/or water supplier may witness the tests if so desired.
Adopt		3. Upon completion, the owner shall provide records of such tests, repairs, overhauls, or replacements to the building official or water supplier (for those devices associated with containment). In addition, all records shall be kept by the owner of the backflow prevention device or method for at least five years and, upon specific request, shall be made available to the building official or water supplier.
Adopt		4. All tests, repairs, overhauls or replacements shall be at the expense of the owner of the backflow preventer.
Amend	Chapter 4	

Amend	Section 403.3.3, Location of Toilet Facilities in Occupancies other than Malls and Educational Buildings.	In occupancies other than covered and open mall buildings, and educational buildings, the required public and employee toilet facilities shall be located not more than one story above or below the space required to be provided with toilet facilities, and the path of travel to such facilities shall not exceed a distance of 500 feet (152 m).
Adopt	Section 403.3.7, Location of Toilet Facilities in Educational Buildings.	For primary schools, and other special types of institutions with classrooms, for children through 12 years of age, separate boys' and girls' toilet room doors shall not be further than 200 feet from any classroom doors. For secondary schools, and other special types of institutions with classrooms, for persons of secondary school age, separate boys' and girls' toilet room doors shall not be further than 400 feet from any classroom door. In multi-storied buildings, there shall be boys' and girls' toilet rooms on each floor, having the number of plumbing fixtures as specified in Table 403.1 of this code for the classroom population of that floor. When new educational buildings are added to an existing campus, the restroom facilities and drinking fountains located in the existing building(s) may be used to serve the occupants of the new educational building(s) only when all of the following provisions are met:
Adopt		1. covered walkways consisting of a roof designed to protect the students and faculty from precipitation having a minimum width of 6 feet and located above a slip-resistant concrete or other acceptable hard surfaces leading to and from the restrooms shall be provided whenever children or faculty have to walk outside to access the toilet room;
Adopt		2. the path of travel from the classroom door to the toilet room doors (boys' or girls') does not exceed the applicable distance specified in this Section; and
Adopt		3. the number of occupants of the new building does not cause an increase in the school population that would trigger the need for more fixtures per Table 403.1 (Minimum Number of Required Plumbing Fixtures).
Adopt	Section 403.6, Other Fixture Requirements for Licensed Pre-schools, Day Care Centers, and Residential Facilities.	Additional plumbing fixtures shall be provided in day care centers and residential facilities as required by this Section.
Adopt	Section 403.6.1, Food Preparation.	The food preparation area in pre-schools, day cares, and residential facilities shall meet the following requirements. The food preparation, storage and handling where six or less individuals are cared for shall provide a two-compartment sink and an approved domestic type dishwasher. Where the number of individuals cared for is between 7 and 15, either a three-compartment sink, or an approved domestic or commercial type dishwashing machine and a two-compartment sink with hot and cold running water shall be provided. Where 16 or more individuals are cared for, a three-compartment sink must be provided. If a dishwasher is also utilized in these instances (16 or more individuals), it must be a commercial type and it shall be in addition to the required three-compartment sink. One laundry tray, service sink, or curbed cleaning facility with floor drain shall also be provided on the premises for cleaning of mops and mop water disposal (for facilities caring for 16 or more individuals).
Adopt	Section 403.6.2, Caring for Children between 0 and 4 Years of Age.	In child day care facilities, a hand washing sink shall be in or adjacent to each diaper changing area. In addition, one extra laundry tray, service sink, or similar fixture is required to clean and sanitize toilet training potties immediately after each use. Such fixture shall be dedicated solely for this purpose and shall not be in the food preparation/storage, utensil washing, or dining areas. Training potties shall not be counted as toilets in determining the minimum fixture requirements of Table 403.1. Fixtures shall be size appropriate for the age of the children being cared for (toilets 11 inches maximum height and lavatories 22 inches maximum height), or if standard size fixtures are used, safe, cleanable step aids shall be provided.
Adopt	Section 410.6, Minimum Required Separation from Contamination.	Drinking fountain fixtures shall provide a minimum requirement of 18 inches of separation from its water outlet (spigot) to any source of contamination. Combination sink/drinking fountain units shall provide a minimum of 18 inches between the drinking fountain water outlet (spigot) and the nearest outside rim of the sink bowl [or other source(s) of contamination].
Adopt	Exceptions	
Adopt		1. This 18 inch minimum separation may only be reduced by the use of a vertical shield made of a smooth, easily cleaned surface that is attached flush with the top surface of the unit and extends to a distance at least 18 inches in height above the drinking fountain water outlet (spigot) level.
Adopt		2. Prohibited Fixture. Combination sink/drinking fountain units which share the same sink bowl are prohibited except in individual prison cells."
Amend	Section 412, Floor and Trench Drains.	
Adopt	Section 412.5, Miscellaneous Areas.	
Adopt		1. A floor drain shall be required in public toilet rooms, excluding hotel/motel guest rooms or patient rooms of a hospital or nursing home.
Adopt		2. A floor drain shall be required in the recess room for sterilizers in a medical facility.
Adopt		3. Floor drains are not permitted in general food storage areas, unless in accordance with Section 802.1.1 or 802.1.2 of this code.
Amend	Section 417.3, Shower Water Outlet.	Waste outlets serving showers shall be not less than 2 inches (50.8 mm) in diameter and, for other than waster outlets in bathtubs, shall have removable strainers not less than 3 inches (76 mm) in diameter with strainer openings not less than 1/4 inch (6.4 mm) in least dimension. Where each shower space is not provided with an individual waste outlet, the waste outlet shall be located and the floor pitched so that waste from one shower does not flow over the floor area serving another shower. Waste outlets shall be fastened to the waste pipe in an approved manner.
Adopt	Section 418.4, Handwash Sinks.	
Adopt		1. Dedicated handwash sinks shall be located to permit convenient use by all employees in food processing, food preparation, and other food handling areas.
Adopt		2. Each commercial body art (tattoo) facility shall provide a hand washing sink to be used solely for hand washing in body art procedure area for the exclusive use of the operator. A separate instrument sink shall also be provided for the sole purpose of cleaning instruments and equipment prior to sterilization.
Adopt		3. A hand washing sink may not be used for purposes other than hand washing.
Adopt		4. Sinks used for food preparation or for washing and sanitizing of equipment and utensils shall not be used for hand washing.

Adopt	Section 418.5, Manual Warewashing, Sink Requirements.	A sink with at least three compartments constructed of smooth, impervious non-corrosive material such as stainless steel or high density food grade polymer plastic shall be provided in slaughter rooms, packing rooms, retail food establishments, and other food handling areas for manual washing, rinsing and sanitizing equipment and utensils except where there are no utensils or equipment to wash, rinse and sanitize; i.e., such as in a facility with only prepackaged foods.
Adopt	Section 422.11, Handwashing Facilities.	Medical facilities, including doctor's office and clinics, shall be provided with hand washing facilities within each patient examination and treatment room. The hand wash facility shall be provided with hot and cold water delivered via a mixing faucet.
Amend	Chapter 5, Water Heaters.	
Amend	Section 504.6	5. Discharge to the floor, to a waste receptor, mop sinks or to the outdoors
Amend	Section 504.7.1, Pan Size and Drain.	The drain pan shall be a minimum of 2-inches (2") (50.8 mm) in depth and shall be of sufficient size and shape to receive all dripping or condensate from the tank or water heater. The pan shall be drained by an indirect waste pipe having a diameter of not less than 1-inch (25.4 mm). Piping for safety pan drains shall be of those materials listed in Table 605.4.
Amend	Chapter 6	
Amend	Chapter 6, Water Supply and Distribution.	
Amend	Section 602.3, Individual Water Supply.	Where a potable public water supply is not available, a private water supply meeting the applicable requirements of LAC 51:XII (Water Supplies) and LAC 56:I (Water Wells) shall be utilized.
Repeal		1. Delete and remove Sections 602.3.1, 602.3.2, 602.3.3, 602.3.4, 602.3.5 and 602.3.5.1, Pump Enclosure.
Adopt	Section 603.3, Potable Water (Pressure) Lines Near Soil Absorption Trenches, Sand Filter Beds, Oxidation Ponds, and any Effluent Reduction Option (Effluent Reduction Fields, Rock Plant Filters, Spray Irrigation Systems, Overland Flow Systems, Mound Systems, or Subsurface Drip Disposal Systems).	Underground potable water (pressure) lines shall not be located within 25 feet (7.6 m) of any soil absorption trenches, sand filter beds, oxidation ponds, or any effluent reduction option including, but not limited to effluent reduction fields, rock plant filters, spray irrigation systems (from the edge of the spray and its drainage), overland flow systems (from the discharge point and field of flow), mound systems, or subsurface drip disposal systems which have been installed for either the disposal of septic tank effluent or mechanical treatment plant effluent.
Adopt	Section 603.4, Potable Water (Pressure) Lines Near Septic Tanks, Mechanical Sewage Treatment Plants, and Pump Stations.	Underground potable water (pressure) lines shall not be located within 10 feet (3.0 m) of any septic tank, mechanical sewage treatment plant, or sewage pump station.
Adopt	Section 603.5, Potable Water (Pressure) Lines Near Seepage Pit, Cesspool, or Sanitary Pit Privy.	Underground potable water (pressure) lines shall not be located within 50 feet (15.2m) of any seepage pit, cesspool, or sanitary pit privy.
Adopt	603.6, Reclaimed Water Lines.	Reclaimed water lines shall be considered and treated as though they are sewerage lines and shall be installed in accord with the spacing requirements of this Section for the protection of potable water lines.
Amend	Section 605.2.1, Lead Content of Water Supply Pipe and Fittings used for Human Consumption.	Water Piping Quality. All potable water pipes, fittings, valves, and fixtures used to provide water for human consumption shall be lead free and shall be evaluated and listed as conforming with NSF/ANSI 372. Any solder or flux which is used in the installation or repair of any public water system or any plumbing in a residential or nonresidential facility providing water for human consumption shall be lead free.
Adopt	Exceptions	The lead-free requirement above shall not apply to:
Adopt		1. leaded joints necessary for the repair of existing cast iron pipes;
Adopt		2. fire hydrants, pipes, pipe fittings, plumbing fittings, or fixtures, including backflow preventers, that are used exclusively for nonpotable services such as manufacturing, industrial processing, irrigation, outdoor watering, or any other uses where the water is not anticipated to be used for human consumption; or
Adopt		3. toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower valves, service saddles, or water distribution main gate valves that are 2 inches in diameter or larger.
Amend	Section 605.3, Water Service Pipe with Corresponding Table 605.3.	Water service pipe shall conform to NSF 61 and shall conform to one of the standards listed in Table 605.3. Water service pipe or tubing, installed underground and outside of the structure, shall have a working pressure rating of not less than 160 psi (1100 kPa) at 73.4 degrees F (23 degrees C). Where the water pressure exceeds 160 psi (1100 kPa) piping material shall have a working pressure rating not less than the highest available pressure. Water service piping materials not third-party certified for water distribution shall terminate at or before the full open valve located at the entrance to the structure. All ductile iron water service piping shall be cement mortar lined in accordance with AWWA C104.

Amend	Table 605.3—Water Service Pipe.	

Material	Standard
Acrylonitrile butadiene styrene (ABS) plastic pipe	ASTM D 1527; ASTM D 2282
Brass pipe	ASTM B 43
Chlorinated polyvinyl chloride (CPVC) plastic pipe	ASTM D 2846; ASTM F 441; ASTM F 442; CSA B137.6
Copper or copper-alloy pipe	ASTM B 42; ASTM B 302
Copper or copper-alloy tubing (Type K, WK, L, or WL only. i.e., Type M and WM copper is prohibited.)	ASTM B 75; ASTM B 88; ASTM B 251; ASTM B 447
Cross-linked polyethylene (PEX) plastic pipe and tubing	ASTM F 876; ASTM F 877; AWWA C904; CSA B137.5
Cross-linked polyethylene/aluminum/cross-linked polyethylene (PEX-AL-PEX) pipe	ASTM F 1281; ASTM F 2262; CSA B137.10M
Cross-linked polyethylene/aluminum/high-density polyethylene (PEX-AL-HDPE)	ASTM F 1986
Ductile iron water pipe	AWWA C151/A21.51; AWWA C115/A21.15
Galvanized steel pipe	ASTM A 53
Polyethylene (PE) plastic pipe	ASTM D 2239; ASTM D 3035; AWWA C901; CSA B137.1
Polyethylene (PE) plastic tubing	ASTM D 2737; AWWA C901; CSA B137.1
Polyethylene/aluminum/polyethylene (PE-AL-PE) pipe	ASTM F 1282; CSA B137.9
Polyethylene of raised temperature (PE-RT) plastic tubing	ASTM F 2769
Polypropylene (PP) plastic pipe or tubing	ASTM F 2389; CSA B137.11
Polyvinyl chloride (PVC) plastic pipe	ASTM D 1785; ASTM D 2241; ASTM D 2672; CSA B137.3
Stainless steel pipe (Type 304/304L)	ASTM A 312; ASTM A 778
Stainless steel pipe (Type 316/316L)	ASTM A 312; ASTM A 778

Amend	Section 605.3.1, Dual Check-Valve-Type Backflow Preventer.	Dual check-valve backflow preventers installed on the water supply system shall comply with ASSE 1024 or CSA B64.6. These devices, which are commonly installed immediately downstream of water meters by water suppliers, are not approved backflow prevention devices and are only allowed to be installed when no cross connections exist downstream of the device or when all downstream cross connections are properly protected by approved backflow prevention devices, assemblies, or methods in accordance with Section 608 of this code.
Amend	Table 605.4, Water Distribution Pipe.	

Material	Standard
Brass pipe	ASTM B 43
Chlorinated polyvinyl chloride (CPVC) plastic pipe and tubing	ASTM D 2846; ASTM F 441; ASTM F 442; CSA B137.6
Copper or copper-alloy pipe	ASTM B 42; ASTM B 302
Copper or copper-alloy tubing (Type K, WK, L, or WL only. i.e., Type M and WM copper is prohibited.)	ASTM B 75; ASTM B 88; ASTM B 251; ASTM B 447

Cross-linked polyethylene (PEX) plastic tubing	ASTM F 876; ASTM F 877; CSA B137.5
Cross-linked polyethylene/aluminum/cross-linked polyethylene (PEX-AL-PEX) pipe	ASTM F 1281; ASTM F 2262; CSA B137.10M
Cross-linked polyethylene/aluminum/high-density polyethylene (PEX-AL-HDPE)	ASTM F 1986
Ductile iron pipe	AWWA C151/A21.51; AWWA C115/A21.15
Galvanized steel pipe	ASTM A 53
Polyethylene/aluminum/polyethylene (PE-AL-PE) composite pipe	ASTM F 1282
Polyethylene of raised temperature (PE-RT) plastic tubing	ASTM F 2769
Polypropylene (PP) plastic pipe or tubing	ASTM F 2389; CSA B137.11
Stainless steel pipe (Type 304/304L)	ASTM A 312; ASTM A 778
Stainless steel pipe (Type 316/316L)	ASTM A 312; ASTM A 778

Amend	Section 605.5, Fittings	Pipe fittings shall be approved for installation with the piping material installed and shall comply with the applicable standards listed in Table 605.5. Pipe fittings utilized in water supply systems shall also comply with NSF 61. Ductile and gray iron pipe fittings shall be cement mortar lined in accordance with AWWA C104. All copper, brass and stainless steel joints below a building slab shall be brazed and/or welded in accordance with the requirements of this code, as appropriate. With the exception of heat fused polypropylene, all other joints and fittings for plastic pipe below a building slab are prohibited
Amend	Table 605.5 Pipe Fittings	

Material	Standard
Acrylonitrile butadiene styrene (ABS)	ASTM D2468
plastic	
Brass	ASTM F1974
Cast-iron	ASME BI6.4; ASME B16.12
Chlorinated polyvinyl chloride (CPVC)	ASSE 1061; ASTM D2846;
plastic	ASTM F 437; ASTM F 438;
	ASTM F 439; CSA B137.6
Copper or copper alloy	ASSE 1061;ASMEBI6.15;
	ASME B 16.18; ASME
	B 16.22; AS ME B 16.26
Cross-linked	ASTM F 1986
polyethylene/aluminumlhigh-density	
polyethylene (PEX-AL-HDPE)	
Fittings for cross-linked polyethylene	ASSE 1061; ASTM F 877;
(PEX) plastic tubing	ASTM F 1807; ASTM F
	1960;
	ASTM F 2080; ASTM F
	2098; ASTM F 2 I 59; ASTM
	F 2434; ASTM F 2735; CSA
	B 137.5
Gray iron and ductile iron	AWWACIIO;AWWACI53
Malleable iron	ASMEBI6.3
Insert fittings for	ASTM F 1974; ASTM F
Polyethylene/aluminum/polyethylene	1281; ASTM F 1282; CSA
(pE-AL-PE) and cross-linked	BI37.9;
polyethylene/aluminum/polyethylene	CSA B137.10
(PEX-AL-PEX)	
Polyethylene (PE) plastic	CSA B137.1
Fittings for polyethylene of raised	ASTM F 1807; ASTM F2098;
temperature (PE-RT) plastic tubing	ASTM F 2159; ASTM F 2735
Polypropylene CPP) plastic pipe or tubing	ASTM F 2389; CSA B 137.11
Polyvinyl chloride (PYC) plastic	ASTM D 2464; ASTM D
	2466; ASTM D 2467; CSA
	B 137.2;
	CSA B137.3
Stainless steel (Type 304/304L) pipe	ASTM A 312; ASTM A 778
Stainless steel (Type 316/316L) pipe	ASTM A 312; ASTM A 778
Steel	ASME B 16.9; ASME BI6.11;
	ASMEBI6.28

Amend	Section 606.5.5, Low-Pressure Cutoff Required on Booster Pumps.	A low-pressure cutoff shall be installed on all booster pumps in a water pressure booster system to prevent creation of a vacuum or negative pressure on the suction side of the pump when a positive pressure of 20 psi (137.9 kPa) or less occurs on the suction side of the pump.
Amend	Section 607.2 Hot or tempered water supply to fixtures.	The developed length of hot or tempered water piping, from the source of hot water to the fixtures that require hot or tempered water, shall not exceed 100. Recirculating system piping and heat-traced piping shall be considered to be sources of hot or tempered water.
Amend	Section 608.1, General.	A potable water supply system shall be designed, installed and maintained in such a manner so as to prevent contamination from non-potable liquids, solids or gases being introduced into the potable water supply through cross-connections or any other piping connections to the system. Backflow preventers shall conform to the applicable standard referenced in Table 608.1. Backflow preventer applications shall conform to Table 608.1, except as specifically stated in Sections 608.2 through 608.16.27 and Sections 608.18 through 608.18.2.
Amend	Section 608.8, Identification of Nonpotable Water.	Where nonpotable water systems are installed, the piping conveying the nonpotable water shall be identified either by color marking, metal tags or tape in accordance with Sections 608.8.1 through 608.8.3.
Adopt	Exception	
Adopt		1. Overall Exception to this Section (§608.8 of this code). Pursuant to R.S. 40:4.12, industrial-type facilities listed therein shall not be required to comply with this section (§608.8 of this code) provided that such facilities have a potable water distribution identification plan in conformity with the requirements of R.S. 40:4.12. The required formal cross-connection control survey of the facility referenced in R.S. 40:4.12 shall be performed by an individual holding a valid cross-connection control surveyor certificate issued under the requirements of ASSE 5120, or other individuals holding a surveyor certificate from a nationally recognized backflow certification organization approved by the state health officer.
Amend	Section 608.14, Location of Backflow Preventers.	Access shall be provided to backflow preventers as specified by the manufacturer's instructions for the required testing, maintenance and repair. A minimum of 1 foot of clearance shall be provided between the lowest portion of the assembly and grade or platform. Elevated installations exceeding 5-feet above grade (g) shall be provided with a suitably located permanent platform capable of supporting the installer, tester, or repairer. Reduced pressure principal type backflow preventers, and other types of backflow preventers with atmospheric ports and/or test cocks (e.g., atmospheric type vacuum breakers, double check valve assemblies, pressure type vacuum breaker assemblies, etc.), shall not be installed below grade (in vaults or pits) where the potential for a relief valve, an atmospheric port, or a test cock being submerged exists.
Amend	Section 608.15.4, Protection by a Vacuum Breaker.	Openings and outlets shall be protected by atmospheric-type or pressure-type vacuum breakers. The critical level of atmospheric type vacuum breakers shall be installed not less than 6 inches (152 mm) above all downstream piping and not less than 6 inches (152 mm) above the flood-level rim of the fixture receptor or device served. Shutoff or control valves shall not be installed downstream from an atmospheric vacuum breaker. Atmospheric vacuum breakers including, but not limited to, hose bibb vacuum breakers shall not be subjected to continuous water pressure. The critical level of pressure type vacuum breakers shall be installed not less than 12 inches (305 mm) above all downstream piping and not less than 12 inches (305 mm) above the flood-level rim of the fixture receptor or device served. Fill valves shall be set in accordance with Section 425.3.1. Vacuum breakers shall not be installed under exhaust hoods or similar locations that will contain toxic fumes or vapors.
Amend	Section 608.16, Connections to the Potable Water System.	Connections to the potable water system shall conform to Sections 608.16.1 through 608.16.27. These Sections (608.16.1-608.16.27) are not inclusive of all potential contamination sources which may need fixture isolation protection. For potential contamination sources not listed in Sections 608.16.1 through 608.16.27, backflow prevention methods or devices shall be utilized in accordance with Table B1 of CAN/CSA B64.10-1994. When a potential contamination source and its associated backflow prevention method or device is not identified in this code or Table B1 of CAN/CSA B64.10-1994, backflow prevention methods or devices shall be utilized as directed by the building official.
Amend	Section 608.16.5, Connections to Lawn/Landscape Irrigation Systems.	The potable water supply to lawn/landscape irrigation systems shall be protected against backflow by an atmospheric vacuum breaker, a pressure vacuum breaker assembly or a reduced pressure principle backflow prevention assembly. Shutoff or control valves shall not be installed downstream from an atmospheric vacuum breaker. When a lawn/landscape sprinkler system is provided with separate zones, the potable water supply shall be protected by a pressure vacuum breaker or reduced pressure principal backflow prevention assembly. Atmospheric vacuum breakers shall be installed at least 6 inches (152 mm) above the highest point of usage (i.e., 6 inches (152 mm) above all downstream piping and highest sprinkler head). Pressure type vacuum breakers shall be installed at least 12 inches (305 mm) above the highest point of usage (i.e., 12 inches (305 mm) above all downstream piping and the highest sprinkler head). Where chemicals are introduced into the system, the potable water supply shall be protected against backflow by a reduced pressure principle backflow prevention assembly.
Amend	Section 608.16.8, Portable Cleaning Equipment.	Where the portable cleaning equipment connects to the water distribution system, the water supply system shall be protected against backflow in accordance with Section 608.13.1, 608.13.2, 608.13.3, 608.13.5, 608.13.6, or 608.13.8. The type of backflow preventer shall be selected based upon the application in accordance with Table 608.1.
Adopt	Section 608.16.11, Cooling Towers.	The potable water supply to cooling towers shall be protected against backflow by an air gap.
Adopt	Section 608.16.12, Chemical Tanks.	The potable water supply to chemical tanks shall be protected against backflow by an air gap.
Adopt	Section 608.16.13, Commercial Dishwashers in Commercial Establishments.	The potable water supply to commercial dishwashers in commercial establishments shall be protected against backflow by an air gap, atmospheric vacuum breaker, or pressure vacuum breaker. Vacuum breakers shall meet the requirements of Section 608.15.4.
Adopt	Section 608.16.14, Ornamental Fountains.	The potable water supply to ornamental fountains shall be protected against backflow by an air gap.
Adopt	Section 608.16.15, Swimming Pools, Spas, Hot Tubs.	The potable water supply to swimming pools, spas, or hot tubs shall be protected against backflow by an air gap or reduced pressure principal backflow prevention assembly.
Adopt	Section 608.16.16, Baptismal Fonts.	The potable water supply to baptismal fonts shall be protected against backflow by an air gap.

Adopt	Section 608.16.17, Animal Watering Troughs.	The potable water supply to animal watering troughs shall be protected against backflow by an air gap.
Adopt	Section 608.16.18, Agricultural Chemical Mixing Tanks.	The potable water supply to agricultural chemical mixing tanks shall be protected against backflow by an air gap.
Adopt	Section 608.16.19, Water Hauling Trucks.	The potable water supply to water hauling trucks/tankers shall be protected against backflow by an air gap when filled from above. When allowed to be filled from below, they shall be protected by a reduced pressure principle backflow prevention assembly. When a tanker truck is designated for the hauling of food grade products (and has been cleaned utilizing food grade cleaning procedures) and is allowed to be filled from below, a double check valve assembly shall be acceptable.
Adopt	Section 608.16.20, Air Conditioning Chilled Water Systems and/or Condenser Water Systems.	The potable water supply to air conditioning chilled water systems and condenser water systems shall be protected against backflow by a reduced pressure principal backflow prevention assembly.
Adopt	Section 608.16.21, Pot-Type Chemical Feeders.	The potable water supply to pot-type chemical feeders shall be protected against backflow by a reduced pressure principal backflow prevention assembly.
Adopt	Section 608.16.22, Food Processing Steam Kettles.	The potable water supply to food processing steam kettles shall be protected against backflow by a double check valve backflow prevention assembly.
Adopt	Section 608.16.23, Individual Travel Trailer Pads.	The potable water supply to individual travel trailer pads shall be protected against backflow by a dual check valve backflow prevention assembly.
Adopt	Section 608.16.24, Laboratory and/or Medical Aspirators.	The potable water supply to laboratory and/or medical aspirators shall be protected against backflow by an atmospheric or pressure vacuum breaker installed in accordance with Sections 608.3.1 and 608.15.4.
Adopt	Section 608.16.25, Laboratory or other Sinks with Threaded or Serrated Nozzles.	The potable water supply to laboratory sinks or other sinks with threaded or serrated nozzles shall be protected against backflow by an atmospheric or pressure vacuum breaker installed in accordance with Sections 608.3.1 and 608.15.4.
Adopt	Section 608.16.26, Mortuary/Embalming Aspirators.	The potable water supply to mortuary/embalming aspirators shall be protected against backflow by a pressure vacuum breaker installed in the supply line serving the aspirator. The critical level of the vacuum breaker shall be installed a minimum of 12 inches higher than the aspirator. The aspirator shall be installed at least 6 inches above the highest level at which suction may be taken. An air gap shall be provided between the outlet of the discharge pipe and the overflow rim of the receiving fixture.
Adopt	Section 608.16.27, Room(s) or other Sub-Unit(s) of a Premise or Facility Receiving Water where Access is Prohibited.	When access is prohibited to particular areas, rooms, or other sub-units of a premise or facility which is receiving water, the potable water supply serving those areas shall be protected against backflow by a reduced pressure principal backflow protection assembly.
Amend	Section 608.17, Protection of Individual Water Supplies.	An individual water supply shall be located and constructed so as to be safeguarded against contamination in accordance with the applicable requirements of LAC 51:XII (Water Supplies) and LAC 56:I (Water Wells).
Repeal	Sections 608.17.1 through 608.17.8 including Table 608.17.1.	Delete Sections 608.17.1 through 608.17.8 including Table 608.17.1.
Adopt	Section 608.18, Containment Practices.	Backflow prevention methods or devices shall be utilized as directed by the water supplier or code official to isolate specific water supply system customers from the water supply system's mains when such action is deemed necessary to protect the water supply system against potential contamination caused by backflow of water from that part of the water system owned and maintained by the customer (for example, the piping downstream of the water meter, if provided). Minimum requirements shall be in accordance with Section 608.18.1 through 608.18.2.
Adopt	Section 608.18.1, Containment Requirements.	As a minimum, the following types of backflow prevention assemblies or methods shall be installed and maintained by water supply system customers immediately downstream of the water meter (if provided) or on the water service pipe prior to any branch line or connections serving the listed customer types and categories.
Adopt		Table 608.18.1, Containment Requirements.

Air Gap
1. Fire Protection/Sprinkler System utilizing non-potable water as an alternative or primary source of water
Reduced Pressure Principle Backflow Prevention Assembly
1. Hospitals, Out-Patient Surgical Facilities, Renal Dialysis Facilities, Veterinary Clinics
2. Funeral Homes, Mortuaries
3. Car Wash Systems
4. Sewage Facilities
5. Chemical or Petroleum Processing Plants
6. Animal/Poultry Feedlots or Brooding Facilities
7. Meat Processing Plants
8. Metal Plating Plants
9. Food Processing Plants, Beverage Processing Plants
10. Fire Protection/Sprinkler Systems using antifreeze in such system (a detector type assembly is recommended on unmetered fire lines)
11. Irrigation/Lawn Sprinkler Systems with Fertilizer Injection

12. Marinas/Docks
13. Radiator Shops
14. Commercial Pesticide/Herbicide Application
15. Photo/X-ray/Film Processing Laboratories
16. Multiple Commercial Units served by a master meter
17. Any type of occupancy type or any other facility having one or more Single-walled Heat Exchangers which uses any chemical, additive, or corrosion inhibitor, etc., in the heating or cooling medium
18. Any type of occupancy type or any other facility having one or more Double-walled Heat Exchangers which use any chemical, additive, or corrosion inhibitor, etc., in the heating or cooling medium and which does not have a path to atmosphere with a readily visible discharge
19. Premises where access/entry is prohibited
Pressure Vacuum Breaker Assembly/Spill Resistant Vacuum Breaker Assembly
1. Irrigation/Lawn Sprinkler Systems
Double Check Valve Assembly
1. Fire Protection/Sprinkler Systems (a detector type double check valve assembly is recommended on unmetered fire lines)
2. Two residential dwelling units served by a master meter, unless both units are located on a parcel or contiguous parcels of land having the same ownership and neither unit is used for commercial purposes. As used herein, the term "commercial purposes" means any use other than residential.
3. Three or more residential dwelling units served by a master meter
4. Multistoried Office/Commercial Buildings (over 3 floors)
5. Jails, Prisons, and Other Places of Detention or Incarceration

Adopt	Section 608.18.2, Other Containment Requirements.	Table 608.18.1 of this code above is not inclusive of all potential contamination sources which may need containment protection. For potential contamination sources not listed in this table, backflow prevention methods or devices shall be utilized in accordance with Table B1 of CAN/CSA B64.10-1994. When a potential contamination source and its associated backflow prevention method or device is not identified in Table 608.18.1 of this code above or Table B1 of CAN/CSA B64.10-1994, backflow prevention methods or devices shall be utilized:
Adopt		1. as directed by the building code official; or
Adopt		2. as directed by the water supplier;
Adopt		3. in cases of a discrepancy regarding the particular backflow prevention assembly or method required, the assembly or method providing the higher level of protection shall be required.
Amend	Chapter 7, Sanitary Drainage.	
Amend	Section 701.2, Sewer Required.	Buildings in which plumbing fixtures are installed and premises having sanitary drainage system piping shall be connected to a community sewerage system, where available, or an approved commercial treatment facility or individual sewerage meeting the requirements of LAC 51:XIII (Sewage Disposal).
Adopt	Section 701.9, Repairs to Drainage System via Re-Route.	In the case where it is determined that there is a broken underground drain line including, but not limited to, broken drain lines under the slab of a building, and a drain line re-route is performed, the existing broken underground drain line shall be and sealed watertight and gastight using approved plumbing materials and joining/jointing methods, e.g., properly install an approved cap, plug, or cleanout on the cut or disconnected pipe.
Adopt	Section 703.6, Minimum Size Building Sewer.	No building sewer shall be less than 4 inches in size with the exception of force lines.
Amend	Section 710.1, Maximum Fixture Unit Load.	The maximum number of drainage fixture units connected to a given size of building sewer, building drain or horizontal branch of the building drain shall be determined using Table 710.1(1). The maximum number of drainage fixture units connected to a given size vertical soil or waste stack, or horizontal branch connecting to a vertical soil or waste stack, shall be determined using Table 710.1(2).
Amend	Table 710.1(1).	

	Maximum Number of Drainage Fixture Units Connected to Any Portion of the Building Drain or the Building Sewer, Including Branches of the Building Drain[a]			
	Slope Per Foot			
Diameter of Pipe (Inches)	1/16 inch	1/8 inch	1/4 inch	1/2 inch
1 1/4			1	1
1 1/2			3	3
2			21	26
2 1/2			24	31
3		20 (not over two water closets)	27 (not over two water closets)	36 (not over two water closets)
4	—	180	216	250
5	—	390	480	575
6	—	700	840	1,000
8	1,400	1,600	1,920	2,300
10	2,500	2,900	3,500	4,200
12	3,900	4,600	5,600	6,700
15	7,000	8,300	10,000	12,000

For SI: 1 inch = 25.4 mm, 1 inch per foot = 83.3 mm/m.
[a] The minimum size of any building drain serving a water closet shall be 3 inches.

Amend	Table 710.1(2).	Table 710.1(2)—Horizontal Fixture Branches and Soil Stacks[a].

Diameter of Pipe (inches) (The minimum size of any branch or soil stack serving a water closet shall be 3".)	Maximum Number of Drainage Fixture Units (dfu)			
	Total for horizontal branch (Does not include branches of the building drain. Use 50 percent less dfu's for any circuit or battery vented fixture branches, no size reduction permitted for circuit or battery vented branches throughout the entire branch length.)	Soil Stacks[b]		
		Total discharge into one branch interval when greater than three branch intervals	Total for soil stack when three branch intervals or less	Total for soil stack when greater than three branch intervals
1 1/2	3	2	4	8
2	6	6	10	24
2 1/2	12	9	20	42
3	20 (not over two water closets)	16 (not over two water closets)	30 (not over six water closets)	60 (not over six water closets)
4	160	90	240	500
5	360	200	540	1,100
6	620	350	960	1,900
8	1,400	600	2,200	3,600
10	2,500	1,000	3,800	5,600
12	3,900	1,500	6,000	8,400
15	7,000	Note c	Note c	Note c

For SI: 1 inch = 25.4 mm.
[a] Does not include branches of the building drain. Refer to Table 710.1(1).
[b] Soil stacks shall be sized based on the total accumulated connected load at each story or branch interval. As the total accumulated connected load decreases, stacks are permitted to be reduced in size. Stack diameters shall not be reduced to less than one-half of the diameter of the largest stack size required.
[c] Sizing load based on design criteria.

Adopt	Section 710.3, Underground Drainage Piping.	Any portion of the drainage system installed underground or below a basement or cellar shall not be less than 2-inch diameter. In addition, any portion of the drainage system installed underground which is located upstream from a grease trap or grease interceptor as well as the underground horizontal branch receiving the discharge there from shall not be less than 3-inch diameter.
Amend	Chapter 8, Indirect/Special Waste.	
Amend	Section 802.1.1, Food Handling.	Equipment and fixtures utilized for the storage, preparation and handling of food shall discharge through an indirect waste pipe by means of an air gap. Food handling equipment includes, but is not limited to, the following: any sink where food is cleaned, peeled, cut up, rinsed, battered, defrosted or otherwise prepared or handled; potato peelers; ice cream dipper wells; refrigerators; freezers; walk-in coolers or freezers; ice boxes; ice making machines; fountain-type drink dispensers; rinse sinks; cooling or refrigerating coils; laundry washers; extractors; steam tables; steam kettles; egg boilers; coffee urns; steam jackets or other food handling or cooking equipment wherein the indirect waste pipe may come under a vacuum; or similar equipment.
Amend	Section 802.3 Waste receptors.	For other than hub drains that receive only clear-water waste and standpipes, a removable strainer or basket shall cover the outlet of waste receptors. Waste receptors shall not be installed in concealed spaces. Waste receptors shall not be installed in plenums, interstitial spaces above ceilings and below floors. Access shall be provided to waste receptors.
Amend	Chapter 9, Vents.	
Repeal	Section 918, Air Admittance Valves.	Delete Section 918, Air Admittance Valves in its entirety and all referring sections of the 2015 IPC. In accordance with the requirements of Act 836 of the 2014 Regular Session, air admittance valves are prohibited from use on all plumbing systems.
Amend	Chapter 10, Traps, Interceptors and Separators.	
Amend	Section 1003.2, Approval.	Interceptors and separators shall be designed and installed in accordance with the manufacturer's instructions and the requirements of this section based on the anticipated conditions of use. Wastes that do not require treatment or separation shall not be discharged into any interceptor or separator. No interceptor or separator shall be installed until its design, size, location and venting has been approved by the local jurisdictional code official. The local jurisdictional code official shall have the authority to require a grease interceptor to be serviced, repaired, or replaced with a larger unit when it is determined that a unit is not working or being maintained properly, the unit is damaged, or the mode of operation of the facility no longer meets the anticipated conditions of use (i.e., offensive odors, sewage backups or overflows, or when it is determined that grease is bypassing the grease interceptor and causing downstream blockages or interfering with sewage treatment).

Adopt	Section 1003.2.1, Grease Interceptor Sizing.	In all instances of new construction, change of occupancy classification or use of the property, a gravity grease interceptor or hydro-mechanical grease interceptor meeting the minimum capacity as required by this Section of the Code shall be installed. The minimum required capacity (volume) of the grease interceptor shall be determined based upon the maximum number of persons served during the largest meal period. The minimum capacity shall not be less than 125 gallons below the static water level. This capacity is sufficient to hold the flow from one meal long enough to accomplish proper grease separation when serving up to 50 people during a single meal period. When over 50 people are served during a single meal period, the minimum capacity shall be increased beyond 125 gallons based upon at least an additional 2 1/2 gallons per person beginning with the 51st person served and greater.
Adopt	Exceptions	
Adopt		(a.) At the discretion of the local jurisdictional code official, a smaller, point of use type hydro-mechanical grease interceptor or automatic grease removal device may be permissible when:
Adopt		1. a concrete slab would have to be broken at an existing building or facility for the proper installation of a grease interceptor; or
Adopt		2. an outside, unpaved area surrounding an existing building where a grease interceptor could be installed is available; however, it is determined that the area is located further than 75 feet from the plumbing fixtures that the grease interceptor would be servicing; or
Adopt		3. the local jurisdictional code official determines that the installation is unfeasible such as when servicing a kitchen located on the upper floors of a multistoried building; or
Adopt		4. the local jurisdictional code official determines that minimal fat, oil and grease will be produced or introduced into the sanitary drainage system based on the menu and mode of operation of the facility (i.e., snowball stands, sandwich shops, or other similar facilities with low grease production and which utilize single-service tableware and hollowware including forks, knives, spoons, plates, bowls, cups, and other serving dishes).
Adopt		(b.) In these instances, listed under the exception, the minimum required size of the hydromechanical grease interceptor; fats, oils and greases disposal system or automatic grease removal device shall be determined in accordance with the requirements of Section 1003.3.4 of this code. In no case shall a grease interceptor or automatic grease removal device be installed which has an approved rate of flow of less than 20 gallons per minute.
Amend	Section 1003.3.4, Hydromechanical Grease Interceptors, Fats, Oils and Greases Disposal Systems and Automatic Grease Removal Devices.	When specifically allowed under the exception of Section 1003.2.1 of this code, hydromechanical grease interceptors; fats, oils, and greases disposal systems and automatic grease removal devices shall be sized in accordance with ASME A112.14.3, ASME A112.14.4, ASME A112.14.6, CSA B481.3 or PDI-G101. Hydromechanical grease interceptors; fats, oils, and grease disposal systems and automatic grease removal devices shall be designed and tested in accordance with ASME A112.14.3, ASME A112.14.4, CSA B481.1, PDI G101 or PDI G102. Hydromechanical grease interceptors; fats, oils, and greases disposal systems and automatic grease removal devices shall be installed in accordance with the manufacturer's instructions. Where manufacturer's instructions are not provided, hydromechanical grease interceptors; fats, oils, and greases disposal systems and automatic grease removal devices shall be installed in compliance with ASME A112.14.3, ASME A112.14.4, ASME A112.14.6, CSA B481.3 or PDI-G101.
Amend	Section 1003.3.46, Gravity Grease Interceptors/Grease Traps.	Gravity grease interceptors shall comply with the requirements of Sections 1003.3.46.1 through 1003.3.46.8 and shall be sized in accordance with Section 1003.2.1 of this code.
Adopt	Section 1003.3.6.1, Indoor Installations.	If a gravity grease interceptor must be installed within an enclosed building, any access covers shall be gasketed to prevent the intrusion of odors into the building.
Adopt	Section 1003.3.6.2, Distance.	The grease interceptor shall be placed as close to the plumbing fixture(s) discharging greasy waste as possible, but preferably on the outside of the building when feasible.
Adopt	Section 1003.3.6.3, Outlet Pipe.	The minimum diameter of the outlet pipe shall not be less than 4 inches. The invert of the gravity grease interceptor outlet opening (i.e., lowest portion of the outlet pipe where it draws waste near the bottom of the grease interceptor), shall be located at a maximum of 6 inches and a minimum of 4 inches from the floor of the grease interceptor. This requirement also applies to any intermediate outlets in multi-compartment gravity grease interceptors.
Adopt	Section 1003.3.6.4, Air Space.	A minimum of one foot of air space shall be provided above the static water level.
Adopt	Section 1003.3.6.5, Venting.	A gravity grease interceptor outlet shall be properly vented in accordance with this section to prevent it from siphoning itself out. Any internally vented outlet line shall have the vent terminal extended to within 2 inches of the bottom of the access cover to prevent grease from escaping the gravity grease interceptor through the open vent terminal. For those gravity grease interceptors having a gasketed cover, the gravity grease interceptor outlet line shall not be allowed to be internally vented. In this case, the outlet line itself shall be vented with a minimum 2-inch vent pipe installed in accordance with Chapter 9 of this code.
Adopt	Section 1003.3.6.6, Water Seal.	On unbaffled single compartment gravity grease interceptors, a 90 degree ell shall be used on the inlet and shall terminate 6 inches below the static water level. On baffled single compartment gravity grease interceptors, a baffle wall shall be placed between the inlet and outlet. The inlet shall discharge into the gravity grease interceptor at a level at least 6 inches below the top of the baffle wall.
Adopt	Section 1003.3.6.7, Minimum Horizontal Distance.	The minimum horizontal distance between the inlet and outlet piping in the gravity grease interceptor shall be 24 inches.
Adopt	Section 1003.3.6.8, Access/Covers.	Access from the top of the gravity grease interceptor shall be provided by an easily removable cover above an access opening for proper maintenance. Additional access opening/covers shall be provided as necessary to provide accessibility to each compartment in multi-compartment or multi-baffled arrangements as well as access to both the inlet and outlet. Access opening covers shall be above or at grade (G) to provide ready accessibility. Each access cover shall be designed so that it cannot slide, rotate, or flip when properly installed in order that the opening is not unintentionally exposed. Especially for lightweight covers, mechanical fasteners are recommended to augment the safety of and ensure positive closure of the cover.
Amend	Section 1003.10, Access and Maintenance of Interceptors and Separators.	Access shall be provided to each interceptor and separator for service and maintenance. A two-way cleanout shall be provided on the discharge waste line immediately downstream of all interceptors and separators. Interceptors and separators shall be maintained by periodic removal of accumulated grease, scum, oil, or other floating substances and solids deposited in the interceptor or separator.

Amend	Chapter 11, Storm Drainage.	
Amend	Section 1101.3, Prohibited Drainage.	Storm water shall not be drained into sewers intended for sewage only.
Adopt	Exception	
Adopt		1. Liquid waste from the cleaning operation and from the leakage of garbage containers and dumpsters holding putrescible wastes shall be disposed of as sewage. Methods used for this disposal shall prevent rainwater and runoff from adjacent areas from entering the sanitary sewerage system (i.e., dumpster pads may be elevated or curbed, enclosed or covered). When determined by the code official that liquid wastes or putrescible wastes contain fats, oils or grease (or, for new establishments, will likely contain fats, oils, or grease in the future), an approved grease interceptor shall be installed in the waste line in accordance with Section 1003 of this code.
Repeal	Section 1103.1.	
Repeal	Section 1103.2.	
Repeal	Section 1103.3.	
Repeal	Section 1103.4.	
Repeal	Section 1109.1.	
Amend	Chapter 13, Gray Water Recycling Systems.	
Amend	Section 1301.4, Permits.	Permits shall be required for the construction, installation, alteration and repair of nonpotable water systems. Construction documents, engineering calculations, diagrams and other such data pertaining to the nonpotable water system shall be submitted with each permit application. Such plans and specifications shall be appropriately sealed and signed by a Louisiana registered professional engineer.
Amend	Section 1301.5, Potable Water Connections.	Where a potable system is connected to a nonpotable water system, the potable water supply shall be protected against backflow by an air gap or reduced pressure principal backflow prevention assembly.
Amend	Section 1301.9.5, Makeup Water.	Where an uninterrupted supply is required for the intended application, potable or reclaimed water shall be provided as a source of makeup water for the storage tank. The makeup water supply shall be protected against backflow by an air gap or reduced pressure principal backflow prevention assembly. A full-open valve located on the makeup water supply line to the storage tank shall be provided. Inlets to the storage tank shall be controlled by fill valves or other automatic supply valves installed to prevent the tank form overflowing and to prevent the water level from dropping below a predetermined point. Where makeup water is provided, the water level shall not be permitted to drop below the source water inlet or the intake of any attached pump.
Amend	Chapter 15, Referenced Standards.	
Amend	CSA Referenced Standard.	B64.10-94 Manual for the Selection, Installation, Maintenance and Field Testing of Backflow Prevention Devices (not including Part 6 (Maintenance and Field Testing) Section 608.16 and Section 618.2
Adopt	Chapter 16, Travel Trailer and Mobile/Manufactured Home Parks.	
Adopt	Definitions	Add the following definitions:
Adopt	*Dependent Travel Trailer*	a travel trailer not equipped with a water closet.
Adopt	*Drain Hose*	the approved type hose, flexible and easily detachable, used for connecting the drain outlet on a travel trailer to a sewer inlet connection.
Adopt	*Drain Outlet*	the lowest end of the main drain of a travel trailer itself to which a drain hose is connected.
Adopt	*Independent Travel Trailer*	a travel trailer equipped with a water closet and a bath or shower.
Adopt	*Inlet Coupling*	the terminal end of the branch water line to which the mobile/manufactured home or travel trailer's water service connection is made. It may be a swivel fitting or threaded pipe end.
Adopt	*Intermediate Waste Holding Tank*	(travel trailers only)—an enclosed tank for the temporary retention of water-borne waste.
Adopt	*Mobile/Manufactured Home*	a prefabricated home built on a permanent chassis which can be transported in one or more sections and is typically used as a permanent dwelling. Manufactured homes built since 1976 are built to the *Manufactured Home Construction and Safety Standards (HUD Code)* and display a HUD certification label on the exterior of each transportable section.
Adopt	*Park* or *Mobile/Manufactured Home Park* or *Travel Trailer Park*	any lot, tract, parcel or plot of land upon which more than one travel trailer and/or mobile/manufactured homes parked for the temporary or permanent use of a person or persons for living, working or congregating.
Adopt	*Park Drainage System*	the entire system of drainage piping within the park which is used to convey sewage or other wastes from the mobile/manufactured home or travel trailer drain outlet connection, beginning at its sewer inlet connection at the mobile/manufactured home or travel trailer site, to a community sewerage system, a commercial treatment facility, or an individual sewerage system.
Adopt	*Park Water Distribution System*	all of the water distribution piping within the park, extending from the water supply system or other source of supply to, but not including, the mobile/manufactured home or travel trailer's water service connection, and including branch service lines, fixture devices, service buildings and appurtenances thereto.
Adopt	*Service Building*	a building housing toilet and bathing facilities for men and women, with laundry facilities.
Adopt	*Sewer Inlet*	a sewer pipe connection permanently provided at the travel trailer or mobile/manufactured home site which is designed to receive sewage when a travel trailer or a mobile/manufactured home is parked on such site. It is considered the upstream terminus of the park drainage system.
Adopt	*Travel Trailer*	a vehicular unit, mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use.
Adopt	*Travel Trailer Sanitary Service Station*	a sewage inlet with cover, surrounded by a concrete apron sloped inward to the drain, and watering facilities to permit periodic wash down of the immediately adjacent area, to be used as a disposal point for the contents of intermediate waste holding tanks of travel trailers.

Adopt	*Water Service Connection*	as used in conjunction with mobile/manufactured homes and travel trailers, the water pipe connected between the inlet coupling of the park water distribution system and the water supply fitting provided on the mobile/manufactured home or travel trailer itself.
Adopt	Section 1601, General.	
Adopt	Section 1601.1, Scope.	The requirements set forth in this Chapter shall apply specifically to all new travel trailer and mobile/manufactured home parks, and to additions to existing parks as herein defined, and are to provide minimum standards for sanitation and plumbing installation within these parks, for the accommodations, use and parking of travel trailers and/or mobile/manufactured homes.
Adopt	Section 1601.2, Governing Provisions.	Other general provisions of this code shall govern the installation of plumbing systems in travel trailer and mobile/manufactured home parks, except where special conditions or construction are specifically defined in this Chapter.
Adopt	Section 1601.3, Sewage Collection, Disposal, Treatment.	Travel trailers or mobile/manufactured homes shall not hereafter be parked in any park unless there are provided plumbing and sanitation facilities installed and maintained in conformity with this code. Every travel trailer and mobile/manufactured home shall provide a gastight and watertight connection for sewage disposal which shall be connected to an underground sewage collection system discharging into a community sewerage system, a commercial treatment facility, or an individual sewerage system which has been approved by the state health officer.
Adopt	Section 1601.4, Travel Trailer Sanitary Service Station.	At least one travel trailer sanitary service station shall be provided in all travel trailer parks that accept any travel trailers having an intermediate waste holding tank. The water supply serving the sanitary service station shall be protected against backflow by a reduced pressure principle backflow prevention assembly meeting the requirements of Section 608 of this code.
Adopt	Section 1601.5, Materials.	Unless otherwise provided for in this Chapter, all piping fixtures or devices used in the installation of drainage and water distribution systems for travel trailer parks and mobile/manufactured home parks shall conform to the quality and weights of materials prescribed by this code.
Adopt	Section 1601.6, Installation.	Unless otherwise provided for in this Chapter, all plumbing fixtures, piping drains, appurtenances and appliances designed and used in the park drainage, water distribution system, and service connections shall be installed in conformance with the requirements of this code.
Adopt	Section 1601.7, Maintenance.	All devices or safeguards required by this Chapter shall be maintained in good working order by the owner, operator, or lessee of the travel trailer park or his designated agent.
Adopt	Section 1602, Service Buildings.	
Adopt	Section 1602.1, Service Buildings for Independent Travel Trailers.	Each travel trailer park which serves only independent travel trailers shall have at least one service building to provide necessary sanitation and laundry facilities. Each mobile/manufactured home park which also serves one or more independent travel trailers (in addition to mobile/manufactured homes) shall have at least one service building to provide necessary sanitation and laundry facilities. When a service building is required under this Section, it shall have a minimum of one water closet, one lavatory, one shower or bathtub for females and one water closet, one lavatory, and one shower or bathtub for males. In addition, at least one laundry tray or clothes washing machine and one drinking fountain located in a common area shall be provided.
Adopt	Exception	
		1. Temporary (six months) travel trailers residing in mobile home parks and or where more than one travel trailer resides for the purpose of employment and or hardships, may be exempted by the local jurisdiction building official from section.
Adopt	Section 1602.2, Service Building for Dependent Travel Trailers.	The service building(s) in travel trailer or mobile/manufactured home parks that also accommodate dependent travel trailers shall have a minimum of two water closets, one lavatory, one shower or bathtub for females, and one water closet, one lavatory, one urinal, and one shower or bathtub for males. In addition, at least one laundry tray or clothes washing machine and one drinking fountain located in a common area shall be provided. The above facilities are for a maximum of ten dependent travel trailers. For every ten additional dependent travel trailers (or any fraction thereof) the following additional fixtures shall be provided: one laundry tray or clothes washing machine, one shower or bathtub for each sex, and one water closet for females. Also, one additional water closet for males shall be provided for every 15 additional dependent travel trailers (or any fraction thereof).
Adopt	Section 1602.3, Service Building Design Requirements.	Each service building shall conform to Sections 1602.3.1 through 1602.3.3 of this code.
Adopt	Section 1602.3.1, Construction.	Every service building shall be of permanent construction with an interior finish of moisture resistant material which will stand frequent washing and cleaning and the building shall be well-lighted and ventilated at all times.
Adopt	Section 1602.3.2, Fixture Separation.	The laundry tray(s) and/or clothes washing machine(s) and drinking fountain(s) shall be located in a common area. None of these fixtures shall be located within any toilet room. Each water closet, tub and/or shower shall be in separate compartments with self-closing doors on all water closet compartments. The shower stall shall be a minimum of 3 x 3 feet (914 x 914 mm) in area, with a dressing compartment.
Adopt	Section 1602.3.3, Floor Drains.	A minimum 2-inch floor drain protected by and approved trap primer shall be installed in each toilet room and laundry room.
Adopt	Section 1603, Park Drainage System.	
Adopt	Section 1603.1, Separation of water and sewer lines.	The sewer main and sewer laterals shall be separated from the park water service and distribution system in accordance with Section 603.2 of this code.
Adopt	Section 1603.2, Minimum Size Pipe.	The minimum size pipe in any mobile/manufactured home park or travel trailer park drainage system shall be 4 inches. This includes branch lines or sewer laterals to individual travel trailers and mobile/manufactured homes.
Adopt	Section 1603.3, Fixture Units.	Each mobile/manufactured home and travel trailer shall be considered as 6 fixture units in determining discharge requirements in the design of park drainage and sewage disposal systems.
Adopt	Section 1603.4, Sewage Disposal/Treatment.	The discharge of a park drainage system shall be connected to a community sewerage system. Where a community sewerage system is not available, an approved commercial treatment facility or individual sewerage system shall be installed in accord with the requirements of LAC 51:XIII (Sewage Disposal).
Adopt	Section 1603.5, Manholes and Cleanouts.	Manholes and/or cleanouts shall be provided and constructed as required in Chapter 7 of this code. Manholes and/or cleanouts shall be accessible and brought to grade.

Adopt	Section 1603.6, Sewer Inlets.	Sewer inlets shall be 4-inch diameter and extend above Grade (G) 3 to 6 inches (76 to 152 mm). Each inlet shall be provided with a gas-tight seal when connected to a travel trailer or mobile/manufactured home and have a gas-tight seal plug for use when not in service.
Adopt	Section 1603.7, Drain Connections.	Drain connections shall slope continuously downward and form no traps. All pipe joints and connections shall be installed and maintained gastight and watertight.
Adopt	Section 1603.8, Waste.	No sewage, waste water, or any other effluent shall be allowed to be deposited on the surface of the ground.
Adopt	Section 1603.9, Testing the Park Drainage System.	Upon completion and before covering, the park drainage system shall be subjected to a static water test performed in accordance with Section 312 of this code.
Adopt	Section 1604, Water Supply and Distribution System.	
Adopt	Section 1604.1, General.	Every mobile/manufactured home and travel trailer site shall be provided with an individual branch water service line delivering potable water.
Adopt	Section 1604.2, Water Service Lines.	Water service lines to each travel trailer site shall be sized to provide a minimum of 8 gpm (0.505 L/s) at the point of connection with the trailer's water distribution system. Water service lines to each mobile/manufactured home site shall be sized to provide a minimum of 17 gpm (1.1 L/s) at the point of connection with the mobile/manufactured home's water distribution system. All water service lines shall be a minimum of 3/4 inch. A separate service shutoff valve shall be installed on each water service line. In instances where a backflow prevention device or assembly is installed on the water service line (see Section 608.16.23), the shutoff valve shall be located on the supply side of the device or assembly.
Adopt	Section 1604.3, Water Service Connections.	The water service connection from the water service line to the mobile/manufactured home or travel trailer site shall be not less than 1/2-inch diameter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D) and 40:1730.26(1) and Act836 of the 2014 of the Regular Louisiana Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:291 (February 2007), amended LR 34:93 (January 2008), LR 34:883 (May 2008), LR 34:2205 (October 2008), LR 35:1904 (September 2009), LR 36:2574 (November 2010), effective January 1, 2011, LR 37:601 (February 2011), LR 37:913 (March 2011), repromulgated LR 37:2187 (July 2011), repromulgated LR 37:2726 (September 2011), LR 37:3065 (October 2011), LR 38:1994 (August 2012), amended by the Department of Public Safety and Corrections, Uniform Construction Code Council, LR 39:1825 (July 2013), LR 39:2512 (September 2013), LR 40:2609 (December 2014), amended by the Department of Public Safety and Corrections, Office of State Fire Marshall, LR 41:2386 (November 2015), amended by the Department of Public Safety and Corrections, Office of State Fire Marshal, Uniform Construction Code Council, LR 42:1672 (October 2016), LR 44:81 (January 2018), repromulgated LR 45:919 (July 2019), amended LR 45:

Chapter 3. Preliminary Provisions

§301. Request for Rule Change (Formerly LAC 55:VI.101)

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:290 (February 2007), amended LR 34:93 (January 2008), repealed LR 45:

Family Impact Statement

1. The effect of this Rule on the stability of the family. This Rule should not have any effect on the stability of the family.

2. The effect of this Rule on the authority and rights of parents regarding the education and supervision of their children. This Rule should not have any effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect of this Rule on the functioning of the family. This Rule should not have any effect on the functioning of the family.

4. The effect of this Rule on family earnings and family budget. This Rule should not have any effect on family earnings and family budget.

5. The effect of this Rule on the behavior and personal responsibility of children. This Rule should not have any effect on the behavior and personal responsibility of children.

6. The effect of this Rule on the ability of the family or local government to perform the function as contained in the proposed Rule. This Rule should not have any effect on the ability of the family or local government to perform the function as contained in the proposed Rule.

Small Business Impact

1. The impact of the proposed Rule on small businesses has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act.

2. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Poverty Statement

1. The impact of the proposed Rule on child, individual, or family poverty has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on poverty in relation to individual or community asset development as provided in the R.S. 49:973.

2. The agency has considered economic welfare factors and, where possible, utilized regulatory methods in the drafting of the proposed rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on poverty.

Provider Impact Statement

The proposed Rule does not impact or affect a provider. "Provider" means an organization that provides services for individuals with developmental disabilities as defined in

HCR 170 of the 2014 Regular Session of the Legislature. In particular, the proposed Rule have no effect or impact on a provider in regards to:

1. the staffing level requirements or qualifications required to provide the same level of service;

2. the cost to the provider to provide the same level of service;

3. the ability of the provider to provide the same level of service.

Interested Persons

All interested persons are invited to submit written comments on the proposed regulation. Such comments should be submitted no later than October 10, 2019 at 4:30 p.m. to Mark Joiner, 8181 Independence Boulevard, Baton Rouge, LA 70806. A public hearing will be scheduled pursuant to R.S. 49:953(A)(1)(a) if needed.

Lt. Colonel Jason Starnes
Chief Administrative Officer

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Uniform Construction Code

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule changes are not anticipated to result in additional cost or savings for state or local governmental units. The proposed rule changes amend the present construction codes by adding and amending the current plumbing and spray foam provisions in the International Building Code, International Residential Code and the International Plumbing Code. The proposed rule changes provide a greater level of health, welfare and safety by using the new technology and methods found in the aforementioned codes.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no anticipated impact on revenue collections for state or local governments as a result of the proposed rules.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule changes will affect the construction industry and prospective owners of residential and commercial buildings. The department estimates that the proposed rule changes will limit or reduce initial construction costs while providing greater safety.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition or employment as a result of the proposed rule changes.

Lt. Col. Jason Starnes
Chief Administrative Officer
1909#068

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue
Policy Services Division

Individual and Fiduciary Income Tax Filing Extensions
(LAC 61:III.2501 and 2507)

Under the authority of R.S. 47:103(D), 1511, 1514, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend LAC 61:III.2501 to repeal the mandate requiring the electronic filing of a request for an extension to file an individual income tax return and proposes to enact LAC 61:III.2507 to require the electronic filing of a request for an extension to file a fiduciary income tax return.

Title 61
REVENUE AND TAXATION
Part III. Administrative and Miscellaneous Provisions
Chapter 25. Returns
§2501. Individual Income Tax Filing Extensions

A. Pursuant to R.S. 47:103(D), the secretary may grant a reasonable extension of time to file a state income tax return, not to exceed six months from the date the return is due.

1. To obtain a filing extension, the taxpayer must make the request on or before the tax return's due date.

2. A taxpayer may request a state filing extension by submitting one of the following:

a. a paper Louisiana Department of Revenue form requesting a filing extension;

b. a paper copy of the taxpayer's Internal Revenue Service form requesting an extension to file a federal income tax return for the same taxable period; or

c. an electronic application.

3. An electronic application may be submitted by:

a. the Department of Revenue's web site;

b. tax preparation software; or

c. any other electronic method authorized by the secretary.

B. Filing Extension Does Not Extend Time to Pay Tax

1. A filing extension granted by the secretary only allows for an extension of time to file the tax return. The extension does not allow an extension of time to pay the tax due.

2. To avoid interest and penalty assessments, estimated taxes due must be paid on or before the original due date.

C. A tax preparer subject to the electronic filing mandate under LAC 61:III.1501.B must file an electronic application for a state filing extension for individual income taxes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:103(D) and 1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 35:1137 (June 2009), amended LR 36:73 (January 2010), LR 39:103 (January 2013), LR 45:

§2507. Fiduciary Income Tax Filing Extensions

A. Pursuant to R.S. 47:103(D), the secretary may grant a reasonable extension of time to file a state income tax return, not to exceed six months from the date the return is due.

1. To obtain a filing extension for filing a fiduciary return, estates and trusts must make the request on or before the due date of the tax return.

2. For taxable periods beginning on or after January 1, 2019, an estate or trust must request a state filing extension by submitting an electronic application.

3. An electronic application may be submitted via:

a. the Department of Revenue's web site;

b. tax preparation software; or

c. any other electronic method authorized by the secretary.

B. Filing extension does not extend time to pay tax.

1. A filing extension granted by the secretary only allows for an extension of time to file the tax return. The extension does not allow an extension of time to pay the tax due.

2. To avoid interest and penalty assessments, income taxes due must be prepaid on or before the original due date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:103(D) and 1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 45:

Family Impact Statement

The proposed amendment of LAC 61:III.2501 regarding individual income tax filing extensions and the proposed enactment of LAC 61:III.2507 regarding fiduciary income tax filing extensions should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically, the implementation of the proposed amendment of LAC 61:III.2501 and the proposed enactment of LAC 61:III.2507 will have no known or foreseeable effect on:

1. The stability of the family.

2. The authority and rights of parents regarding the education and supervision of their children.

3. The functioning of the family.

4. Family earnings and family budget.

5. The behavior and personal responsibility of children.

6. The ability of the family or a local government to perform this function.

Poverty Statement

The proposed amendment of LAC 61:III.2501 and the proposed enactment of LAC 61:III.2507 will have no impact on poverty as described in R.S. 49:973.

Small Business Statement

It is anticipated that the proposed amendment of LAC 61:III.2501 and the proposed enactment of LAC 61:III.2507 should not have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental, and economic factors, has considered, and, where possible, utilized regulatory methods in drafting the proposed amendment of LAC 61:III.2501 and the proposed enactment of LAC 61:III.2507 to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

Provider Impact Statement

The proposed amendment of LAC 61:III.2501 and the proposed enactment of LAC 61:III.2507 will have no known or foreseeable effect on:

1. The staffing levels requirements or qualifications required to provide the same level of service.

2. The total direct and indirect effect on the cost to the provider to provide the same level of service.

3. The overall effect on the ability of the provider to provide the same level of service.

Public Comments

Any interested person may submit written data, views, arguments, or comments regarding this proposed amendment of LAC 61:III.2501 and this proposed enactment of LAC 61:III.2507 to Danielle B. Clapinski, Attorney, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 44098, Baton Rouge, LA 70804-4098. All comments must be received no later than 4:30 p.m. on October 25, 2019.

Public Hearing

A public hearing will be held on October 28, 2019, at 10:00 a.m. in the LaBelle Room, on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

Kimberly Lewis Robinson
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Individual and Fiduciary Income Tax Filing Extensions

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The purpose of this proposed rule is to amend LAC 61.III.2501 to repeal the mandate requiring the electronic filing of a request for an extension to file an individual income tax return except for certain tax preparers, who will still be subject to the electronic filing mandate in LAC 61:III.1501(B). Proposed rule also enacts LAC 61.III.2507, to require the electronic filing of a request for an extension to file a fiduciary income tax return.

Minor implementation costs to LDR are anticipated for computer system modification and testing to accommodate electronic filing of fiduciary income tax filing extensions, and to respond to taxpayer inquiries. Since paper filing of the extension is currently allowed, anticipated costs of processing any additional paper requests are relatively small and will be absorbed in LDR's current appropriations.

Since paper extensions are currently being accepted for individual income tax, there is no cost to LDR for removing the electronic filing mandate.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed amendment to this rule will have no effect on the revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Currently, individuals are mandated to file the extension request electronically, but an exception is made for filing paper copies of the federal extension form. As the proposed rule

merely increases the available options for requesting these extensions, no additional cost to individuals wanting to file on paper is anticipated.

LDR does not have the information necessary to determine the additional costs to comply with the mandated electronic filing of fiduciary returns, but these costs are expected to be minimal, as online access and activity has largely become a business standard.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposal is not expected to have any significant effect on competition and employment.

Kimberly Lewis Robinson	Gregory V. Albrecht
Secretary	Chief Economist
1909#045	Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue
Policy Services Division

Mandatory Electronic Filing of Industrial Hemp-Derived CBD Tax Returns and Payment of Tax
(LAC 61:III.1535 and 1536)

Under the authority of R.S. 47:1511, 47:1519, 47:1520, and 47:1695, and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, gives notice that rulemaking procedures have been initiated to adopt LAC 61.III.1535 and 1536, to provide mandatory electronic filing and payment requirements for the Industrial Hemp-Derived CBD Tax Return.

R.S. 47:1519(B)(1) authorizes the secretary to require payments by electronic funds transfer, and R.S. 47:1520(A)(2) authorizes the secretary the discretion to require electronic filing of tax returns or reports by administrative rule promulgated with legislative oversight in accordance with the Administrative Procedure Act, R.S. 49:950 *et seq*. The purpose of this regulation is to mandate electronic filing of all Industrial Hemp-Derived CBD Tax Returns and electronic payment of all industrial hemp-derived CBD tax.

Title 61
REVENUE AND TAXATION
Part III. Administrative and Miscellaneous Provisions
Chapter 15. Mandatory Electronic Filing of Tax Returns and Payment

§1535. Industrial Hemp-Derived CBD Tax Return - Electronic Filing Requirements

A. For tax periods beginning on or after January 1, 2020, every industrial hemp-derived CBD retailer shall be required to file the Industrial Hemp-Derived CBD Tax return electronically with the Department of Revenue using the electronic format prescribed by the department.

B. Retailers may not send paper versions of any returns required to be filed.

C.1. Failure to comply with the electronic filing requirement of this section will result in the assessment of a penalty as provided for in R.S. 47:1520(B).

2. Waiver of the penalty provided for in paragraph 1 of this subsection shall only be allowed as provided for in R.S. 47:1520(B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, and 47:1520.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR

§1536. Industrial Hemp-Derived CBD Tax - Electronic Payment Required

A. R.S. 47:1519(B)(1) allows the secretary to require payment of the industrial hemp-derived CBD tax by electronic funds transfer.

B. Effective for all taxable periods beginning on or after January 1, 2020, all payments by an industrial hemp-derived CBD product retailer shall be electronically transferred to the Department of Revenue on or before the twentieth day following the close of the reporting period using the electronic format provided by the department.

C. For purposes of this Rule, specific requirements relating to the procedures for making payments by electronic funds transfer are set forth in R.S. 47:1519 and LAC 61.I.4910.

D. Failure to comply with the electronic funds transfer requirements shall result in the tax payment being considered delinquent and subject to penalties and interest as provided under R.S. 47:1601 and 1602.

E. If a taxpayer has made a good faith attempt and exercises due diligence in initiating a payment under the provisions of R.S. 47:1519, this Rule, and LAC 61.I.4910, but because of unexpected problems arising at financial institutions, Federal Reserve facilities, the automated clearinghouse system, or state agencies, the payment is not timely received, the delinquent penalty may be waived as provided by R.S. 47:1603. Before a waiver will be considered, taxpayers must furnish the department with documentation proving that due diligence was exercised and that the delay was clearly beyond their control.

F. In any case where the taxpayer can prove payment by electronic funds transfer would create an undue hardship, the secretary shall exempt the taxpayer from the requirement to transmit funds electronically.

G. The tax returns must be filed electronically separately from the electronic transmission of the remittance. Specific requirements relating to the mandatory electronic filing of the return required by the Department of Revenue are set forth in LAC 61.III.1535.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, 47:1519, 47:1520 and 47:1695.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 45:

Family Impact Statement

The proposed adoption of this rule should have no known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically, the implementation of this proposed rule has no known or foreseeable effect on:

1. The stability of the family.
2. The authority and rights of parents regarding the education and supervision of their children.
3. The functioning of the family.
4. Family earnings and family budget.
5. The behavior and personal responsibility of children.
6. The ability of the family or a local government to perform this function.

Poverty Impact Statement

The proposed rule has no known impact on poverty as described in R.S. 49:973.

Small Business Impact Analysis

The proposed rule has no known measurable impact on small businesses as described in R.S. 49:965.6.

Provider Impact Statement

The proposed rule has no known or foreseeable effect on:

1. The staffing levels requirements or qualifications required to provide the same level of service.
2. The total direct and indirect effect on the cost to the provider to provide the same level of service.
3. The overall effect on the ability of the provider to provide the same level of service.

Public Comments

All interested persons may submit written data, views, arguments or comments regarding this proposed rule to Brandea Averett, Attorney, Policy Services Division, Office of Legal Affairs, P.O. Box 44098, Baton Rouge, LA 70804-4098. Written comments will be accepted until 4:30 p.m., October 25, 2019.

Public Hearing

A public hearing will be held on October 28, 2019 at 11 a.m. in the LaBelle Room, located on the 1st floor of the LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana.

Kimberly Lewis Robinson
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Mandatory Electronic Filing of Industrial Hemp-Derived CBD Tax Returns and Payment of Tax

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This proposal adopts rules that require electronic filing of the industrial hemp-derived CBD tax return and electronic funds transfer of all industrial hemp-derived CBD tax payments. This proposal also provides for the assessment and waiver of penalties for non-compliance.

Implementation of this proposal will not result in material additional costs or cost savings to governmental units. LDR is implementing electronic filing of industrial hemp-derived CBD tax returns through LaTAP as an ongoing enhancement of its collection efforts. Accounting for non-compliance penalties will not result in material additional costs.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This proposal may increase revenues from penalties by an indeterminable amount. A modest and temporary increase in revenue from penalties is possible as the proposed rule is implemented, although LDR cannot predict non-compliant behavior. For information purposes, on returns that are currently required to be filed electronically, LDR collected approximately $7,000 in FY17, $1,000 in FY18, and $6,000 in FY19.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

LDR does not have the information necessary to determine the additional costs to comply with this change, but these costs are expected to be minimal, as online access and activity has largely become a business standard. To the extent non-compliance penalties are collected, affected taxpayers will incur penalty costs. LDR cannot estimate the additional penalty amount.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposal is not expected to have any significant effect on competition or employment.

Kimberly Lewis Robinson	Gregory V. Albrecht
Secretary	Chief Economist
1909#047	Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue
Policy Services Division

Small Town Health Professionals Credit
(LAC 61:I.1915)

Under the authority of R.S. 47:297(H) and 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend LAC 61:I.1915 regarding the small town health professionals credit.

The purpose of these proposed amendments is to implement the provisions of Act No. 338 of the 2019 Regular Session of the Louisiana Legislature. Act No. 338 amended the definition of certified medical primary care health professional to include a primary care physician assistant licensed by the state of Louisiana and an optometrist licensed by the state of Louisiana.

Title 61
REVENUE AND TAXATION
Part I. Taxes Collected and Administered by the Secretary of Revenue
Chapter 19. Miscellaneous Tax Exemptions, Credits and Deductions
§1915. Small Town Health Professionals Credit

A. General Description

1. The small town health professionals credit provides an individual income tax credit for certified medical primary care health professionals including:

a. physicians possessing an unrestricted license by the state of Louisiana to practice medicine;

b. dentists licensed by the state of Louisiana to practice dentistry;

c. primary care nurse practitioners licensed by the state of Louisiana;

d. primary care physician assistants licensed by the state of Louisiana; or

e. optometrists licensed by the state of Louisiana.

2. To be eligible for the credit, a certified medical primary care health professional must:

a. establish and maintain the primary office of their practice which is, as determined by the Department of Health through annual application:

i. for medical physicians, nurse practitioners, physician assistants, and optometrists, an area that is a primary care high needs geographic Health Professional Shortage Area (HPSA), or for dentists, a Dental Health Professional Shortage Area (DHPSA), as designated by the

U.S. Department of Health and Human Services' Health Resources and Services Administration's Bureau of Health Workforce, Division of Policy and Shortage Designation (DPSD); and

ii. a rural area as defined in rules promulgated by the Department of Health (See LAC 48:I.10307 for parishes that meet the definition of rural.);

iii. accept Medicaid and Medicare payments for services rendered;

b. to be eligible for the credit, the certified medical primary care health professional must practice under the conditions set forth above for a period of not less than three tax years. In addition, the health professional must submit an annual application and receive certification from the Department of Health for each calendar year in order to claim the credit for the corresponding tax year. Under no circumstances shall a taxpayer receive the credit for more than one relocation or more than five tax years.

B. Definitions.

Certified Medical Primary Care Health Professional—a physician possessing an unrestricted license by the State of Louisiana to practice medicine, a dentist licensed by the State of Louisiana to practice dentistry, a primary care nurse practitioner licensed by the State of Louisiana, a primary care physician assistant licensed by the state of Louisiana, or an optometrist licensed by the state of Louisiana.

Department of Health—the Louisiana Department of Health

Department of Revenue—the Louisiana Department of Revenue

Health Professional Shortage Area/Dental Health Professional Shortage Area—an area so designated by the U.S. Department of Health and Human Services' Health Resources and Services Administration's Bureau of Health Workforce, Division of Policy and Shortage Designation (DPSD) as of December 31 of the year preceding the applicable application period.

C. - E.4. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:297(H) and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 44:1641 (September 2018), LR 45:

Family Impact Statement

The proposed amendments to LAC 61:I.1915 regarding the small town health professionals credit should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically, the proposed amendments to LAC 61:I.1915 will have no known or foreseeable effect on:

1. The stability of the family.
2. The authority and rights of parents regarding the education and supervision of their children.
3. The functioning of the family.
4. Family earnings and family budget.
5. The behavior and personal responsibility of children.
6. The ability of the family or a local government to perform this function.

Poverty Statement

The proposed amendments to LAC 61:I.1915 will have no impact on poverty as described in R.S. 49:973.

Small Business Statement

It is anticipated that the proposed amendments to LAC 61:I.1915 should not have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental, and economic factors, has considered, and, where possible, utilized regulatory methods in drafting the proposed amendments to LAC 61:I.1915 to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

Provider Impact Statement

The proposed amendments to LAC 61:I.1915 will have no known or foreseeable effect on:

1. The staffing levels requirements or qualifications required to provide the same level of service.
2. The total direct and indirect effect on the cost to the provider to provide the same level of service.
3. The overall effect on the ability of the provider to provide the same level of service.

Public Comments

Any interested person may submit written data, views, arguments, or comments regarding this proposed rule to Danielle B. Clapinski, Attorney, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 44098, Baton Rouge, LA 70804-4098. All written comments must be received no later than 4:30 p.m. on October 25, 2019.

Public Hearing

A public hearing will be held on October 28, 2019, at 10:30 a.m. in the LaBelle Room, on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

Kimberly Lewis Robinson
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Small Town Health Professionals Credit

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The purpose of these proposed rule amendments it to implement the provisions of Act 338 of the 2019 Regular Session of the Louisiana Legislature. For purposes of the Small Town Health Professionals Tax Credit, Act 338 amended the definition of certified medical primary care health professional to include a primary care physician assistant licensed by the state of Louisiana and an optometrist licensed by the state of Louisiana. These amendments incorporate the addition of primary care physician assistants and optometrists into the existing rule.

Implementation of this proposal will not result in material additional costs or cost savings to the Louisiana Department of Revenue (LDR). Local governments are not affected by this proposal.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

An annual decrease of approximately $77,000 in state revenue collections is anticipated from implementation of this proposal. Local governments are not affected by this proposal.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Physician assistants and optometrists applying for the credit will incur the additional paperwork of applying for the credit, which is not expected to be costly. Physician assistants receiving this credit are expected to experience tax savings of approximately $65,000, and optometrists are expected to save approximately $12,000 per year. No material impacts on receipts and/or income is expected as a result of this proposal Rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposal is not expected to have any significant effect on competition or employment.

Kimberly Lewis Robinson	Gregory V. Albrecht
Secretary	Chief Economist
1909#046	Legislative Fiscal Office

NOTICE OF INTENT

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Alligators
(LAC 76:V.701)

The Wildlife and Fisheries Commission does hereby give notice of its intent to amend the alligator regulations governing alligator hide tag fees. The action temporarily suspends the alligator hide tag fee by $1.00, thereby reducing the tag fee from $4.00 per tag to $3.00 per tag for license years 2020 and 2021. This temporary reduction will automatically end December 31, 2021.

Title 76
WILDLIFE AND FISHERIES
Part V. Wild Quadrupeds and Wild Birds
Chapter 7. Alligators
§701. Alligator Regulations

A. - A.3.p. …

4. Licenses, Permits and Fees

a.i. The licenses and fees required for activities authorized by these regulations are as prescribed under provisions of R.S. Title 56, or as prescribed in these regulations, and are:

(a). $25 for a resident alligator hunter's license; including commercial, helper, sport and nuisance classes;

(b). $150 for a nonresident alligator hunter's license; including landowner and sport classes;

(c). $25 for a resident fur buyer's license;

(d). $100 for a nonresident fur buyer's license;

(e). $150 for a resident fur dealer's license ($500 deposit required);

(f). $300 for a nonresident fur dealer's license ($1,000 deposit required);

(g). $10 for a nongame quadruped exhibitor's license;

(h). $25 for a nongame quadruped breeder's license;

(i). $50 for an alligator parts dealer license;

(j). $5 for an alligator parts retailer license;

(k). $4 for each alligator hide tag, except for license years 2020 and 2021 in which the fee for each alligator hide tag shall be $3;

(l). $4 for each whole alligator leaving the state as alligator shipping label fee;

(m). $0.25 severance tax for each alligator hide taken from within the state;

(n). $25 for a designated agent collection permit.

A.4.a.ii. - A.18.c. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115, R.S. 56:259, R.S. 56:262, R.S. 56:263 and R.S. 56:280.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 16:1070 (December 1990), amended LR 17:892 (September 1991), LR 19:215 (February 1993), LR 20:321 (March 1994), LR 26:1492 (July 2000), LR 28:1996 (September 2002), LR 30:2338 (October 2004), LR 30:2878 (December 2004), LR 31:2267 (September 2005), LR 33:677 (April 2007), LR 35:690 (April 2009), LR 37:2421 (August 2011), LR 39:2291 (August 2013), LR 42:909 (June 2016), LR 43:90 (January 2017), LR 45:

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 and final rule, including but not limited to, the filing of the Fiscal and Economic Impact Statement, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

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.

Provider Impact Statement

This Rule has no known impact on providers as described in HCR 170 of 2014.

Public Comments

Written comments may be addressed to Amity Bass, Biologist Director, Department of Wildlife and Fisheries, P.O. Box 98000, Baton Rouge, LA 70898 or via email to abass@wlf.la.gov, no later than 4:30 PM on Friday, November 1, 2019.

Alfred R. Sunseri
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Alligators

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be no costs or savings for the Department of Wildlife and Fisheries (LDWF) associated with this proposed rule change which reduces the fee for alligator hide tags from $4.00 per tag to $3.00 per tag for the 2020 and 2021 license years.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change is expected to reduce revenue collections accruing to the Louisiana Department of Wildlife

and Fisheries Alligator Management Program by approximately $413,000 per year in 2020 and 2021 based on the latest four-year average total farm output (386,983 hides) and wild alligator harvest (26,115).

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed tag fee reduction is expected to benefit farmers or processors who produce or harvest wild or farm-raised alligators in Louisiana by reducing tag fee payments by approximately $413,000 per year in 2020 and 2021. There were 56 alligator farms in Louisiana in 2018, including 23 that sold alligator hides. Commercial alligator hunters in 2018 numbered 2,773.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change is not anticipated to have a significant effect on competition and employment in the public and private sectors.

Bryan McClinton
Undersecretary
1909#013

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Eagle Lake Crappie Length and Creel Regulations
(LAC 76:VII.198)

Pursuant to the authority of R.S. 56:6(25)(a), R.S. 56:325(C) and R.S. 56:326.3, the Wildlife and Fisheries Commission hereby advertises its intent to extend the current crappie regulations on Eagle Lake, Madison Parish, Louisiana. The daily take and size regulations will be 30 fish per person with an 11-inch minimum length limit.

Title 76
WILDLIFE AND FISHERIES
Part VII. Fish and Other Aquatic life
Chapter 1. Freshwater Sport and Commercial Fishing
§198. Crappie Regulations—Eagle Lake

A. The recreational daily limit and total length limit for black crappie (*Pomoxis nigromaculatus*) and white crappie (*Pomoxis annularis*) on Eagle Lake located east of the Mississippi River in Madison Parish, Louisiana shall be as follows:

1. The recreational daily creel limit shall be 30 fish, in the aggregate.
2. The minimum total length limit shall be 11 inches.

B. This Rule will remain effective provided identical minimum total length limit and daily creel regulations set by the Mississippi Wildlife, Fisheries and Parks Commission are effective on the Mississippi portion of Eagle Lake; otherwise the statewide crappie regulations will be effective on the Louisiana portion of Eagle Lake.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25) (a), R.S. 56:325(C) and R.S. 56:326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 41: 1499 (August 2015); amended LR 45:

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 and final rule, including but not limited to, the filing of the fiscal and economic impact statement, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

Family Impact Statement

In accordance with Act No. 1183 of 1999, 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.

Provider Impact Statement

This 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 Ryan Daniel, Biologist Manager, Inland Fisheries, Department of Wildlife and Fisheries, 368 Centurylink Drive, Monroe, LA 71203-8732, prior to 4:30 p.m., November 1, 2019.

Alfred R. Sunseri
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Eagle Lake Crappie Length and Creel Regulations

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no anticipated costs or savings to the Department of Wildlife and Fisheries (LDWF) or local governmental units.

The proposed Rule extends indefinitely the current minimum size and creel limits for black crappie (Pomoxis nigromaculatus) and white crappie (Pomoxis annularis) on Eagle Lake, an oxbow lake in Madison Parish, Louisiana, on the eastern side of the Mississippi River along the state boundary with Mississippi. The current regulations (a minimum size limit of 11 inches and a daily creel limit of 30 fish in aggregate) were adopted in 2015 with a four-year expiration date in part to make the regulations on the Louisiana portion consistent with those on the Mississippi portion.

The state of Mississippi is maintaining the minimum length limit and creel limits on its portion of the lake. The proposed rule change would extend the regulations on the Louisiana portion of the lake indefinitely or until biological data indicates a change is necessary.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change is expected to have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rules change will have little or no impact on any persons or non-governmental groups. Though the proposed rule change is effectively a restriction of regulations on a portion of the lake, it is expected to affect a relatively moderate number of individuals and is unlikely to result in a significant decrease in recreational fishing activity among Louisiana resident anglers.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change is expected to have no effect on competition or employment.

Bryan McClinton Undersecretary 1909#014	Evan Brasseaux Staff Director Legislative Fiscal Office

NOTICE OF INTENT

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Oysters—Leasing Policies and Procedures
(LAC 76:VII.501, 502, 503, and 505)

The Wildlife and Fisheries Commission does hereby give notice of its intent to amend LAC 76:VII.501, 503, and 505 modifying existing oyster lease policies and procedures and to enact LAC 76:VII.502 establishing joint leasing procedures for "dual claim" water bottom. Authority for adoption of the Rule is included in Part VII, Subpart D of Title 56 of the Louisiana Revised Statutes of 1950, Act 808 of the 2008 Regular Legislative Session, and Acts 570 and 595 of the 2016 Regular Legislative Session.

Title 76
WILDLIFE AND FISHERIES
Part VII. Fish and Other Aquatic Life
Chapter 5. Oysters
§501. Oyster Leases

A. Office Policies and Leasing Procedures:

1. Office hours will be from 8 a.m. to 4:30 p.m., Monday through Friday excluding state holidays.

2. If leases overlap, the department will examine the leases involved and eliminate the overlap by maintaining the overlapped area as part of the earliest-issued lease, amending the other lease agreement(s) and lease plat(s) to subtract the overlapped area, and notifying the lessees of the action taken.

3. If examination of a lease indicates an acreage miscalculation, the department will amend the lease agreement and lease plat to state the correct acreage and notify the lessee of the action taken.

4. The Oyster Lease Section will keep an indexing system to determine the acreage held by all oyster lessees. The Oyster Lease Section will also receive and accept information related to the location of private oyster leases, provided that they are on state claimed water bottoms and were encumbered by a private oyster lease that was in effect and properly recorded as of February 1, 2016, and to the extent possible, the location of such leases will be made available to the public through inclusion as part of the existing indexing system and/or the Geographic Index System ("GIS"). Pursuant to R.S. 56:432, no single lessee may hold more than 2,500 acres under lease. Whoever is found to have leased more than the allotted amount by a court of competent jurisdiction shall forfeit all leases held on any water bottom of the state.

5. Oyster leases shall not be issued or renewed within the boundaries of a Wildlife Management Area or a designated Public Oyster Seed Ground or reservation. If extenuating circumstances are established and significant public interests would be furthered, the secretary has the discretion to grant exceptions to this prohibition on a case by case basis.

6. All oyster leases are subordinate to the rights or responsibilities of the state, any political subdivision of the state, the United States, or any agency or agent thereof, to take any action in furtherance of integrated coastal protection as defined in R.S. 49:214.2.

7. Subordination and Designation of Access Channels

a. With the exception of those oyster leases issued under authority of Phase I of the Oyster Lease Moratorium Lifting Priority (LAC 76:VII.505.A.2), any oyster lease initially applied for after July 1, 2016, or any renewal or judicial partition of such lease, is subordinate to the rights of any person:

i. to engage in any activity authorized by a coastal use permit, determination, coastal use authorization, or drilling permit (collectively, for purposes of this Section, a "Permit") for which the Permit application was received prior to the date the application for the oyster lease was received. This subordination shall apply only within those areas as designated by the Permit. If no area is delineated by the Permit, then the default area shall be 75 feet from the centerline of a pipeline and 250 feet from the outside of a well, platform, shell pad, or facility.

ii. to operate, maintain, repair, replace, rehabilitate, or remove any pipeline, well, platform, shell pad, or facility on or impacting such an oyster lease where the structure was placed or constructed prior to September 20, 1980, or prior to the date the oyster lease was issued. This subordination applies only to areas 75 feet from the centerline of a pipeline and 250 feet from the outside of a well, platform, shell pad, or facility.

iii. to cross an oyster lease to access any activity, pipeline, well, platform, shell pad, or facility to which Clause A.7.a.i or A.7.a.ii applies, within a single access route properly designated and identified as follows:

(a). For any activity, pipeline, well, platform, shell pad, or facility, including removal of any of those structures, for which a single access channel is identified in the Permit, the department shall recognize that as the sole access channel across any subordinate oyster lease.

(b). If multiple access channels are identified in the Permit that cross any subordinate oyster lease, then the holder of the Permit shall propose one of them as the sole access channel to the Oyster Lease Section in writing, identifying the centerline of the access channel using the North American Datum 1983 state plane coordinates. Upon receiving the proposal, the Oyster Lease Section shall notify each affected oyster lessee in writing. Upon receiving written notification, the oyster lessee shall have 30 calendar days to object in writing to the Oyster Lease Section and show good cause why the department should not consent to the proposed designation. If an objection is not made within this time period, the department shall recognize the access channel as proposed. If an objection is timely made, the department shall so notify all affected oyster lessees and the holder of the Permit in writing. The affected oyster lessees and the holder of the Permit shall have 30 days from issuance of this notice to propose a mutually agreeable access channel and submit it to the department, identifying the centerline using the North American Datum 1983 state

plane coordinates, and the department shall recognize that as the sole access channel. Should the parties fail to reach a mutually agreeable resolution within this time period, the secretary shall have sole discretion to designate a sole access channel across the oyster lease from among those identified in the Permit.

(c). For any activity, pipeline, well, platform, shell pad, or facility, including removal of any of those structures, that was placed or constructed before September 20, 1980 or was placed or constructed before the oyster lease was issued, but for which no access channel has been previously authorized, the holder of the Permit shall propose a single access channel in writing to the Oyster Lease Section, identifying its centerline using the North American Datum (NAD) 1983 state plane coordinates. Upon receiving the proposal, the Oyster Lease Section shall notify each affected oyster lessee in writing. Upon receiving written notification, the oyster lessee shall have 30 calendar days to object in writing to the Oyster Lease Section and show good cause why the department should not consent to the proposed designation. If an objection is not made during this time period, the department shall recognize the access channel as proposed. If an objection is timely made, the department shall so notify all affected oyster lessees and the holder of the Permit in writing. The affected oyster lessees and the holder of the Permit shall have 30 days from issuance of this notice to propose a mutually agreeable access channel and submit it to the department, identifying the centerline using the (NAD) 1983 state plane coordinates, and the department shall recognize that as the sole access channel. Should the parties fail to reach a mutually agreeable resolution within this time period, the secretary shall have sole discretion to designate a sole access channel across the oyster lease.

(d). Any access channel designated across a subordinate oyster lease and accepted by the department shall be the area within 50 feet from the designated centerline of the channel.

(e). In addition, if a spoil area was previously identified in the Permit for an access channel designated pursuant to this Subparagraph, this Subparagraph shall also apply to the same spoil area; however, such spoil area shall be limited to eighty feet in width adjacent to one side of the access channel.

8. All leases, all applications for leases by persons who have since died, and all property rights or interests acquired pursuant to such leases, made in conformity with the provisions of law and rule, are heritable and transferable. No such inheritance of transfer is effective with respect to the department unless and until an authentic act, judgment, or other valid instrument translative of title to the lease, application, or property right or interest is registered in the Oyster Lease Section. In the event any oyster lease has been inherited, assigned or transferred to a non-resident, that lease shall not be renewed, pursuant to the residency requirements established in R.S. 56:422.

9. The fee schedule for all processes, as well as the purchase of extra maps, leases, plats or documents, is as follows.

Desktop Examination	$260
New Ground Application	$40
Renewal Application	$30
Lease Transfer	$10 per lease
Maps	$10 per copy
Plats	$5 per copy
Lease Documents	$5 per copy
Other materials	$1 per copy
Computations State Plane to Latitude/Longitude	$2 per point
GIS Data	$5 per lease $50 per USGS 24k section $200 for the dataset

B. Oyster Lease Applications

1. All applicants must appear in person at the Oyster Lease Section office to apply for a new oyster lease.

a. All applicants must be either a bona fide resident as defined in R.S. 56:8(16)(a), an officer or registered agent of and applying on behalf of a firm composed of bona fide Louisiana residents, or an officer or registered agent of and applying on behalf of a corporation domiciled in Louisiana or organized under Louisiana law. Evidence of residency requirements for partnerships, corporations, LLCs, or other business entity and evidence of office-holding or agency shall be provided via certified copy of the filing, in good standing, with the Secretary of State.

b. Applicants shall be of the full age of majority (18 years) when applying for or renewing a lease, or provide power of attorney to agents, evidenced by authentic act, to act on their behalf.

c. Louisiana residency and age shall be evidenced by a valid Louisiana driver's license or state-issued identification.

2. An applicant will be required to outline on a department map the area for which he wishes to apply.

a. In the event of department error that results in an application being taken in an area where there is a prior application or lease that prevents the applicant from taking the full amount of acreage applied for in the area described, the following procedure shall apply. The applicant shall have the option of:

i. taking a lease of all available remaining acres within the originally described area; or

ii. taking a single lease for up to 110% of the number of acres originally applied for, outside of the originally described area but in the nearest unencumbered water bottom (a "Revision"), provided that the Oyster Lease Section approves the Revision; or

iii. if neither of the above options is acceptable to the applicant, or if the Oyster Lease Section does not approve a Revision within 30 days after the applicant notifies the department that he has made that selection, the applicant may have his application cancelled and receive a full refund of the application fee.

b. The applicant shall have 30 days~~,~~ from the date of notification of the conflict by certified letter to exercise the above options and notify the department in writing of his selection. If the applicant does not notify the department of his selection within this time period, his application shall be cancelled and the department shall retain all fees.

c. Before a Revision lease is issued under Clause 2.a.ii above, the applicant shall first submit a new application for the revised area. This application shall be identified as a "Revision" application and shall indicate the original application by number for which it is being

substituted. There will be no charge for the Revision application.

d. All Revisions shall follow this procedure. No lease shall proceed until the properly completed Revision application has been submitted, accepted and approved. No Revision lease is authorized without the above procedure being followed.

3. Except as provided in Act 595 of the 2016 Regular Legislative Session, where distances between oyster leases, or between oyster leases and the shoreline, are 200 feet or less, no applications or leases shall be taken or issued except that the intervening space may be shared equally by the existing leases or applicants if properly applied for and leased in accordance with existing policies and practices.

4. Water bottoms identified or nominated in lease applications shall be configured in the most compact configuration possible. No new lease, or portion thereof, shall be issued whose length exceeds its narrowest width by more than a factor of three except as follows:

a. between existing leases where all surrounding water bottoms are leased, or under application;

b. in bayous (or similar configurations, connections or cuts between bays, lakes and ponds, etc.), but provided that the water bottom may be leased subject to a subservience clause to reasonable navigation. However, no application will be allowed to include a narrow water body connecting two otherwise non-contiguous larger water bottom areas identified in the lease application, except with the approval of the administrator of the Fisheries Management Division.

5. Oyster lease applications shall be heritable, but not otherwise transferrable.

a. If an applicant dies before the secretary has determined whether to grant the application, the application may be maintained by the administrator of the applicant's estate, provided that proper proof of the death is presented to the department. The applicant's heir as to the application may also maintain the application, provided that the heir is otherwise eligible for an oyster lease and proper proof of death and heirship is provided to the department.

b. The administrator or heir shall appoint a representative to manage the application within 180 days of the applicant's death. If the department is not notified in writing of the appointment of a representative with the legal authority to maintain and manage the application within 180 days of the applicant's death, the application will be null and void regardless of when the department learns of the death, and automatically cancelled and all fees retained by the department.

c. If the lease is granted, it shall be granted in the name of the applicant's heir as to the application, as shown in the proof of heirship provided to the department.

6. Any application for a lease exceeding 1,000 acres will be denied.

7. No application will be accepted that would cause an applicant to exceed the maximum total of 2,500 acres under lease and application established in R.S. 56:432.

a. An applicant will be given 30 days to reduce the acreage contained in any application that would cause his lease acreage to exceed 2,500 acres. If the applicant does not amend the application to reduce the acreage accordingly within 30 days of notification of the exceedance, the application will automatically be cancelled and all fees retained by the department.

8. Once an application for a new lease is received by the department, it will be registered with the Oyster Lease Section and the department will post notice of the application for the lease, along with a copy of the application, map and general description on its website for 90 consecutive days. Concurrent with this 90-day notice period, the department will:

a. request the Office of State Lands to perform a reasonable investigation to determine whether the water bottom applied for is claimed by the state and susceptible to leasing. The department will deny the lease if the Office of State Lands does not determine that the water bottom applied for is claimed by the state and susceptible to leasing. Alternatively, if the Office of State Lands determines that only part of the water bottom applied for is claimed by the state and susceptible to leasing, the applicant may amend the application within 30 days of such denial to limit it to such areas, and the department will continue to process the application as amended. If the applicant does not notify the department of an amendment meeting all requirements within this time period, the application shall be cancelled and the department shall retain all fees;

b. submit any application for a new lease to the Coastal Protection and Restoration Authority to review and determine if the water bottom applied for is located in an area where a buffer zone may be necessary to protect sensitive and eroding lands, and if so to delineate the extent of that buffer zone. The department will deny the lease if the Coastal Protection and Restoration Authority determines that a buffer zone is needed on the water bottom applied for. Alternatively, the applicant may amend the application within 30 days of notification of such denial to remove the area of the buffer zone, and the department will continue to process the application as amended. If the applicant does not notify the department of an amendment meeting all requirements within this time period, the application shall be cancelled and the department shall retain all fees;

c. send written notice of application for the lease to any private person who has previously submitted a claim of ownership of any part of the water bottom applied for to the Office of State Lands. The purpose of this measure is to provide additional notice. The posting of notice of application for lease on the department's website shall be the official notice. Any claim that the department failed to provide written notice, or that such notice was untimely shall not serve to negate an application for lease or extend the protest period.

9. Any private person claiming ownership of any part of the water bottom applied for may protest the issuance of a state lease on the grounds that the protesting party owns the water bottom, as provided below.

a. The protest must be made in writing via certified mail delivered within the 90-day notice period, concurrently to the secretary through the Oyster Lease Section, the administrator of the Office of State Lands, and the applicant.

b. The protest shall include proof of ownership, including but not limited to all information and documentation that the protesting party believes is relevant to the question of ownership.

c. Any right to protest issuance of the lease shall expire if not delivered within the 90-day notice period.

d. Pursuant to R.S. 56:427(F)(2), if protest is timely made, the administrator of the Office of State Lands shall review the state's claim to ownership of the contested water bottom and issue a preliminary determination to the secretary, the protesting party, and the lease applicant within 90 days of receiving the notice of protest, as to whether the state claims ownership of the contested water bottom. The administrator of the Office of State Lands may evaluate additional information after his preliminary determination, but shall issue a final determination of ownership within 180 days of receiving the notice of protest.

e. The final determination by the administrator of the Office of State Lands shall not be reviewable under the Administrative Procedure Act and is appealable only to the Nineteenth Judicial District Court. Any petition for judicial review of the determination made in accordance with this rule must be filed within 60 days after issuance of the determination.

f. Failure of a private claimant to make a protest has no effect on the right to claim ownership of the leased water bottom pursuant to R.S. 56:423(D).

10. If the administrator of the Office of State Lands finally determines that the state claims ownership of the water bottom applied for, and if the Coastal Protection and Restoration Authority determines that the water bottoms applied for is not essential for integrated coastal protection, and all other requirements are met, the secretary may, at his discretion, execute a lease for the water bottoms in the application, with any amendments as provided in these regulations.

11. An application will automatically be cancelled and all fees retained by the department for any of the following reasons:

a. if the applicant does not appear in person to execute a lease agreement within 60 days of issuance of the initial rental notice;

b. if the applicant fails to request a desktop examination from the department or submit a complete survey meeting department specifications within one year of the date of submission of the lease application;

c. if the administrator of the estate of a deceased applicant or heir as to the application fails to submit the appropriate paperwork naming a representative within one hundred eighty (180) days of the named applicant's death, as provided above;

d. as otherwise provided in these regulations.

12. An applicant may withdraw an application and receive a full refund from the department by submitting a written request for withdrawal within the following timeframes:

a. within 120 days after the department posts notice of the application on its website;

b. within 30 days after issuance of the final determination by the administrator of the Office of State Lands regarding the state's claim to ownership of the water bottoms applied for; or

c. within 30 days after final judgment in any proceeding for judicial review of the final determination by the administrator of the Office of State Lands regarding the state's claim to ownership of the water bottoms applied for.

13. The department will deny any new lease application for any water bottoms located within 75 feet of the centerline of a pipeline that is located on purchased right-of-way. However, if the right-of-way is abandoned and returned to commerce, the secretary may then lease such water bottoms.

a. If only part of the water bottom applied for is within 75 feet of the centerline of a pipeline that is located on a purchased right-of-way, the applicant may amend the application to remove all other areas within 30 days of notification of such denial, and the department will continue to process the application as amended. If the applicant does not notify the department of an amendment meeting all requirements within this time period, his application shall be cancelled and the department shall retain all fees.

14. The department will deny any new lease application for any water bottoms located within the following areas:

a. water bottoms designated as a Public Oyster Seed Ground, reservation, or other public oyster harvest area;

b. water bottoms that are within the boundaries of a Wildlife Management Area; or

c. water bottoms or bodies designated as navigable channels or waterways by the United States Army Corps of Engineers, or within 50 feet of the permitted boundary of such channel or waterway.

d. If only part of the water bottom applied for is within one of the above-listed areas, the applicant may amend the application to remove such areas within 30 days of notification of such denial, and the department will continue to process the application as amended. If the applicant does not notify the department of an amendment meeting all requirements within this time period, his application shall be cancelled and the department shall retain all fees.

C. Renewals

1. The lessees of record for expiring leases have first right of renewal on expiring leases for successive periods of 15 years each, provided that the leased area is capable of supporting oyster populations.

2. All applicants must appear in person at the Oyster Lease Section office to apply for an oyster lease renewal.

a. Applicants shall be the full age of majority (18 years) when applying for or renewing a lease, or provide power of attorney to agents, evidenced by authentic act, to act on their behalf.

b. Louisiana residency and age shall be evidenced by a valid Louisiana driver's license or state-issued identification.

c. All applicants must be either a bona fide resident as defined in R.S. 56:8(16)(a), an officer or registered agent of and applying on behalf of a firm composed of bona fide Louisiana residents, or an officer or registered agent of and applying on behalf of a corporation domiciled in Louisiana or organized under Louisiana law. Evidence of residency requirements for partnerships, corporations, LLCs, or other business entity and evidence of office-holding or agency shall be provided via certified copy of the filing, in good standing, with the Secretary of State.

3. Leases, or portions of leases, will not be renewed if:

a. the water bottom is determined by the department to be incapable of supporting oyster populations.

b. the water bottom is designated as a Public Oyster Seed Ground, reservation, or other public oyster harvest area, unless specifically authorized by the secretary.

c. the water bottom is within the boundaries of a Wildlife Management Area, unless specifically authorized by the secretary.

d. the water bottom is within an area where the Coastal Protection and Restoration Authority determines is essential for integrated coastal protection or that a buffer zone is necessary to protect sensitive and eroding lands.

e. the renewal applicant fails to meet the residency requirements required by law.

4. In the event a lease, or a portion of a lease, is not renewed for one of the foregoing reasons, the lessee of record at the time of cancellation or his designee has until July 1st of the year the lease was non-renewed to remove cultch or improvements made to the previously leased bottom, or a period of 90 days from receiving notice of non-renewal, whichever is longer. The secretary, at his discretion and upon a showing of good cause, may extend this time period by 90 additional days.

5. Upon renewal, the secretary may make such stipulations in the leases as he deems necessary and proper and may fully settle all disputes as to lease boundaries.

6. Except as provided in Act 595 of the 2016 Regular Legislative Session regarding Phase II of the oyster lease moratorium lifting process, "take-ups", expansions, reconfigurations, or other lease modifications shall not be considered as lease renewals. Any such application for previously unleased water bottoms shall be processed as a new lease application.

D. Lease Plat Requirements and Standards for Oyster Lease Surveys

1. Lease applicants can request the department to perform a desktop examination to produce a lease plat, or may hire a licensed surveyor to draft a lease plat.

a. If a desktop examination is requested, an additional fee established by the commission may be charged.

b. When drafting a lease plat depicting leaseable water bottom, the plat shall reference National Agricultural Imagery Program (NAIP) Imagery or any other relevant imagery with spatial resolution of at least one meter.

c. Upon execution of the lease, the department shall provide three copies of the plat to the lessee of record.

2. If no desktop examination is requested by the applicant, the applicant shall furnish to the department a plat, certified by a licensed surveyor, of the water bottom applied for, within one year of receipt of the lease application by the department. A licensed surveyor shall be responsible for conducting any such survey, in accordance with these regulations and the appropriate professional standards of practice. Failure to submit such a plat within the prescribed time period shall result in the automatic cancellation of the lease application and forfeiture of all application fees.

3. Each element of the description written on the application must be met by the plat required by R.S. 56:427(A). Additionally, the plat must conform completely to the map outline attached to and made a part of the application; provided, however, that deviations from the map outline (but not the written description) are permitted when such a deviation would not encroach on a neighboring lease or application. Such deviations are also permitted when the signed written consent of the lessee or applicant whose lease or application would be affected has been granted; in such cases, the affected lease or application will be amended to remove the overlapped area. In no case will an applicant be allowed to lease outside of his written description, except as provided in Clause B.2.a.ii.

a. Plats drafted by a licensed surveyor are to be drawn on the form prescribed by the department and stamped. The plat shall remain in the custody of the department after receipt.

b. An electronic CADD file, ESRI Shapefile, or other comparable file, as allowed by the department, of the boundary shall be provided to the department together with the plat and within the same time frame as the plat.

c. In the event that a licensed surveyor relies on department GIS information, it shall be at his own risk.

d. If a licensed surveyor repeatedly surveys over an existing lease, application or land area, that surveyor will be reported to the Louisiana State Board of Professional Engineers and Land Surveyors.

4. All corners of oyster lease plats shall be referenced to the Louisiana State Plane Coordinate System, south Zone, NAD83, Survey Feet.

5. Plats shall illustrate any land, any existing structures or improvements within or adjacent to the application boundary.

6. The acreage indicated on all plats, even though calculated to the tenth or hundredth of an acre, shall be rounded up to the next highest acre.

a. All land areas shall be excluded from the acreage calculation and the lease.

7. The application number and the name of the applicant shall be shown on all plats, as indicated on the original application.

8. Standard signs and symbols shall be used on the plat.

9. The department shall not be responsible for the cost of any private survey performed. Contracting a private survey is at the sole discretion and expense of the applicant.

10. Noncompliance with any requirement established by law or by these rules, after 30-day notification from the department by certified mail, shall result in cancellation of the application or lease and forfeiture of all fees to the department.

E. Oyster Lease Posting Requirements. In an effort to comply with R.S. 56:430(B), and to keep within the constraints of R.S. 14:63 dealing with criminal trespassing, the following oyster lease posting requirements apply to any actively harvested lease.

1. The lessee shall post the oyster lease and maintain signs along the boundaries of the property or area to be posted. These signs shall be written in the English language.

2. The signs shall have letters at least three inches in height and shall be of sufficient size and clarity to give notice to the public of the location and boundary of the oyster lease. The signs shall be placed and maintained at intervals of not more than 1,000 feet and shall be at least 3 to 12 feet above the water level.

3. At the main entrance to the lease and at no less than all corners along the boundary of said property, the lessee shall include his name, initials, or lease number.

4. In marsh areas and canals, posted signs shall also be placed at all major points of ingress and egress.

5. In open waters all signs are to be placed facing outward.

F. Policy Regarding the Splitting of Leases

1. No lease shall be split into non-contiguous pieces unless done so by the Coastal Protection Restoration Authority or by judicial decree.

2. If a lease is split by an acquisition by the Coastal Protection Restoration Authority or judicial decree, the department will issue alternative lease numbers for each discrete remainder lease area. An amended lease or leases for such remainder lease areas will be mailed to the lessee at the address on file with the department's Oyster Lease Section.

3. An amended lease issued by the department because a lease was split pursuant to these rules shall not constitute a new lease for purposes of subordination under Act 595 of the 2016 Regular Legislative Session.

4. Splitting of oyster leases will be done with no fee charged to the lessee by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(10), R.S. 56:422, R.S. 56:423, R.S. 56:425, R.S. 56:427, R.S. 56:428, Act 808 of the 2008 Regular Legislative Session, Acts 570 and 595 of the 2016 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 10:470 (June 1984), amended LR 12:844 (December 1986), LR 15:197 (March 1989), LR 17:808 (August 1991), LR 37:1622 (June 2011), LR 45:

§502. Joint Leasing of Water Bottoms

A. At any time, the department may enter into a joint lease agreement or agreements with a private claimant for the leasing of "dual claim" water bottoms to an applicant for the purposes of oyster cultivation. Such an agreement will be referred to as a Dual Claim Agreement. A copy of each Dual Claim Agreement will be maintained at the department's Oyster Lease Section. The department, in consultation with the administrator of the Office of State Lands, and the private claimant, through the Dual Claim Agreement, will designate water bottoms as "dual claim" and authorize the department to enter into dual claim oyster leases (as defined in Subsection B) with applicants on the "dual claim" water bottoms pursuant to Title 56, Part VII, Subpart D of the LRS of 1950. Except as provided in Subsection E, no Dual Claim Agreement shall contain any restrictions on the applicant more burdensome than those in a traditional state-issued oyster lease. A Dual Claim Agreement shall remain in effect as to the "dual claim" water bottoms affected thereby (1) for the entire term and to the extent of any state-issued oyster lease or renewal issued by the department thereon, or (2) until and to the extent that ownership of the "dual claim" water bottoms is determined by a final, unappealable judgment of a court of competent jurisdiction, or (3) until such time that no Dual Claim Lease has been issued, and no claimed water bottom remains subject to the Dual Claim Agreement by virtue of the exercise of withdrawal rights as provided in Subsection C. Neither the existence nor the terms of any Dual Claim Agreement or Dual Claim Lease shall in any way be interpreted to indicate, determine, allocate, or otherwise affect ownership of any water bottoms or mineral rights beneath any water bottoms.

B. The term Dual Claim Lease shall refer to an oyster lease issued by the department on "dual claim" water bottoms that are subject to a Dual Claim Agreement, for which a private claimant holds record title, to which the state also makes an ownership claim as a sovereign navigable water bottom, and to which title has not been adjudicated to either party by a final, unappealable judgment of a court of competent jurisdiction.

C. Both the department and the private claimant shall have the right to withdraw any dual claim water bottoms or portions thereof from a Dual Claim Agreement by and upon written notice to the other ("withdrawal notice"), provided that the department has not received an application for a Dual Claim Lease on the water bottoms affected by the withdrawal notice at the time the withdrawal notice is received.

D. A Dual Claim Lease shall be executed on a department lease form and shall be subject to the same rules and regulations that apply to traditional state-issued oyster leases, except the Dual Claim Lease shall be titled as such, and shall include and be subject to the following clause.

> he water bottoms that are the subject of this lease are committed to a Dual Claim Agreement entered into by and between the Louisiana Department of Wildlife and Fisheries ("DWF") and ("Private Claimant"), as authorized by R.S. 56:425.1 (Act 570 of 2016). That Dual Claim Agreement is on file with the DWF Oyster Lease Section. Lessee hereunder acknowledges that it has been provided a copy of the Dual Claim Agreement in connection with Lessee's application or request for the issuance of this oyster lease. This lease is subject to all terms and conditions of that Dual Claim Agreement in effect on the effective date of this lease. Neither the existence nor the terms of any Dual Claim Agreement or this lease shall in any way be interpreted to indicate, determine, allocate, or otherwise affect ownership of any water bottoms or mineral rights beneath any water bottoms.

E. Any state-issued oyster lease may be amended with the consent of the lessee, in the lessee's sole discretion, to (1) incorporate the foregoing clause into the existing state-issued oyster lease and (2) convert the state-issued oyster lease to a Dual Claim Lease. Such conversion shall have no effect on the effective date of the lease or any rights, privileges, or obligations of the lease, except as modified by the clause established in Subsection D of this Section.

F. The department shall receive the same annual rental payment for a Dual Claim Lease as established by R.S. 56:428 for any state-issued oyster lease. However, as a condition of the Dual Claim Agreement, a private claimant may negotiate an additional private rental payment.

1. State-issued oyster leases in existence as of July 1, 2016 may be subject to a Dual Claim Agreement, but the department shall not execute a Dual Claim Agreement that requires private rental payment for such water bottoms.

2. Any such private payment shall be stated in or determinable from the Dual Claim Agreement.

3. Under no circumstances may the department execute a Dual Claim Agreement where the private rental rate exceeds the rate received by the department.

4. If a private rental payment is required, such payment shall be paid directly to the private claimant as lessor; the department shall neither receive nor be the repository for any such payment, nor have any right or responsibility in relation thereto.

5. The Dual Claim Agreement may set forth deadlines and penalties for untimely payment or non-payment of the private payment, but no such deadlines or penalties may be more onerous in terms of deadlines, amount, or consequences than those applicable to state-issued oyster leases. If the Dual Claim Agreement does not provide for such private deadlines or penalties, the deadlines, amount, and consequences for non-payment or late payment of the private payment shall be the same as those applicable to state-issued oyster leases. Regardless, private claimants shall have no responsibility to issue any notice of payment due or late. If a Dual Claim Lease terminates due to non-payment of either the state or private payment, the Dual Claim Lease shall immediately be terminated in its entirety and for all purposes, and the Dual Claim Agreement party whose payment was unpaid shall immediately notify the other party and the lessee of the termination.

G. The department may not execute a Dual Claim Agreement unless it provides that both the private claimant and the department are prohibited from entering into any oyster lease for water bottoms subject to the Dual Claim Agreement, except through a Dual Claim Lease; and that upon the effectiveness of any Dual Claim Lease issued pursuant to the Dual Claim Agreement, the Dual Claim Lease shall replace and supersede in its entirety any then-existing oyster lease previously granted by the private claimant, but only as to acreage within the Dual Claim Lease.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:425.1 and Act 570 of the 2016 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 45:

§503. Oyster Lease Rental Rate and Default for Non-Payment

A. The rental rate for oyster leases shall be as determined by law.

B. Policy to Comply with Laws Concerning Default in Payment of Rent on Oyster Leases (Noncompliance R.S. 56:429)

1. Annual rental payments shall be due January 1 each year. Annual rental notices will be mailed to lessees no later than December 1 of each year.

2. If a lessee has not paid the rent on or before January 1 of each year, or within 60 days thereafter, the lease shall automatically terminate and be cancelled, and the lessee shall automatically forfeit all the works, improvements, betterment, and oysters on the previously leased water bottoms to the department. Such water bottoms shall then be open for lease in accordance with R.S. 56:425.

3. On or before February 1 each year, the department shall issue a written notice of delinquency by certified mail to each lessee who has not yet paid rent. This notice shall also be published on the department's website and in the official journal of the parish in which the rent-delinquent lease is located.

4. If a lease is forfeited due to failure to pay rent, the cancellation of that lease shall be made public by notice through publication in the official journal of the parish where the formerly leased water bottoms are located. This shall be done within 10 days of cancellation.

5. Any lessee who pays the rent on or after February 1 shall pay the rent due plus an additional 10 percent penalty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:428 and R.S. 56:429.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 5:468 (December 1979), amended LR 45:

§505. Oyster Lease Moratorium

A. A moratorium on the issuance of oyster leases for water bottoms not presently under lease is established. This includes a moratorium on the taking of oyster lease applications for water bottoms not presently under lease. This moratorium shall remain in place and may not be finally lifted until the following preferential rights have been claimed or forfeited in the following order. Upon the conclusion of the final oyster lease moratorium lifting phase, the secretary shall have the authority to fully and finally lift the moratorium. The secretary shall notify the Wildlife and Fisheries Commission of the lifting of the moratorium and post notice thereof on the department's website at least 30 days before the lifting becomes effective.

1. Phase 0: Processing Pre-Moratorium Lease Application Backlog

a. Applications pending at the time of the March 7, 2002 moratorium shall be processed. This includes all pending applications that have been held, along with all fees paid, but excludes applications as to which the applicant requested cancellation of the application and received a refund of fees.

b. In the event of the death of an applicant, the applicant's heirs or legatees shall so notify the department; and any lease ultimately issued shall issue only to persons placed in possession of the application by Judgment of Possession or to a court-appointed administrator or executor on behalf of a deceased applicant's estate.

c. Pending applications shall be subject to the application procedures established in R.S. 56:427(F) and LAC 76:VII.501.B.

d. The Office of State Lands shall make a determination of ownership for water bottoms applied for in any pending application prior to the execution of such lease.

e. Pending applications may be issued as a "Dual Claim Lease" under LAC 76:VII.502 if ownership of the water bottom is contested.

f. No water bottoms applied for in a pending lease application shall be leased if such water bottoms were encumbered by a private oyster lease that was in effect and properly recorded as of February 1, 2016 in the public records of the parish where the water bottoms are located, and at the time of the lease application, are encumbered by a private oyster lease, to the extent of the lease in effect on February 1, 2016. An applicant may amend the pending application to limit it to the remainder of the water bottoms that are not encumbered by the private oyster lease, or may withdraw the application and receive a full refund.

g. Any lease executed under this phase shall not be subject to the subordination conditions established in LAC

76:VII.501.A.7, as they were originally applied for prior to July 1, 2016.

h. In addition to the official notification of eligible applications the department shall post on the department's website a list of all applicants with pending oyster lease applications eligible for process under Phase 0.

2. Phase I: Right of First Refusal for Non-Renewed Avenal Leases

a. In coordination with the Coastal Protection and Restoration Authority, the department shall identify the leases that were not renewed since January 1, 1996, due to recommendations from the Department of Natural Resources that such leases would be in the operational or impact area of a planned integrated coastal protection project, and those leases whose lessee voluntarily failed to renew the lease between January 1, 1996 and October 19, 2004, and was a party to the class action suit entitled Albert J. Avenal, Jr. et al. v. State of Louisiana and the Department of Natural Resources.

b. The lessee of record at the time the original lease was not renewed shall have the right of first refusal for a new lease for the previously leased acreage.

c. The department shall publish a list of eligible leases on its website for 60 consecutive days, together with notice of the right of first refusal for new leases for the previously leased acreage and the deadline for applying for the new leases under this phase. The deadline for application for new leases under this phase shall be 60 days from when notice is first posted.

d. Any potentially eligible applicant who fails to apply during this 60-day application period forfeits all rights to the lease under this phase.

e. In addition to the official notification of eligible leases posted on the department's website, the department shall also send notice of the right of first refusal for new leases for the previously leased acreage and the deadline for applying for the new leases under this phase in writing via certified letter, to all lessees of record at the time of non-renewal. The purpose of this measure is to provide additional notice. The posting of the eligible leases on the department's website shall be the official notice. Any claim that the department failed to provide written notice via certified letter, or that such notice was untimely shall not serve to extend the application deadline or be sufficient cause to negate forfeiture of a lessee of record's right of refusal.

f. No water bottoms applied for in a pending lease application shall be leased if such water bottoms were encumbered by a private oyster lease that was in effect and properly recorded as of February 1, 2016 in the public records of the parish where the water bottoms are located, and at the time of the lease application, are encumbered by a private oyster lease, to the extent of the lease in effect on February 1, 2016. An applicant may amend the pending application to limit it to the remainder of the water bottoms that are not encumbered by the private oyster lease, or may withdraw the application and receive a full refund.

g. Any lease executed under this phase shall not be subject to the subordination conditions established in LAC 76:VII.501.A.7 and R.S. 56:423(A)(2).

h. This phase of the moratorium lifting shall not commence until the department has finally acted upon all outstanding lease applications under Phase 0.

3. Phase II: Incorporation of Adjacent Water Bottoms

a. A lessee may expand any lease existing as of January 1, 2016 under this phase by amending the lease to incorporate immediately adjacent water bottom that is not leased.

b. Such expansion shall be limited to five hundred feet beyond the existing lease boundary, and only toward:

i. Existing Louisiana coastline as shown on the last oyster lease survey plat on record;

ii. Existing Louisiana coastline as of January 1, 2016, as shown by the 2015 NAIP imagery, located within 1,000 feet of the existing lease boundary; or

iii. Another lease existing as of January 1, 2016, but only where there is 500 feet or less between the leases.

(a). Expansion between two leases separated by 500 feet or less shall be divided equally between the two applicants.

(b). Allocation for expansion between three or more applicants whose leases are separated by 500 feet or less must be agreed upon in writing signed by each of them under authentic act, submitted to the department within the application period. The area shall be divided according to this agreement. Failure to provide such an agreement within the application period results in a forfeiture of all rights to expansion under this phase for each applicant.

c. The department shall post on its website, for one hundred eighty consecutive days, notice of the availability of lease expansions and the deadline for applying for expansions under this phase.

d. The deadline for application under this phase shall be 180 days after notice is first posted.

e. If a lessee fails to apply for an expansion within this application period, he forfeits all rights to expansion under this phase.

f. Expansions issued under this phase shall be identified and issued as an extension to the existing lease and treated as a single lease, including the conditions and the term governing the existing lease. However, the expanded portion of the lease will be subject to the subordination conditions in LAC 76:VII.501.A.7 and R.S. 56:423(A)(2).

g. No water bottoms applied for in a pending lease application shall be leased if such water bottoms were encumbered by a private oyster lease that was in effect and properly recorded as of February 1, 2016 in the public records of the parish where the water bottoms are located, and at the time of the lease application, are encumbered by a private oyster lease, to the extent of the lease in effect on February 1, 2016. An applicant may amend the pending application to limit it to the remainder of the water bottoms that are not encumbered by the private oyster lease, or may withdraw the application and receive a full refund.

h. This phase of the moratorium lifting shall not begin before the time period for applying for leases under Phase I has expired.

4. Phase III: Right of First Refusal for Lessees under Private Lease

a. For any water bottom claimed by a private person that was under a private oyster lease issued by a private claimant with record title to the water bottom and recorded in the public records of the parish where it is located by February 1, 2016, the private lessee of that water bottom at the time of implementation of Phase III shall have the right

of first refusal for a new state lease, including a Dual Claim Lease, on any water bottom claimed by the state within the area of the existing private oyster lease.

b. The department shall post on its website, for 60 consecutive days, notice of the right of first refusal for new state leases, including Dual Claim Leases, within the area of private oyster leases and the deadline for applying for new leases under this phase.

c. The deadline for application under this phase shall be 60 days after notice is first posted.

d. If a lessee fails to apply for a lease within this application period, he forfeits all rights to a state lease under this phase.

e. This phase is the only time where lessees may "convert" privately issued oyster leases located on state claimed water bottoms, to state-issued leases, including Dual Claim Leases, under these regulations. Upon conclusion of Phase III, private leases on state-claimed water bottoms previously recognized as valid by Act 570 of the 2016 Regular Legislative Session will either have been converted to regular state leases or Dual Claimed Leases, or they will cease to be recognized by the department. Continued harvest on state water bottoms after this phase without a state-issued lease, regardless of whether a privately issued oyster lease exists, will be subject to enforcement action. Any portions of privately issued oyster leases on water bottoms not claimed by the state at the time of Phase III applications will not be subject to or affected by Phase III, and will not be afforded any right of first refusal or other priority or preference.

f. This phase of the moratorium lifting shall not begin before the time period for applying for Phase II has expired.

5. Phase IV: First Lottery Phase:

a. The department shall post on its website, for sixty consecutive days, notice of the oyster lease lottery and the deadline for entering the lottery.

b. The deadline for submitting an entry shall be sixty days after notice first posted.

c. Any person eligible for an oyster lease under R.S. 56:425 may submit a single lottery entry for an appointment to apply for a single lease under this phase.

i. Individuals may apply multiple times if each application is made on behalf of a separate juridical person. An individual applying on behalf of a non-natural person must submit a certified copy of a filing with the Secretary of State showing that he is an officer or agent of the non-natural person.

d. If any person fails to submit a lottery entry within this application period, he forfeits all rights to a new lease under this phase.

e. Upon the conclusion of the application period, the Oyster Lease Section shall enter each valid applicant into a random selection process using computer-generated randomization software to assign appointment priority.

f. Lottery participants will be given notice of their random priority number following the selection process.

g. The lottery entrants shall be assigned an appointment date and time with the Oyster Lease Section based upon their priority. Appointment times will be assigned strictly by priority and shall not be negotiable.

h. The department shall send notification of the appointment date and time in writing to each lottery entrant at the address provided in the lottery application, at least 14 days prior to the date of the scheduled appointment. Additionally, the department shall maintain an electronic calendar of scheduled appointments and priority queue on its website.

i. A lottery entrant who fails to attend his scheduled appointment, for any reason whatsoever, shall be moved to the bottom of the priority list and his appointment shall be rescheduled accordingly. Failure to attend the rescheduled appointment will result in a forfeiture of all rights to a lease under this phase.

j. This phase of the moratorium lifting shall not begin before the time period for applying for leases under Phase III has expired.

6. Phase V: Second Lottery Phase:

a. If after Phase IV, the secretary believes that a second lottery phase is warranted, then he may elect to conduct a second lottery.

b. This second lottery shall be subject to the same guidelines established by the commission governing the first lottery.

c. This phase of the moratorium lifting shall not begin before all applications for leases or expansions under Phases I, II, III, and IV have been finally received by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(10), R.S. 56:422, R.S. 56:425, R.S. 56:429, R.S. 56:432.1, Act 808 of the 2008 Regular Legislative Session, Acts 570 and 595 of the 2016 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 10:948 (November 1984), amended LR 29:374 (March 2003), LR 33:1397 (July 2007), LR 45:

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 and Final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statement, the filing of the Notice of Intent and Final Rule and the preparation of reports and correspondence to other agencies of government.

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 in R.S. 49:972(B).

Poverty Impact Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

Provider Impact Statement

This Rule has no known impact on providers as described in HCR 170 of 2014.

Public Comments

Written comments should be addressed to Marc Maniscalco, Department of Wildlife and Fisheries, 2045 Lakeshore Drive, New Orleans, LA, 70122 or via email to mmaniscalco@wlf.la.gov until 4:30 p.m., Friday, November 1, 2019.

Alfred R. Sunseri
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Oysters
Leasing Policies and Procedures

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change is expected to increase costs for the Louisiana Department of Wildlife and Fisheries (LDWF) which may have to hire one or two additional employees to process the applications that are expected to be submitted following the implementation of this Rule. The LDWF expects to incur additional salary costs of approximately $27,000 in Fiscal Year (FY) 2019-2020 and $137,000 in subsequent years.

The proposed rule change addresses requirements of Acts 595 and 570 of 2016. Act 595 provided for the lifting of a moratorium on new oyster leases. Act 570 authorized the LDWF to establish rules for the joint leasing of water bottoms to a third party when the state of Louisiana and a private claimant have a "dual claim" to the same water bottom. It also updates internal policies and procedures for the LDWF related to oyster lease practices and incorporates into rule other aspects of LA.R.S. 56 that had not been previously included.

The following aspects of the rule change address requirements of Act 595 (moratorium lifting). The proposed rule change provides for preferential rights and rules governing the lifting of the moratorium. It includes revisions to make the application process consistent with the Act regarding public notifications, procedures to protest lease issuance decisions, and policies for the partitioning of leases by the Coastal Protection Restoration Authority (CPRA). The proposed Rule states that oyster leases and lease applications submitted after July 1, 2016 are subordinate to the rights of persons with coastal use permits, coastal use authorizations, or drilling permits and persons operating or maintaining pipelines, wells, platforms, and similar facilities.

The proposed rule change prohibits the issuance of an oyster lease within Wildlife Management Areas (WMA), Public Seed Oyster Grounds (PSOG) or reservations; within federally designated navigable waterways; or within 75 feet of the centerline of a pipeline. It outlines procedures to renew leases and defines when leases may not be renewed.

The proposed rule change states that the oyster lease moratorium shall not be lifted until certain preferential rights have been claimed or forfeited in the order identified in this rule. In Phase 0 of this process, lease applications submitted before the imposition of the moratorium on March 7, 2002 shall be processed. Phase I, which shall be implemented after the resolution of leases addressed in Phase 0, allows the submission of lease applications from certain applicants who had previously submitted applications for leases after June 1, 1996 and before March 7, 2002. Phase II of this process, which may be implemented after the resolution of Phase I applications, lessees may expand leases existing as of January 1, 2006 to include adjacent water bottoms up to 500 feet. Phase III, which may be implemented after Phase II, allows lessees under private leases on dually claimed water bottoms the right of first refusal to convert private leases to state leases or dually claimed leases. Phase IV describes processes for the first lottery of new leases once other phases have been resolved. Phase V outlines procedures for a second lottery of water bottoms if necessary.

The following aspects of the rule change address requirements of Act 570 (dually claimed water bottoms). The proposed rule change establishes rules governing the joint leasing of water bottoms to third parties when those water bottoms are subject to dual claims or competing claims for ownership between the state of Louisiana and private claimants. Whenever an application for an oyster lease is received, the LDWF is required under the proposed rule change to request the State Land Office to investigate whether the water bottom is claimed by the state of Louisiana and to submit application to the CPRA to determine if the water bottom is located within a buffer zone or area that is sensitive to erosion or changes in salinity.

The proposed rule change codifies office policies and leasing procedures contained in R.S. 56, including the following: establishes procedures to address overlaps of leases and correct miscalculations of lease boundaries and sizes; requires an indexing system to determine lease acreage; identifies fees for desktop examinations ($260), new ground applications ($40), renewal applications ($30), lease transfers ($10 per lease), and maps ($10 per copy); clarifies age and residency requirements for lease applicants; clarifies the requirement for the compact configuration of water bottoms identified in leases; specifies that oyster lease applications are heritable but not otherwise transferable; prohibits leases of more than 1,000 acres and sets a maximum of 2,500 total for any lessee; outlines the procedure to file protests when water bottoms are disputed; revises plat requirements and standards for oyster lease surveys; establishes a policy for joint leasing of water bottoms; and defines rules for payment on state-owned oyster leases consistent with R.S. 56.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change is anticipated to increase the revenue collected by the L.D.W.F. Oyster Lease Section by an estimated $5,000 in FY 2019-2020 and $54,000 in FY 2020-21 and unknown amounts in later years.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The establishment of rules regarding the joint leasing of water bottoms subject to dual claims is expected to benefit private claimants who may earn rent from any water bottoms that may be leased. The availability of additional water bottoms for potential lease may also benefit commercial oyster harvesters by offering additional areas for production. According to the Louisiana Office of State Lands, there are 1,018,332 acres of leasable water bottoms, including approximately 100,000 acres that are designated as dually claimed water bottoms.

The proposed rule change allowing the processing of desktop examinations of oyster lease applications is expected to benefit lease applicants by providing them a potentially less costly, less time-consuming alternative to private surveys.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change is expected to have little effect on competition and employment.

Bryan McClinton	Evan Brasseaux
Undersecretary	Staff Director
1909#012	Legislative Fiscal Office

NOTICE OF INTENT

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Sharks and Sawfishes—Harvest Regulations
(LAC 76:VII.357)

The Wildlife and Fisheries Commission does hereby give notice of intent to amend a Rule (LAC 76:VII.357) by modifying the recreational minimum size limit for shortfin mako sharks (*Isurus oxyrinchus*) from 54 inches fork length

to 71 inches fork length for male sharks and 83 inches fork length for female sharks. 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. R.S. 56:320.2(C), R.S. 56:326.1, and R.S. 56:326.3 to the Wildlife and Fisheries Commission.

Title 76
WILDLIFE AND FISHERIES
Part VII. Fish and Other Aquatic Life
Chapter 3. Saltwater Sport and Commercial Fishery
§357. Sharks and Sawfishes - Harvest Regulations

A. - E.2. …

F. Sharks taken under a recreational bag limit shall not be sold, purchased, exchanged, traded, bartered, or attempted to be sold, purchased, exchanged, traded, or bartered. A person subject to a bag limit shall not possess at any time, regardless of the number of trips or the duration of a trip, any shark in excess of the recreational bag limits or less than minimum size limits as follows.

1. All sharks taken under a recreational bag limit within or without Louisiana waters must be at least 54 inches fork length, except that the minimum size limit does not apply for Atlantic sharpnose or bonnethead sharks. Male shortfin mako sharks must be at least 71 inches fork length and female shortfin mako sharks must be at least 83 inches fork length. No sandbar or silky shark may be retained under a recreational bag limit.

F.2. - O. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(10), R.S. 56:326(E)(2), R.S. 56:326.1, R.S. 56:326.3, R.S. 56:320.2(C), and R.S. 56:325.2(A).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:543 (March 1999), amended LR 27:2267 (December 2001), LR 30:1507 (July 2004), LR 35:705 (April 2009), LR 39:1062 (April 2013), LR 43:1188 (June 2017), LR 45:

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 and the final Rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

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.

Provider Impact Statement

This Rule has no known impact on providers as described in HCR 170 of 2014.

Public Comment Period

Interested persons may submit comments relative to the proposed Rule to Jason Adriance, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, or via e-mail to jadriance@wlf.la.gov prior to Thursday, November 7, 2019.

Alfred R. Sunseri
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Sharks and Sawfishes
Harvest Regulations

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no anticipated implementation costs or savings to the Department of Wildlife & Fisheries or local governmental units as a result of the proposed rule change which establishes recreational minimum size limits of 71 inches fork length for male shortfin mako sharks and 83 inches fork length for female mako sharks caught in Louisiana state waters. The change aligns Louisiana state regulations for mako sharks in state waters with federal regulations that set minimum size limits in federal waters of the Gulf of Mexico. Increasing the minimum size limit is intended to improve the viability of the stock.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change is not anticipated to have any impact on the revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule change is not expected to have a substantial effect on Louisiana anglers because the species is infrequently encountered in state waters. According to LA Creel estimates, recreational landings of mako sharks were two in 2017, zero in 2018, and three in 2019.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment as a result of the rule change.

Bryan McClinton
Undersecretary
1909#023

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Workforce Commission
Office of Workers' Compensation

Pain Medical Treatment Guidelines (LAC 40:I.Chapter 21)

The Louisiana Workforce Commission does hereby give notice of its intent to amend certain portions of the Medical Guidelines contained in the *Louisiana Administrative Code*, Title 40, Labor and Employment, Part I, Workers' Compensation Administration, Subpart 2, Medical Guidelines, Chapter 21, regarding chronic pain guidelines. This Rule is promulgated by the authority vested in the director of the Office of Workers' Compensation found in R.S. 23:1291 and R.S. 23:1310.1(C).

Title 40
LABOR AND EMPLOYMENT
Part I. Workers' Compensation Administration
Subpart 2. Medical Guidelines
Chapter 21. Pain Medical Treatment Guidelines
Subchapter A. Chronic Pain Disorder Medical Treatment Guidelines

Editor's Note: Form LWC-WC 1009. Disputed Claim for Medical Treatment has been moved to §2328 of this Part.

§2101. Introduction

A. This document has been prepared by the Louisiana Workforce Commission, Office of Workers' Compensation (OWCA) and should be interpreted within the context of guidelines for physicians/providers treating individuals qualifying under Louisiana Workers' Compensation Act as injured workers with chronic pain. Although the primary purpose of this document is advisory and educational, the guidelines are enforceable under the Louisiana Workers Compensation Act. All medical care, services, and treatment owed by the employer to the employee in accordance with the Louisiana Workers' Compensation Act shall mean care, services, and treatment in accordance with these guidelines. Medical care, services, and treatment that varies from these guidelines shall also be due by the employer when it is demonstrated to the medical director of the office by a preponderance of the scientific medical evidence, that a variance from these guidelines is reasonably required to cure or relieve the injured worker from the effects of the injury or occupational disease given the circumstances. Therefore, these guidelines are not relevant as evidence of a provider's legal standard of professional care. To properly utilize this document, the reader should not skip nor overlook any sections.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation Administration, LR 37:1681 (June 2011), amended LR 45:

§2103. General Guideline Principles

A. The principles summarized in this section are key to the intended implementation of all Office of Workers' Compensation medical treatment guidelines and critical to the reader's application of the guidelines in this document.

1. Application of Guidelines. The OWCA provides procedures to implement medical treatment guidelines and to foster communication to resolve disputes among the provider, payer, and patient through the Workers Compensation Act.

2. Education. Education of the patient and family, as well as the employer, insurer, policy makers and the community should be the primary emphasis in the treatment of chronic pain and disability. Currently, practitioners often think of education last, after medications, manual therapy, and surgery. Practitioners must implement strategies to educate patients, employers, insurance systems, policy makers, and the community as a whole. An education-based paradigm should always start with inexpensive communication providing reassuring and evidence-based information to the patient. More in-depth education is currently a component of treatment regimens which employing functional, restorative, preventive and rehabilitative programs. No treatment plan is complete without addressing issues of individual and/or group patient education as a means of facilitating self-management of symptoms and prevention. Facilitation through language interpretation, when necessary, is a priority and part of the medical care treatment protocol.

3. Informed Decision Making. Providers should implement informed decision making as a crucial element of a successful treatment plan. Patients, with the assistance of their health care practitioner, should identify their personal and professional functional goals of treatment at the first visit when a chronic pain condition allows functional improvement. Progress towards the individual's identified functional goals should be addressed by all members of the health care team at subsequent visits and throughout the established treatment plan when a chronic pain condition allows attainment of functional goals. Injured workers may not reach functional goals to return to work and therefore they will require a significantly different plan. Nurse case managers, physical therapists, and other members of the health care team play an integral role in informed decision-making and achievement of functional goals. Patient education and informed decision-making should facilitate self-management of symptoms and prevention of further injury.

4. Treatment Parameter Duration. Time frames for specific interventions commence once treatments have been initiated, not on the date of injury. Obviously, duration will be impacted by patient adherence, as well as availability of services. Clinical judgment may substantiate the need to accelerate or decelerate the time frames discussed in this document. Such deviation shall be in accordance with La. R.S. 23:1203.1.

5. Active Interventions. Active interventions emphasizing patient responsibility, such as therapeutic exercise and/or functional treatment, are generally emphasized over passive modalities, especially as treatment progresses. Generally, passive interventions are viewed as a means to facilitate progress in an active rehabilitation program with concomitant attainment of objective functional gains when chronic pain conditions allow attainment of functional goals because some chronic pain patients require active interventions as well maintenance procedures and medications.

6. Active Therapeutic Exercise Program. Exercise program goals should incorporate patient strength, endurance, flexibility, coordination, and education. This includes functional application in vocational or community settings.

7. Positive Patient Response. Positive results are defined primarily as functional gains that can be objectively measured.

a. Objective functional gains include, but are not limited to, positional tolerances, range-of-motion (ROM), strength, and endurance, activities of daily living, ability to function at work, cognition, psychological behavior, and efficiency/velocity measures that can be quantified. Not all chronic pain patients will reach any functional goals and may only improve ADL's and or pain complaints due to severity of the injury. Subjective reports of pain and function should be considered and given relative weight when the pain has anatomic and physiologic correlation. Anatomic correlation must be based on objective findings.

8. Re-Evaluation of Treatment Every Three to Four Weeks. If a given treatment or modality is not producing positive results within three to four weeks or within the time to produce effect in the non-chronic pain guidelines, the physical therapist must consult with the treating physician for consideration for a referral to a pain specialist or surgeon or other appropriate specialist for other treatment options. Reconsideration of diagnosis should also occur in the event of poor response to a seemingly rational intervention.

9. Surgical Interventions. Surgery should be contemplated within the context of expected functional outcome and not purely for the purpose of pain relief. The concept of "cure" with respect to surgical treatment by itself is generally a misnomer. All operative interventions must be based upon positive correlation of clinical findings, clinical course, and diagnostic tests. A comprehensive assimilation of these factors must lead to a specific diagnosis with positive identification of pathologic conditions.

10. Pharmacy-Louisiana Law and Regulation. All prescribing will be done in accordance with the laws of the state of Louisiana as they pertain respectively to each individual licensee, including, but not limited to: Louisiana State Board of Medical Examiners regulations governing medications used in the treatment of non-cancer-related chronic or intractable pain; Louisiana Board of Pharmacy Prescription Monitoring Program; Louisiana Department of Health and Hospitals licensing and certification standards for pain management clinics; other laws and regulations affecting the prescribing and dispensing of medications in the state of Louisiana.

11. Six Month-Time Frame. Injuries resulting in temporary total disability require maintenance treatment and may not attain return to work in six months.

12. Return to Work. Return-to-work is therapeutic, assuming the work is not likely to aggravate the basic problem or increase long-term pain. An injured worker's return-to-work status shall not be the sole cause to deny reasonable and medically necessary treatment under these guidelines. Two good practices are: early contact with injured workers and provide modified work positions for short-term injuries. The practitioner may provide specific physical limitations and the patient should never be released to non-specific and vague descriptions such as "sedentary" or "light duty." The following physical limitations should be considered and modified as recommended: lifting, pushing, pulling, crouching, walking, using stairs, bending at the waist, awkward and/or sustained postures, tolerance for sitting or standing, hot and cold environments, data entry and other repetitive motion tasks, sustained grip, tool usage and vibration factors. Even if there is residual chronic pain, return-to-work is not necessarily contraindicated. The practitioner should understand all of the physical demands of the patient's job position before returning the patient to full duty and should request clarification of the patient's job duties. Clarification should be obtained from the employer or, if necessary, from including, but not limited to, occupational health nurse, physical therapist, occupational therapist, vocational rehabilitation specialist, or an industrial hygienist, chiropractor or another professional. American Medical Association clarifies "disability" as "activity limitations and/or participation restrictions in an individual with a health condition, disorder or disease" versus "impairment" as "a significant deviation, loss, or loss of use of any body structure or body function in an individual with a health condition, disorder or disease".

13. Delayed Recovery. Within the discretion of the treating physician, strongly consider a psychological evaluation, if not previously provided, as well as initiating interdisciplinary rehabilitation treatment and vocational goal setting, for those patients who are failing to make expected progress 6 to 12 weeks after initiation of treatment of an injury. The OWCA recognizes that 3 to 10 percent of all industrially injured patients will not recover within the timelines outlined in this document despite optimal care. Such individuals may require treatments beyond the limits discussed within this document, but such treatment requires clear documentation by the authorized treating practitioner focusing on objective functional gains afforded by further treatment and impact upon prognosis.

14. Guideline Recommendations and Inclusion of Medical Evidence. All recommendations are based on available evidence and/or consensus judgment. It is generally recognized that early reports of a positive treatment effect are frequently weakened or overturned by subsequent research. Per R.S. 1203.1, when interpreting medical evidence statements in the guideline, the following apply to the strength of recommendation.

Strong	Level 1 Evidence	We Recommend
Moderate	Level 2 and Level 3 Evidence	We Suggest
Weak	Level 4 Evidence	Treatment is an Option
Inconclusive	Evidence is Either Insufficient of Conflicting	

a. …

15. Treatment of Pre-Existing Conditions The conditions that preexisted the work injury/disease will need to be managed under two circumstances: (a) A pre-existing condition exacerbated by a work injury/disease should be treated until the patient has returned to their objectively verified prior level of functioning or Maximum Medical Improvement (MMI); and (b) A pre-existing condition not directly caused by a work injury/disease but which may prevent recovery from that injury should be treated until its objectively verified negative impact has been controlled. The focus of treatment should remain on the work injury/disease.

B. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation Administration, LR 37:1682 (June 2011), amended by the Louisiana Workforce Commission, Office of Workers Compensation, LR 40:1155 (June 2014), amended LR 45:

§2104. Overview of Chronic Pain Management

A. It is estimated by the Institute of Medicine that approximately 100 million adults suffer from chronic pain in the United States. The World Health Organization's survey found that 37 percent of adults in 10 developed countries have chronic pain conditions. This overview covers the biopsychosocial nature of chronic pain and a comprehensive plan of care including: functional assessment and goal setting, psychological assessment, medication management, sleep considerations, and active therapy assisted by

international pain management procedures with continued therapy afterwards as well as indicated surgery.

B. Chronic pain may develop from persistent acute pain due to neuroplastic changes occurring in the central nervous system. All chronic pain appears to involve a central sensitization which changes the perception of pain. Thus, treatment patterns are aimed at a number of mechanisms contributing to chronic pain.

C. Chronic pain is recognized as a biopsychosocial disease process. Each treatment plan should be individualized with a patient-centered approach addressing the many available treatment combinations. Therefore, all areas of the chronic pain guideline should be considered when developing a treatment plan. This includes: the mandatory psychological evaluation; an active therapy plan; medications specific to the pain process for that patient; continuing functional assessment; complementary medication alternatives, when appropriate; and continued return to work/regular daily activity.

D. Once a patient has been identified as a chronic pain patient, usually three months after an injury when pain persists or when pain persists beyond a reasonable post-operative period, the physician should perform a complete re-evaluation or may refer the patient to a pain specialist or surgeon for consultation. This will assist both the patient and the provider in developing an appropriate treatment plan. Although it is unusual to identify an unknown pathology at this point in the treatment, it is recommended that the provider acknowledge the full complement of patient symptoms and concerns. Repeating or ordering new imaging may be necessary.

E. It is essential that the patient and provider understand the type of pain the patient is experiencing and how the pain affects day-to-day activities. Identifying the presence of neuropathic pain, as well as any sources of nociceptive pain, will assist the patient and provider when choosing medication and other forms of treatment recommended in the guideline.

F. During the chronic pain assessment, it is suggested that all physicians review with the patient their usual activities over several different typical 24-hour periods. This will assist both parties in understanding what functions are not able to be performed by the patient, how significantly sleep is impacted, and whether pain is affecting social and family relationships. This information is also essential for establishing agreed upon functional goals.

G. All chronic pain patients should have psychological evaluations. Patients may merely need assistance with coping mechanisms, and/or anxiety or depression may be caused or exacerbated by chronic pain. Treatment in this area is essential for the chronic pain patient. Cognitive behavioral sessions are frequently effective for these conditions.

H. Review of the current prescribed and over-the-counter medications is an important part of this initial chronic pain evaluation. If the patient has been chronically on opioids, a pain specialist referral should be considered to identify the necessity of the opioids and the proper dose. It is also reasonable to taper opioids in order to determine the patient's baseline and how other medications are actually affecting the pain.

1. The following is a general summary of the required elements. A number of other guidelines, including the Centers for Disease Control and Prevention (CDC) for Primary Care Practitioners and Board of Medical Examiners, have confirmed these steps.

a. An opioid trial shall be performed before chronic opioids are determined to be useful for patients. About 50 percent of patients will not be able to tolerate the side effects and/or not show a sufficient increase in function with opioid use. Patients should be aware that this is a trial and like any other medication trial, it will not be continued unless there is sufficient benefit. The average benefit is about a 30 percent decrease in pain. Thus, all other required treatment must be continued during the time period of the chronic opioid trial.

b. Long acting opioids should never be used for acute pain, post-operative pain, or before an opioid trial has been completed. There is no evidence they are more beneficial than short acting opioids, and the trial should begin with short acting opioids.

c. A risk assessment tool, such as the Opioid Risk Tool (ORT) or Screener and Opioid Assessment for Patients with Pain (SOAPP) should be completed to assure the provider that there are no prior elements suggesting substance abuse or, when such elements are present, the physician may choose to refer to a provider with more expertise in substance abuse.

d. Urine drug testing should be done prior to initiating controlled substance.

e. Check the Prescription Monitoring Program (PMP). Follow Louisiana Revised Statutes 40:973, 40:978 and 40:978.3.

f. The psychological evaluation should have been completed and hopefully treatment as appropriate is being continued.

g. A functional history should be taken and functional goals should be set. This needs to be followed throughout all chronic pain treatment to determine if the patient is increasing or decreasing in function.

h. A provider physician agreement must be completed. This is extremely helpful as it reviews for the patient the expectations regarding his/her behavior as well as the expectations regarding when a physician would choose to taper or remove the patient from opioids and what other treatment is expected to continue during an opioid trial.

2. If the opioid trial is successful, the physician should continue to monitor with random drug testing and PMP checks. "Random drug testing" should be four times a year or possibly more with documented suspicion of abuse or diversion. Quantitative testing is appropriate in cases of inconsistent findings, suspicions, or for particular medications that patient is utilizing that is not in the qualitative testing. In addition, the Current Opioid Misuse Measure (COMM) is an example of a tool that can be used for patients on opioids to screen for possible abuse. It should be noted that current estimates suggest approximately 14 to 19 percent of chronic opioid users may become addicted to opioids.

I. The patient will need to be monitored for side effects. Constipation is anticipated. There may also be problems with sexual dysfunction. Opioids may increase or cause sleep apnea problems, and this should be monitored. At all

visits, the functional status of the patient should be recorded. This can be accomplished with reliable, patient-reported functional status tools. Function is preferably validated by physical exam or by other objective measures from the provider.

J. Lack of sleep is a significant problem for patients with uncontrolled chronic pain. Taking a good history in this area and promoting an appropriate sleep regime is essential for patients, if they are to establish a productive life-style.

K. Active therapy is one of the most important components. Regular exercise is shown to decrease depression as well as decrease chronic pain. Helping the patient choose appropriate physical activities and cognitive activities will be important for recovery. Physician directed exercise, home stretching exercise, does not haveto be formal course of physical therapy (as long as the patient has previously undergone a formal course of physical therapy).

L. Although treating chronic pain patients is challenging due to the many disciplines and treatment patterns available, the rewards are great when a patient with chronic pain is able to resume work and engage in satisfying life activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation Administration, LR 45:

§2105. Introduction to Chronic Pain

A. - B. …

C. Pain can generally be classified as:

1. …

2. Neuropathic including pain originating from brain, peripheral nerves or both; and

3. Psychogenic which originates in mood, characterological, social, or psychophysiological processes.

D. - E. …

F. Chronic Pain is defined as "pain that persists for at least 30 days beyond the usual course of an acute disease or a reasonable time for an injury to heal or that is associated with a chronic pathological process that causes continuous pain (e.g., Complex Regional Pain Syndrome)." The very definition of chronic pain describes a delay or outright failure to relieve pain associated with some specific illness or accident. Delayed recovery should prompt a clinical review of the case and a psychological evaluation by the health care provider. Referral to a specialist with experience in pain management is recommended.

G. The term “chronic pain syndrome” has been incorrectly used and defined in a variety of ways that generally indicate a belief on the part of the health care provider that the patient's pain is inappropriate or out of proportion to existing problems or illness. Use of the term “chronic pain syndrome” should be discontinued because the term ceases to have meaning due to the many different physical and psychosocial issues associated with it. The IASP offers taxonomy of pain, which underscores the wide variety of pathological conditions associated with chronic pain. This classification system may not address the psychological and psychosocial issues that occur in the perception of pain, suffering, and disability and may require referral to psychiatric or psychological clinicians. Practitioners should use the nationally accepted terminology indicated in the most current ICD system. Chronic pain can be diagnosed as F45.42 “Pain disorder with related psychological factors” when the associated body part code is also provided. Alternately, chronic pain can also be diagnosed as F54 “Psychological factors affecting physical conditions,” and this code should also be accompanied by the associated body part. G89.4 “chronic pain associated with significant psychosocial dysfunction” may also be utilized.

H. Injured patients generally initiate treatment with complaints of pain, which is generally attributable to a specific injurious event, but occasionally to an ostensible injury. Thus, the physician should not automatically assume that complaints of acute pain are directly attributable to pathophysiology at the tissue level. Pain is known to be associated with sensory, affective, cognitive, social, and other processes. The pain sensory system itself is organized into two parts, often called first and second pain. A-Delta nerve fibers conduct first pain via the neospinalthalamic tract to the somatosensory cortex and provide information about pain location and quality. In contrast, unmyelinated C fibers conduct second pain via the paleospinalthalamic tract and provide information about pain intensity. Second pain is more closely associated with emotion and memory neural systems than it is with sensory systems.

I. As a patient’s condition transitions through the acute, subacute, and chronic phases, the central nervous system (CNS) is reorganized. The temporal summation of second pain produces a sensitization or “windup” of the spinal cord, and the connections between the brain regions involved in pain perception, emotion, arousal, and judgment are changed by persistent pain. These changes cause the CNS’s “pain neuromatrix” to become sensitized to pain. This CNS reorganization is also associated with changes in the volume of brain areas, decreased grey matter in the prefrontal cortex, and the brain appearing to age more rapidly. As pain continues over time, the CNS remodels itself so that pain becomes less closely associated with sensation, and more closely associated with arousal, emotion, memory, and beliefs. Because of these CNS processes, all clinicians should be aware that as the patient enters the subacute phase, it becomes increasingly important to consider the psychosocial context of the disorder being treated, including the patient’s social circumstances, arousal level, emotional state, and beliefs about the disorder. However, behavioral complications and physiological changes associated with chronicity and central sensitization may also be present in the acute phase, and within hours of the initial injury. It is the intent of many of the treatments in this guideline to assist in remodeling these CNS changes.

J. Chronic pain is a phenomenon not specifically relegated to anatomical or physiologic parameters. The prevailing biomedical model (which focuses on identified disease pathology as the sole cause of pain) cannot capture all of the important variables in pain behavior. While diagnostic labels may pinpoint contributory physical and/or psychological factors and lead to specific treatment interventions that are helpful, a large number of patients defy precise taxonomic classification. Furthermore, such diagnostic labeling often overlooks important social contributions to the chronic pain experience. Failure to address these operational parameters of the chronic pain experience may lead to incomplete or faulty treatment plans. The concept of a "pain disorder" is perhaps the most useful

term, in that it captures the multi-factorial nature of the chronic pain experience.

K. It is recognized that some health care practitioners, by virtue of their experience, additional training, and/or accreditation by pain specialty organizations, have much greater expertise in the area of chronic pain evaluation and treatment than others. Referrals for the treatment of chronic pain should be to such recognized specialists. Chronic pain treatment plans should be monitored and coordinated by physicians with expertise in pain management including specialty training, and/or certification.

L. Most acute and some chronic pain problems are adequately addressed in other OWCA medical treatment guidelines, and are generally not within the scope of this guideline. However, because chronic pain is more often than not multi-factorial, involving more than one pathophysiologic or mental disorder, some overlap with other guidelines is inevitable. This guideline is meant to apply to any patient who fits the operational definition of chronic pain discussed at the beginning of this section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation Administration, LR 37:1683 (June 2011), amended LR 45:

§2107. Definitions

A. - E. …

F. Central Sensitization. The experience of pain evoked by the excitation of non-nociceptive neurons or of nerve fibers that normally relay non-painful sensations to the spinal cord. This results when non-nociceptive afferent neurons act on a sensitized central nervous system (CNS). Experimental data suggest that pathways normally carrying pain signals themselves become overstimulated and/or fail to respond to inhibitory influences causing increased pain. An example is 'wind-up' which occurs when cells in the dorsal horn of the spinal cord increase their rate of action potential discharge in response to repeated stimulation by nociceptors.

G. - H. …

I. Hyperesthesia (positive sensory phenomenon). Includes allodynia, hyperalgesia, and hyperpathia. Elicited by light touch, pin prick, cold, warm, vibration, joint position sensation or two-point discrimination, which is perceived as increased or more.

J. Hyperpathia. A condition of altered perception such that stimuli which would normally be innocuous, if repeated or prolonged, result in severe explosive persistent pain.

K. …

L. Hypoesthesia/Hypesthesia (negative sensory phenomena). diminished sensitivity to stimulation.

M. Malingering. Intentional feigning of illness or disability in order to achieve external incentives such as recreational drugs or money.

N. - S. …

T. Neuropathy. A disturbance of function or pathological change in a nerve: in one nerve (mononeuropathy); in several nerves (mononeuropathy multiplex); or diffuse and bilateral (polyneuropathy). Neuropathy should be associated with objective findings such as consistent sensory abnormalities, consistent motor findings (e.g., weakness, atrophy, fasciculation's, muscle cramping), and/or neuropathic abnormalities on EMG/nerve conduction testing.

U. - V. …

W. Pain Threshold. The smallest stimulus perceived by a subject as painful during laboratory testing. The term also loosely applies to the biological variation among human beings in sensing and coping with pain.

X. …

Y. Peripheral Neuropathic Pain. Pain initiated or caused by a primary lesion or dysfunction in the peripheral nervous system.

Z. Somatic Dysfunction: impaired or altered function of related components of the somatic (body framework) system which includes skeletal, arthrodial, and myofascial structures.

AA. …

BB. Sympathetically Maintained Pain (smp). A pain that is maintained by sympathetic efferent pathways and is eliminated by blockade of these pathways. It is intensified by circulating catecholamines.

CC. Tender Points. Tenderness on palpation at a tendon insertion, muscle belly or over bone. Palpation should be done with the thumb or forefinger, applying pressure approximately equal to a force of 4 kilograms (blanching of the entire nail bed).

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation Administration, LR 37:1684 (June 2011), amended LR 45:

§2109. Initial Evaluation and Diagnostic Procedures

A. …

1. History and Physical Examination (Hx and PE):These are generally accepted, well-established, and widely used procedures that establish the foundation/basis for and dictate subsequent stages of diagnostic and therapeutic procedures. When findings of clinical evaluations and those of other diagnostic procedures are not complementing each other, the objective clinical findings should have preference. The medical records should reasonably document the following:

a. Medical History. As in other fields of medicine, a thorough patient history is an important part of the evaluation of chronic pain. In taking such a history, factors influencing a patient's current status can be made clear and taken into account when planning diagnostic evaluation and treatment. It may be necessary to acquire previous medical records. One efficient manner in which to obtain historical information and patient reported functional status is by using a questionnaire. The questionnaire may be sent to the patient prior to the initial visit or administered at the time of the office visit. History should ascertain the following elements:

i. - vii. …

viii. belief system—patients should be asked about their value systems, including spiritual and cultural beliefs, in order to determine how these may influence the patient's and family's response to illness and treatment recommendations.

ix. Functional Assessment: Functional ability should be assessed and documented at the beginning of treatment. Periodic assessment should be recorded throughout the course of care to follow the trajectory of recovery. Functional measures are likely to be more reliable over time than pain measures.

(a). Patient-reported outcomes, whether of pain or function, are susceptible to a phenomenon called response shift. This refers to changes in self-evaluation, which may accompany changes in health status. Patient self-reports may not coincide with objective measures of outcome, due to reconceptualization of the impact of pain on daily function and internal recalibration of pain scales. Response shift may obscure treatment effects in clinical trials and clinical practice, and it may lead to apparent discrepancies in patient-reported outcomes following treatment interventions. While methods of measuring and accounting for response shift are not yet fully developed, understanding that the phenomenon exists can help clinicians understand what is happening when some measures of patient progress appear inconsistent with other measures of progress.

x. activities of daily living (ADLs)—Pain has a multidimensional effect on the patient that is reflected in changes in usual daily vocational, social, recreational, and sexual activities;

xi. past and present psychological problems;

xii. history of abuse—physical, emotional, sexual;

xiii. history of disability in the family;

xiv. sleep disturbances: poor sleep has been shown to increase patient's self-perceived pain scores. Pre-injury and post-injury sleep should be recorded.

xv. Causality: How did this injury occur? Was the problem initiated by a work-related injury or exposure? Patient's perception of causality (e.g., was it their fault or the fault of another).

b. - b.i. …

ii. pain diagram drawings to document the distribution of pain.

iii. Visual Analog Scale (VAS): Current pain, highest pain level, and usual pain level may be recorded. Include a discussion of the range of pain during the day and how activities, use of modalities, and other actions affect the intensity of pain.

iv. duration: including intermittent pain, activity related pain;

v. place of onset: circumstances during which the pain began (e.g., an accident, an illness, a stressful incident, or spontaneous onset);

vi. pain characteristics—such as burning, shooting, stabbing, and aching. Time of pain occurrence, as well as intensity, quality, and radiation, give clues to the diagnosis and potential treatment. Quality of pain can be helpful in identifying neuropathic pain which is normally present most of the day, at night, and is often described as burning;

vii. list of activities which aggravate or exacerbate, ameliorate, decrease, or have no effect on the level of pain;

viii. associated symptoms—Does the patient have numbness or paresthesia, dysesthesia, weakness, bowel or bladder dysfunction, altered temperature, increased sweating, cyanosis or edema? Is there local tenderness, allodynia, hyperesthesia, or hyperalgesia? Does the patient have constitutional symptoms such as fevers, chills, night sweats, unexplained weight loss, or pain that awakes them from a deep sleep at night?

c. Medical Management History.

i. prior treatment—chronological review of medical records including previous medical evaluations and response to treatment interventions. In other words, what has been tried and which treatments have helped?;

ii. …

iii. medications—history of and current use of medications, including opioids,over the counter medications and herbal/dietary supplements, to determine drug usage (or abuse) interactions and efficacy of treatment. Drug allergies and other side effects experienced with previous or current medication therapy and adherence to currently prescribed medications should be documented. Ideally, this includes dosing schedules as reported by the patient or patient representative. Information should be checked against the Louisiana Prescription Monitoring Program (PMP), offered by the Louisiana Pharmacy Board;

iv. …

v. psychosocial functioning—determine if the following are present: current symptoms of depression or anxiety; evidence of stressors in the workplace or at home, and past history of psychological problems. Other confounding psychosocial issues may be present, including the presence of psychiatric disease. Due to the high incidence of co-morbid problems in populations that develop chronic pain, it is recommended that patients diagnosed with Chronic Pain be referred for a full psychosocial evaluation;

vi. - vii. …

viii. family history pertaining to similar disorders.

d. Substance use/abuse

i. …

ii. smoking history and use of nicotine replacements;

iii. history of current and prior prescription and recreational drug use and abuse;

iv. the use of caffeine or caffeine-containing beverages;

v. substance abuse information may be only fully obtainable from multiple sources over time. Patient self-reports may be unreliable. Patient self-reports should always be checked against medical records.

e. Other factors affecting treatment outcome

i. - ii. …

iii. Other scales may be used to identify cases which are likely to require more complex care. Examples include:

(a). fear avoidance beliefs questionnaire;

(b). tampa scale of kinesiophobia;

(c). pain catastrophizing scale.

f. Physical Examination

i. Neurologic Evaluation—includes cranial nerves survey, muscle tone and strength, atrophy, detailed sensory examination (see ii-below), motor evaluation (station, gait, coordination), reflexes (normal tendon reflexes and presence or absence of abnormal reflexes such as frontal lobe release signs or upper motor neuron signs), cerebellar testing, signs suggestive of a sensory ataxia (positive Romberg, impaired proprioception, etc.), and provocative neurological maneuvers.

ii. Sensory Evaluation—A detailed sensory examination is crucial in evaluating a patient with chronic pain complaints. Quantitative sensory testing, such as Semmes-Weinstein, may be useful tools in determining sensory abnormalities. Ideally, the examination should

determine if the following sensory signs are present and consistent on repeated examination:

(a). - (i). …

iii. Musculoskeletal Evaluation—range of motion, segmental mobility, musculoskeletal provocative maneuvers, palpation, observation, and functional activities. All joints, muscles, ligaments, and tendons should be examined for asymmetry, swelling, laxity, and tenderness. A portion of the musculoskeletal evaluation is the myofascial examination. The myofascial examination includes palpating soft tissues for evidence of tightness and trigger points.

iv. Evaluation of non-physiologic findings:

(a). Waddell's Signs cannot be used to predict or diagnose malingering. It is not an appropriate test for assessing non-physiologic causes of low back pain. The sole purpose of the Waddell's signs is to identify low back pain patients who may need further psychosocial assessment prior to surgery. Refer to Personality/Psychological/Psychosocial Evaluation.

(b). …

(c). Inconsistencies between formal exam and observed abilities of range-of-motion, motor strength, gait and cognitive/emotional state should be noted in the assessment.

2. Personality /Psychosocial/ Psychiatric/ Psychological Evaluation

a. These are generally accepted and well-established and widely used diagnostic procedures not only with selected use in acute pain problems, but have also with more widespread use in subacute and chronic pain populations.

i. Diagnostic evaluations should distinguish between conditions that are pre-existing, aggravated by the current injury, or work related.

b. Psychosocial evaluations should determine if further psychosocial or behavioral interventions are indicated for patients diagnosed with chronic pain. The interpretations of the evaluation should provide clinicians with a better understanding of the patient in his or her social environment, thus allowing for more effective rehabilitation. Psychosocial assessment requires consideration of variations in pain experience and expression resulting from affective, cognitive, motivational and coping processes, and other influences such as gender, age, race, ethnicity, national origin, religion, sexual orientation, disability, language, or socioeconomic status.

c. While there is some agreement about which psychological factors need to be assessed in patients with chronic pain, a comprehensive psychological evaluation should attempt to identify both primary psychiatric risk factors or "red flags" (e.g., psychosis, active suicidality) as well as secondary risk factors or "yellow flags" (e.g., moderate depression, job dissatisfaction). Significant personality disorders must be taken into account when considering a patient for spinal cord stimulation and other major procedures.

d. Psychometric Testing is a valuable component of a consultation to assist the physician in making a more effective treatment plan. There is good evidence that psychometric testing can have significant ability to predict medical treatment outcome. For example, one study found that psychometric testing exceeded the ability of discography to predict disability in patients with low back pain. Pre-procedure psychiatric/psychological evaluation must be done prior to diagnostic confirmatory testing for a number of procedures. Examples include discography for fusion, spinal cord stimulation, or intrathecal drug delivery systems, and a psychologist employed by the physician planning to perform the procedure should not do them and they should not be done by a psychologist employed by the physician planning to perform the procedure.

e. In many instances, psychological testing has validity comparable to that of commonly used medical tests; for example, the correlation between high trait anger and blood pressure is equal to the correlation between reduced blood flow and the failure of a synthetic hemodialysis graft. Thus, psychometric testing may be of comparable validity to medical tests and may provide unique and useful diagnostic information.

f. All patients who are diagnosed as having chronic pain should be referred for a psychosocial evaluation, as well as concomitant interdisciplinary rehabilitation treatment. This referral should be performed in a way so as to not imply that the patient's claims are invalid or that the patient is malingering or mentally ill. Even in cases where no diagnosable mental condition is present, these evaluations can identify social, cultural, coping, and other variables that may be influencing the patient's recovery process and may be amenable to various treatments including behavioral therapy. As pain is understood to be a biopsychosocial phenomenon, these evaluations should be regarded as an integral part of the assessment of chronic pain conditions.

i. Qualifications

(a). A psychologist with a PhD, PsyD, or EdD credentials or a physician with Psychiatric MD/DO credentials may perform the initial comprehensive evaluations. It is preferable that these professionals have experience in diagnosing and treating chronic pain disorders and/or working with patients with physical impairments.

(b). Psychometric tests should be administered by psychologists with a PhD, PsyD, or EdD or health professionals working under the supervision of a doctorate level psychologist. Physicians with appropriate training may also administer such testing, but interpretation of the tests should be done by properly credentialed mental health professionals.

ii. Clinical Evaluation. Special note to health care providers: most providers are required to adhere to the federal regulations under the Health Insurance Portability and Accountability Act (HIPAA). Unlike general health insurers, workers' compensation insurers are not required to adhere to HIPAA standards. Thus, providers should assume that sensitive information included in a report sent to the insurer could be forwarded to the employer. It is recommended that the health care provider either obtain a full release from the patient regarding information that may go to the employer or not include sensitive health information not directly related to the work related conditions in reports sent to the insurer.

(a). All chronic pain patients should have a clinical evaluation that addresses the following areas recalling that not all details should be included in the report sent to the insurer due to the HIPAA issue noted above:

(i). History of Injury—The history of the injury should be reported in the patient's words or using similar terminology. Caution must be exercised when using translators.

[a]. - [e]. …

[f]. adherence with treatment;

[g]. coping strategies used, including perceived locus of control, catastrophizing, and risk aversion;

[h]. - [i]. …

(ii). Health History

[a]. - [b]. …

[c]. psychiatric history: to include past diagnoses, counseling, medications, and response to treatment;

[d]. history of substance related and addictive disorders to include: alcohol, opioids, medications (sedative, hypnotic, and anxiolytic), stimulants, prescriptions drug abuse, nicotine use and other substances of abuse/dependence;

[e]. …

[f]. Past, recent, and concurrent stressors.

[g]. …

(iii). Psychosocial History

[a]. childhood history, including abuse/neglect;

[b]. - [d]. …

[e]. legal history, including but not limited to substance use related, domestic violence, criminal and civil litigation;

[f]. employment history;

[g]. military duty: Because post-traumatic stress disorder (PTSD) might be an unacceptable condition for many military personnel to acknowledge, it may be prudent to screen initially for signs of depression or anxiety-both of which may be present in PTSD;

[h]. signs of pre-injury psychological dysfunction;

[i]. …

[j]. current living situation including roommates, family, intimate partners, and financial support;

[k]. prior level of function including self-care, community, recreational, and employment activities.

(iv). …

(v). Assessment of any danger posed to self or others.

(vi). - (vii). …

(viii). Causality: to address medically probable cause and effect, and to distinguish pre-existing psychological symptoms, traits, and vulnerabilities from current symptoms.

(ix). …

(x). Mental status exam including orientation, cognition, activity, speech, thinking, affect, mood, and perception. May include screening tests such as the mini mental status exam or frontal assessment battery if appropriate.

iii. Tests of Psychological Functioning. Psychometric Testing is a valuable component of a consultation to assist the physician in making a more effective treatment plan. Psychometric testing is useful in the assessment of mental conditions, pain conditions, cognitive functioning, treatment planning, vocational planning, and evaluation of treatment effectiveness. While there is no general agreement as to which psychometric tests should be specifically recommended for psychological evaluations of chronic pain conditions, standardized tests are preferred over those which are not for assessing diagnosis. Generally, it is helpful if tests consider the following issues: validity, physical symptoms, affective disorders, character disorders and traits, and psychosocial history. Character strengths that support the healing/rehabilitative process should also be evaluated and considered with any dysfunctional behavior patterns or pathology to more accurately assess the patient's prognosis and likely response to a proposed intervention. In contrast, non-standardized tests can be useful for "ipsative" outcome assessment, in which a test is administered more than once and a patient's current and past reports are compared. It is appropriate for the mental health provider to use their discretion and administer selective psychometric tests within their expertise and within standards of care in the community. Use of screening psychometrics by non-mental health providers is encouraged, but mental health provider consultation should always be utilized for chronic pain patients in which invasive palliative pain procedures or chronic opiate treatment is being contemplated. Some of these tests are available in Spanish and other languages, and many are written at a sixth grade reading level. Examples of frequently used psychometric tests performed include, but not limited to, the following.

(a). Comprehensive Inventories for Medical Patients

(i). Battery for Health Improvement, 2nd Edition (BHI-2);

(ii). Millon Behavioral Medical Diagnostic (MBMD);

(b) Comprehensive Psychological Inventories.

(i). Millon Clinical Multiaxial Inventory;

(ii). Minnesota Multiphasic Personality Inventory, 2nd Edition (MMPI-2).

(iii). Personality Assessment Inventory (PAI).

(c). Brief Multidimensional Screens for Medical Patients. Treating providers, to assess a variety of psychological and medical conditions, including depression, pain, disability and others, may use brief instruments. These instruments may also be employed as repeated measures to track progress in treatment, or as one test in a more comprehensive evaluation. Brief instruments are valuable in that the test may be administered in the office setting and hand scored by the physician. Results of these tests should help providers distinguish which patients should be referred for a specific type of comprehensive evaluation.

(i). Brief Battery for Health Improvement, 2nd Edition (BBHI-2);

(ii). Pain Patient Profile (P-3);

(iii). SF-36®;

(iv). Sickness Impact Profile (SIP);

(v). McGill Pain Questionnaire (MPQ);

(vi). McGill Pain Questionnaire—Short Form (MPQ-SF);

(vii). Oswestry Disability Questionnaire.;

(viii). Visual Analog Scales (VAS).;

(ix). Numerical Rating Scale (NRS);

(x). Chronic Pain Grade Scale (CPGS);

(xi). Pain Catastrophizing Scale (PCS).

(d). Brief Multidimensional Screens for Psychiatric Patients. These tests are designed for detecting various psychiatric syndromes, but in general are more prone to false positive findings when administered to medical patients.

(i). Brief Symptom Inventory (BSI);

(ii). Brief Symptom Inventory—18 (BSI-18);

(iii). Symptom Check List -90 Revised (SCL 90 R).

(e). Brief Specialized Psychiatric Screening Measures:

(i). Beck Depression Inventory (BDI);

(ii). Center of Epidemiologic Studies—Depression Questionnaire (CES-D);

Note: Designed for assessment of psychiatric patients, not pain patients, which can bias results, and this should be a consideration when using.

(iii). Brief Patient Health Questionnaire from PRIME - MD. (The PHQ-9 may also be used as a depression screen.);

(iv). Zung Depression Questionnaire. Note: The Zung Depression Scale must be distinguished from the Modified Zung Depression scale used by the DRAM (a QPOP measure). The Zung Depression Scale has different items and a different scoring system than the Modified Zung Depression scale, making the cutoff scores markedly different. The cutoff scores for one measure cannot be used for the other;

(v). General Anxiety Disorder 7-item scale (GAD-7).

3. Diagnostic Studies. Imaging of the spine and/or extremities is a generally accepted, well-established, and widely used diagnostic procedure when specific indications, based on history and physical examination, are present. Practitioners should be aware of the radiation doses associated with various procedures and provide appropriate warnings to patients. Unnecessary CT scans or X-rays increase the lifetime risk of cancer death. Physicians should refer to individual OWCA guidelines for specific information about specific testing procedures. Tests should be performed to rule in or out specific diagnoses especially cases that are difficult to diagnose or fail to progress.

a. Radiographic Imaging, MRI, CT, bone scan, radiography, and other special imaging studies may provide useful information for many musculoskeletal disorders causing chronic pain. It is probably most helpful in ruling out rare, significant diagnoses that may present with pain, such as metastatic cancer. Most imaging is likely to demonstrate aging changes which are usually not pathologic. However, it is good to remember every medical condition can be exacerbated. Refer to specific OWCA Medical Treatment Guidelines for details. Before the test is performed, patients should be informed of the purpose of the exam (e.g., to rule out unsuspected cancer) and the likelihood of finding non-pathologic changes that are part of the normal aging process.

b. Electrodiagnostic studies may be useful in the evaluation of patients with suspected myopathic or neuropathic disease and may include Nerve Conduction Studies (NCS), Standard Needle Electromyography, or Somatosensory Evoked Potential (SSEP). The evaluation of electrical studies is complex and should be performed by specialists who are well trained in the use of this diagnostic procedure.

c. Special Testing Procedures may be considered when attempting to confirm the current diagnosis or reveal alternative diagnosis. Additional special tests may be performed at the discretion of the physician.

d. Testing for Complex Regional Pain Syndrome (CRPS-I) or Sympathetically Maintained Pain (SMP) is described in the OWCA's Complex Regional Pain Syndrome/Reflex Sympathetic Dystrophy Medical Treatment Guidelines.

4. Laboratory testing is a generally accepted, well-established and widely used procedure.

a. Patients should be carefully screened at the initial exam for signs or symptoms of diabetes, hypothyroidism, arthritis, and related inflammatory diseases. For patients at risk for sleep apnea, testing may be appropriate depending on medication use and issues with insomnia. The presence of concurrent disease does not refute work-relatedness of any specific case. This frequently requires laboratory testing. When a patient's history and physical examination suggest infection, metabolic or endocrinologic disorders, tumorous conditions, systemic musculoskeletal disorders (e.g., rheumatoid arthritis or ankylosing spondylitis), or problems potentially related to medication (e.g., renal disease and non-steroidal anti-inflammatory medications), then laboratory tests, including, but not limited to the following can provide useful diagnostic information:

i. thyroid stimulating hormone (TSH) for hypothyroidism;

ii. diabetic screening: recommended for men and women with a BMI over 30, patients with a family history of diabetes, those from high risk ethnic groups, and patients with a previous history of impaired glucose tolerance. There is some evidence that diabetic patients with upper extremity disorders have sub-optimal control of their diabetes;

iii. serum protein electrophoresis;

iv. sedimentation rate and C-reactive protein (CRP) are nonspecific but elevated in infection, neoplastic conditions, and rheumatoid arthritis. Other screening tests to rule out inflammatory or autoimmune disease may be added when appropriate;

v. serum calcium, phosphorus, uric acid, alkaline, and acid phosphatase for metabolic, endocrine and neo-plastic conditions;

vi. complete blood count (CBC), liver, and kidney function profiles for metabolic or endocrine disorders or for adverse effects of various medications;

vii. bacteriological (microorganism) work-up for wound, blood, and tissue;

viii. vitamin B12 levels may be appropriate for some patients.

b. The OWCA recommends that the workers' compensation carrier cover initial lab diagnostic procedures to ensure that an accurate diagnosis and treatment plan is established. When an authorized treating provider has justification for the test, insurers should cover the costs. Laboratory testing may be required periodically to monitor patients on chronic medications.

5. Injections-Diagnostic

a. Spinal Diagnostic Injections. Diagnostic spinal injections are commonly used in chronic pain patients and

they usually have been performed previously in the acute or subacute stage. They may rarely be necessary for aggravations of low back pain. Refer to the OWCA Low Back Pain Medical Treatment Guideline for indications.

b. Diagnostic Peripheral nerve blocks such as Genicular Nerves, 3rd Occipital, nerves, Greater and Lesser Occipital nerves, intercostal nerves, Ilioinguinal nerves, iliohypogastric nerves, lateral femoral cutaneous nerves, medial branch facet nerves (cervical, thoracic and lumbar), sacral lateral branches of Sacroiliac joints, Selective nerve root blocks and transforaminal epidural injections and other pure sensory nerves suspected of causing pain. Also include diagnostic facet joint injection as a diagnostic block.

c. Medial Branch Facet Blocks (Cervical, Thoracic and Lumbar) and Sacral Lateral Branch Blocks. If provide 80 percent or more pain reduction as measured by a numerical pain index scale within one hour of the medial branch blocks up to three levels per side, then rhizotomy of the medial branch nerves, up to four nerves per side, may be done without confirmation block. If the initial set of medial branch blocks provides less than 80 percent but at least 50 percent pain reduction as measured by a numerical pain index scale or documented functional improvement, the medial branch block should be repeated for confirmation before a rhizotomy is performed. If 50 percent or greater pain reduction is achieved as measured by the NPIS with two sets of medial branch blocks for facet joint pain, then rhizotomy may be performed.

d. In general, relief should last for at least the duration of the local anesthetic used and should significantly result in functional improvement and relief of pain. Refer to Injections- Spinal Therapeutic for information on other specific therapeutic injections.

6. Special tests are generally well-accepted tests and are performed as part of a skilled assessment of the patient's' capacity to return to work, his/her strength capacities, and/or physical work demand classifications and tolerance. The procedures in this subsection are listed in alphabetical order.

a. Computer-enhanced evaluations. These may include isotonic, isometric, isokinetic and/or isoinertial measurement of movement, range of motion (ROM), endurance, or strength. Values obtained can include degrees of motion, torque forces, pressures, or resistance. Indications include determining validity of effort, effectiveness of treatment and demonstrated motivation. These evaluations should not be used alone to determine return to work restrictions.

i. Frequency. One time for evaluation, one for mid-treatment assessment, and one at final evaluation.

b. Functional Capacity Evaluation (FCE): This is a comprehensive or modified evaluation of the various aspects of function as they relate to the worker's ability to return-to-work. FCEs should not be used as the sole criteria to diagnose malingering. Areas such as endurance, lifting (dynamic and static), postural tolerance, specific range of motion (ROM), coordination and strength, worker habits, employability as well as psychosocial aspects of competitive employment may be evaluated. Reliability of patient reports and overall effort during testing is also reported. Components of this evaluation may include: musculoskeletal screen; cardiovascular profile/aerobic capacity; coordination; lift/carrying analysis; job-specific activity tolerance; maximum voluntary effort; pain assessment/psychological screening; non-material and material handling activities. Standardized national guidelines (such as National Institute for Occupational Safety and Health (NIOSH)) should be used as the basis for FCE recommendations.

i. Frequency: Once when the patient is unable to return to the pre-injury position and further information is desired to determine permanent work restrictions. Prior authorization is required for repeat FCEs.

ii. Most studies of FCEs were performed on chronic low back cases. There is some evidence that an FCE fails to predict which injured workers with chronic low back pain will have sustained return to work. Another cohort study concluded that there was a significant relation between FCE information and return to work, but the predictive efficiency was poor. There is some evidence that time off work and gender are important predictors for return to work, and floor-to-waist lifting may also help predict return to work; however, the strength of that relationship has not been determined.

iii. A full review of the literature reveals no evidence to support the use of FCEs to prevent future injuries. There is some evidence in chronic low back pain patients that FCE task performance is weakly related to time on disability and time for claim closure, and even claimants who fail on numerous physical performance FCE tasks may be able to return to work. These same issues may exist for lower extremity issues.

iv. Depth and Breadth of FCE should be assessed on a case-by-case basis and should be determined by tester and/or referring medical professional. In many cases, a work tolerance screening or return to work performance will identify the ability to perform the necessary job tasks. There is some evidence that a short form FCE reduced to a few tests produces a similar predictive quality compared to the longer two-day version of the FCE regarding length of disability and recurrence of a claim after return to work.

v. When an FCE is being used to determine return to a specific jobsite, the provider is responsible for fully understanding the physical demands and the duties of the job that the worker is attempting to perform. A jobsite evaluation is usually necessary. A job description should be reviewed by the provider and FCE evaluator prior to this evaluation. FCEs cannot be used in isolation to determine work restrictions. It is expected that the FCE may differ from both self-report of abilities and pure clinical exam findings in chronic pain patients. The length of a return to work evaluation should be based on the judgment of the referring physician and the provider performing the evaluation. Since return to work is a complicated multidimensional issue, multiple factors beyond functional ability and work demands should be considered and measured when attempting determination of readiness or fitness to return to work. FCEs should not be used as the sole criteria to diagnose malingering.

c. Job site evaluation is a comprehensive analysis of the physical, mental, and sensory components of a specific job. The goal of the Job Site evaluation is to identify any job modification needed to ensure the safety of the employee upon return to work. These components may include, but are not limited to: postural tolerance (static and dynamic);

aerobic requirements; range of motion; torque/force; lifting/carrying; cognitive demands; social interactions; visual perceptual; environmental requirements of a job; repetitiveness; essential functions of a job; and ergonomic set up. Job descriptions provided by the employer are helpful but should not be used as a substitute for direct observation.

i. …

ii. Jobsite evaluation and alteration should include input from a health care professional with experience in ergonomics or a certified ergonomist, the employee, and the employer. The employee must be observed performing all job functions in order for the jobsite evaluation to be a valid representation of a typical workday. If the employee is unable to perform the job function for observation, a co-worker in an identical job position may be observed instead. Periodic follow-up is recommended to assess the effectiveness of the intervention and need for additional ergonomic changes.

iii. A jobsite evaluation may include observation and instruction of how work is done, what material changes (desk, chair) should be made, and determination of readiness to return to work.

iv. Requests for a jobsite evaluation should describe the expected goals for the evaluation. Goals may include but are not limited to the following:

(a). to determine if there are potential contributing factors to the person's condition and/or for the physician to assess causality;

(b). to make recommendations for and to assess the potential for ergonomic changes;

(c). to provide a detailed description of the physical and cognitive job requirements;

(d). to assist patients in their return to work by educating them on how they may be able to do their job more safely in a bio-mechanically appropriate manner;

(e). to give detailed work/activity restrictions.

d. Vocational Assessment. Once an authorized practitioner has reasonably determined and objectively documented that a patient will not be able to return to his/her former employment and can reasonably prognosticate final restrictions, implementation of a timely vocational assessment can be performed. The vocational assessment should provide valuable guidance in the determination of future rehabilitation program goals. It should clarify rehabilitation goals, which optimize both patient motivation and utilization of rehabilitation resources. If prognosis for return to former occupation is determined to be poor, except in the most extenuating circumstances, vocational assessment should be implemented within 3 to 12 months post-injury. Declaration of Maximum Medical Improvement (MMI) should not be delayed solely due to lack of attainment of a vocational assessment.

i. …

e. Work Tolerance Screening (Fitness for Duty) is a determination of an individual's tolerance for performing a specific job based on a job activity or task. It may include a test or procedure to specifically identify and quantify work-relevant cardiovascular, physical fitness and postural tolerance. It may also address ergonomic issues affecting the patient's return-to-work potential. May be used when a full FCE is not indicated. In order for a work tolerance to be performed in place of a FCE, an updated job description must be provided to the tester.

i. Frequency. One time for initial screen. May monitor improvements in strength every three to four weeks up to a total of six visits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation Administration, LR 37:1685 (June 2011), amended LR 45:

§2111. Therapeutic Procedures—Non-Operative

A. Non-operative therapeutic rehabilitation is applied to patients with chronic and complex problems of de-conditioning and functional disability. Treatment modalities may be utilized sequentially or concomitantly depending on chronicity and complexity of the problem, and anticipated therapeutic effect. Treatment plans should always be based on a diagnosis utilizing appropriate diagnostic procedures.

B. All treatment plans begin with shared decision making with the patient. Before initiation of any therapeutic procedure, an authorized treating physician, employer, and insurer should consider these important issues in the care of the injured worker:

1. Patients undergoing therapeutic procedure(s) should be released or returned to modified or restricted duty during their rehabilitation at the earliest appropriate time. Refer to Return-to-Work in this section for detailed information.

2. Reassessment of the patient's status in terms of functional improvement should be documented after each treatment. If patients are not responding within the recommended time periods, alternative treatment interventions, further diagnostic studies or specialist and/or surgeon consultations should be pursued. Continued treatment should be monitored using objective measures such as:

a. …

b. fewer restrictions at work or performing activities of daily living (ADL);

c. decrease in usage of medications related to the work injury; and

d. measurable functional gains, such as increased range of motion, documented increase in strength, increased ability to stand, sit or lift, or patient completed functional evaluations;

3. - 4. …

C. The following procedures are listed in alphabetical order.

1. Acupuncture

a. Overview. When acupuncture has been studied in randomized clinical trials, it is often compared with sham acupuncture and/or no acupuncture (usual care). The differences between true acupuncture and usual care have been moderate but clinically important. These differences can be partitioned into two components: non-specific effects and specific effects. Non-specific effects include patient beliefs and expectations, attention from the acupuncturist, administration of acupuncture in a relaxing setting, and other components of what is often called the placebo effect. Specific effects refer to any additional effects which occur in the same setting of expectations and attention, but they are attributable to the penetration of the skin in the specific,

classic acupuncture points on the surface of the body by the needles themselves.

i. A sham procedure is intended as a non-therapeutic procedure that appears similar to the patient as the purported therapeutic procedure being tested. In most controlled studies, sham and classic acupuncture have produced similar effects. However, the sham controlled studies have shown consistent advantages of both true and sham acupuncture over no acupuncture when the studies have included a third comparison group that was randomized to usual medical care. Having this third comparison group has been advantageous in the interpretation of the non-specific effects of acupuncture since the third comparison group controls for some influences on study outcome. These influences include: more frequent contact with providers; the natural history of the condition; regression to the mean; the effect of being observed in a clinical trial; and for biased reporting of outcomes if the follow-up observations are done consistently in all three treatment groups. Controlling for these factors enables researchers to more closely estimate the contextual and personal interactive effects of acupuncture as it is generally practiced.

ii. There is some evidence that in the setting of chronic joint pain arising from aromatase inhibitor treatment of non-metastatic breast cancer, the symptomatic relief from acupuncture is strongly influenced by the expectations with which patients approach treatment, and a patient who expects significant benefits from acupuncture is more likely to derive benefits from sham acupuncture than a patient with low expectations is to derive benefits from real acupuncture. On average, real and sham acupuncture do not lead to significantly different symptom responses, but different treatment expectations do lead to different symptom responses.

iii. Clinical trials of acupuncture typically enroll participants who are interested in acupuncture and who may respond to some of the non-specific aspects of the intervention more than patients who have no interest in or desire for acupuncture. The non-specific effects of acupuncture may not be produced in patients who have no wish to be referred for it.

iv. There is a high quality study which does not support good evidence that true acupuncture is meaningfully superior to sham acupuncture with blunt needles in relieving the bothersomeness of nonspecific low back pain. The overall evidence from similar high quality studies does not support evidence of a treatment difference between true and sham acupuncture. In these studies, 5 to15 treatments were provided. Comparisons of acupuncture and sham acupuncture have been inconsistent, and the advantage of true over sham acupuncture has been small in relation to the advantage of sham over no acupuncture.

v. Acupuncture is recommended for subacute or chronic pain patients who are trying to increase function and/or decrease medication usage and have an expressed interest in this modality. It is also recommended for subacute or acute pain for patients who cannot tolerate NSAIDs or other medications.

vi. Acupuncture is not the same procedure as dry needling for coding purposes; however, some acupuncturists may use acupuncture treatment for myofascial trigger points. Dry needling is performed specifically on myofascial trigger points. Refer to Trigger Point Injections, and Dry Needling Treatment.

vii. Acupuncture should generally be used in conjunction with manipulative and physical therapy/rehabilitation.

viii. Credentialed practitioners with experience in evaluation and treatment of chronic pain patients must perform evaluations prior to acupuncture treatments. The exact mode of action is only partially understood. Western medicine studies suggest that acupuncture stimulates the nervous system at the level of the brain, promotes deep relaxation, and affects the release of neurotransmitters. Acupuncture is commonly used as an alternative or in addition to traditional Western pharmaceuticals. It may be used when pain medication is reduced or not tolerated; as an adjunct to physical rehabilitation and surgical intervention; and/or as part of multidisciplinary treatment to hasten the return of functional activity. Acupuncture must be performed by practitioners with the appropriate credentials in accordance with state and other applicable regulations. Therefore, if not otherwise within their professional scope of practice and licensure, those performing acupuncture must have the appropriate credentials, such as L.A.c. R.A.c, or Dipl. Ac.

ix. There is good evidence that the small therapeutic effects of needle acupuncture, active laser acupuncture, and sham acupuncture for reducing pain or improving function among patients older than 50 years with moderate to severe chronic knee pain from symptoms of osteoarthritis are due to non-specific effects similar to placebo.

x. The Agency for Healthcare Research and Quality (AHRQ) supports acupuncture as effective for chronic low back pain. There is good evidence that acupuncture is effective in the treatment of low back pain in patients with positive expectations of acupuncture. There is good evidence that acupuncture, true or sham, is superior to usual care for the reduction of disability and pain in patients with chronic nonspecific low back pain, but true and sham acupuncture are likely to be equally effective. There is some evidence that acupuncture is better than no acupuncture for axial chronic low back pain. In summary, there is strong evidence that true or sham acupuncture may be useful for chronic low back pain in patients with high expectations, and it should be used accordingly.

xi. Indications. All patients being considered for acupuncture treatment should have subacute or chronic pain (lasting approximately three to four weeks depending on the condition) and meet the following criteria:

(a). they should have participated in an initial active therapy program; and

(b). they should show a preference for this type of care or previously have benefited from acupuncture; and

(c). they must continue to be actively engaged in physical rehabilitation therapy and return to work.

xii. It is less likely to be successful in patients who are more focused on pain than return to function. Time to produce effect should clearly be adhered to.

b. Acupuncture is the insertion and removal of filiform needles to stimulate acupoints (acupuncture points). Needles may be inserted, manipulated, and retained for a period of time. Acupuncture can be used to reduce pain,

reduce inflammation, increase blood flow, increase range-of-motion, decrease the side effect of medication-induced nausea, promote relaxation in an anxious patient, and reduce muscle spasm. Indications include joint pain, joint stiffness, soft tissue pain and inflammation, paresthesia, post-surgical pain relief, muscle spasm, and scar tissue pain.

c. Acupuncture with electrical stimulation: is the use of electrical current (micro- amperage or milli-amperage) on the needles at the acupuncture site. It is used to increase effectiveness of the needles by continuous stimulation of the acupoint. Physiological effects (depending on location and settings) can include endorphin release for pain relief, reduction of inflammation, increased blood circulation, analgesia through interruption of pain stimulus, and muscle relaxation. It is indicated to treat chronic pain conditions, radiating pain along a nerve pathway, muscle spasm, inflammation, scar tissue pain, and pain located in multiple sites.

d. Other acupuncture modalities may include a combination of procedures to enhance treatment effect. Other procedures may include the use of heat, and soft tissue manipulation/massage. Refer to Therapy- Active (Therapeutic Exercise) and Therapy-Passive sections (Massage and Superficial Heat and Cold Therapy) for a description of these adjunctive acupuncture modalities and time frames.

e. Total time frames for acupuncture and acupuncture with electrical stimulation are not meant to be applied to acupuncture and acupuncture with electrical stimulation separately. The time frames are to be applied to all acupuncture treatments regardless of the type or combination of therapies being provided.

i. time to produce effect: three to six treatments;

ii. frequency: one to three times per week;

iii. optimum duration: one to two months;

iv. maximum duration: 14 treatments within six months.

f. Any of the above acupuncture treatments may extend longer if objective functional gains can be documented or when symptomatic benefits facilitate progression in the patient's treatment program. Treatment beyond 14 treatments must be documented with respect to need and ability to facilitate positive symptomatic or functional gains. Such care should be re-evaluated and documented with each series of treatments.

2. Biofeedback is a form of behavioral medicine that helps patients learn self-awareness and self-regulation skills for the purpose of gaining greater control of their physiology, such as muscle activity, brain waves, and measures of autonomic nervous system activity. Stress-related psycho-physiological reactions may arise as a reaction to organic pain and in some cases may cause pain. Electronic instrumentation is used to monitor the targeted physiology and then displayed or fed back to the patient visually, auditorily, or tactilely with coaching by a biofeedback specialist. There is good evidence that biofeedback or relaxation therapy is equal in effect to cognitive behavioral therapy for chronic low back pain. There is good evidence that cognitive behavioral therapy, but not behavioral therapy (e.g., biofeedback), shows weak to small effects in reducing pain and small effects on improving disability, mood, and catastrophizing in patients with chronic pain.

a. Indications for biofeedback include cases of musculoskeletal injury in which muscle dysfunction or other physiological indicators of excessive or prolonged stress response affects and/or delays recovery. Other applications include training to improve self-management of pain, anxiety, panic, anger or emotional distress, opioid withdrawal, insomnia/ sleep disturbance, and other central and autonomic nervous system imbalances. Biofeedback is often utilized for relaxation training. Mental health professionals may also utilize it as a component of psychotherapy, where biofeedback and other behavioral techniques are integrated with psychotherapeutic interventions. Biofeedback is often used in conjunction with physical therapy or medical treatment.

b. - c. …

d. Psychologists or psychiatrists, who provide psycho-physiological therapy which integrates biofeedback with psychotherapy, should be either Biofeedback Certification Institute of America (BCIA) certified or practicing within the scope of their training. All non-licensed health care providers of Biofeedback for chronic pain patients must be BCIA certified and shall have their biofeedback treatment plan approved by the authorized treating psychologist or psychiatrist. Biofeedback treatment must be done in conjunction with the patient's psychosocial intervention. Biofeedback may also be provided by licensed health care providers, who follow a set treatment and educational protocol. Such treatment may utilize standardized material, relaxation tapes, or smart phone apps.

i. time to produce effect: three to four sessions;

ii. frequency: one to two times per week;

iii. optimum duration: five to six sessions;

iv. maximum duration: 10 to 12 sessions. Treatment beyond 12 sessions must be documented with respect to need, expectation, and ability to facilitate functional gains.

3. Complementary Medicine

a. Overview. Complementary Medicine, termed Complementary Alternative Medicine (CAM) in some systems, is a term used to describe a broad range of treatment modalities, a number of which are generally accepted and supported by some scientific literature and others which still remain outside the generally accepted practice of conventional Western Medicine. In many of these approaches, there is attention given to the relationship between physical, emotional, and spiritual well-being. While CAM may be performed by a myriad of both licensed and non-licensed health practitioners with training in one or more forms of therapy, credentialed practitioners should be used when available or applicable.

b. Although CAM practices are diverse and too numerous to list, they can be generally classified into five domains.

i. Alternative Medical Systems. These are defined as medical practices that have developed their own systems of theory, diagnosis, and treatment and have evolved independent of and usually prior to conventional Western Medicine. Some examples are Traditional Chinese Medicine, Ayurvedic Medicine, Homeopathy, and Naturopathy.1

ii. Mind-Body Interventions. These include practices such as hypnosis, meditation, bioenergetics, and prayer. Reflexology does not appear to relieve low back pain.

iii. Biological-Based Practices. These include herbal and dietary therapy as well as the use of nutritional supplements. To avoid potential drug interactions, supplements should be used in consultation with an authorized treating physician.

iv. Body-Based Therapy. This category includes Rolfing bodywork. For information on yoga, please refer to Therapeutic Exercise.

v. Energy-Based Practices. Energy-based practices include a wide range of modalities that support physical as well as spiritual and/or emotional healing. Some of the more well-known energy practices include Qi Gong, Tai Chi, Healing Touch, and Reiki. Practices such as Qi Gong and Tai Chi are taught to the patient and are based on exercises the patient can practice independently at home. Other energy-based practices such as Healing Touch and Reiki that involve a practitioner/patient relationship may provide some pain relief. Tai Chi may improve range-of-motion in those with rheumatoid arthritis. There is some evidence that a 10-week tai chi program was effective for improving pain symptoms and disability compared with usual care controls for those who have chronic low back pain symptoms. There is insufficient evidence that the results from Qi Gong are equivalent to exercise therapy.

c. Methods used to evaluate chronic pain patients for participation in CAM will differ with various approaches and with the training and experience of individual practitioners. A patient may be referred for CAM therapy when the patient's cultural background, religious beliefs, or personal concepts of health suggest that an unconventional medical approach might assist in the patient's recovery or when the physician's experience and clinical judgment support a CAM approach. The patient must demonstrate a high degree of motivation to return to work and improve his or her functional activity level while participating in therapy. Other more traditional conservative treatments should generally be attempted before referral to CAM. Treatment with CAM requires prior authorization.

d. All CAM treatments require prior authorization and must include agreed upon number of visits for time to produce functional effects.

e. Time Frames for Complementary Medicine:

i. Time to Produce Effect- Functional treatment goals and number of treatments for time to produce effect should be set with the practitioner and the patient before the beginning of treatment.

ii. Frequency- Per CAM therapy selected.

iii. Optimum Duration- Should be based upon the physician's clinical judgment and demonstration by the patient of positive symptomatic and functional gains. Practitioner provided CAM therapy is not recommended on a maintenance basis.

4. Direct Cortical Stimulation, There are several types of cortical stimulation to relieve pain. All of these are undergoing further investigation and are considered experimental at this time. The limited studies available do not allow translation to the workers' compensation chronic pain population. An invasive option is implantation in the epidural motor cortex. Given the invasive nature and lack of evidence applying to the working population, direct cortical stimulation is not recommended.

5. Disturbances of sleep

a. Overview. Disturbances of sleep are common in chronic pain. An essential element of chronic pain treatment is restoration of normal sleep cycles. Although primary insomnia may accompany pain as an independent co-morbid condition, it more commonly occurs secondary to the pain condition itself. Exacerbations of pain often are accompanied by exacerbations of insomnia; the reverse can also occur. Sleep laboratory studies have shown disturbances of sleep architecture in pain patients. Loss of deep slow-wave sleep and increase in light sleep occur and sleep efficiency, the proportion of time in bed spent asleep, is decreased. These changes are associated with patient reports of non-restorative sleep. Sleep apnea may also occur as a primary diagnosis or be caused or exacerbated by opioid and hypnotic use. This should be investigated diagnostically. (Refer to Medications and Medical Management, Opioids).

i. A recent systematic review explored the relationship between sleep and pain. It noted that studies of healthy individuals and those in pain from medical conditions both showed decreased pain thresholds after sleep deprivation. In this report some studies focusing on sleep continuity disruption showed a disruption of the natural pain inhibitory function. Sleep continuity disruption may be one of the most common sleep problems associated with pain. Thus, clinicians should strongly focus on assuring functional sleep for patients.

ii. Many chronic pain patients develop behavioral habits that exacerbate and maintain sleep disturbances. Excessive time in bed, irregular sleep routine, napping, low activity, and worrying in bed are all maladaptive responses that can arise in the absence of any psychopathology. Relaxation training such as progressive relaxation, biofeedback, mindfulness meditation, or imagery training, and other forms of cognitive therapy can reduce dysfunctional beliefs and attitudes about sleep.

iii. There is some evidence that behavioral modification, such as patient education and group or individual counseling with cognitive behavioral therapy, can be effective in reversing the effects of insomnia. Cognitive and behavioral interventions should be undertaken before prescribing medication solely for insomnia. Behavioral modifications are easily implemented and can include:

(a). maintaining a regular sleep schedule, retiring and rising at approximately the same time on weekdays and weekends, regardless of the number of hours slept;

(b). limiting naps to 30 minutes twice per day or less;

(c). avoiding caffeinated beverages after lunchtime;

(d). making the bedroom quiet and comfortable, eliminating disruptive lights, sounds, television sets, pets, and keeping a bedroom temperature of about 65°F;

(e). avoiding alcohol or nicotine within two hours of bedtime;

(f). avoiding large meals within two hours of bedtime;

(g). avoiding exposure to TV screens or computers within two hours of bedtime.

(h). exercising vigorously during the day, but not within two hours of bedtime, since this may raise core temperature and activate the nervous system;

(i). associating the bed with sleep and sexual activity only, using other parts of the home for television, reading and talking on the telephone;

(j). leaving the bedroom when unable to sleep for more than 20 minutes, and returning to the bedroom when ready to sleep again.

(k). Reducing time in bed to estimated typical sleeping time.

(l). Engaging in relaxing activities until drowsy.

b. Behavioral modifications should be trialed before the use of hypnotics. Reinforcing these behaviors may also decrease hypnotic use and overall medication costs. Some patients may use other medications to assist in sleep, such as: trazadone, amitriptyline, doxepin, or low doses of melatonin. There is some evidence that group cognitive behavioral therapy reduces the severity and daytime consequences of insomnia for at least six months. There is some evidence that Ramelteon, while producing a small amount of reduction in sleep latency, does not appreciably increase total sleep time or daytime function. There is some evidence that a dietary supplement containing melatonin, magnesium, and zinc, conveyed in pear pulp, taken one hour before bedtime, results in significantly better quality of sleep and quality of life than a placebo treatment in long-term care facility residents aged 70 and older with primary insomnia.

c. Many medications used in chronic pain can affect the sleep cycle. There is some evidence that the following medications exert different effects with respect to sleep variables. Total sleep time and REM sleep duration are likely to be greater with pregabalin than with duloxetine or amitriptyline. However, pregabalin is likely to lead to dizziness and fatigue more frequently than the other drugs, and oxygen desaturation during sleep also appears to be greater with pregabalin.

d. Insomnia requires difficulty initiating or maintaining sleep, waking up early, or insufficient restorative sleep despite adequate opportunity for sleep, as well as, daytime symptoms of sleep deprivation. In general, recommendations for treatment of insomnia include Cognitive Behavioral Therapy.

6. Education/Informed/Shared Decision Making: of the patient and family, as well as the employer, insurer, policy makers, and the community should be the primary emphasis to prevent disability. Unfortunately, practitioners often think of education and informed decision making last, after medications, manual therapy, and surgery.

a. Informed decision making is the hallmark of a successful treatment plan. In most cases, the continuum of treatment from the least invasive to the most invasive (e.g., surgery) should be discussed. The intention is to find the treatment along this continuum which most completely addresses the condition. Patients should identify their personal values and functional goals of treatment at the first visit. It is recommended that specific individual goals are articulated at the beginning of treatment as this is likely to lead to increased patient satisfaction above that achieved from improvement in pain or other physical function. Progress toward the individual functional goals identified should be addressed at follow-up visits and throughout treatment by other members of the health care team as well as an authorized physician.

b. Documentation of the informed decision process should occur whenever diagnostic tests or referrals from an authorized treating physician are contemplated. The informed decision making process asks the patients to set their personal functional goals of treatment and describe their current health status and any concerns they have regarding adhering to the diagnostic or treatment plan proposed. The provider should clearly describe the following1 as appropriate to the patient:

i. the expected functional outcomes from the proposed treatment or the expected results and plan of action if diagnostic tests are involved.

ii. expected course of illness/injury without the proposed intervention.

iii. any side effects and risks to the patient.

iv. required post-treatment rehabilitation time and impact on work, if any.

v. alternative therapies or diagnostic testing.

c. Before diagnostic tests or referrals for invasive treatment take place, the patient should be able to clearly articulate the goals of the intervention, the general side effects and risks associated with it and his/her decision regarding compliance with the suggested plan. There is some evidence that information provided only by video is not sufficient education.

d. Practitioners must develop and implement an effective strategy and skills to educate patients, employers, insurance systems, policy makers, and the community as a whole. An education-based paradigm should always start with providing reassuring information to the patient and informed decision making. More in-depth education currently exists within a treatment regimen employing functional restoration, prevention, and cognitive behavioral techniques. Patient education and informed decision making should facilitate self-management of symptoms and prevention.

e. Time Frames for Education / Informed Decision Making

i. Time to Produce Effect- Varies with individual patient

ii. Frequency- Should occur at every visit.

7. Injections—Spinal Therapeutic

a. General Description. The following injections are considered to be reasonable treatment for patients with chronic pain exacerbations when therapy is continuing and specific indications are met. Refer to the OWCA's appropriate Medical Treatment Guideline for indications. Monitored Anesthesia Care is acceptable for diagnostic and therapeutic procedures. For post-MMI care, refer to Injection Therapy Maintenance Management, in this guideline.

b. Steroid Associated Issues:

i. The majority of diabetic patients will experience an increase in glucose following steroid injections. Average increases in one study were 125mg/dL and returned to normal in 48 hours, whereas in other studies, the increased glucose levels remained elevated up to seven days, especially after multiple injections. All diabetic patients should be told to follow their glucose levels carefully over the seven days after a steroid injection. For patients who have not been diagnosed with diabetes, one can

expect some increase in glucose due to insulin depression for a few days after a steroid injection. Clinicians may consider diabetic screening tests for those who appear to be at risk for type 2 diabetes.

ii. Intra-articular or epidural injections cause rapid drops in plasma cortisol levels which usually resolve in one to four weeks. There is some evidence that an intra-articular injection of 80 mg of methylprednisolone acetate into the knee has about a 25 percent probability of suppressing the adrenal gland response to exogenous adrenocortocotrophic hormone (ACTH) for four or more weeks after injection, but complete recovery of the adrenal response is seen by week eight after injection. This adrenal suppression could require treatment if surgery or other physiologically stressful events occur.

iii. There is good evidence that there are no significant differences between epidural injections with corticosteroid plus local anesthetic versus local anesthetic alone; however, there are measureable differences with respect to morning cortisol levels at three and six weeks after the injection, suggesting that the corticosteroid injection is capable of inducing suppression of the hypothalamic-pituitary-adrenal axis.

iv. Case reports of Cushing's syndrome, hypopituitarism, and growth hormone deficiency have been reported uncommonly and have been tied to systemic absorption of intra-articular and epidural steroid injections. Cushing's syndrome has also been reported from serial occipital nerve injections and paraspinal injections.

v. Morning cortisol measurements may be ordered prior to repeating steroid injections or prior to the initial steroid injection when the patient has received multiple previous steroid injections.

vi. The effect of steroid injections on bone mineral density (BMD) and any contribution to osteoporotic fractures is less clear. Patients on long-term steroids are clearly more likely to suffer from fractures than those who do not take steroids. However, the contribution from steroid injections to this phenomenon does not appear to be large. A well-controlled, large retrospective cohort study found that individuals with the same risk factors for osteoporotic fractures were 20 percent more likely to suffer a lumbar fracture if they had an epidural steroid injection. The risk increased with multiple injections. Other studies have shown inconsistent findings regarding BMD changes. Thus, the risk of epidural injections must be carefully discussed with the patient, particularly for patients over 60, and repeat injections should generally be avoided unless the functional goals to be reached outweigh the risk for future fracture. Patients with existing osteoporosis or other risk factors for osteoporosis should rarely receive epidural steroid injections.

c. Time Frames for Intra-Articular and Epidural Injections

i. Maximum Duration—Given this information regarding increase in blood glucose levels, effects on the endocrine system, and possible osteoporotic influence, it is suggested that the total dose of corticosteroid for intra-articular and epidural injections be limited to a total of 320mg per 80kg patient or 3-4mg/kg per person per year [all joints or injections combined]

d. Epidural Steroid Injections (ESI): may include caudal, transforaminal, or interlaminar injections (cervical, thoracic or lumbar).

i. Epidural injections may be used for radicular pain or radiculopathy. If an injection provides at least 50 percent relief, a repeat of the same pain relieving injection may be given at least two weeks apart with fluoroscopic guidance. No more than two levels may be injected in one session. If there is not a minimum of 50 percent pain reduction as measured by a numerical pain index scale or documented functional improvement, similar injections should not be repeated, although the practitioner may want to consider a different approach or different level depending on the pathology. Maximum of two series of three effective pain relieving injections may be done in one year based upon the patient's response to pain and function.

ii. Spinal Stenosis Patients. Refer to the OWCA's Low Back Pain Medical Treatment Guideline for patients with radicular findings and claudication for indications.

iii. For chronic radiculopathy, injections may be repeated. Patients should be reassessed after each injection session for a 50 percent improvement in pain (as measured by accepted pain scales) and/or evidence of functional improvement. A positive result could include a return toward baseline function, return to increased work duties, and a measurable improvement in physical activity goals including return to baseline after an exacerbation.

e. Intradiscal Steroid Injections: There is some evidence that intradiscal steroid injection is unlikely to relieve pain or provide functional benefit in patients with non-radicular back pain; therefore, they are not recommended.

i. Intradiscal injections of other substances such as bone marrow, stem cells, are not recommended at this time due to lack of evidence and possible complications.

f. Transforaminal Injection with Etanercept: Transforaminal injection with a tumor necrosis factor alpha inhibitor is thought to decrease the inflammatory agents which may be associated with the pathophysiology of lumbar radicular pain from a herniated disc.

i. It is not recommended due to the results of a study which showed no advantage over steroids or saline injections.

g. Zygapophyseal (Facet) Injection

i. Description—an accepted intra-articular or pericapsular injection of local anesthetic and corticosteroid with very limited uses. Up to three joints, either unilaterally or bilaterally. Injections may be repeated only when a functional documented response lasts for three months. A positive result would include a return to baseline function as established at MMI, return to increased work duties, and a measurable improvement in physical activity goals including return to baseline after an exacerbation. Injections may only be repeated when these functional and time goals are met and verified by the designated primary physician. May be repeated up to three times a year. There is no justification for a combined facet and medial branch block.

h. Sacroiliac Joint Injection

i. Description - A generally accepted injection of local anesthetic in an intra-articular fashion into the sacroiliac joint under fluoroscopic guidance. May include

the use of corticosteroids. Sacroiliac joint injections may be considered either unilaterally or bilaterally. The injection may only be repeated with 50 percent improvement in Visual Analog Scale with documented functional improvement. Should the designated primary physician consider Sacroiliac Joint (lateral Branch Neurotomy), the diagnostic S1-S3 lateral branch blocks would need to be documented with 80 percent to 100 percent improvement in symptoms for the duration of the local anesthetic. Should the diagnostic lateral branch nerve blocks only result in 50 percent to 80 percent improvement in symptoms then the confirmatory nerve blocks are recommended. In the event that the diagnostic lateral nerve blocks result in less than 50 percent improvement, then the lateral branch neurotomy is not recommended.

ii. Time Frames for sacro-iliac joint injections

(a). Maintenance Duration. Four Sacroiliac joint injections and/ or three lateral branch levels four times per year either unilaterally or bilaterally. Injections may be repeated only when a functional documented response lasts for three months. After three Sacroiliac joint injections or three sessions of three lateral branch blocks within one 12-month period, RF Ablation of lateral branches should be considered.

8. Injections—Other (Including Radio Frequency): The following are in alphabetical order:

a. Botulinum Toxin Injection

i. Description—Used to temporarily weaken or paralyze muscles. May reduce muscle pain in conditions associated with spasticity, or dystonia. Neutralizing antibodies develop in at least four percent of patients treated with botulinum toxin type A, rendering it ineffective. Several antigenic types of botulinum toxin have been described. Botulinum toxin type B, first approved by the Food and Drug Administration (FDA) in 2001, is similar pharmacologically to botulinum toxin type A. It appears to be effective in patients who have become resistant to the type A toxin. The immune responses to botulinum toxins type A and B are not cross-reactive, allowing type B toxin to be used when type A action is blocked by antibody. Experimental work with healthy human volunteers suggests that muscle paralysis from type B toxin is not as complete or as long lasting as that resulting from type A. The duration of treatment effect of botulinum toxin type B for cervical dystonia has been estimated to be 12 to 16 weeks. EMG needle guidance may permit more precise delivery of botulinum toxin to the target area.

(a). There is strong evidence that botulinum toxin A has objective and asymptomatic benefits over placebo for cervical dystonia. There is good evidence that a single injection of botulinum toxin type B is more effective than placebo in alleviating the severity and pain of idiopathic cervical dystonia. The duration of effect of botulinum toxin type B is not certain but appears to be approximately 12 to 18 weeks.

(b). There is a lack of adequate evidence supporting the use of these injections to lumbar musculature for the relief of isolated low back pain. There is insufficient evidence to support its use for longer-term pain relief of other myofascial trigger points and it is likely to cause muscle weakness or atrophy if used repeatedly. Examples of such consequences include subacromial impingement, as the stabilizers of the shoulder are weakened by repeated injections of trigger points in the upper trapezii. Therefore, it is not recommended for use for low back pain or other myofascial trigger points.

(c). They may be used for chronic piriformis syndrome. There is some evidence to support injections for electromyographically proven piriformis syndrome. Prior to consideration of botulinum toxin injection for piriformis syndrome, patients should have had marked (80 percent or better) but temporary improvement, verified with demonstrated improvement in functional activities, from three separate trigger point injections. To be a candidate for botulinum toxin injection for piriformis syndrome, patients should have had symptoms return to baseline or near baseline despite an appropriate stretching program after trigger point injections. Botulinum toxin injections of the piriformis muscle should be performed by a physician experienced in this procedure and utilize either ultrasound, fluoroscopy, or EMG needle guidance. Botulinum toxin should be followed by limb strengthening and reactivation.

ii. Indications -for conditions which produce dystonia or piriformis syndrome. It is important to note that dystonia, torticollis, and spasticity are centrally mediated processes that are distinct from spasm, tightness, or myofascial pain. True dystonia is uncommon and consists of a severe involuntary contraction which results in abnormal postures or movements. Cervical dystonia or torticollis is the most common dystonia seen in the work related population. There should be evidence of limited range of motion prior to the injection.

(a). There is insufficient evidence to support its use in myofascial trigger points for longer-term pain relief, and it is likely to cause muscle weakness or atrophy if used repeatedly. Examples of such consequences include subacromial impingement, as the stabilizers of the shoulder are weakened by repeated injections of trigger points in the upper trapezii. Therefore, it is not recommended for use for other myofascial trigger points.

iii. Complications -There is good evidence that cervical botulinum toxin A injections cause transient dysphagia and neck weakness. Allergic reaction to medications, dry mouth, and vocal hoarseness may also occur. Dry mouth and dysphagia occur 15 percent of the time after one injection. Rare systemic effects include flu-like syndrome, weakening of distant muscle. There is an increased risk of systemic effects in patients with motor neuropathy or disorders of the neuromuscular junction.

iv. Time Frames for Botulinum Toxin Injections

(a). Time to produce effect: 24 to 72 hours post injection with peak effect by four to six weeks.

(b). Frequency. No less than three months between re-administration. Patients should be reassessed after each injection session for approximately an 80 percent improvement in pain (as measured by accepted pain scales) and evidence of functional improvement for three months. A positive result would include a return to baseline function, return to increased work duties, and measurable improvement in physical activity goals including return to baseline after an exacerbation.

(c). Optimum duration: three to four months.

(d). Maximum duration. Currently unknown. Repeat injections should be based upon functional

improvement and therefore used sparingly in order to avoid development of antibodies that might render future injections ineffective. In most cases, not more than four injections are appropriate due accompanying muscle atrophy.

b. Medial Branch Facet Blocks (Cervical, Thoracic and Lumbar). If provide 80 percent or more pain reduction as measured by a numerical pain index scale within one hour of the medial branch blocks up to three levels per side, then rhizotomy of the medial branch nerves, up to four nerves per side, may be done without confirmation block. If the initial set of medial branch blocks provides less than 80 percent but at least 50 percent pain reduction as measured by a numerical pain index scale or documented functional improvement, the medial branch block should be repeated for confirmation before a rhizotomy is performed. If 50 percent or greater pain reduction is achieved with two sets of medial branch blocks for facet joint pain, then rhizotomy may be performed.

c. Peripheral nerve blocks. Used to diagnose and treat pain causers such as Genicular Nerves, 3rd Occipital nerves, Greater and Lesser Occipital nerves, intercostal nerves, Ilioinguinal nerves, iliohypogastric nerves, lateral femoral cutaneous nerves, medial branch facet nerves (cervical, thoracic and lumbar), sacral lateral branches of Sacroiliac joints, Selective nerve root blocks and other pure sensory nerves suspected of causing pain. A positive diagnostic nerve block that provides at least 50 percent pain reduction and with possible functional improvement is confirmation that Radiofrequency Ablation of said nerve is indicated. This treatment usually provides relief for 6 to 18 months. Maintenance retreatment with RF is indicated after six months if the same pain returns.

d. Prolotherapy. Also known as sclerotherapy, prolotherapy consists of a series of injections of hypertonic dextrose, with or without glycerine and phenol, into the ligamentous structures of the low back. Its proponents claim that the inflammatory response to the injections will recruit cytokine growth factors involved in the proliferation of connective tissue, stabilizing the ligaments of the low back when these structures have been damaged by mechanical insults.

i. There is good evidence that prolotherapy alone is not an effective treatment for chronic low back pain. There is some evidence that prolotherapy of the sacroiliac (SI) joint is longer lasting, up to 15 months, than intra-articular steroid injections. The study was relatively small and long-term blinding was unclear; however, all injections were done under fluoroscopic guidance. Indications included an 80 percent reduction in pain from an SI joint injection with local anesthetic, as well as physical findings of SI joint dysfunction. Lasting functional improvement has not been shown and approximately three injections were required. The injections are invasive, and may be painful to the patient. The use of prolotherapy for low back pain is generally not recommended, as the majority of patients with SI joint dysfunction will do well with a combination of active therapy and manipulation and not require prolotherapy. However, it may be used in select patients. Prolotherapy is not recommended for other non-specific back pain.

ii. Indications: insufficient functional progress after six months of an appropriate program that includes a combination of active therapy, manual therapy and psychological evaluation and treatment. There should be documented relief from previously painful maneuvers (e.g., Patrick's or Faber's test, Gaenslen, distraction or gapping, and compression test). A positive result from SI joint diagnostic block including improvement in at least 3 previously identified physical functions. Standards of evaluation should follow those noted in the diagnostic section. Refer to Section F.5, Injections-Diagnostic.

iii. At the minimum, manual therapy, performed on a weekly basis per guideline limits by a professional specializing in manual therapy (such as a doctor of osteopathy, physicial therapist, or chiropractor) would address any musculoskeletal imbalance causing sacroiliac joint pain such as lumbosacral or sacroiliac dysfunction, pelvic imbalance, or sacral base unleveling. This thorough evaluation would include identification and treatment to resolution of all causal conditions such as iliopsoas, piriformis, gluteal or hamstring tonal imbalance, leg length inequality, loss of motion of the sacrum, lumbar spine or pelvic bones, and ligamentous, visceral or fascial restrictions.

iv. An active therapy program would consist of a functionally appropriate rehabilitation program which is advanced in a customized fashion as appropriate commensurate with the patient's level of strength and core spinal stability. Such a program would include stretching and strengthening to address areas of muscular imbalance as noted above and neuromuscular re-education to address maintenance of neutral spine via core stabilization with concomitant inhibition of lumbar paravertebral muscles. Patients who demonstrate a directional preference are usually not candidates for this procedure and should receive a trial of directional preference therapy.

v. Informed decision making must be documented including a discussion of possible complications and the likelihood of success. It is suggested that a non-injection specialist determine whether all reasonable treatment has been attempted and to verify the physical findings evaluate the individual. Procedures should not be performed in patients who are unwilling to engage in the active therapy and manual therapy necessary to recover.

e. Radio frequency ablation—Dorsal Nerve Root Ganglion. Due to the combination of possible adverse side effects, time limited effectiveness, and mixed study results, this treatment is not recommended.

f. Radio frequency ablation—Genicular Nerves and other peripheral sensory nerves: Genicular nerves are peripheral sensory nerves on the surface of the knee. After total knee arthroplasty, it is believed that peripheral neuromas or injury occurs in the genicular nerves causing disabling pain. Diagnostic genicular nerve blocks diagnose this problem and must provide at least 50 percent reduction of pain and demonstrated objective functional improvement to warrant Radiofrequency ablation of genicular nerves. This RF Ablation treatment usually provides 6 to 18 months or more of relief. Radiofrequency Ablation of other peripheral sensory nerves listed in 8. (c) of this Section must also follow diagnostic nerve blocks which provide at least 50

percent reduction of pain and possible functional improvement of said nerve.

g. Radio Frequency (RF) Denervation—Medial Branch Neurotomy/Facet Denervation:

i. Description. A procedure designed to denervate the facet joint (Cervical, Thoracic and Lumbar) by ablating the corresponding sensory medial branches. Percutaneous radiofrequency is the method generally used. Pulsed radiofrequency at 42 degrees C should not be used as it may result in incomplete denervation. Cooled radiofrequency is generally not recommended due to current lack of evidence.

(a). If the medial branch blocks provide 80 percent or more pain reduction as measured by a numerical pain index scale within one hour of the medial branch blocks, then rhizotomy of the medial branch nerves, up to four nerves per side, may be done. If the first medial branch block provides less than 80 percent but at least 50 percent pain reduction as measured by a numerical pain index scale or documented functional improvement, the medial branch block should be repeated before a rhizotomy is performed. If 50 percent or greater pain reduction is achieved with two sets of medial branch blocks for facet joint pain, then rhizotomy may be performed.

(b). Generally, RF pain relief lasts at least six months and repeat radiofrequency neurotomy can be successful and last longer. RF neurotomy is the procedure of choice over alcohol, phenol, or cryoablation. Permanent images should be recorded to verify placement of the needles.

ii. Needle Placement. Multi-planar fluoroscopic imaging is required for all injections.

iii. Indications. those patients with proven, significant, facetogenic pain. This procedure is not recommended for patients with multiple pain generators, except in those cases where the facet pain is deemed to be greater than 50 percent of the total pain in the given area. Treatment is limited to no more than 3 facet joint levels or four medial branch nerves unilateral or bilateral at any one-treatment session. After RF ablation is completed additional levels adjacent to the original levels may require additional medial branch blocks to identify if there are additional levels requiring RF ablation. The same rules apply to the additional levels, as if the first levels did not exist.

iv. All patients should continue appropriate exercise with functionally directed rehabilitation. Active treatment, which patients will have had prior to the procedure, will frequently require a repeat of the sessions that may have been previously ordered prior to the facet treatment (Refer to Therapy-Active).

v. Complications: bleeding, infection, or neural injury. The clinician must be aware of the risk of developing a localized neuritis, or rarely, a deafferentation centralized pain syndrome as a complication of this and other neuroablative procedures.

vi. Post-Procedure Therapy- Active therapy: implementation of a gentle aerobic reconditioning program (e.g., walking) and back education within the first post-procedure week, barring complications. Instruction and participation in a long-term, home-based program of ROM, core strengthening, postural or neuromuscular re-education, endurance, and stability exercises should be accomplished over a period of 4 to 10 visits post-procedure. Patients who are unwilling to engage in this therapy should not receive this procedure.

vii. Requirements for repeat radiofrequency medial branch neurotomy or other peripheral nerve ablation: In some cases, pain may recur. Successful RF neurotomy usually provides from 6 to 18 months or more of relief.

(a). Before a repeat RF neurotomy is done, a confirmatory medial branch injection or diagnostic nerve block should only be performed if the patient's pain pattern presents differently than the initial evaluation. In occasional patients, additional levels of medial branch blocks and RF neurotomy may be necessary. The same indications and limitations apply.

h. Radio Frequency Denervation - Sacro-iliac (SI) Joint: This procedure requires neurotomy of multiple nerves, such as L5 dorsal ramus, and/or lateral branches of S1-S3 under C-arm fluoroscopy.

i. Needle Placement - Multi-planar fluoroscopic imaging is required for all steroid injections. Permanent images are suggested to verify needle placement.

ii. Indications: The following three requirements must be fulfilled:

(a). The patient has physical exam findings of at least three positive physical exam maneuvers (e.g., Patrick's sign, Faber's test, Gaenslen distraction or gapping, or compression test). Insufficient functional progress during or after six months of an appropriate program that includes a combination of active therapy, manual therapy, and psychological evaluation and treatment.

(b). At the minimum, manual therapy, performed on a weekly basis per guideline limits by a professional specializing in manual therapy (such as a doctor of osteopathy, physical therapist, or chiropractor) would address any musculoskeletal imbalance causing sacroiliac joint pain such as lumbosacral or sacroiliac dysfunction, pelvic imbalance, or sacral base unleveling1. This thorough evaluation would include identification and treatment to resolution of all causal conditions such as iliopsoas, piriformis, gluteal or hamstring tonal imbalance, leg length inequality, loss of motion of the sacrum, lumbar spine or pelvic bones, and ligamentous, visceral or fascial restrictions.

(c). An active therapy program would consist of a functionally appropriate rehabilitation program which is advanced in a customized fashion as appropriate commensurate with the patient's level of strength and stability. Such a program would include stretching and strengthening to address areas of muscular imbalance as noted above and neuromuscular re-education to address maintenance of neutral spine via core stabilization with concomitant inhibition of lumbar paravertebral muscles. Patients who demonstrate a directional preference are usually not candidates for this procedure and should receive a trial of directional preference therapy. Patients with confounding findings suggesting zygapophyseal joint or intervertebral disc pain generators should be excluded.

(i). Two fluoroscopically guided blocks of the Sacroiliac joint or appropriate three lateral branches with anesthetics and/or steroid, with relief of pain for the appropriate time periods, and functional improvement must be documented. If the above block provides less than 80 percent but at least 50 percent pain reduction as measured by

a numerical pain index scale or documented functional improvement, the sacral peripheral nerve injection or SI joint block should be repeated before a rhizotomy is done. If 50 percent or greater pain reduction is achieved with two sets of blocks (as outlined above) for the SI joint, then rhizotomy may be performed. Pain relief from RF Ablation must last a minimum of six months in order to repeat the RF treatment. There is no need to repeat the SI joint Injection or lateral branch injection after the first RF treatment if the pain that returns is the same as the original pain that required the first RF. It is well known that 67 percent of those with lumbar facet pain also suffer with Sacroiliac joint pain and do also require treatment with SI joint blocks and or SI Joint or Sacral nerve RF Ablation to reach Maximal Medical Improvement. (Implanted Stimulators or Pumps do not usually treat SI joint or facet pain.)

iii. Complications: damage to sacral nerve roots - issues with bladder dysfunction etc. Bleeding, infection, or neural injury. The clinician must be aware of the risk of developing a localized neuritis, or rarely, a deafferentation centralized pain syndrome as a complication of this and other neuroablative procedures.

iv. Post-Procedure Therapy - Active Therapy: implementation of a gentle aerobic reconditioning program (e.g., walking) and back education within the first post-procedure week, barring complications. Instruction and participation in a long-term home-based program of ROM, core strengthening, postural or neuromuscular re-education, endurance, and stability exercises should be accomplished over a period of 4 to 10 visits post-procedure. Patients who are unwilling to engage in this therapy should not receive this procedure.

v. Requirements for Repeat Radiofrequency SI Joint Neurotomy. In some cases, pain may recur. Successful RF neurotomy usually provides from 6 to 18 months of relief. Repeat neurotomy should only be performed if the initial procedure resulted in improved function for six months. There is no need for repeat Sacroiliac joint or lateral branch injection before RF.

i. Transdiscal Biacuplasty:

i. Description: cooled radiofrequency procedure intended to coagulate fissures in the disc and surrounding nerves which could be pain generators.

ii. It is not recommended due to lack of published data demonstrating effectiveness.

j. Trigger Point Injections:

i. Description. Trigger point injections are generally accepted treatments. Trigger point treatments can consist of the injection of local anesthetic, with or without corticosteroid, into highly localized, extremely sensitive bands of skeletal muscle fibers. These muscle fibers produce local and referred pain when activated. Medication is injected in a four-quadrant manner in the area of maximum tenderness. Injection can be enhanced if treatments are immediately followed by myofascial therapeutic interventions, such as vapo-coolant spray and stretch, ischemic pressure massage (myotherapy), specific soft tissue mobilization and physical modalities. There is conflicting evidence regarding the benefit of trigger point injections. There is no evidence that injection of medications improves the results of trigger-point injections. Needling alone may account for some of the therapeutic response of injections. Needling must be performed by practitioners with the appropriate credentials in accordance with state and other applicable regulations.

(a). Conscious sedation for patients receiving trigger point injections may be considered. However, the patient must be alert to help identify the site of the injection.

ii. Indications: Trigger point injections may be used to relieve myofascial pain and facilitate active therapy and stretching of the affected areas. They are to be used as an adjunctive treatment in combination with other treatment modalities such as active therapy programs. Trigger point injections should be utilized primarily for the purpose of facilitating functional progress. Patients should continue in an aggressive aerobic and stretching therapeutic exercise program, as tolerated, while undergoing intensive myofascial interventions. Myofascial pain is often associated with other underlying structural problems. Any abnormalities need to be ruled out prior to injection.

iii. Trigger point injections are indicated in patients with consistently observed, well-circumscribed trigger points. This demonstrates a local twitch response, characteristic radiation of pain pattern, and local autonomic reaction such as persistent hyperemia following palpation. Generally, trigger point injections are not necessary unless consistently observed trigger points are not responding to specific, noninvasive, myofascial interventions within approximately a six-week time frame. However, trigger point injections may be occasionally effective when utilized in the patient with immediate, acute onset of pain or in a post-operative patient with persistent muscle spasm or myofascial pain.

iv. Complications: Potential but rare complications of trigger point injections include infection, pneumothorax, anaphylaxis, penetration of viscera, neurapraxia, and neuropathy. If corticosteroids are injected in addition to local anesthetic, there is a risk of local myopathy. Severe pain on injection suggests the possibility of an intraneural injection, and the needle should be immediately repositioned.

v. Time Frames for Trigger Point Injections

(a). Time to Produce Effect- Local anesthetic 30 minutes; 24 to 48 hours for no anesthesia.

(b). Frequency- No more than four injection sites per session per week for acute exacerbations only, to avoid significant post-injection soreness.

(c). Optimum/Maximum Duration- four sessions per year. Injections may only be repeated when the above functional and time goals are met.

9. Interdisciplinary rehabilitation programs: are the gold standard of treatment for individuals with chronic pain who have not responded to less intensive modes of treatment, except for those determined to be temporarily totally disabled. There is good evidence that interdisciplinary programs that include screening for psychological issues, identification of fear-avoidance beliefs and treatment barriers, and establishment of individual functional and work goals will improve function and decrease disability. There is good evidence that multidisciplinary rehabilitation (physical therapy and either psychological, social, or occupational therapy) shows small effects in reducing pain and improving disability compared to usual care and that multidisciplinary

biopsychosocial rehabilitation is more effective than physical treatment for disability improvement after 12 months of treatment in patients with chronic low back pain. Patients with a significant psychosocial impact are most likely to benefit.

a. The International Classification of Functioning, Disability and Health (ICF) model should be considered in patient program planning. The following factors should be addressed: body function and structures, activity expectations, participation barriers, and environmental and personal factors. In general, interdisciplinary programs deal with evaluate and treat multiple and sometimes irreversible conditions, including but not limited to: painful musculoskeletal, neurological, and other chronic painful disorders and psychological issues, drug dependence, abuse, or addiction; high levels of stress and anxiety, failed surgery and pre-existing or latent psychopathology. The number of professions involved on the team in a chronic pain program may vary due to the complexity of the needs of the person served. The OWCA recommends consideration of referral to an interdisciplinary program within six months post-injury in patients with delayed recovery unless surgical interventions or other medical and/or psychological treatment complications intervene.

b. Chronic pain patients need to be treated as outpatients within a continuum of treatment intensity. Outpatient chronic pain programs are available with services provided by a coordinated interdisciplinary team within the same facility (formal) or as coordinated among practices by an authorized treating physician (informal). Formal programs are able to provide coordinated, high intensity level of services and are recommended for most chronic pain patients who have received multiple therapies during acute management.

c. Patients with addiction problems, high-dose opioid use, or abuse of other drugs may require inpatient and/or outpatient chemical dependency treatment programs before or in conjunction with other interdisciplinary rehabilitation. Guidelines from the American Society of Addiction Medicine are available and may be consulted relating to the intensity of services required for different classes of patients in order to achieve successful treatment.

d. Informal interdisciplinary pain programs may be considered for patients who are currently employed, those who cannot attend all-day programs, those with language barriers, or those living in areas not offering formal programs. Before treatment has been initiated, the patient, physician, and insurer should agree on treatment approach, methods, and goals. Generally, the type of outpatient program needed will depend on the degree of impact the pain has had on the patient's medical, physical, psychological, social, and/or vocational functioning.

e. Inpatient pain rehabilitation programs are rarely needed but may be necessary for patients with any of the following conditions: High risk for medical instability; Moderate to severe impairment of physical/functional status; Moderate to severe pain behaviors; Moderate impairment of cognitive and/or emotional status; Dependence on medications from which he or she needs to be withdrawn; and the need for 24-hour supervised nursing and for those temporarily totally disabled. Whether formal or informal, should be comprised of the following dimensions.

i. Communication. To ensure positive functional outcomes, communication between the patient, insurer and all professionals involved must be coordinated and consistent. Any exchange of information must be provided to all parties, including the patient. Care decisions would be communicated to all parties and should include the family and/or support system.

ii. Documentation. Thorough documentation by all professionals involved and/or discussions with the patient. It should be clear that functional goals are being actively pursued and measured on a regular basis to determine their achievement or need for modification. It is advisable to have the patient undergo objective functional measures.

iii. Treatment Modalities. Use of modalities may be necessary early in the process to facilitate compliance with and tolerance to therapeutic exercise, physical conditioning, and increasing functional activities. Active treatments should be emphasized over passive treatments. Active and self-monitored passive treatments should encourage self-coping skills and management of pain, which can be continued independently at home or at work. Treatments that can foster a sense of dependency by the patient on the caregiver should be avoided. Treatment length should be decided based upon observed functional improvement. For a complete list of Active and Passive Therapies, refer to Therapy - Active, and Therapy - Passive. All treatment timeframes may be extended based upon the patient's positive functional improvement.

iv. Therapeutic Exercise Programs. There is good evidence that exercise alone or as part of a multi-disciplinary program results in decreased disability for workers with non-acute low back pain. There is no sufficient evidence to support the recommendation of any particular exercise regimen over any other exercise regimen. A therapeutic exercise program should be initiated at the start of any treatment rehabilitation. Such programs should emphasize education, independence, and the importance of an on-going exercise regime.

v. Return-to-work: An authorized treating physician should continually evaluate the patient for their potential to return to work. For patients currently employed, efforts should be aimed at keeping them employed. Formal rehabilitation programs should provide assistance in creating work profiles. For more specific information regarding return-to-work, refer to the Return-to-work section in this guideline.

vi. - vii. …

viii. Risk assessments. The following should be incorporated into the overall assessment process, individual program planning, and discharge planning: aberrant medication related behavior, addiction, suicide, and other maladaptive behavior.

ix. Family/support system services as appropriate. The following should be considered in the initial assessment and program planning for the individual: ability and willingness to participate in the plan, coping, expectations, educational needs, insight, interpersonal dynamics, learning style, problem solving, responsibilities, and cultural and financial factors. Support would include counseling, education, assistive technology, and ongoing communication.

x. Discharge Planning. Follow-up visits will be necessary to assure adherence to treatment plan. Programs should have community and/or patient support networks available to patients on discharge.

f. Interdisciplinary programs are characterized by a variety of disciplines that participate in the assessment, planning, and/or implementation of the treatment program. These programs are for patients with greater levels of perceived disability, dysfunction, de-conditioning and psychological involvement. Programs should have sufficient personnel to work with the individual in the following areas: behavioral, functional, medical, cognitive, communication, pain management, physical, psychological, social, spiritual, recreation and leisure, and vocational. Services should address impairments, activity limitations, participation restrictions, environmental needs, and personal preferences of the worker. The following programs are listed in order of decreasing intensity:

i. Formal interdisciplinary rehabilitation programs

(a). Interdisciplinary pain rehabilitation. An interdisciplinary pain rehabilitation program provides outcome-focused, coordinated, goal-oriented interdisciplinary team services to measure and improve the functioning of persons with pain and encourage their appropriate use of health care system and services. The program can benefit persons who have limitations that interfere with their physical, psychological, social, and/or vocational functioning. The program shares information about the scope of the services and the outcomes achieved with patients, authorized providers, and insurers.

(i). The interdisciplinary team maintains consistent integration and communication to ensure that all interdisciplinary team members are aware of the plan of care for the patient, are exchanging information, and implement the plan of care. The team members make interdisciplinary team decisions with the patient and then ensure that decisions are communicated to the entire care team.

(ii). Teams that assist in the accomplishment of functional, physical, psychological, social, and vocational goals must include: a medical director, pain team physician(s) who should preferably be board certified in an appropriate specialty, and a pain team psychologist. The medical director of the pain program and each pain team physician should be board certified in pain management or be board certified in his/her specialty area and have completed a one-year fellowship in interdisciplinary pain medicine or palliative care recognized by a national board, or two years of experience in an interdisciplinary pain rehabilitation program, or if less than two years of experience, participate in a mentorship program with an experienced pain team physician. The pain team psychologist should have one year's full-time experience in an interdisciplinary pain program, or if less than two years of experience, participate in a mentorship program with an experienced pain team psychologist. Other disciplines on the team may include, but are not limited to, biofeedback therapist, occupational therapist, physical therapist, registered nurse (RN),case manager, exercise physiologist, psychiatrist, and/or nutritionist. A recent French interdisciplinary functional spine restoration program demonstrated increased return to work at 12 months.

[a]. Time to produce effect: three to four weeks;

[b]. Frequency: Full time programs - No less than five hours/day, five days/week; part-time programs - four hours per day, two to three days per week.

[c]. Optimum duration: 3 to 12 weeks at least two to three times a week. Follow-up visits weekly or every other week during the first one to two months after the initial program is completed.;

[d]. Maximum duration: four months for full-time programs and up to six months for part-time programs. Periodic review and monitoring thereafter for one year, and additional follow-up based on the documented maintenance of functional gains.

(b). Occupational Rehabilitation: This is a formal interdisciplinary program addressing a patient's employability and return to work. It includes a progressive increase in the number of hours per day in which a patient completes work simulation tasks until the patient can tolerate a full work day. A full work day is case specific and is defined by the previous employment of the patient. Safe workplace practices and education of the employer and family and/or social support system regarding the person's status should be included. This is accomplished by addressing the medical, psychological, behavioral, physical, functional, and vocational components of employability and return to work.

(i). The following are best practice recommendations for an occupational rehabilitation program:

[a]. Work assessments including a work-site evaluation when possible (Refer to Return-To-Work).

[b]. Practice of component tasks with modifications as needed.

[c]. Development of strength and endurance for work tasks.

[d]. Education on safe work practices.

[e]. Education of the employer regarding functional implications of the worker when possible.

[f]. Involvement of family members and/or support system for the worker.

[g]. Promotion of responsibility and self-management.

[h]. Assessment of the worker in relationship to productivity, safety, and worker behaviors.

[i], Identification of transferable skills of the worker.

[j]. Development of behaviors to improve the ability of the worker to return to work or benefit from other rehabilitation.

[k]. Discharge includes functional/work status, functional abilities as related to available jobs in the community, and a progressive plan for return to work if needed.

(ii). There is some evidence that an integrated care program, consisting of workplace interventions and graded activity teaching that pain need not limit activity, is effective in returning patients with chronic low back pain to work, even with minimal reported reduction of pain. The occupational medicine rehabilitation interdisciplinary team should, at a minimum, be comprised of a qualified medical director who is board certified with

documented training in occupational rehabilitation, team physicians having experience in occupational rehabilitation, an occupational therapist, and a physical therapist. As appropriate, the team may also include any of the following: a chiropractor, an RN, a case manager, a psychologist, a vocational specialist, or a certified biofeedback therapist.

(iii). Time Frames for Occupational Rehabilitation

[a]. Time to produce effect: two weeks

[b]. Frequency: two to five visits per week; up to eight hours per day

[c]. Optimum duration: two to four weeks

[d]. Maximum duration: six weeks. Participation in a program beyond six weeks must be documented with respect to need and the ability to facilitate positive symptomatic and functional gains.

(c). Opioid/Chemical Treatment Programs: Refer to the OWCA's Chronic Pain Disorder Medical Treatment Guideline. Recent programs which incorporate both weaning from opioids and interdisciplinary therapy appear to demonstrate positive long-term results.

ii. Informal Rehabilitation Program: A coordinated Interdisciplinary Pain Rehabilitation Program is one in which the authorized treating physician coordinates all aspects of care. This type of program is similar to the formal programs in that it is goal-oriented and provides interdisciplinary rehabilitation services to manage the needs of the patient in the following areas: functional; medical; physical; psychological; social; and vocational.

(a). This program is different from a formal program in that it involves lower frequency and intensity of services/treatment. Informal rehabilitation is geared toward those patients who do not need the intensity of service offered in a formal program or who cannot attend an all-day program due to employment, daycare, language or other barriers.

(b). Patients should be referred to professionals experienced in outpatient treatment of chronic pain. The OWCA recommends the authorized treating physician consult with physicians experienced in the treatment of chronic pain to develop the plan of care. Communication among care providers regarding clear objective goals and progress toward the goals is essential. Employers should be involved in return to work and work restrictions, and the family and/or social support system should be included in the treatment plan. Professionals from other disciplines likely to be involved include: a biofeedback therapist, an occupational therapist, a physical therapist, an RN, a psychologist, a case manager, an exercise physiologist, a psychiatrist, and/or a nutritionist.

(c). Time Frames for Informal Interdisciplinary Rehabilitation Program

(i). Time to produce effect: three to four weeks

(ii). Frequency: Full-time programs - No less than five hours per day, five days per week; Part-time programs - four hours per day for two to three days per week.

(iii). Optimum duration: 3 to 12 weeks at least two to three times a week. Follow-up visits weekly or every other week during the first one to two months after the initial program is completed.

(iv). Maximum duration: four months for full-time programs and up to six months for part-time programs. Periodic review and monitoring thereafter for one year, and additional follow-up based upon the documented maintenance of functional gains.

10. Medications and Medical Management. A thorough medication history, including use of alternative and over the counter medications, should be performed at the time of the initial visit and updated periodically. The medication history may consist of evaluating patient refill records through pharmacies and the Prescription Monitoring Program (PMP) to determine if the patient is receiving their prescribed regimen. Appropriate application of pharmacological agents depends on the patient's age, past history (including history of substance abuse), drug allergies and the nature of all medical problems. It is incumbent upon the healthcare provider to thoroughly understand pharmacological principles when dealing with the different drug families, their respective side effects, drug interactions and primary reason for each medication's usage. Healthcare providers should be aware that Interventional procedures can reduce or stop the need for medications while also improving functional capabilities. Patients should be aware that medications alone are unlikely to provide complete pain relief. In addition to pain relief, a primary goal of drug treatment is to improve the patient's function as measured behaviorally. Besides taking medications, continuing participation in exercise programs and using self-management techniques such as biofeedback, cognitive behavioral therapy, and other individualized physical and psychological practices are required elements for successful chronic pain management. Management must begin with establishing goals and expectations, including shared decision making about risks and benefits of medications.

a. Medication reconciliation is the process of comparing the medications that the patient is currently taking with those for which the patient has orders. This needs to include drug name, dosage, frequency, and route. The reconciliation can assist in avoiding medications errors such as omissions, duplications, dosing errors, or drug interactions. The results can also be used to assist discussion with the patient regarding prescribing or changing medications and the likelihood of side effects, drug interactions, and achieving expected goals. At a minimum, medication reconciliation should be performed for all patients upon the initial visit and whenever refilling or prescribing new medications.

b. Control of chronic non-malignant pain is expected to frequently involve the use of medication. Strategies for pharmacological control of pain cannot be precisely specified in advance. Rather, drug treatment requires close monitoring of the patient's response to therapy, flexibility on the part of the prescriber and a willingness to change treatment when circumstances change. Many of the drugs discussed in the medication section were licensed for indications other than analgesia, but are effective in the control of many types of chronic pain.

c. It is generally wise to begin management with lower cost non-opioid medications whose efficacy equals higher cost medications and medications with a greater safety profile. At practitioner's discretion, decisions to progress to more expensive, non-generic, and/or riskier

products are made based on the drug profile, patient feedback, and improvement in function. The provider must carefully balance the untoward side effects of the different drugs with therapeutic benefits, as well as monitor for any drug interactions.

d. All medications should be given an appropriate trial in order to test for therapeutic effect. The length of an appropriate trial varies widely depending on the individual drug. Certain medications may take several months to determine the efficacy, while others require only a few doses. It is recommended that patients with chronic nonmalignant pain be maintained on drugs that have the least serious side effects. For example, patients need to be tried or continued on acetaminophen and/or antidepressant medications whenever feasible as part of their overall treatment for chronic pain. Patients with renal or hepatic disease may need increased dosing intervals with chronic acetaminophen use. Chronic use of NSAIDs is a concern due to increased risk of cardiovascular events and GI bleeding.

e. The use of sedatives and hypnotics is not generally recommended for chronic pain patients. It is strongly recommended that such pharmacological management be monitored or managed by an experienced pain medicine physician, medical psychologist or psychiatrist. Multimodal therapy is the preferred mode of treatment for chronic pain patients whether or not these drugs were used acutely or sub-acutely.

f. Pharmaceutical neuropathic pain studies are limited. Diabetic peripheral neuropathy (DPN) and post-herpetic neuralgia (PHN) are the two most frequently studied noncancerous neuropathic pain conditions in randomized clinical trials of drug treatment. Some studies enroll only DPN or PHN patients, while other studies may enroll both kinds of patients. There appear to be consistent differences between DPN and PHN with respect to placebo responses, with DPN showing greater placebo response than PHC. Thus, there is an increased likelihood of a "positive" trial result for clinical trials of drug treatment for PHN than for DPN.

g. Although many studies focus on mean change in pain, this may not be the most reliable result. It does not necessarily allow for subgroups that may have improved significantly. Furthermore, the DPN and PHN studies do not represent the type of neurologic pain usually seen in workers' compensation.

h. For these reasons, few pharmaceutical agents listed in this Guideline are supported by high levels of evidence, but the paucity of evidence statements should not be construed as meaning that medication is not to be encouraged in managing chronic pain patients.

i. It is advisable to begin with the lowest effective dose proven to be useful for neuropathic pain in the literature. If the patient is tolerating the medication and clinical benefit is appreciated, maximize the dose for that medication or add another second line medication with another mechanism of action. If a medication is not effective, taper off the medication and start another agent. Maintain goal dosing for up to eight weeks before determining its effectiveness. Many patients will utilize several medications from different classes to achieve maximum benefit.

j. The preceding principles do not apply to chronic headache or trigeminal neuralgia patients. These patients should be referred to a physician specializing in the diagnosis and treatment of headache and facial pain.

k. For the clinician to interpret the following material, it should be noted that: drug profiles listed are not complete; dosing of drugs will depend upon the specific drug, especially for off-label use; and not all drugs within each class are listed, and other drugs within the class may be appropriate for individual cases. Clinicians should refer to informational texts or consult a pharmacist before prescribing unfamiliar medications or when there is a concern for drug interactions.

l. The following drug classes are listed in alphabetical order, not in order of suggested use, which is outlined above for neuropathic pain.

i. Alpha-Acting Agents: Noradrenergic pain-modulating systems are present in the central nervous system, and the Alpha-2 adrenergic receptor may be involved in the functioning of these pathways. Alpha-2 agonists may act by stimulating receptors in the substantia gelatinosa of the dorsal horn of the spinal cord, inhibiting the transmission of nociceptive signals. Spasticity may be reduced by presynaptic inhibition of motor neurons. Given limited experience with their use, they cannot be considered first-line analgesics or second-line analgesics for neurogenic pain, but a trial of their use may be warranted in many cases of refractory pain.

(a). Clonidine (Catapres, Kapvay, Nexiclon)

(i). Description - Central Alpha 2 agonist.

(ii). Indications - Sympathetically mediated pain, treatment of withdrawal from opioids.

[a]. As of the time of this guideline writing, formulations of clonidine have been FDA approved for hypertension.

(iii). Major Contraindications - Severe coronary insufficiency, renal impairment.

(iv). Dosing and Time to Therapeutic Effect - Increase dosage weekly to therapeutic effect.

(v). Major Side Effects - Sedation, orthostatic hypotension, sexual dysfunction, thrombocytopenia, weight gain, agitation, rebound hypertension with cessation.

(vi). Drug Interactions - Beta adrenergics, tricyclic antidepressants.

(vii). Laboratory Monitoring - Renal function, blood pressure.

ii. Anticonvulsants: Although the mechanism of action of anticonvulsant drugs in neuropathic pain states remains to be fully defined, they appear to act as channel blocking agents. A large variety of sodium channels are present in nervous tissue, and some of these are important mediators of nociception, as they are found primarily in unmyelinated fibers and their density increases following nerve injury. While the pharmacodynamic effects of the various anticonvulsant drugs are similar, the pharmacokinetic effects differ significantly. Gabapentin and pregablin, by contrast, are relatively non-significant enzyme inducers, creating fewer drug interactions. All patients on these medications should be monitored for suicidal ideation. Many of these medications are not recommended for women of child bearing age due to possible teratogenic effects.

(a). Gabapentin and pregabalin are commonly prescribed for neuropathic pain. There is an association between older anticonvulsants including gabapentin and non-traumatic fractures for patients older than 50; this should be taken into account when prescribing these medications.

(b). Gabapentin and pregabalin have indirect (not GABA A or GABA B receptor mediated) GABA-mimetic qualities rather than receptor mediated actions. This can potentially result in euphoria, relaxation, and sedation. It is likely that they also affect the dopaminergic "reward" system related to addictive disorders. Misuse of these medications usually involves doses 3 to 20 times that of the usual therapeutic dose. The medication is commonly used with alcohol or other drugs of abuse. Providers should be aware of the possibility and preferably screen patients for abuse before prescribing these medications. Withdrawal symptoms, such as insomnia, nausea, headache, or diarrhea, are likely when high doses of pregabalin have been used. Tolerance can also develop.

(c). Gabapentin (Fanatrex, Gabarone, Gralise, Horizant, Neurontin)

(i). Description - Structurally related to gamma-aminobutyric acid (GABA) but does not interact with GABA receptors. Gabapentin affects the alpha-2-delta-1 ligand of voltage gated calcium channels, thus inhibiting neurotransmitter containing intra-cellular vesicles from fusing with the pre-synaptic membranes and reducing primary afferent neuronal release of neurotransmitters (glutamate, CGRP, and substance P). It may also modulate transient receptor potential channels, NMDA receptors, protein kinase C and inflammatory cytokines, as well as possibly stimulating descending norepinephrine mediated pain inhibition.

(ii). Indications - As of the time of this guideline writing, formulations of gabapentin have been FDA approved for post-herpetic neuralgia and partial onset seizures.

[a]. There is strong evidence that gabapentin is more effective than placebo in the relief of painful diabetic neuropathy and post-herpetic neuralgia.

[b]. There is some evidence that gabapentin may benefit some patients with post-traumatic neuropathic pain. There is good evidence that gabapentin is not superior to amitriptyline. There is some evidence that nortriptyline (Aventyl, Pamelor) and gabapentin are equally effective for pain relief of postherpetic neuralgia. There is some evidence that the combination of gabapentin and morphine may allow lower doses with greater analgesic effect than the drugs given separately. There is strong evidence that gabapentin is more effective than placebo for neuropathic pain, even though it provides complete pain relief to a minority of patients. There is some evidence that a combination of gabapentin and nortriptyline provides more effective pain relief than monotherapy with either drug.

(iii). Relative Contraindications - Renal insufficiency. Dosage may be adjusted to accommodate renal dysfunction.

(iv). Dosing and Time to Therapeutic Effect - Dosage should be initiated at a low dose in order to avoid somnolence and may require four to eight weeks for titration. Dosage should be adjusted individually. It is taken three to four times per day, and the target dose is 1800 mg.

(v). Major Side Effects - Confusion, sedation, dizziness, peripheral edema. Patients should also be monitored for suicidal ideation and drug abuse.

(vi). Drug Interactions -antacids.

(vii). Laboratory Monitoring - Renal function.

(b). Pregabalin (Lyrica)

(i). Description: structural derivative of the inhibitory neuro transmitter gamma aminobutyric acid which inhibits calcium influx at the alpha-2-subunit of voltage-gated calcium channels of neurons. By inhibiting calcium influx, there is inhibition of release for excitatory neurotransmitters.

(ii). Indications: As of the time of this guideline writing, pregabalin is FDA approved for the treatment of neuropathic pain, post-herpetic neuralgia, fibromyalgia, diabetic peripheral neuropathy, and partial-onset seizure in adults with epilepsy.

[a].There is an adequate meta-analysis supporting strong evidence that in the setting of painful diabetic neuropathy, pregabalin as a stand-alone treatment is more effective than placebo in producing a 50 percent pain reduction, but this goal is realized in only 36 percent of patients treated with pregabalin compared with 24 percent of patients treated with placebo. There is an absence of published evidence regarding its effectiveness in improving physical function in this condition. There is also some evidence that pregabalin may be effective in treating neuropathic pain due to spinal cord injury. Unfortunately, most of the studies reviewed used pain as the primary outcome. Only one study considered function and found no improvement.

[b].When pregabalin is compared with other first line medications for the treatment of neuropathic pain and diabetic peripheral neuropathy, such as amitriptyline and duloxetine, there is good evidence that it is not superior to these medications. Additionally, amitriptyline was found more effective compared to pregabalin for reducing pain scores and disability. Side effects were similar for the two medications. Therefore, amitriptyline is recommended for patients without contraindications, followed by duloxetine or pregabalin. This is based on improved effectiveness in treating neuropathic pain and a favorable side effect profile compared to pregabalin. Pregabalin may be added to amitriptyline therapy.

[c].Pregabalin seems to be not effective and/or not well tolerated in a large percentage of patients. This is evident in several of the studies using run-in phases, enrichment, and partial enrichment techniques to strengthen the results. This analysis technique excludes placebo responders, non-responders, and adverse events prior to the treatment part of the study. This was done in the large meta-analysis, and one study had 60 percent of participants excluded in the run-in phase.

[d].Duloxetine, pregabalin, and amitriptyline are approximately of equal benefit with respect to pain relief in the setting of diabetic peripheral neuropathy. There is some evidence that they exert different effects with respect to sleep variables. Total sleep time and REM sleep duration are likely to be greater with pregabalin than with

duloxetine or amitriptyline. However, amitriptyline and pregabalin are likely to lead to dizziness and fatigue more frequently than the other drugs, and oxygen desaturation during sleep also appears to be greater with pregabalin.

(iii). Relative Contraindications: Avoid use with hypersensitivity to pregabalin or other similar class of drugs, avoid abrupt withdrawal, avoid use with a CNS depressant or alcohol, and exercise caution when using:

[a]. in the elderly,
[b]. with renal impairment,
[c]. with CHF class III/IV,
[d]. with a history of angioedema,
[e]. with depression.

(iv). Dosing and Time to Therapeutic Effect: Pregabalin comes in dosages ranging from 25mg to 300mg in 25mg and 50mg increments. For neuropathic pain, start at 75mg twice daily for one week and then increase to 150mg twice daily for two to three weeks if needed, with a possible final increase to 300mg twice daily with a max dose of 600mg/day. The full benefit may be achieved as quickly as 1 week, but it may take six to eight weeks. To discontinue, taper the dose down for at least one week.

(v). Major Side Effects: dizziness (less than 45 percent), somnolence (less than 36 percent), peripheral edema (less than 16 percent), weight gain (less than 16 percent), xerostomia (less than 15 percent), headache (less than 14 percent), fatigue (less than 11 percent), tremor (less than 11 percent), blurred vision/diplopia (less than 12 percent), constipation (less than 10 percent), confusion (less than seven percent), euphoria (less than seven percent), impaired coordination (less than six percent), thrombocytopenia (less than one percent). Patients should be monitored for hypersensitivity reactions, angioedema, suicidality, withdrawal symptoms, and seizures during abrupt discontinuation.

(vi). In regards to euphoria, pregabalin has higher rates compared to gabapentin in patients with history of substance misuse. Thus, prescribers should be aware that there is a potential for misuse.

(vii). Drug Interactions: Avoid use with antiepileptic agents and any CNS depression medications. Specifically avoid use with carbinoxamine, doxylamine, and gingko. Monitor closely when pregabalin is use with opioids.

(viii). Laboratory Monitoring: creatinine at baseline.

(c.) Other Anticonvulsants with Limited Third Line Use: It is recommended that a physician experienced in pain management be involved in the care when these medications are used.

(i). Topiramate (Topamax, Topiragen): sulfamate substitute monosacchride. FDA approved for epilepsy or prophylaxis for migraines. Topiramate is without evidence of efficacy in diabetic neuropathic pain, the only neuropathic condition in which it has been adequately tested. The data we have includes the likelihood of major bias due to last observation carried forward imputation, where adverse event withdrawals are much higher with active treatment than placebo control. Despite the strong potential for bias, no difference in efficacy between topiramate and placebo was apparent. There is good evidence that topiramate demonstrates minimal effect on chronic lumbar radiculopathy or other neuropathic pain. If it is utilized, this would be done as a third or fourth line medication in appropriate patients.

(ii). Lamotrigine (Lamictal): This anti-convulsant drug is not FDA approved for use with neuropathic pain. Due to reported deaths from toxic epidermal necrolysis and Stevens Johnson syndrome, increased suicide risk, and incidents of aseptic meningitis, it is used with caution for patients with seizure or mood disorders. There is insufficient evidence that lamotrigine is effective in treating neuropathic pain and fibromyalgia at doses of about 200 to 400 mg daily. Given the availability of more effective treatments including antiepileptics and antidepressant medicines, lamotrigine does not have a significant place in therapy based on the available evidence. The adverse effect profile of lamotrigine is also of concern. If it is utilized, this would be done as a third or fourth line medication in appropriate patients.

(iii). Zonisamide: There is insufficient evidence that zonisamide provides pain relief in any neuropathic pain condition. There are a number of drug interactions and other issues with its use. If it is utilized, this would be done as a third or fourth line medication in appropriate patients.

(iv). Carbamazepine (Tegretol) Has important effects as an inducer of hepatic enzymes and may influence the metabolism of other drugs enough to present problems in patients taking interacting drugs. Dose escalation must be done carefully, since there is good evidence that rapid dose titration produces side-effects greater than the analgesic benefits. Carbamazepine is likely effective in some people with chronic neuropathic pain but with caveats. No trial was longer than four weeks, had good reporting quality, nor used outcomes equivalent to substantial clinical benefit. In these circumstances, caution is needed in interpretation, and meaningful comparison with other interventions is not possible. Carbamazepine is generally not recommended; however, it may be used as a third or fourth line medication. It may be useful for trigeminal neuralgia.

(v). Valproic Acid: There is insufficient evidence to support the use of valproic acid or sodium valproate as a first-line treatment for neuropathic pain. It should be avoided in women of child bearing age. There is more robust evidence of greater efficacy for other medications. However, some guidelines continue to recommend it. If it is utilized, this would be done as a third or fourth line medication in appropriate patients.

(vi). Levetiracetam: There is no evidence that levetiracetam is effective in reducing neuropathic pain. It is associated with an increase in participants who experienced adverse events and who withdrew due to adverse events. Therefore, this is not recommended.

(vii).

Lacosamide: Has limited efficacy in the treatment of peripheral diabetic neuropathy. Higher doses did not give consistently better efficacy but were associated with significantly more adverse event withdrawals. Where adverse event withdrawals are high with active treatment compared with placebo and when last observation carried forward imputation is used, as in some of these studies, significant overestimation of treatment efficacy can result. It

is likely, therefore, that lacosamide is without any useful benefit in treating neuropathic pain; any positive interpretation of the evidence should be made with caution if at all. Therefore, this is not recommended.

iii. …

(a). Pain responses may occur at lower drug doses with shorter times to symptomatic response than are observed when the same compounds are used in the treatment of mood disorders. Neuropathic pain, diabetic neuropathy, post-herpetic neuralgia, and cancer-related pain may respond to antidepressant doses low enough to avoid adverse effects that often complicate the treatment of depression. First line drugs for neuropathic pain are the tricyclics with the newer formulations having better side effect profiles. SNRIs are considered second line drugs due to their costs and the number needed to treat for a response. Duloxetine may be considered for first line use in a patient who is a candidate for pharmacologic treatment of both chronic pain and depression. SSRIs are used generally for depression rather than neuropathic pain and should not be combined with moderate to high-dose tricyclics.

(b). All patients being considered for anti-depressant therapy should be evaluated and continually monitored for suicidal ideation and mood swings.

(i). Tricyclics and Older Agents (e.g., amitriptyline, nortriptyline, doxepin [Silenor, Sinequan, Adapin], desipramine [Norpramin, Pertofrane], imipramine [Tofranil], trazodone [Desyrel, Oleptro])

[a]. Description - Serotonergics, typically tricyclic antidepressants (TCAs), are utilized for their serotonergic properties as increasing CNS serotonergic tone can help decrease pain perception in non-antidepressant dosages. TCAs decrease reabsorption of both serotonin and norepinephrine. They also impact Na channels. Amitriptyline is known for its ability to repair Stage 4 sleep architecture, a frequent problem found in chronic pain patients and to treat depression, frequently associated with chronic pain. However, higher doses may produce more cholinergic side effects than newer tricyclics such as nortriptyline and desipramine. Doxepin and trimipramine also have sedative effects.

[i]. There is some evidence that in the setting of chronic low back pain with or without radiculopathy, amitriptyline is more effective than pregabalin at reducing pain and disability after 14 weeks of treatment. There is some evidence that in the setting of neuropathic pain, a combination of morphine plus nortriptyline produces better pain relief than either monotherapy alone, but morphine monotherapy is not superior to nortriptyline monotherapy, and it is possible that it is actually less effective than nortriptyline. There is insufficient low quality evidence supporting the use of desipramine to treat neuropathic pain. Effective medicines with much greater supportive evidence are available. There may be a role for desipramine in patients who have not obtained pain relief from other treatments. There is no good evidence of a lack of effect; therefore, amitriptyline should continue to be used as part of the treatment of neuropathic pain. Only a minority of people will achieve satisfactory pain relief. Limited information suggests that failure with one antidepressant does not mean failure with all. There is insufficient evidence to support the use of nortriptyline as a first line treatment. However, nortriptyline has a lower incidence of anticholinergic side effects than amitriptyline. It may be considered for patients who are intolerant to the anticholinergic effects of amitriptyline. Effective medicines with greater supportive evidence are available, such as duloxetine and pregabalin.

[ii]. There is some evidence that a combination of some gabapentin and nortriptyline provides more effective pain relief than monotherapy with either drug, without increasing side effects of either drug.

[b]. Indications -Some formulations are FDA approved for depression and anxiety. For the purposes of this guideline, they are recommended for neuropathic pain and insomnia. They are not recommended as a first line drug treatment for depression.

[c]. Major Contraindications - Cardiac disease or dysrhythmia, glaucoma, prostatic hypertrophy, seizures, high suicide risk, uncontrolled hypertension and orthostatic hypotension. A screening cardiogram may be done for those 40 years of age or older, especially if higher doses are used. Caution should be utilized in prescribing TCAs. They are not recommended for use in elderly patients 65 years of age or older, particularly if they are at fall risk.

[d]. Dosing and Time to Therapeutic Effect - Varies by specific tricyclic. Low dosages, less than 100 mg, are commonly used for chronic pain and/or insomnia. Lower doses decrease side effects and cardiovascular risks.

[e]. Major Side Effects - Side effects vary according to the medication used; however, the side effect profile for all of these medications is generally higher in all areas except GI distress, which is more common among the SSRIs and SNRIs. Anticholinergic side effects including, but not limited to, dry mouth, sedation, orthostatic hypotension, cardiac arrhythmia, urinary retention, and weight gain. Dry mouth leads to dental and periodontal conditions (e.g., increased cavities). Patients should also be monitored for suicidal ideation and drug abuse. Anticholinergic side effects are more common with tertiary amines (amitriptyline, imipramine, doxepin) than with secondary amines (nortriptyline and desipramine).

[f]. Drug Interactions - Tramadol (may cause seizures, both also increase serotonin/norepinephrine, so serotonin syndrome is a concern), clonidine, cimetidine (Tagemet), sympathomimetics, valproic acid (Depakene, Depakote, Epilim, Stavzor), warfarin (Coumadin, Jantoven, Marfarin), carbamazepine, bupropion (Aplezin, Budeprion, Buproban, Forfivo, Wellbutrin, Zyban), anticholinergics, quinolones.

[g]. Recommended Laboratory Monitoring - Renal and hepatic function. EKG for those on high dosages or with cardiac risk.

(ii). Selective serotonin reuptake inhibitors (SSRIs) (e.g., citalopram (Celexa), fluoxetine (Prozac, Rapiflux, Sarafem, Selfemra), paroxetine (Paxil, Pexeva), sertraline (Zoloft)) are not recommended for neuropathic pain. They may be used for depression.

(iii). Selective Serotonin Nor-epinephrine Reuptakes Inhibitor (SSNRI)/Serotonin Nor-epinephrine Reuptake Inhibitors (SNRI).

[a]. Description -Venlafaxine (Effexor), desvenlafaxine (Pristiq), duloxetine, and milnacipran (Savella).

[i]. There is strong evidence that duloxetine monotherapy is more effective than placebo in relieving the pain of diabetic peripheral neuropathy; however, monotherapy leads to a 50 percent pain reduction in only half of patients who receive a therapeutic dose.

[ii]. AHRQ supports the use of duloxetine for chronic low back pain.

[iii]. There is good evidence that in patients with painful diabetic neuropathy who have not had good responses to monotherapy with 60 mg of duloxetine or 300 mg of pregabalin, a clinically important benefit can be achieved by either of two strategies: doubling the dose of either drug, or combining both drugs at the same dose. It is likely that the strategy of combining the two drugs at doses of 60 and 300 mg respectively is more beneficial overall.

[iv]. There was no evidence to support the use of milnacipran to treat neuropathic pain conditions, although it is used for fibromyalgia. It is not generally recommended but may be used if patients cannot tolerate other medications.

[v]. There is insufficient evidence to support the use of venlafaxine in neuropathic pain. However, it may be useful for some patients who fail initial recommended treatments. Venlafaxine is generally reasonably well tolerated, but it can precipitate fatigue, somnolence, nausea, and dizziness in a minority of people. The sustained release formulations are generally more tolerable as inter-dose withdrawal symptoms can be avoided. They should be trialed if the patient cannot tolerate the immediate release formulation.

[b]. Indications -At the time of writing this guideline, duloxetine has been FDA approved for treatment of diabetic neuropathic pain and chronic musculoskeletal pain. Therefore, best evidence supports the use of duloxetine alone or with pregabalin.

[c]. Relative Contraindications -Seizures, eating disorders.

[d]. Major Side Effects -Depends on the drug, but commonly includes dry mouth, nausea, fatigue, constipation, and abnormal bleeding. Serotonin syndrome is also a risk. Gastrointestinal (GI) distress, drowsiness, sexual dysfunction less than other classes. Hypertension and glaucoma with venlafaxine. Cardiac issues with venlafaxine and withdrawal symptoms unless tapered. Studies show increased suicidal ideation and attempts in adolescents and young adults. Patients should also be monitored for suicidal ideation and drug abuse.

[e]. Drug Interactions -Drug specific.

[f]. Laboratory Monitoring - Renal and hepatic monitoring, venlafaxine may cause cholesterol or triglyceride increases.

(iv). Atypical Antidepressants/Other Agents. May be used for depression; however, are not appropriate for neuropathic pain.

iv. Cannabinoid Products. At the time of writing, marijuana use is illegal under federal law and cannot be recommended for use in this guideline.

v. Nonsteroidal Anti-Inflammatory Drugs (NSAIDs): NSAIDs are useful for pain and inflammation. In mild cases, they may be the only drugs required for analgesia. There are several classes of NSAIDs. The response of the individual injured worker to a specific medication is unpredictable. For this reason, a range of NSAIDs may be tried in each case, with the most effective preparation being continued. Patients should be closely monitored for adverse reactions. The FDA advises that many NSAIDs may cause an increased risk of serious cardiovascular thrombotic events, myocardial infarction, and stroke, which can be fatal. Administration of proton pump inhibitors, Histamine 2 Blockers, or prostaglandin analog misoprostol along with these NSAIDs may reduce the risk of duodenal and gastric ulceration in patients at higher risk for this adverse event (e.g., age > 60, concurrent antiplatelet or corticosteroid therapy). They do not impact possible cardiovascular complications. Due to the cross-reactivity between aspirin and NSAIDs, NSAIDs should not be used in aspirin-sensitive patients, and they should be used with caution in all asthma patients. NSAIDs are associated with abnormal renal function, including renal failure, as well as abnormal liver function. Patients with renal or hepatic disease may need increased dosing intervals with chronic use. Chronic use of NSAIDs is generally not recommended due to increased risk of cardiovascular events and GI bleeding.

(a). Topical NSAIDs may be more appropriate for some patients as there is some evidence that topical NSAIDs are associated with fewer systemic adverse events than oral NSAIDs.

(b). NSAIDs may be associated with non-unions. Thus, their use with fractures is questionable.

(c). Certain NSAIDs may have interactions with various other medications. Individuals may have adverse events not listed above. Intervals for metabolic screening are dependent on the patient's age and general health status and should be within parameters listed for each specific medication. Complete Blood Count (CBC) and liver and renal function should be monitored at least every six months in patients on chronic NSAIDs and initially when indicated.

(d). There is no evidence to support or refute the use of oral NSAIDs to treat neuropathic pain conditions.

(e). AHRQ supports the use of NSAIDs for chronic low back pain.

(i). Non-Selective Non-Steroidal Anti-Inflammatory Drugs: Includes NSAIDs and acetylsalicylic acid. Serious GI toxicity, such as bleeding, perforation, and ulceration can occur at any time, with or without warning symptoms, in patients treated with traditional NSAIDs. Physicians should inform patients about the signs and/or symptoms of serious GI toxicity and what steps to take if they occur. Anaphylactoid reactions may occur in patients taking NSAIDs. NSAIDs may interfere with platelet function. Fluid retention and edema have been observed in some patients taking NSAIDs.

[a]. Time Frames for Non-Selective Non-Steroidal Anti-Inflammatory Drugs

[i]. Optimum Duration: one week.

[ii]. Maximum Continuous Duration (not interment): one year. Use of these substances long-term (three days per week or greater) is associated with rebound pain upon cessation.

(ii). Selective Cyclo-oxygenase-2 (COX-2) Inhibitors: COX-2 inhibitors differ from the traditional NSAIDs in adverse side effect profiles. The major advantages of selective COX-2 inhibitors over traditional

NSAIDs are that they have less GI toxicity and no platelet effects. COX-2 inhibitors can worsen renal function in patients with renal insufficiency; thus, renal function may need monitoring.

[a]. There is good evidence that celecoxib (Celebrex) in a dose of 200 mg per day, administered over a long period, does not have a worse cardiovascular risk profile than naproxen at a dose of up to 1000 mg per day or ibuprofen at a dose of up to 2400 mg per day. There is good evidence that celecoxib has a more favorable safety profile than ibuprofen or naproxen with respect to serious GI adverse events, and it has a more favorable safety profile than ibuprofen with respect to renal adverse events. There is an absence of evidence concerning the relative safety of celecoxib at doses greater than 200 mg per day.

[b]. COX-2 inhibitors should not be first-line for low risk patients who will be using an NSAID short-term. COX-2 inhibitors are indicated in select patients who do not tolerate traditional NSAIDs. Serious upper GI adverse events can occur even in asymptomatic patients. Patients at high risk for GI bleed include those who use alcohol, smoke, are older than 65 years of age, take corticosteroids or anti-coagulants, or have a longer duration of therapy. Celecoxib is contraindicated in sulfonamide allergic patients.

[c]. Time Frames for Selective Cyclo-oxygenase-2 (COX-2) Inhibitors

[i]. Optimum Duration: 7 to 10 days.

[ii]. Maximum Duration: Chronic use is appropriate in individual cases. Use of these substances long-term (three days per week or greater) is associated with rebound pain upon cessation.

vi. Opioids: Opioids are the most powerful analgesics. Their use in acute pain and moderate-to-severe cancer pain is well accepted. Their use in chronic nonmalignant pain, however, is fraught with controversy and lack of scientific research. Deaths in the United States from opioids have escalated in the last 15 years. The CDC states the following in their 2016 Primary Care guideline for prescribing opioids: Opioid pain medication use presents serious risk, including overdose and opioid use disorder. From 1999 to 2014, more than 165,000 persons died from overdose related to opioid pain medication in the United States. In the past decade, while the death rates for the top leading causes of death such as heart disease and cancer have decreased substantially, the death rate associated with opioid pain medication has increased markedly. Sales of opioid pain medication have increased in parallel with opioid-related overdose deaths. The Drug Abuse Warning Network estimated that less than 420,000 emergency department visits were related to the misuse or abuse of narcotic pain relievers in 2011, the most recent year for which data are available. Opioid poisoning has also been identified in work-related populations.

(a). Effectiveness and Side Effects: Opioids include some of the oldest and most effective drugs used in the control of severe pain. The discovery of opioid receptors and their endogenous peptide ligands has led to an understanding of effects at the binding sites of these naturally occurring substances. Most of their analgesic effects have been attributed to their modification of activity in pain pathways within the central nervous system; however, it has become evident that they also are active in the peripheral nervous system. Activation of receptors on the peripheral terminals of primary afferent nerves can mediate anti-nociceptive effects, including inhibition of neuronal excitability and release of inflammatory peptides. Some of their undesirable effects on inhibiting gastrointestinal motility are peripherally mediated by receptors in the bowel wall.

(i). Most studies show that only around 50 percent of patients tolerate opioid side effects and receive an acceptable level of pain relief. Depending on the diagnosis and other agents available for treatment, the incremental benefit can be small.

(ii). There is strong evidence that in the setting of chronic nonspecific low back pain, the short and intermediate term reduction in pain intensity of opioids, compared with placebo, falls short of a clinically important level of effectiveness. There is an absence of evidence that opioids have any beneficial effects on function or reduction of disability in the setting of chronic nonspecific low back pain. AHRQ found that opioids are effective for treating chronic low back pain. However, the report noted no evidence regarding the long-term effectiveness or safety for chronic opioids.

(iii). There is good evidence that opioids are more efficient than placebo in reducing neuropathic pain by clinically significant amounts. There is a lack of evidence that opioids improve function and quality of life more effectively than placebo. There is good evidence that opioids produce significantly more adverse effects than placebo such as constipation, drowsiness, dizziness, nausea, and vomiting. There is a lack of evidence that they are superior to gabapentin or nortriptyline for neuropathic pain reduction.

(iv). Patients should have a thorough understanding of the need to pursue many other pain management techniques in addition to medication use in order to function with chronic pain. They should also be thoroughly aware of the side effects and how to manage them. There is strong evidence that adverse events such as constipation, dizziness, and drowsiness are more frequent with opioids than with placebo. Common side effects are drowsiness, constipation, nausea, and possible testosterone decrease with longer term use.

(v). There is some evidence that in the setting of chronic low back pain with disc pathology, a high degree of anxiety or depressive symptomatology is associated with relatively less pain relief in spite of higher opioid dosage than when these symptoms are absent. A study comparing Arkansas Medicaid and a national commercial insurance population found that the top five percent of opioid users accounted for 48 to70 percent of total opioid use. Utilization was increased among those with mental health and substance use disorders and those with multiple pain conditions. Psychological issues should always be screened for and treated in chronic pain patients. Therefore, for the majority of chronic pain patients, chronic opioids are unlikely to provide meaningful increase in function in daily activities. However, a subpopulation of patients may benefit from chronic opioids when properly prescribed and all requirements from medical management are followed.

(b). Hyperalgesia: Administration of opioid analgesics leads not only to analgesia, but may also lead to a paradoxical sensitization to noxious stimuli. Opioid induced

hyperalgesia has been demonstrated in animals and humans using electrical or mechanical pain stimuli. This increased sensitivity to mildly painful stimuli does not occur in all patients and appears to be less likely in those with cancer, clear inflammatory pathology, or clear neuropathic pain. When hyperalgesia is suspected, opioid tapering is appropriate.

(c). Opioid Induced Constipation (OIC): Some level of constipation is likely ubiquitous among chronic opioid users. An observational study of chronic opioid users who also used some type of laxative at least four times per week noted that approximately 50 percent of the patients were dissatisfied and they continue to report stool symptoms. 71 percent used a combination of natural and dietary treatment, 64.3 percent used over-the-counter laxatives, and 30 percent used prescription laxatives. Other studies report similar percentages. There are insufficient quality studies to recommend one specific type of laxative over others.

(i). The easiest method for identifying constipation, which is also recommended by a consensus, multidisciplinary group, is the Bowel Function Index. It assesses the patient's impression over the last seven days for ease of defecation, feeling of incomplete bowel evacuation, and personal judgment re-constipation.

(ii). Stepwise treatment for OIC is recommended, and all patients on chronic opioids should receive information on treatment for constipation. Dietary changes increasing soluble fibers are less likely to decrease OIC and may cause further problems if GI motility is decreased. Stool softeners may be tried, but stimulant and osmotic laxatives are likely to be more successful. Osmotic laxatives include lactulose and polyethylene glycol. Stimulants include bisacodyl, sennosides, and sodium picosulfate, although there may be some concern regarding use of stimulants on a regular basis.

(iii). Opioid rotation or change in opioids may be helpful for some patients. It is possible that sustained release opioid products cause more constipation than short acting agents due to their prolonged effect on the bowel opioid receptors. Tapentadol is a u-opioid agonist and norepinephrine reuptake inhibitor. It is expected to cause less bowel impairment then oxycodone or other traditional opioids. Tapentadol may be the preferred opioid choice for patients with OIC.

(iv). Other prescription medications may be used if constipation cannot adequately be controlled with the previous measures. Naloxegol is a pegylaped naloxone molecule that does not pass the blood brain barrier and thus can be given with opioid therapy. There is good evidence that it can alleviate OIC and that 12.5 mg starting dose has an acceptable side effect profile.

(v). Methylnaltrexone does not cross the blood brain barrier and can be given subcutaneously or orally. It is specifically recommended for opioid induced constipation for patients with chronic non-cancer pain.

(vi). Misoprostol is a synthetic prostaglandin E1 agonist and has the side effect of diarrhea in some patients. It also has been tried for opioid induced constipation, although it is not FDA approved for this use.

(vii). Naldemedine is an opioid antagonist indicated for the treatment of opioid induced constipation in adult patients with chronic pain.

(viii). Lubiprostone is a prostaglandin E1 approved for use in opioid constipation.

(ix). Most patients will require some therapeutic control for their constipation. The stepwise treatment discussed should be followed initially. If that has failed and the patient continues to have recurrent problems with experiencing severe straining, hard or lumpy stool with incomplete evacuation, or infrequent stools for 25 percent of the time despite the more conservative measures, it may be appropriate to use a pharmaceutical agent.

(d). Physiologic Responses to Opioids: Physiologic responses to opioids are influenced by variations in genes which code for opiate receptors, cytochrome P450 enzymes, and catecholamine metabolism. Interactions between these gene products significantly affect opiate absorption, distribution, and excretion. Hydromorphone, oxymorphone, and morphine are metabolized through the glucuronide system. Other opioids generally use the cytochrome P450 system. Allelic variants in the mu opiate receptor may cause increased analgesic responsiveness to lower drug doses in some patients. The genetic type can predict either lower or higher needs for opioids. For example, at least 10 percent of Caucasians lack the CYP450 2D6 enzyme that converts codeine to morphine. In some cases, genetic testing for cytochrome P450 type may be helpful. When switching patients from codeine to other medications, assume the patient has little or no tolerance to opioids. Many gene-drug associations are poorly understood and of uncertain clinical significance. The treating physician needs to be aware of the fact that the patient's genetic makeup may influence both the therapeutic response to drugs and the occurrence of adverse effects. A Comprehensive genetic testing panel may be ordered by treating physician for these multiple P450 genes once in a lifetime and utilized whenever there is a question of metabolism or unusual response of any drugs used to treat pain conditions, because multiple drugs and associated genes can cause problems with opioid metabolism.

(e). Adverse Events: Physicians should be aware that deaths from unintentional drug overdoses exceed the number of deaths from motor vehicle accidents in the US. Most of these deaths are due to the use of opioids, usually in combination with other respiratory depressants such as alcohol or benzodiazepines. The risk for out of hospital deaths not involving suicide was also high. The prevalence of drug abuse in the population of patients undergoing pain management varies according to region and other issues. One study indicated that one-fourth of patients being monitored for chronic opioid use have abused drugs occasionally, and one-half of those have frequent episodes of drug abuse. 80 percent of patients admitted to a large addiction program reported that their first use of opioids was from prescribed medication.

(i). There is good evidence that in generally healthy patients with chronic musculoskeletal pain, treatment with long-acting opioids, compared to treatments with anticonvulsants or antidepressants, is associated with an increased risk of death of approximately 69 percent, most of

which arises from non-overdose causes, principally cardiovascular in nature. The excess cardiovascular mortality principally occurs in the first 180 days from starting opioid treatment.

(ii). There is some evidence that compared to an opioid dose under 20 MED per day, a dose of 20-50 mg nearly doubles the risk of death, a dose of 50 to 100 mg may increase the risk more than fourfold, and a dose greater than 100 mg per day may increase the risk as much as sevenfold. However, the absolute risk of fatal overdose in chronic pain patients is fairly low and may be as low as 0.04 percent. There is good evidence that prescription opioids in excess of 200 MED average daily doses are associated with a near tripling of the risk of opioid-related death, compared to average daily doses of 20 MED. Average daily doses of 100-200 mg and doses of 50-99 mg per day may be associated with a doubling of mortality risk, but these risk estimates need to be replicated with larger studies.

(iii). Doses of opioids in excess of 120 MED have been observed to be associated with increased duration of disability, even when adjusted for injury severity in injured workers with acute low back pain. Higher doses are more likely to be associated with hypo-gonadism, and the patient should be informed of this risk. Higher doses of opioids also appear to contribute to the euphoric effect. The CDC recommends Primary Care Practitioners limiting to 90 MED per day to avoid increasing risk of overdose or referral to a pain specialist.

(iv). In summary, there is strong evidence that any dose above 50 MED per day is associated with a higher risk of death and 100 mg or greater appears to significantly increase the risk. Interventional techniques such as Spinal Cord Stimulation or Intrathecal Catheters and Programmable pumps should be considered in order to stop oral opioids usage.

(v). Workers who eventually are diagnosed with opioid abuse after an injury are also more likely to have higher claims cost. A retrospective observational cohort study of workers' compensation and short-term disability cases found that those with at least one diagnosis of opioid abuse cost significantly more in days lost from work for both groups and in overall healthcare costs for the short-term disability groups. About 0.5 percent of eligible workers were diagnosed with opioid abuse.

(f). Dependence versus Addiction: The central nervous system actions of these drugs account for much of their analgesic effect and for many of their other actions, such as respiratory depression, drowsiness, mental clouding, reward effects, and habit formation. With respect to the latter, it is crucial to distinguish between two distinct phenomena: dependence and addiction.

(i). Dependence is a physiological tolerance and refers to a set of disturbances in body homeostasis that leads to withdrawal symptoms, which can be produced with abrupt discontinuation, rapid reduction, decreasing blood levels, and/or by administration of an antagonist.

(ii). Addiction is a primary, chronic, neurobiological disease, with genetic, psychological, and environmental factors influencing its development and manifestations. It is a behavioral pattern of drug craving and seeking which leads to a preoccupation with drug procurement and an aberrant pattern of use. The drug use is frequently associated with negative consequences.

(iii). Dependence is a physiological phenomenon, which is expected with the continued administration of opioids, and need not deter physicians from their appropriate use. Before increasing the opioid dose, the physician should review other possible causes for the decline in analgesic effect. Increasing the dose may not result in improved function or decreased pain. Remember that it is recommended for total morphine milligram equivalents (MME) per day to remain at 50 or below. Consideration should be given to possible new psychological stressors or an increase in the activity of the nociceptive pathways. Other possibilities include new pathology, low testosterone level that impedes delivery of opioids to the central nervous system, drug diversion, hyperalgesia, or abusive use of the medication.

(g). Choice of Opioids: No long-term studies establish the efficacy of opioids over one year of use or superior performance by one type. There is no evidence that one long-acting opioid is more effective than another, or more effective than other types of medications, in improving function or pain. There is some evidence that long-acting oxycodone (Dazidox, Endocodone, ETH-oxydose, Oxycontin, Oxyfast, OxyIR, Percolone, Roxicodone) and oxymorphone have equal analgesic effects and side effects, although the milligram dose of oxymorphone (Opana) is one-half that of oxycodone. There is no evidence that long-acting opioids are superior to short-acting opioids for improving function or pain or causing less addiction. A number of studies have been done assessing relief of pain in cancer patients. A recent systematic review concludes that oxycodone does not result in better pain relief than other strong opioids including morphine and oxymorphone. It also found no difference between controlled release and immediate release oxycodone. There is some evidence that extended release hydrocodone has a small and clinically unimportant advantage over placebo for relief of chronic low back pain among patients who are able to tolerate the drug and that 40percent of patients who begin taking the drug do not attain a dose which provides pain relief without unacceptable adverse effects. Hydrocodone ER does not appear to improve function in comparison with placebo. A Cochrane review of oxycodone in cancer pain also found no evidence in favor of the longer acting opioid. There does not appear to be any significant difference in efficacy between once daily hydromorphone and sustained release oxycodone. Nausea and constipation are common for both medications between 26 to 32 percent. November 21, 2017, the FDA Commissioner, Scott Gottlieb, M.D., issued a Statement to promote development of generic versions of opioids formulated to deter abuse. One year earlier the FDA issued a statement encouraging development of Abuse Deterrant Formulations for opioids as a meaningful health benefit designed to reduce opoid abuse in the U.S. and to potentially and eventually remove conventional non deterrant opioids from the market if found to be unsafe.

(i). There is some evidence that in the setting of neuropathic pain, a combination of morphine plus nortriptyline produces better pain relief than either

monotherapy alone, but morphine monotherapy is not superior to nortriptyline monotherapy, and it is possible that it is actually less effective than nortriptyline.

(ii). Long-acting opioids should not be used for the treatment of acute, sub-acute, or post-operative pain, as this is likely to lead to drug dependence and difficulty tapering the medication. Additionally, there is a potential for respiratory depression to occur. The FDA requires that manufacturers develop Risk Evaluation and Mitigation Strategies (REMS) for most opioids. Physicians should carefully review the plans or educational materials provided under this program. Clinical considerations should determine the need for long-acting opioids given their lack of evidence noted above.

(iii). Addiction and abuse potentials of commonly prescribed opioid drugs may be estimated in a variety of ways, and their relative ranking may depend on the measure which is used. One systematic study of prescribed opioids estimated rates of drug misuse were estimated at 21 to 29 percent and addiction at 8 to 12 percent. There is good evidence that in the setting of new onset chronic non-cancer pain, there is a clinically important relationship between opioid prescription and subsequent opioid use disorder. Compared to no opioid use, short-term opioid use approximately triples the risk of opioid use disorder in the next 18 months. Use of opioids for over 90 days is associated with very pronounced increased risks of the subsequent development of an opioid use disorder, which may be as much as one hundredfold when doses greater than 120 MED are taken for more than 90 days. The absolute risk of these disorders is very uncertain but is likely to be greater than 6.1 percent for long duration treatment with a high opioid dose. Pain physicians should be consulted when the MED reaches 100 to develop an updated treatment plan.

(iv). Hydrocodone is the most commonly prescribed opioid in the general population and is one of the most commonly abused opioids in the population. However, the abuse rate per 1000 prescriptions is lower than the corresponding rates for extended release oxycodone, hydromorphone (Dilaudid, Palladone), and methadone. Extended release oxycodone appears to be the most commonly abused opioid, both in the general population and in the abuse rate per 1000 prescriptions. Tramadol, by contrast, appears to have a lower abuse rate than for other opioids.

(v). Types of opioids are listed below:

[a]. Buprenorphine: (various formulations) is prescribed as an intravenous injection, transdermal patch, buccal film, or sublingual tablet due to lack of bioavailability of oral agents. Depending upon the formulation, buprenorphine may be indicated for the treatment of pain or for the treatment of opioid dependence (addiction).

[i]. Buprenorphine for Opioid Dependence (addiction): FDA has approved a number of buccal films including those with naloxone and a sublingual tablet to treat opioid dependence (addiction).

[ii]. Buprenorphine for Pain: The FDA has approved specific forms of an intravenous and subcutaneous injectable, transdermal patch, and a buprenorphine buccal film to treat pain. However, by law, the transdermal patch and the injectable forms cannot be used to treat opioid dependence (addiction), even by DATA-2000 waivered physicians authorized to prescribe buprenorphine for addiction. Transdermal forms may cause significant skin reaction. Buprenorphine is not recommended for most chronic pain patients due to methods of administration, reports of euphoria in some patients, and lack of proof for improved efficacy in comparison with other opioids. 1

[iii]. There is insufficient evidence to support or refute the suggestion that buprenorphine has any efficacy in any neuropathic pain condition.

[iv]. There is good evidence transdermal buprenorphine is not inferior to oral tramadol in the treatment of moderate to severe musculoskeletal pain arising from conditions like osteoarthritis and low back pain. The population of patients for whom it is more appropriate than tramadol is not established but would need to be determined on an individual patient basis if there are clear reasons not to use oral tramadol.

[v]. In a well done study, 63 percent of those on buccal buprenorphine achieved a 30 percent or more decrease in pain at 12 weeks compared to a 47 percent placebo response. Approximately 40 percent of the initial groups eligible for the study dropped out during the initial phase when all patients received the drug to test for incompatibility.

[vi]. There is strong evidence that in patients being treated with opioid agonists for heroin addiction, methadone is more successful than buprenorphine at retaining patients in treatment. The rates of opiate use, as evidenced by positive urines, are equivalent between methadone and buprenorphine. There is strong evidence that buprenorphine is superior to placebo with respect to retention in treatment, and good evidence that buprenorphine is superior to placebo with respect to positive urine testing for opiates.

[vii]. There is an adequate meta-analysis supporting good evidence that transdermal fentanyl and transdermal buprenorphine are similar with respect to analgesia and sleep quality, and they are similar with respect to some common adverse effects such as constipation and discontinuation due to lack of effect. However, buprenorphine probably causes significantly less nausea than fentanyl, and it probably carries a lower risk of treatment discontinuation due to adverse events. It is also likely that both transdermal medications cause less constipation than oral morphine.

[viii]. Overall, due to cost and lack of superiority, buprenorphine is not a front line opioid choice. However, it may be used in those with a history of addiction or at high risk for addiction who otherwise qualify for chronic opioid use. It is also appropriate to consider buprenorphine products for tapering strategies and those on high dose morphine of 90 MED or more.

[b]. Codeine with Acetaminophen: Some patients cannot genetically metabolize codeine and therefore have no response. Codeine is not generally used on a daily basis for chronic pain. Acetaminophen dose per day should be limited to 2 grams.

[c]. Fentanyl (Actiq, Duragesic, Fentora, Sublimazem, Subsys): is not recommended for use with musculoskeletal chronic pain patients. It has been associated

with a number of deaths and has high addiction potential. Fentanyl should never be used transbuccally in this population. If Fentanyl it is being considered for a very specific patient population, it requires support from a pain specialist. Subsys is only indicated for Cancer Pain.

[d]. Meperidine (Demerol): is not recommended for chronic pain. It and its active metabolite, normeperidine, present a serious risk of seizure and hallucinations. It is not a preferred medication for acute pain as its analgesic effect is similar to codeine.

[e]. Methadone: requires special precautions given its unpredictably long half-life and non-linear conversion from other opioids such as morphine. It may also cause cardiac arrhythmias due to QT prolongation and has been linked with a greater number of deaths due to its prolonged half-life. No conclusions can be made regarding differences in efficacy or safety between methadone and placebo, other opioids, or other treatments. There is strong evidence that in patients being treated with opioid agonists for heroin addiction, methadone is more successful than buprenorphine at retaining patients in treatment. The rates of opiate use, as evidenced by positive urines, are equivalent between methadone and buprenorphine. Methadone should only be prescribed by those with experience in managing this medication. Conversion from another opioid to methadone (or the other way around) can be very challenging, and dosing titration must be done very slowly (no more than every seven days). Unlike many other opioids, it should not be used on an "as needed" basis, as decreased respiratory drive may occur before the full analgesic effect of methadone is appreciated. If methadone is being considered, genetic screening is appropriate. CYP2B6 polymorphism appears to metabolize methadone more slowly than the usual population and may cause more frequent deaths.

[f]. Morphine: may be used in the non-cancer pain population. A study in chronic low back pain suggested that individuals with a greater amount of endogenous opioids will have a lower pain relief response to morphine.

[g]. Oxycodone and Hydromorphone: There is no evidence that oxycodone (as oxycodone CR) is of value in treating people with painful diabetic neuropathy, postherpetic neuralgia, or other neuropathic conditions. There was insufficient evidence to support or refute the suggestion that hydromorphone has any efficacy in any neuropathic pain condition. Oxycodone was not associated with greater pain relief in cancer patients when compared to morphine or oxymorphone.

[h]. Propoxyphene (Darvon, Davon-N, PP-Cap): has been withdrawn from the market due to cardiac effects including arrhythmias.

[i]. Tapentadol (Nucynta): is a mu opioid agonist which also inhibits serotonin and norepinephrine reuptake activity. It is currently available in an intermediate release formulation and may be available as extended release if FDA approved. Due to its dual activity, it can cause seizures or serotonin syndrome, particularly when taken with other SSRIs, SNRIs, tricyclics, or MAO inhibitors. It has not been tested in patients with severe renal or hepatic damage. It has similar opioid abuse issues as other opioid medication; however, it is promoted as having fewer GI side effects, such as constipation. There is good evidence that extended release tapentadol is more effective than placebo and comparable to oxycodone. In that study, the percent of patients who achieved 50 percent or greater pain relief was: placebo, 18.9 percent, tapentadol, 27.0 percent, and oxycodone, 23.3 percent. There is some evidence that tapentadol can reduce pain to a moderate degree in diabetic neuropathy, average difference 1.4/10 pain scale, with tolerable adverse effects. However, a high quality systematic review found inadequate evidence to support tapentadol to treat chronic pain. Tapentadol is not recommended as a first line opioid for chronic, subacute, or acute pain due to the cost and lack of superiority over other analgesics. There is some evidence that tapentadol causes less constipation than oxycodone. Therefore, it may be appropriate for patients who cannot tolerate other opioids due to GI side effects.

[j]. Tramadol (Rybix, Ryzolt, Ultram):

[i]. Description: an opioid partial agonist that does not cause GI ulceration or exacerbate hypertension or congestive heart failure. It also inhibits the reuptake of norepinephrine and serotonin which may contribute to its pain relief mechanism. There are side effects similar to opioid side effects and may limit its use. They include nausea, sedation, and dry mouth. 1

[ii]. Indications: mild to moderate pain relief. As of the time of this guideline writing, formulations of tramadol have been FDA approved for management of moderate to moderately severe pain in adults. This drug has been shown to provide pain relief equivalent to that of commonly prescribed NSAIDs. Unlike other pure opioids agonists, there is a ceiling dose to tramadol due to its serotonin activity (usually 300-400 mg per day). There is some evidence that it alleviates neuropathic pain following spinal cord injury. There is inadequate evidence that extended-release tramadol/acetaminophen in a fixed-dose combination of 75mg/650 mg is more effective than placebo in relieving chronic low back pain; it is not more effective in improving function compared to placebo. There is some evidence that tramadol yields a short-term analgesic response of little clinical importance relative to placebo in post-herpetic neuralgia which has been symptomatic for approximately six months. However, given the effectiveness of other drug classes for neuropathic pain, tramadol should not be considered a first line medication. It may be useful for patients who cannot tolerate tricyclic antidepressants or other medications.

[iii]. Contraindications: use cautiously in patients who have a history of seizures, who are taking medication that may lower the seizure threshold, or taking medications that impact serotonin reuptake and could increase the risk for serotonin syndrome, such as monoamine oxidase inhibitors (MAO) inhibitors, SSRIs, TCAs, and alcohol. Use with caution in patients taking other potential QT prolonging agents. Not recommended in those with prior opioid addiction. Has been associated with deaths in those with an emotional disturbance or concurrent use of alcohol or other opioids. Significant renal and hepatic dysfunction requires dosage adjustment.

[iv]. Side Effects: may cause impaired alertness or nausea. This medication has physically addictive properties, and withdrawal may follow abrupt discontinuation.

[v]. Drug Interactions: opioids, sedating medications, any drug that affects serotonin and/or norepinephrine (e.g., SNRIs, SSRIs, MAOs, and TCAs).

[vi]. Laboratory Monitoring: renal and hepatic function.

(vi). Health care professionals and their patients must be particularly conscientious regarding the potential dangers of combining over-the-counter acetaminophen with prescription medications that also contain acetaminophen. Opioid and acetaminophen combination medication are limited due to the acetaminophen component. Total acetaminophen dose per day should not exceed 4 grams per any 24-hour period and is preferably limited to 2 grams per day to avoid possible liver damage.

(vii). Indications: The use of opioids is well accepted in treating cancer pain, where nociceptive mechanisms are generally present due to ongoing tissue destruction, expected survival may be short, and symptomatic relief is emphasized more than functional outcomes. In chronic non-malignant pain, by contrast, tissue destruction has generally ceased, meaning that central and neuropathic mechanisms frequently overshadow nociceptive processes. Expected survival in chronic pain is relatively long, and return to a high-level of function is a major goal of treatment. Therefore, approaches to pain developed in the context of malignant pain may not be transferable to chronic non-malignant pain. Opioids are generally not the best choice of medication for controlling neuropathic pain. Tricyclics, SNRIs, and anticonvulsants should be tried before considering opioids for neuropathic pain.

[a]. In most cases, analgesic treatment should begin with acetaminophen, aspirin, NSAIDs, and possibly Baclofen or Tizanidine. While maximum efficacy is modest, they may reduce pain sufficiently to permit adequate function. When these drugs do not satisfactorily reduce pain, medications specific to the diagnosis should be used (e.g., neuropathic pain medications as outlined in Medications and Medical Management).

[b]. There is good evidence from a prospective cohort study that in the setting of common low back injuries, when baseline pain and injury severity are taken into account, a prescription for more than seven days of opioids in the first six weeks is associated with an approximate doubling of disability one year after the injury. Therefore, prescribing after two weeks in a non-surgical case requires a risk assessment. If prescribing beyond four weeks, a full opioid trial is suggested including toxicology screen. Best practice suggests that whenever there is use of opioids for more than seven days, providers should follow all recommendations for screening and follow-ups of chronic pain use.

[c]. Consultation or referral to a pain specialist behavioral therapist should be considered when the pain persists but the underlying tissue pathology is minimal or absent and correlation between the original injury and the severity of impairment is not clear. Consider consultation if suffering and pain behaviors are present and the patient manifests risk behaviors described below, or when standard treatment measures have not been successful or are not indicated.

[d]. A psychological consultation including psychological testing (with validity measures) is indicated for all chronic pain patients as these patients are at high risk for unnecessary procedures and treatment and prolonged recovery.

[e]. Many behaviors have been found related to prescription-drug abuse patients. None of these are predictive alone, and some can be seen in patients whose pain is not under reasonable control; however, the behaviors should be considered warning signs for higher risk of abuse or addiction by physicians prescribing chronic opioids. Refer to subsection, High Risk Behavior, below.

(ix). Recommendations for Opioid Use: When considering opioid use for moderate to moderately severe chronic pain, a trial of opioids must be accomplished as described below and the patient must have failed other chronic pain management regimes. Physicians should complete the education recommended by the FDA, risk evaluation and mitigation strategies (REMS) provided by drug manufacturing companies.

[a]. General Indications - There must be a clear understanding that opioids are to be used for a limited term in the first instance (see trial indications below). The patient should have a thorough understanding of all of the expectations for opioid use. The level of pain relief is expected to be relatively small, two to three points on a VAS pain scale, although in some individual patients it may be higher. For patients with a high response to opioid use, care should be taken to assure that there is no abuse or diversion occurring. The physician and patient must agree upon defined functional goals as well as pain goals. If functional goals are not being met, the opioid trial should be reassessed. The full spectrum of side effects should be reviewed. The shared decision making agreement signed by the patient must clarify under what term the opioids will be tapered. Refer to subsection on the shared decision making agreement, below.

[b]. Therapeutic Trial Indications - A therapeutic trial of opioids should not be employed unless the patient has begun multi-disciplinary pain management. The trial shall last one month. If there is no functional effect, the drug should be tapered. Chronic use of opioids should not be prescribed until the following have been met:

[i]. The failure of pain management alternatives, including active therapies, cognitive behavioral therapy, pain self-management techniques, and other appropriate medical techniques.

[ii]. Physical and psychological and/or psychiatric assessment including a full evaluation for alcohol or drug addiction, dependence or abuse, performed by two specialists including the authorized treating physician and a physician or psychologist specialist with expertise in chronic pain. The patient should be stratified as to low, medium, or high risk for abuse based on behaviors and prior history of abuse. High risk patients are those with active substance abuse of any type or a history of opioid abuse. These patients should generally not be placed on chronic opioids. If it is deemed appropriate to do so, physician addiction specialists should be monitoring the care. Moderate risk factors include a history of non-opioid substance abuse disorder, prior trauma particularly sexual abuse, tobacco use, widespread pain, poor pain coping, depression, and dysfunctional

cognitions about pain and analgesic medications (see below). Pre-existing respiratory or memory problems should also be considered. Patients with a past history of substance abuse or other psychosocial risk factors should be co-managed with a physician addiction specialist.

[iii]. Risk Factors to Consider: history of severe post-operative pain, opioid analgesic tolerance (daily use for months), current mixed opioid agonist/antagonist treatment (e.g., buprenorphine, naltrexone), chronic pain (either related or unrelated to the surgical site), psychological comorbidities (e.g., depression, anxiety, catastrophizing), history of substance use disorder, history of "all over body pain", history of significant opioid sensitivities (e.g., nausea, sedation), and history of intrathecal pump use or nerve stimulator implanted for pain control.

[iv]. Employment requirements are outlined. The patient's employment requirements should also be discussed as well as the need to drive. It is generally not recommended to allow workers in safety sensitive positions to take opioids. Opioid naïve patients or those changing doses are likely to have decreased driving ability. Some patients on chronic opioids may have nominal interference with driving ability; however, effects are specific to individuals. Providers may choose to order certified driver rehabilitation assessment.

[v]. Urine drug screening for substances of abuse and substances currently prescribed. Clinicians should keep in mind that there are an increasing number of deaths due to the toxic misuse of opioids with other medications and alcohol. Drug screening is a mandatory component of chronic opioid management. It is appropriate to screen for alcohol and marijuana use and have a contractual policy regarding both alcohol and marijuana use during chronic opioid management. Alcohol use in combination with opioids is likely to contribute to death.

[vi]. Review of the Prescription Monitoring Program. Louisiana Revised Statutes 40:978 and 40:1001-1014. Informed, written, witnessed consent by the patient including the aspects noted above. Patients should also be counseled on safe storage and disposal of opioids.

[vii]. The trial, with a short-acting agent, should document sustained improvement of pain control, at least a 30 percent reduction, and of functional status, including return-to-work, and/or increase in activities of daily living. It is necessary to establish goals which are specific, measurable, achievable, and relevant prior to opioid trial or adjustment to measure changes in activity/function. Measurement of functional goals may include patient completed validated functional tools. Frequent follow-up at least every two to four weeks may be necessary to titrate dosage and assess clinical efficacy.

[c]. On-Going, Long-Term Management after a successful trial should include:

[i]. Prescriptions from a single practitioner;

[ii]. Ongoing review and documentation of pain relief, functional status, appropriate medication use, and side effects; full review at least every three months;

[iii]. Ongoing effort to gain improvement of social and physical function as a result of pain relief;

[iv]. Review of the Prescription Monitoring Program (PMP);

[v]. Shared decision making agreement detailing the following:

{a}. Side effects anticipated from the medication;

{b}. Requirement to continue active therapy;

{c}. Need to achieve functional goals including return to work for most cases;

{d}. Reasons for termination of opioid management, referral to addiction treatment, or for tapering opioids (tapering is usually for use longer than 30 days). Examples to be included in the contract include, but are not limited to:

{i}. Diversion of medication

{ii}. Lack of functional effect at higher doses

{iii}. Non-compliance with other drug use

{iv}. Drug screening showing use of drugs outside of the prescribed treatment or evidence of non-compliant use of prescribed medication

{v}. Requests for prescriptions outside of the defined time frames

{vi}. Lack of adherence identified by pill count, excessive sedation, or lack of functional gains

{vii}. Excessive dose escalation with no decrease in use of short-term medications

{viii}. Apparent hyperalgesia

{ix}. Shows signs of substance use disorder (including but not limited to work or family problems related to opioid use, difficulty controlling use, craving)

{x}. Experiences overdose or other serious adverse event

{xi}. Shows warning signs for overdose risk such as confusion, sedation, or slurred speech

{e}. Patient Agreements should be written at a sixth grade reading level to accommodate the majority of patients.

{f}. Use of random drug screening, initially, four times a year or possibly more with documented suspicion of abuse or diversion or for stabilization or maintenance phase of treatment. In addition to those four or more random urine drug screens, quantitative testing is appropriate in cases of inconsistent findings, suspicions, or for particular medications that patient is utilizing that is not in the qualitative testing.

{i}. Drugs or drug classes for which screening is performed should only reflect those likely to be present based on the patient's medical history or current clinical presentation, illicit substances, the practitioner's suspicion, and without duplication.

{ii}. Qualitative Urine Drug Testing (UDT) (i.e., immunoassay to evaluate, indicates the drug is present) that is utilized for pain management or substance abuse monitoring, may be considered medically necessary for: baseline screening/Induction phase before initiating treatment or at time treatment is initiated, stabilization phase of treatment with targeted weekly qualitative screening for a maximum of four weeks. (This type of monitoring is done to

identify those patients who are expected to be on a stable dose of opioid medication within a four-week timeframe.) Maintenance phase of treatment with targeted qualitative screening once every one to three months. Subsequent monitoring phase of treatment at a frequency appropriate for the risk level of the individual patient. (This type of monitoring is done to identify those patients who are noncompliant or abusing prescription drugs or illicit drugs.) Note: In general, qualitative urine drug testing should not require more than four tests in a 12-month period. Additional testing, as listed above, would require clinical justification of medical necessity.

{iii}. Quantitative UDT (i.e., gas chromatography and or mass spectrometry [GCMS] as confirmatory, indicates the amount of drug is present) that is utilized for pain management or substance abuse monitoring, may be considered medically necessary under the following circumstances: When immunoassays for the relevant drug(s) are not commercially available, or in specific situations when qualitative urine drug levels are required for clinical decision making. The following qualitative urine drug screen results must be present and documented: Positive for a prescription drug that is not prescribed to the patient; or Negative for a prescription drug that is prescribed to the patient; or Positive for an illicit drug.

{iv}. Quantitative testing is not appropriate for every specimen and should not be done routinely. This type of test should be performed in a setting of unexpected results and not on all specimens. The rationale for each quantitative test must be supported by the ordering clinician's documentation. The record must show that an inconsistent positive finding was noted on the qualitative testing or that there was not an available qualitative test to evaluate the presence of semisynthetic or synthetic opioid, illicit drugs or other medications used for pain management in a patient. Simultaneous blood and urine drug screening or testing is not appropriate and should not be done.

{v}. Urine testing, when included as one part of a structured program for pain management, has been observed to reduce abuse behaviors in patients with a history of drug misuse. Clinicians should keep in mind that there are an increasing number of deaths due to the toxic misuse of opioids with other medications and alcohol. Drug screening is a mandatory component of chronic opioid management. Clinicians should determine before drug screening how they will use knowledge of marijuana use. It is appropriate to screen for alcohol and marijuana use and have a contractual policy regarding both alcohol and marijuana use during chronic opioid management. Alcohol use in combination with opioids is likely to contribute to death. From a safety standpoint, it is more important to screen for alcohol use than marijuana use as alcohol is more likely to contribute to unintended overdose.

{vi}. Physicians should recognize that occasionally patients may use non-prescribed substances because they have not obtained sufficient relief on the prescribed regime.

[vi]. Chronic use limited to two oral opioids.

[vii]. Transdermal medication use, other than buprenorphine, is generally not recommended.

[viii]. Use of acetaminophen-containing medications in patients with liver disease should be limited; including over-the-counter medications. Acetaminophen dose should not exceed 4 grams per day for short-term use or 2 to 3 grams/day for long-term use in healthy patients. A safer chronic dose may be 1800mg/day.

[ix]. Continuing review of overall therapy plan with regard to non-opioid means of pain control and functional status.

[x]. Tapering of opioids may be necessary for many reasons including the development of hyperalgesia, decreased effects from an opioid, lack of compliance with the opioid contract, or intolerance of side effects. Some patients appear to experience allodynia or hyperalgesia on chronic opioids. This premise is supported by a study of normal volunteers who received opioid infusions and demonstrated an increase in secondary hyperalgesia. Options for treating hyperalgesia include withdrawing the patient from opioids and reassessing their condition. In some cases, the patient will improve when off of the opioid. In other cases, another opioid may be substituted.

{a}. Tapering may also be appropriate by patient choice, to accommodate "fit-for-duty" demands, prior to major surgery to assist with post-operative pain control, to alleviate the effects of chronic use including hypogonadism, medication side effects, or in the instance of a breach of drug agreement, overdose, other drug use aberrancies, or lack of functional benefit. It is also appropriate for any of the tapering criteria listed in section E above.

{b}. Generally tapering can be accomplished by decreasing the dose 10 percent per week. This will generally take 6 to 12 weeks and may need to be done one drug class at a time. Behavioral support is required during this service. Tapering may occur prior to MMI or in some cases during maintenance treatment.

[xi]. Medication assisted treatment with buprenorphine or methadone may be considered for opioid abuse disorder, in addition to behavioral therapy. Refer to Opioid Addiction Treatment.

[xii]. Inpatient treatment may be required for addiction or opioid tapering in complex cases. Refer to Interdisciplinary Rehabilitation Programs for detailed information on inpatient criteria.

[d]. Relative Contraindications - Extreme caution should be used in prescribing controlled substances for workers with one or more "relative contraindications": Consultation with a pain or addiction specialist may be useful in these cases.

[i]. history of alcohol or other substance abuse, or a history of chronic, benzodiazepine use;

[ii]. sleep apnea: If patient has symptoms of sleep apnea, diagnostic tests should be pursued prior to chronic opioid use;

[iii]. off work for more than six months with minimal improvement in function from other active therapy;

[iv]. severe personality disorder or other known severe psychiatric disease per psychiatrist or psychologist;

[v]. monitoring of behavior for signs of possible substance abuse indicating an increased risk for addiction and possible need for consultation with an addiction specialist.

[e]. High Risk Behavior: The following are high risk warning signs for possible drug abuse or addiction. Patients with these findings may need a consultation by a physician experienced in pain management and/or addiction. Behaviors in the first list are warning signs, not automatic grounds for dismissal, and should be followed up by a reevaluation with the provider.

[i]. Repeated behaviors in the first list may be more indicative of addiction and behaviors in the second list should be followed by a substance abuse evaluation:

{a}. First List: Less suggestive for addiction but are increased in depressed patients- Frequent requests for early refills; claiming lost or stolen prescriptions; Opioid(s) used more frequently, or at higher doses than prescribed; Using opioids to treat non-pain symptoms; Borrowing or hoarding opioids; Using alcohol or tobacco to relieve pain; Requesting more or specific opioids; Recurring emergency room visits for pain; Concerns expressed by family member(s); Unexpected drug test results; Inconsistencies in the patient's history.

{b}. Second List: More suggestive of addiction and are more prevalent in patients with substance use disorder- Buying opioids on the street; stealing or selling drugs; Multiple prescribers ("doctor shopping"); Trading sex for opioids; Using illicit drugs; Positive urine drug tests for illicit drugs; Forging prescriptions; Aggressive demands for opioids; Injecting oral/topical opioids; Signs of intoxication (ETOH odor, sedation, slurred speech, motor instability, etc.).

[ii]. Both daily and monthly users of nicotine were at least three times more likely to report non-medical use of opioid in the prior year. At least one study has demonstrated a prevalence of smokers and former smokers among those using opioids and at higher doses compared to the general population. It also appeared that smokers and former smokers used opioids more frequently and in higher doses than never smokers. Thus, tobacco use history may be a helpful prognosticator.

[iii]. In one study, four specific behaviors appeared to identify patients at risk for current substance abuse: increasing doses on their own, feeling intoxicated, early refills, and oversedating oneself. A positive test for cocaine also appeared to be related.

[iv]. One study found that half of patients receiving 90 days of continuous opioids remained on opioids several years later and that factors associated with continual use included daily opioid greater than 120 MED prior opioid exposure, and likely opioid misuse.

[v].One study suggested that those scoring at higher risk on the Screener and Opioid Assessment for Patients with Pain-Revised (SOAPP-R), also had greater reductions in sensory low back pain and a greater desire to take morphine. It is unclear how this should be viewed in practice.

[f]. Dosing and Time to Therapeutic Effect - Oral route is the preferred route of analgesic administration because it is the most convenient and cost-effective method of administration. Transbuccal administration should be avoided other than for buprenorphine. A daily dosage above 50 MED may be appropriate for certain patients. However, when the patient's dosage exceeds 50 MED per day and/or the patient is sedentary with minimal function, consideration should be given to lowering the dosage. Some patients may require dosages above 90 MED per day. However, if the patient reaches a dosage above 90 MED per day, it is appropriate to taper or refer to a pain or addiction specialist. The provider should also adhere to all requirements in this guideline and closely monitor the patient as this is considered a high risk dosage. In some cases, buprenorphine may be a preferred medication for pain control in those patients. Consultation may be necessary.

[g]. Major Side Effects - There is great individual variation in susceptibility to opioid-induced side effects and clinicians should monitor for these potential side effects. Common initial side effects include nausea, vomiting, drowsiness, unsteadiness, and confusion. Occasional side effects include dry mouth, sweating, pruritus, hallucinations, and myoclonus. Rare side effects include respiratory depression and psychological dependence. Constipation and nausea/vomiting are common problems associated with long-term opioid administration and should be anticipated, treated prophylactically, and monitored constantly. Stool softeners, laxatives, and increased dietary fluid may be prescribed. Refer to Opioid Induced Constipation. Chronic sustained release opioid use is associated with decreased testosterone in males and females and estradiol in pre-menopausal females. Patients should be asked about changes in libido, sexual function, and fatigue. Appropriate lab testing and replacement treatment should be completed.

[h]. Naloxone or oral and injection Naltrexone: may be prescribed when any risk factors are present. The correct use of Naloxone and Naltrexone should be discussed with the patient and family.

[i]. Benzodiazepines: should not be prescribed when opioids are used.

[j]. Sedation: driving and other tasks - Although some studies have shown that patients on chronic opioids do not function worse than patients not on medication, caution should be exerted, and patients should be counseled never to mix opioids with the use of alcohol or other sedating medication. When medication is increased or trials are begun, patients should not drive for at least five days. Chronic untreated pain, sedatives especially when mixed with opiates or alcohol, and disordered sleep can also impair driving abilities.

[k]. Drug Interactions - Patients receiving opioid agonists should not be given a mixed agonist-antagonist such as pentazocine [Talacen, Talwin] or butorphanol [Stadol] because doing so may precipitate a withdrawal syndrome and increase pain.

[i]. All sedating medication, especially benzodiazepines, should be avoided or limited to very low doses. Over-the-counter medications such as antihistamines, diphenhydramine, and prescription medications such as hydroxyzine (Anx, Atarax, Atazine, Hypam, Rezine, Vistaril) should be avoided except when being used to manage withdrawal during tapering of opioids. Alcohol should not be used.

[l]. Recommended Laboratory Monitoring - Primary laboratory monitoring is recommended for acetaminophen/aspirin/NSAIDs combinations (renal and liver function, blood dyscrasias) although combination opioids are not recommended for long-term use. Morphine and other medication may require renal testing and other screening. A comprehensive genetic testing panel may be ordered by treating physician for these multiple P450 genes once in a lifetime and utilized whenever there is a question of metabolism or unusual response of any drugs used to treat pain conditions, because multiple drugs and associated genes can cause problems with opioid metabolism.

[m]. Sleep Apnea Testing: Both obstructive and central sleep apnea are likely to be exaggerated by opioid use or may occur secondary to higher dose chronic opioid use and combination medication use, especially benzodiazepines and sedative hypnotics. Patients should be questioned about sleep disturbance and family members or sleeping partners questioned about loud snoring or gasping during sleep. If present, qualified sleep studies and sleep medicine consultation should be obtained. Portable sleep monitoring units are generally not acceptable for diagnosing primary central sleep apnea. Type 3 portable units with two airflow samples and an 02 saturation device may be useful for monitoring respiratory depression secondary to opioids, although there are no studies on this topic.

[n]. Regular consultation of the Prescription Monitoring Program (PMP): Physicians should review their patients on the system whenever drug screens are done. This information should be used in combination with the drug screening results, functional status of the patient, and other laboratory findings to review the need for treatment and level of treatment appropriate for the patient.

[o]. Addiction: If addiction occurs, patients will require treatment. Refer to Opioid Addiction Treatment. After detoxification, they may need long-term treatment with naltrexone (Depade, ReVia, Vivitrol), an antagonist which can be administered in a long-acting form or buprenorphine which requires specific education per the Drug Enforcement Agency (DEA).

[p]. Potentiating Agents -There is some evidence that dextromethorphan does not potentiate the effect of morphine opioids and therefore is not recommended to be used with opioids.

vii. Post-Operative Pain Management: Proper post-operative pain management may avoid overuse and misuse of opioids. A recent practice guideline strongly recommends a multi-modal approach to post-operative pain. Suggestions include use of TENS, cognitive behavioral therapy, use of oral medication over parenteral medication and patient controlled analgesia when parenteral medication is used, use of NSAIDS (for appropriate procedures) or acetaminophen, gabapentin or pregabalin may also be used, and peripheral regional anesthesia when appropriate. Ketamine is also suggested for major surgeries, patients with high opioid tolerance or those who have difficulty tolerating opioids. However, ketamine does have side effects such as hallucination and nightmares. It is not recommended as a first line medication for most patients. A Comprehensive genetic testing panel may be ordered by treating physician for these multiple P450 genes once in a lifetime and utilized whenever there is a question of metabolism or unusual response of any drugs used to treat pain conditions, because multiple drugs and associated genes can cause problems with opioid metabolism.

(a). Pre-operative psychological preparation or neuroscience education may improve post-operative pain management. Pre-operative cognitive-behavioral therapy or other psychological intervention likely improves in-hospital mobilization and analgesic use for lumbar spinal fusion patients and for other surgical patients. One randomized study compared patients who received one session of pre-operative pain neuroscience education from physical therapist prior to lumbar discectomy and those who did not. There was no change in the primary outcomes from surgery. However, significant changes occurred in secondary outcomes which included preparation for surgery, surgery meeting their expectations, and a 45 percent decrease in health expenditure for the follow up year. Thus, pre-operative pain neuroscience education may prove a useful addition for any patient prior to surgical decisions. Refer to Therapy-Active, for a description of Pain Neuroscience Education. Optimal surgical outcomes are more likely when the patient commits to a post-operative active therapy program.

(b). Generally, post-operative pain management is under the supervision of the surgeon and hospitalist with the goal of returning to the pre-operative level of pharmaceutical management. For a specific procedure's post-operative management, refer to the related medical treatment guideline.

(c). Surgical procedures may be necessary for patients already taking chronic opioids, and they may encounter difficulty with pain control post-operatively. These patients will usually require higher doses of opioids during their post-operative phase and may benefit the most from multimodal therapy and/or ketamine as described in Topical Drug Delivery. It is strongly advised that physicians consult a pain specialist or addiction specialist when caring for post-operative patients with a history of substance abuse or previous addiction. Refer to Post-Operative Pain Management.

viii. Skeletal Muscle Relaxants: are most useful for acute musculoskeletal injury or exacerbation of injury. Chronic use of benzodiazepines or any muscle relaxant is not recommended due to their habit-forming potential, seizure risk following abrupt withdrawal, and documented contribution to deaths of patients on chronic opioids due to respiratory depression.

(a). Baclofen (intrathecal or oral):

(i). Description - May be effective due to stimulation of Gamma Aminobutyric Acid (GABA) receptors.

(ii). Indications - Pain from muscle rigidity. As of the time of this guideline writing, formulations of baclofen injection have been FDA approved for the management of severe spasticity of a spinal cord or cerebral origin.

(iii). Side Effects -Exacerbation of psychotic disorders, may precipitate seizures in epileptics, dry mouth, and sexual dysfunction.

(iv). Recommended Laboratory Monitoring - Renal and hepatic function.

(v). Caution: Abrupt discontinuation of baclofen can precipitate a withdrawal syndrome and has been seen with both low and high doses. The most common side effects of baclofen withdrawal include pruritis, tremor, and mood disturbance. In extreme circumstances, seizures, muscle rigidity (resembling neuroleptic malignant syndrome), and even death can occur.

(b). Cyclobenzaprine (Amrix, Fexmid, Flexeril):

(i). Description: structurally related to tricyclics.

(ii). Indications: acute exacerbated chronic pain associated with muscle spasm. As of the time of this guideline writing, formulations of this drug are FDA approved as an adjunct to rest and physical therapy for relief of muscle spasm associated with acute, painful musculoskeletal conditions. It should only be used for short periods (less than two weeks) because of lack of evidence for effectiveness with prolonged use.

(iii), Major Contraindications: cardiac dysrhythmias.

(iv). Dosing and Time to Therapeutic Effect: variable, onset of action is one hour.

(v). Major Side Effects: sedation, anticholinergic, blurred vision. Patients should also be monitored for suicidal ideation and drug abuse.

(vi). Drug Interactions: contraindicated for use with MAO inhibitors; interacts with tramadol, duloxetine, escitalopram, and fluoxetine. Likely interactions with other SSRIs and SNRIs. Drug interactions are similar to those for tricyclics. Refer also to information on tricyclics in Medications and Medical Management.

(vii). Recommended Laboratory Monitoring: hepatic and renal function.

(c). Carisoprodol (Soma, Soprodal, Vanadom): This medication should not be used in chronic pain patients due to its addictive nature secondary to the active metabolite meprobamate.

(d). Metaxalone (Skelaxin):

(i). Description: central acting muscle relaxant.

(ii), Indications: acute exacerbated chronic pain associated with muscle spasm. As of the time of this guideline writing, formulations of this drug are FDA approved as an adjunct to rest and physical therapy for relief of muscle spasm associated with acute, painful musculoskeletal conditions. It should only be used for short periods (less than two weeks) because of lack of evidence for effectiveness with prolonged use.

(iii), Major Contraindications: significantly impaired renal or hepatic disease, pregnancy, and disposition to drug induced hemolytic anemia.

(iv). Dosing and Time to Therapeutic Effect: 800 mg, three to four times per day, onset of action one hour.

(v). Major Side Effects: sedation, hematologic abnormalities.

(vi). Drug Interactions: other sedating drugs (e.g., opioids, benzodiazepines).

(vii), Recommended Laboratory Monitoring: hepatic function, CBC.

(e). Methocarbamol:

(i). Description: central action muscle relaxant.

(ii), Indications: muscle spasm.

(iii), Major Contraindications: hypersensitivity, possible renal compromise.

(iv). Dosing and Time to Therapeutic Effect: 1500 mg. four times per day. Longer dosing 4000 to 4500 mg per day.

(v). Major Side Effects: decreased cognition, light headedness, GI effects among other.

(vii). Drug Interactions: alcohol and other CNS depressants.

(f). Tizanidine (Zanaflex):

(i). Description: alpha 2 adrenergic agonist.

(ii). Indications: true centrally mediated spasticity, musculoskeletal disorders. As of the time of this guideline writing, formulations of tizanidine have been FDA approved for the management of spasticity in spinal cord injury and multiple sclerosis.

(iii). Major Contraindications: concurrent use with ciprofloxacin (Cipro, Proquin) or fluvoxamine (Luvox); or hepatic disease.

(iv). Dosing and Time to Therapeutic Effect: 4 mg/day orally and gradually increase in 2 to 4 mg increments on an individual basis over two to four weeks; maintenance, 8 mg orally every six to eight hours (max dose 36 mg/day).

(v). Major Side Effects: hypotension, sedation, hepatotoxicity, hallucinations and psychosis, dry mouth.

(vi). Drug Interactions: Alcohol can increase sedation, and concurrent use with ciprofloxacin or fluvoxamine is contraindicated. Several other medications increase tizanidine plasma concentrations (e.g., oral contraceptives, verapamil, and cimetidine). Use with caution with other alpha agonists and other antihypertensives as they may increase the risk of hypotension.

(vii). Laboratory Monitoring: hepatic function, blood pressure.

ix. Smoking Cessation Medications and Treatment: Tobacco dependence is chronic and may require repeated attempts to quit. All smoking cessation programs should be accompanied by behavioral support which may include practical counseling sessions and social support, which usually includes telephone follow-up. A variety of medications have been used including Bupropion SR, nicotine patches, gum, inhaler, lozenges or nasal spray, and varenicline. When nicotine supplements are used, cotinine testing will be positive. Urine anabasine or exhaled carbon monoxide 5 ppm or less may be used to check tobacco abstinence.

(a). There is some evidence that among adults motivated to quit smoking, 12 weeks of open-label treatment including counseling and one of the following: nicotine patch, varenicline, or combination nicotine replacement therapy (nicotine patch and nicotine lozenge) are equally effective in assisting motivated smokers to quit smoking over a period of one year.

(b). There is some evidence that among adults motivated to quit smoking, abrupt smoking cessation is the

more effective method that leads to lasting abstinence over a period of four weeks to six months compared to gradual cessation, even for smokers who initially prefer to quit by gradual reduction.

x. Topical Drug Delivery:

(a). Description: topical creams and patches may be an alternative treatment of localized musculoskeletal and neuropathic disorders and can be especially helpful in avoiding opioid use.

(b). Indications: neuropathic pain for many agents; episodic use of NSAIDs and salicylates for joint pain or musculoskeletal disorders. All topical agents should be used with strict instructions for application as well as maximum number of applications per day to obtain the desired benefit and avoid potential toxicity.

(c). Dosing and Time to Therapeutic Effect: all topical agents should be prescribed with clear instructions for application and maximum number of applications per day to obtain the desired benefit and avoid potential toxicity. For most patients, the effects of long-term use are unknown. Thus, episodic use may be preferred for some agents.

(d). Side Effects: localized skin reactions may occur, depending on the medication agent used.

(e). Topical Agents:

(i). Capsaicin: As of the time of this guideline writing, formulations of capsaicin have been FDA approved for management of pain associated with post-herpetic neuralgia. Capsaicin offers a safe and effective alternative to systemic NSAID therapy. Although it is quite safe, the local stinging or burning sensation that typically dissipates with regular use, usually after the first 7 to 10 days of treatment, limits effective use of capsaicin. Patients should be advised to apply the cream on the affected area with a plastic glove or cotton applicator and to avoid inadvertent contact with eyes and mucous membranes.

[a]. There is good evidence that low dose capsaicin (0.075 percent) applied four times per day will decrease pain up to 50 percent. There is strong evidence that a single application of eight percent capsaicin is more effective than a control preparation of 0.04 percent capsaicin for up to 12 weeks. However, there may be a need for frequent application, and it is not known whether subsequent applications of capsaicin are likely to be as effective as the first application. There is some evidence that in patients who are being treated with capsaicin 8 percent patches, two methods of pre-treatment are equally effective in controlling application pain and in enabling patients to tolerate the patch: topical four percent lidocaine cream applied to the area for one hour before placement of the capsaicin patch and 50 mg oral tramadol taken 30 minutes before patch placement.

(ii). Clonidine: There is good evidence that topical clonidine gel 0.1 percent is likely to alleviate pain from diabetic peripheral neuropathy in patients who display a nociceptive response to the application of 0.1 percent capsaicin applied to the pretibial area. It is likely that patients who do not display a pain response to pretibial capsaicin are not likely to have a clinically meaningful analgesic response to clonidine gel. It is unknown if this screening test applies to other types of neuropathic pain. Clonidine gel may be used for neuropathic pain.

[a]. Lofexidine (Lucemyra) is now available and indicated for mitigation of opioid withdrawal symptoms to facilitate abrupt discontinuation in adults. This is necessary to block or reduce life threatening side effects of opioid withdrawal. This drug will be beneficial in drug treatment centers and for physicians finding necessity to abruptly stop opioid medication.

(iii). Ketamine and Tricyclics: Topical medications, such as the combination of ketamine and amitriptyline, have been proposed as an alternative treatment for neuropathic disorders including CRPS. A study using a 10 percent concentration showed no signs of systemic absorption. This low-quality study demonstrated decreased allodynia at 30 minutes for some CRPS patients. However, as of the time of this guideline writing, neither tricyclic nor ketamine topicals are FDA approved for topical use in neuropathic pain. Furthermore, there is good evidence that neither two percent topical amitriptyline nor 1 percent topical ketamine reduces neuropathic pain syndromes. Despite the lack of evidence, it is physiologically possible that topical tricyclics and a higher dose of ketamine could have some effect on neuropathic pain. Other less expensive topicals and compounds, including over-the-counter, should be trialed before more expensive compounds are ordered. The use of topical tricyclics and/or ketamine should be limited to patients with neuritic and/or sympathetically mediated pain with documented supporting objective findings such as allodynia and/or hyperalgesia. Continued use of these agents beyond the initial prescription requires documentation of effectiveness, including functional improvement, and/or decreased use of other medications, particularly decreased use of opioids or other habituating medications.

(iv). Lidocaine: As of the time of this guideline writing, formulations of lidocaine (patch form) have been FDA approved for pain associated with post-herpetic neuralgia. Evidence is mixed for long-term use of lidocaine topically. Physicians should always take into account the blood level that may be achieved with topical use as toxic levels have been reported and there is variability and systemic absorption among individuals. There is good evidence that lidocaine five percent plasters, applied for up to 12 hours to the lower extremities of patients with post-herpetic neuralgia and diabetic painful neuropathy, is non-inferior to pregabalin for the same indications. The topical lidocaine is associated with significantly fewer drug-related adverse events over four weeks of observation. There is some evidence that a five percent lidocaine patch may be used as a secondary option for patients with focal neuropathic pain. A 30 to 50 percent pain reduction may be achieved in those who tolerate the patch. Up to three patches may be used simultaneously for 12 hours per day. It should be applied only to intact skin. Metered dose eight percent pump sprays have also been used and usually require a three times per day reapplication. There is some evidence that the eight percent sprays are effective for short-term, two-week use. However, the effects of long-term use are unknown.

(v). Topical Salicylates and Nonsalicylates: have been shown to be effective in relieving pain in acute musculoskeletal conditions and single joint osteoarthritis. Topical salicylate and nonsalicylates achieve tissue levels

that are potentially therapeutic, at least with regard to COX inhibition.

[a]. There is insufficient evidence to support the use of topical rubefacients containing salicylates for acute injuries or chronic conditions. They seem to be relatively well tolerated in the short-term, based on limited data. The amount and quality of the available data mean that uncertainty remains about the effects of salicylate-containing rubefacients.

[b]. There is good evidence that diclofenac gel (Voltaren, Solaraze) reduces pain and improves function in mild-to-moderate hand osteoarthritis. There is good evidence that topical diclofenac and ketoprofen are more effective than placebo preparations for purposes of relieving pain attributable to knee osteoarthritis. There is good evidence that topical NSAIDs probably reduce the risk of GI adverse effects by approximately one-third compared to oral NSAIDs. Topical diclofenac does not appear to affect the anti-platelet properties of aspirin unlike the oral version. The topical solution of two percent sodium diclofenac applied thrice a day is equal to 1.5 percent four times per day.

[c]. Diclofenac gel has been FDA approved for acute pain due to minor strains, pains, and contusions and for relief of pain due to osteoarthritis of the joints amenable to topical treatment, such as those of the knees, shoulders, and hands. It is likely that other NSAIDs would also be effective topically. Thus, topical NSAIDs are permitted when patients show functional improvement.

[d]. Other than local skin reactions, the side effects of therapy are minimal, although not non-existent. The usual contraindications to use of these compounds needs to be considered. Local skin reactions are rare and systemic effects are even less common. Their use in patients receiving warfarin therapy may result in alterations in bleeding time. Overall, the low level of systemic absorption can be advantageous. This allows the topical use of these medications when systemic administration is relatively contraindicated, such as is the case in patients with hypertension, cardiac failure, or renal insufficiency. Both topical salicylates and NSAIDs are appropriate for many chronic pain patients. However, in order to receive refills, patients should demonstrate increased function, decreased pain, or decreased need for oral medications.

(vi). Other Compounded Topical Agents: At the time of writing this guideline, no studies identified evidence for the effectiveness of compounded topical agents other than those recommended above. Therefore, other compounded topical agents are not generally recommended. In rare cases, they may be appropriate for patients who prefer a topical medication to chronic opioids or who have allergies or side effects from other more commonly used oral agents.

(vii). Prior authorization is required for all agents that have not been recommended above.

xi. Other Agents:

(a). Glucosamine: There is good evidence that glucosamine does not improve pain related disability in those with chronic low back pain and degenerative changes on radiologic studies; therefore, it is not recommended for chronic lower spinal or non-joint pain. For chronic pain related to joint osteoarthritis, see specific extremity guidelines. Glucosamine should not be combined with chondroitin as it is ineffective.

(b). Oral Herbals: There is insufficient evidence due to low quality studies that an oral herbal medication, Compound Qishe Tablet, reduced pain more than placebo. There is also insufficient evidence that Jingfukang and a topical herbal medicine, Compound Extractum Nucis Vomicae, reduced pain more than Diclofenac Diethylamine Emulgel. Further research is very likely to change both the effect size and our confidence in the results. Currently, no oral herbals are recommended.

(c). Vitamin D: A large beneficial effect of vitamin D across different chronic painful conditions is unlikely. Therefore, it is not recommended.

(d), Alpha-Lipoic Acid: An adequate meta-analysis shows that there is some evidence that alpha-lipoic acid at a dose of 600 mg per day may reduce the symptoms of painful diabetic neuropathy in the short term of three to five weeks. The effect of the intravenous route appears to be greater than that of the oral route, but the oral route may have a clinically relevant effect. Doses of 1200 or 1800 mg have not been shown to have additional therapeutic benefit. This medication may be used for neuropathic pain.

11. Non-Invasive Brain Stimulation: This has been proposed as a treatment for chronic pain. Varieties include repetitive transcranial magnetic stimulation (rTMS), cranial electrotherapy stimulation (CES), and transcranial direct current stimulation (tDCS).

a. Single doses of high-frequency rTMS of the motor cortex may have small short-term effects on chronic pain. It is likely that multiple sources of bias may exaggerate this observed effect. The effects do not meet the predetermined threshold of minimal clinical significance and multiple-dose studies do not consistently demonstrate effectiveness. The available evidence suggests that low-frequency rTMS, rTMS applied to the pre-frontal cortex, CES, and tDCS are not effective in the treatment of chronic pain.

b. Therefore, these devices are not recommended due to lack of evidence and safety concerns.

12. Opioid Addiction Treatment: The DSM-V renames opioid addiction as substance use disorder (SUD) and classifies opioid use disorder according to categories defined as mild (two to three features of stated criteria), moderate (four to five features of stated criteria), or severe (six to seven features of stated criteria).

a. Definitions:

i. Opioid physical dependence: opioid withdrawal symptoms (withdrawals) which occur as a result of abrupt discontinuation of an opioid in an individual who became habituated to the medication or through administration of an antagonist. Opioid physical dependency is not in and of itself consistent with the diagnosis of addiction/substance use disorder.

ii. Tolerance: a physiologic state caused by the regular use of an opioid in which increasing doses are needed to maintain the same affect. In patients with "analgesic tolerance," increased doses of the opioid may be needed to maintain pain relief.

iii. Opioid misuse: the utilization of opioid medications outside of the prescribing instructions for which

it was originally prescribed. Misuse may be as innocuous as taking slightly more or less medications than prescribed to crushing or snorting an opioid.

iv. Opioid abuse: the use of any substance for a non-therapeutic purpose or the use of a medication for purposes other than those for which the agent is prescribed. Abuse includes intentional use for altering a state of consciousness. Abuse frequently affects the individual's ability to fulfill normal societal roles, resulting in difficulty with employment, or legal, or interpersonal problems.

v. Pseudo-addiction: addiction-like behaviors consistent with overutilization of medications outside of the prescribing provider's instructions and recommendations for the express purpose of improved pain management. This occurs when a patient believes there is insufficient pain relief. Once pain is adequately managed with a higher dose of medications than initially prescribed or with improved therapy, the behaviors consistent with addiction are discontinued.

vi. Addiction: a primary chronic neurobiological disease influenced by genetic, psychosocial, and/or environmental factors. It is characterized by impaired control over drug use, compulsive drug use, and continued drug use despite harm and because of craving.

b. Substance use disorder/addiction in the workers' compensation system can be encountered in three ways. First, the individual has an active substance use disorder at the time of injury. The party responsible for treatment of the substance use disorder may be outside of the workers' compensation system. However, if there is no other paying party and the treatment is necessary in order to recover from the current workers' compensation injury, treatment may be covered by the workers' compensation payor. The second possibility is that a patient with a substance use disorder, who is currently in recovery at the time of the workers' compensation injury, relapses as a result of the medications which are prescribed by the treating provider. This patient may become re-addicted and will manifest substance use disorder characteristics and symptoms consistent with the diagnosis. The third possibility is an individual with no history of substance use disorder who is injured as a result of an occupational accident. This particular individual becomes "addicted" to the medications as a result of the medications being prescribed. This is most likely to occur with the use of opioids but could possibly occur with use of other medications such as benzodiazepines or specific muscle relaxants such as carisoprodol.

c. If the treating provider is suspicious of a patient exhibiting opioid misuse, abuse, or addiction, the patient should preferably be evaluated by a specialist in the field of addiction medicine. It would be the responsibility of the specialist to identify medication misuse, abuse, addiction, or pseudo-addiction and to determine what additional treatment, if any, needs to be implemented.

d. During the initial injury evaluation, an authorized treating provider should obtain an addiction history as part of a complete history and physical. If it is determined at the time of the initial evaluation by the treating provider that there is the pre-existing condition of active SUD or history of opioid addiction/SUD, then it is prudent to consider an evaluation with an addiction medicine physician prior to issuing opioid treatments if possible. The addiction medication specialist will be able to counsel the patient accordingly, determine medication needs, and determine the appropriate follow-up to hopefully avoid aggravation or relapse of substance abuse disorders which will complicate the recovery process. Many patients exhibit opioid misuse, opioid abuse, and pseudo-addictive behaviors. These issues can be managed once the problem is identified and a discussion is carried out with the patient regarding these abnormal behaviors.

e. Once the diagnosis of SUD is confirmed, an addiction medicine trained physician familiar with addiction treatment should assist in co-managing the patient's care and the problematic drug prescriptions. This co-management technique is critical for the injured worker with a SUD diagnosis during the initial injury phase, recovery, and stabilization phase until he/she has reached MMI. If it is determined during the active treatment and recovery phase that there is no longer a need for opioids, then the addiction medicine trained physician will be in charge of the transition from use of opioids to safe taper/discontinuation of the opioids while monitoring for relapse of addiction.

f. Co-management is equally important for managing the chronic pain patient that has a concomitant opioid addiction/SUD with a legitimate need for analgesic medications. The addiction medicine trained physician in all likelihood will monitor the patient more closely including judicious prescribing, PMP reviews, urine drug testing, drug counts, and clarifying functional improvement as a result of the medications prescribed and frequent follow-ups which may initially seem excessive.

g. All abstinence addiction treatment begins with a discontinuation of the addicting substance; this is referred to as the detox phase of the treatment and can be performed in a number of ways. However, detoxification alone is not considered adequate addiction treatment. Detoxification is simply a method of discontinuing the medications in an effort to stabilize the patient prior to more extensive treatment.

h. Phase 1:

i. The methods of detoxification can include: abrupt discontinuation - not recommended due to high rate of relapse due to craving and withdrawal symptoms; slow but progressive taper - 10 percent of total dosage per week as an outpatient treatment; conversion to a different medication opioid (buprenorphine/naloxone) to enable a more stable and comfortable taper occasionally done as an outpatient but commonly done as part of a more comprehensive treatment program, and; rapid detox under anesthesia - not recommended due to relatively high incidence of complications and high expense. The methodology chosen for phase 1 detoxification is left up to the specialist and is simply the initial phase of stabilization prior to considering the need for a phase 2 of addiction treatment program.

i. Phase 2:

i. Once a patient is safely through the detoxification phase and the condition is stabilized regardless of the method chosen, then successful addiction treatment begins generally utilizing a number of techniques to prevent the return to active substance use and addiction. This phase of treatment generally involves teaching the patient to develop control over the compulsions,

psychosocial factors, and associated mental health issues which are critical to maintain abstinence. This phase of treatment is generally managed in a 30 - 90 day non-hospital residential treatment program. The treatment prescribed in a residential treatment program generally includes individual and group therapy with certified addiction counselors and psychologists. Phase 2 of treatment may or may not be combined with opioid substitution therapy with medications such as buprenorphine/naloxone (partial agonist of the opioid receptor), methadone, or naltrexone. Injectable depot naltrexone may be used.

ii. Buprenorphine/naloxone therapy utilizes a sublingual partial opioid receptor agonist which binds to the opioid receptor, reducing craving and resulting in analgesia when necessary. Due to its high affinity to the opioid receptor, it blocks the effect of non-approved additional opioid use. The buprenorphine is administered either sublingually or, when FDA approved, as a subcutaneous implant. Naloxone was added to the sublingual drug formulation to discourage using this medication intravenously. With intravenous administration of buprenorphine/naloxone, the naloxone becomes absorbed neutralizing the effects of opioids. Buprenorphine/naloxone can be an excellent option in patients requiring analgesic medications with a prior history of opioid addiction because buprenorphine results in less sedation and euphoria then the other standard schedule II opioid medications. Prescribing Suboxone film (buprenorphine/naloxone) for addiction purposes can only be done by a physician and requires special training and certification. Once special training is completed, an application is filed with the DEA to obtain a special DEA license referred to as an X-DEA number. This X-DEA number needs to accompany all prescription for Suboxone when delivered to the pharmacy and identifies the prescription is being issued specifically for the treatment of addiction/SUD.

iii. Methadone may be an option if the patient is admitted to a federally licensed methadone treatment facility where a daily dose of medication is administered and the patient continues to utilize therapeutic treatments/cognitive behavioral therapies as noted above. There is strong evidence that in patients being treated with opioid agonists for heroin addiction, methadone is more successful than buprenorphine at retaining patients in treatment. The rates of opiate use, as evidenced by positive urines, are equivalent between methadone and buprenorphine. The methodology and rationale for methadone treatment is to saturate the opioid receptors with methadone (a slow onset and prolonged duration opioid), reducing the opioid craving. The majority of the opioid receptors are bound by the methadone leaving very few unbound opioid receptors available in the event additional opioids are utilized in an attempt to achieve the euphoric effect. When the patient is stabilized on a methadone dose determined by the federally licensed methadone clinic and their associated physicians, the patient's drug-seeking, craving, legal issues, and attempts to utilize non-approved medications is reduced. Patients will frequently return to more productive lives free of the compulsions, cravings, and legal issues and are usually able to maintain jobs and improve family dynamics.

iv. Other medications which may be useful and can be utilized during the phase 2 and 3 treatment include opioid receptor antagonists such as naltrexone (ReVia, Vivitrol) which produces no euphoria. The purpose of naltrexone therapy is to add an additional layer of protection and treatment for the patients by allowing them to receive a daily oral dose of naltrexone (ReVia) or a monthly injection of naltrexone (Vivitrol). Administration of naltrexone will bind with very high affinity to the opioid receptor resulting in the opioid receptors being non-responsive to other opioid utilization thereby preventing any euphoric response or reinforcement with unsanctioned opioid use. This treatment method can be problematic in an individual receiving intramuscular naltrexone therapy especially if that individual requires surgery and post-operative pain management because the analgesics needed for post-operative pain management will be significantly less effective because of the prolonged opioid antagonist properties of the naltrexone.

j. In Summary:

i. Medication assisted treatment for patients addicted to opioids is the treatment recommended by most experts. A Canadian evidence-based guideline recommends long-term treatment with buprenorphine/naloxone, or methadone for some patients, based on the high relapse rate without medication assistance. The likelihood of relapse in the workers' compensation population for individuals who have become addicted through prescription drug use is unknown. Buprenorphine implants are likely equally effective as sublingual buprenorphine for preventing illicit opioid use. Implants are significantly costlier. Naltrexone treatment, an opioid agonist, has also been used to maintain abstinence. It can be provided in monthly injections or orally three times per week. Choice of these medications should be made by the addiction specialist.

k. Phase 3:

i. Aftercare begins after discharge from the non-hospital residential treatment program and is designed for long-term management of addiction. This phase is potentially the time when relapse is most likely to occur if the patient has not developed significant skills necessary to deal with the compulsions, cravings, and associated psychosocial factors contributing to SUD. Long-term strategies include: intense outpatient programs (IOP); group therapy/meetings such as Narcotics Anonymous, and; residential communities (RC) which are groups of patients living together in a community for up to six months for the express purpose of maintaining abstinence from their drug of choice but at the same time transitioning and learning how to live in the general community. Residential communities are extremely useful to give patients an opportunity to be reintroduced to employment and psychosocial interactions with family and friends while maintaining contact with the community supporting their addiction recovery. In addition, phase 3 medication treatment may include utilization of opioid substitution therapy (buprenorphine/naloxone) or opioid receptor antagonist therapy as noted above.

ii. It must be noted that relapse is common despite the utilization of intense cognitive behavioral therapy, addiction treatment strategies, and long-term phase 3 treatment and medication. Risk monitoring should be

continued, including checking for behavioral aberrancies, checking the PMP, and drug testing. Additional treatment or readmission for repeat treatment is not uncommon.

13. Opioid/Chemical Treatment Program Requirements:

a. Chemical dependency for workers' compensation issues will usually be related to opioids, anxiolytics, or hypnotics as prescribed for the original workers' compensation injury. Chemical dependency should be treated with specific programs providing medical and psychological assessment, treatment planning, and individual as well as group counseling and education. Established functional goals which are measurable, achievable, and time specific are required.

b. Inpatient or outpatient programs may be used, depending upon the level of intensity of services required. Formal inpatient treatment programs are appropriate for patients who have more intense (e.g., use extraordinarily excessive doses of prescription drugs to which they have developed tolerance) or multiple drug abuse issues (e.g., benzodiazepines and/or alcohol) and those with complex medical conditions or psychiatric issues related to drug misuse. A medical physician with appropriate training and preferably board certified in addiction medicine should provide the initial evaluation and oversee the program. Full primary assessment should include behavioral health assessment; medical history; physical examination; mental status; current level of functioning; employment history; legal history; history of abuse, violence, and risk taking behavior; education level; use of alcohol, tobacco and other drugs; and social support system. The initial medical exam should include appropriate laboratory testing such as liver function, screening for sexual diseases, etc.

c. Addiction specialists, alcohol and drug counselors, psychologists, psychiatrists, and other trained health care providers as needed, are involved in the program. Peer and group support is an integral part of the program and families are encouraged to attend. Peer support specialists should receive competency-based training. A designated individual is assigned to each worker to assist in coordinating care. There should be good communication between the program and other external services, external health care providers, Al-Anon, Alcoholics Anonymous (AA), and pain medicine providers. Drug screening should be performed as appropriate for the individual, at least weekly during the initial detoxification and intensive treatment phases. Quarterly random drug screens per year should be completed for those that are being prescribed opioid medications and drug diversion control methods should be in place.

d. Clear withdrawal procedures are delineated for voluntary, against medical advice, and involuntary withdrawal. Withdrawal programs must have a clear treatment plan and include description of symptoms of medical and emotional distress, significant signs of opioid withdrawal, and actions taken. All programs should have clear direction on how to deal with violence in order to assure safety for all participants. Transition and discharge should be carefully planned with full communication to outside resources. Duration of inpatient programs are usually four weeks while outpatient programs may take 12 weeks.

e. Drug detoxification may be performed on an outpatient or inpatient basis. Detoxification is unlikely to succeed in isolation when not followed by prolonged chemical dependency treatment. Isolated detoxification is usually doomed to failure with very high recidivism rates.

f. Both ultra-rapid and rapid-detoxification are not recommended due to possible respiratory depression and death and the lack of evidence for long range treatment success. Refer to Opioid Addiction Treatment, for more specific details on treatment plans.

g. Tapering opioids on an outpatient basis requires a highly motivated patient and diligent treatment team and may be accomplished by decreasing the current dose 10 percent per day or per week. Tapering programs under the supervision of physicians with pain expertise may proceed more aggressively. Tapering should be accompanied by addiction counseling. Failing a trial of tapering, a patient should be sent to a formal addiction program. When the dose has reached one-third of the original dose, the taper should proceed at half or less of the initial rate. Doses should be held or possibly increased if severe withdrawal symptoms, pain, or reduced treatment failure otherwise occurs. This method is tedious, time consuming, and more likely to fail than more rapid and formalized treatment programs.

h. Time Frames for Opioid / Chemical Treatment Programs

i. Time to Produce Effect: three to four weeks

ii. Frequency: Full time programs - no less than five hours/day, five days/week; part time programs - four hours/day for two to three days per week.

iii. Optimum Duration: 2 to 12 weeks at least two to three times a week. With follow-up visits weekly or every other week during the first one to two months after the initial program is completed.

iv. Maximum Duration: four months for full time programs and up to six months for part-time programs. Periodic review and monitoring thereafter for one year, additional follow-up based upon the documented maintenance of functional gains.

14. Orthotics/prosthetics/equipment

a. Devices and adaptive equipment may be necessary in order to reduce impairment and disability, to facilitate medical recovery, to avoid re-aggravation of the injury, and to maintain maximum medical improvement. Indications would be to provide relief of the industrial injury, prevent further injury and control neurological and orthopedic injuries for reduced stress during functional activities. In addition, they may be used to modify tasks through instruction in the use of a device or physical modification of a device. Equipment needs may need to be reassessed periodically. Refer to Return-to-work for more detailed information.

b. - c. …

d. For chronic pain disorders, equipment such as foot orthoses may be helpful. The injured worker should be educated as to the potential harm from using a lumbar support for a period of time greater than which is prescribed. Harmful effects include de-conditioning of the trunk musculature, skin irritation, and general discomfort. Use of cervical collars is not recommended for chronic cervical myofascial pain. Special cervical orthosis and/or equipment

may have a role in the rehabilitation of a cervical injury such as those injuries to a cervical nerve root resulting in upper extremity weakness or a spinal cord injury with some degree of paraparesis or tetraparesis or post spinal fusion surgery. Use of such devices would be in a structured rehabilitation setting as part of a comprehensive rehabilitation program.

e. - f. …

15. Personality/psychological/psychiatric/psychosocial intervention

a. Psychosocial treatment is a well-established therapeutic and diagnostic intervention with selected use in acute pain problems, and more widespread use in sub-acute and chronic pain populations. Psychosocial treatment is recommended as an important component in the total management of a patient with chronic pain and should be implemented as soon as the problem is identified.

b. Studies have noted that there is not a direct connection between impairment and disability nor is there a direct connection been lumbar imaging and pain. It appears that the lack of connections is likely accounted for by differences among individuals in level of depression, coping strategies, or other psychological distress.

c. There is some evidence that in the setting of chronic low back pain when disc pathology is present, a high degree of anxiety or depressive symptomatology is associated with relatively less pain relief in spite of higher opioid dosage than when these symptoms are absent. Therefore, psychological issues should always be screened for and treated in chronic pain patients.

d. Psychological treatments for pain can be conceptualized as having a neuropsychological basis. These treatments for pain have been shown to decrease physiological reactivity to stress, alter patterns of brain activation as demonstrated by functional MRI (fMRI), alter the volume of grey matter and other structures in the brain, and alter blood flow patterns in the brain. The most researched psychological treatment is Cognitive Behavioral Therapy (CBT) which is summarized in this section.

e. The screening or diagnostic workup should have clarified and distinguished between pre-existing, aggravated, and/or purely causative psychological conditions. Therapeutic and diagnostic modalities include, but are not limited to, individual counseling, and group therapy. Treatment can occur within an individualized model, a multi-disciplinary model, or a structured pain management program.

f. A psychologist with a PhD, PsyD, EdD credentials, or a psychiatric MD/DO may perform psychosocial treatments. The following professionals may also perform treatment in consultation with a psychologist with a PhD, PsyD, EdD, or Psychiatric MD/DO: other licensed mental health providers, licensed health care providers with training in CBT, or providers certified as CBT therapists with experience in treating chronic pain disorders in injured workers.

g. If a diagnosis consistent with the standards of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM) or most current ICD has been determined, the patient should be evaluated for the potential need for psychiatric medications. Use of any medication to treat a diagnosed condition may be ordered by an authorized treating physician or by the consulting psychiatrist. Visits for management of psychiatric medications are medical in nature and are not a component of psychosocial treatment. Therefore, separate visits for medication management may be necessary, depending on the patient and medications selected.

h. Psychosocial interventions include psychotherapeutic treatments for behavioral health conditions, as well as behavioral medicine treatments. These interventions may similarly be beneficial for patients without psychiatric conditions but who may need to make major life changes in order to cope with pain or adjust to disability. Examples of these treatments include Cognitive Behavioral Therapy (CBT), relaxation training, mindfulness training, and sleep hygiene psychoeducation.

i. CBT refers to a group of psychological therapies that are sometimes referred to by more specific names such as Rational Emotive Behavior Therapy, Rational Behavior Therapy, Rational Living Therapy, Cognitive Therapy, and Dialectic Behavior Therapy. Variations of CBT methods can be used to treat a variety of conditions, including chronic pain, depression, anxiety, phobias, and post-traumatic stress disorder (PTSD). For patients with multiple diagnoses, more than one type of CBT might be needed. The CBT used in research studies is often "manualized CBT," meaning that the treatment follows a specific protocol in a manual. In clinical settings, CBT may involve the use of standardized materials, but it is also commonly adapted by a psychologist or psychiatrist to the patient's unique circumstances. If the CBT is being performed by a non-mental health professional, a manual approach would be strongly recommended.

j. CBT must be distinguished from neuropsychological therapies used to teach compensatory strategies to brain injured patients, which are also called "cognitive therapy." Many other clinical providers also provide a spectrum of cognitive interventions including: motivational interviewing, pain neuroscience education, and other interventions aimed at patient education and change in behavior. Refer to Therapy-Active, for details.

k. It should be noted that most clinical trials on CBT exclude subjects who have significant psychiatric diagnoses. Consequently, the selection of patients for CBT should include the following considerations. CBT is instructive and structured, using an educational model with homework to teach inductive rational thinking. Because of this educational model, a certain level of cognitive ability and literacy is assumed for most CBT protocols. Patients who lack the cognitive and educational abilities required by a CBT protocol are unlikely to be successful. Further, given the highly structured nature of CBT, it is more effective when a patient's circumstances are relatively stable. For example, if a patient is about to be evicted, is actively suicidal, or is coming to sessions intoxicated, these matters will generally preempt CBT treatment for pain and require other types of psychotherapeutic response. Conversely, literate patients whose circumstances are relatively stable, but who catastrophize or cope poorly with pain or disability, are often good candidates for CBT for pain. Similarly, literate patients whose circumstances are relatively stable, but who exhibit unfounded medical phobias, are often good candidates for CBT for anxiety.

l. CBT is often combined with active therapy in an interdisciplinary program, whether formal or informal. It must be coordinated with a psychologist or psychiatrist. CBT can be done in a small group or individually, and the usual number of treatments varies between 8 and 16 sessions.

m. Before CBT or other psychological treatments are performed, the patient must have a full psychological evaluation. The CBT program must be done under the supervision of a psychologist with a PhD, PsyD, or EdD or a psychiatric MD/DO.

n. Psychological disorders associated with distress and dysfunction are common in chronic pain. One study demonstrated that the majority of patients who had failed other therapy and participated in an active therapy program also suffered from major depression. However, in a program that included CBT and other psychological counseling, the success rate for return to work was similar for those with and without an ICD diagnosis. This study further strengthens the argument for having some psychological intervention included in all chronic pain treatment plans.

o. Hypnosis

i. The term hypnosis can encompass a number of therapy types including relaxation, imagery, focused attention, interpersonal processing, and suggestion. Hypnosis has been used in depression and for distress related to medical procedures.

ii. A number of studies support the use of hypnosis for chronic pain management. At least one pilot study suggested that hypnotic cognitive therapy assists recovery in chronic pain. Other imaging studies support the concept that hypnosis can actively affect cortical areas associated with pain. Thus, this therapy may be used at the discretion of the psychologist. A more recent meta-analysis was completed which purported to show evidence for hypnosis. However, the heterogeneity of the studies included prevents this study from meeting our standards for evidence.

iii. For all psychological/psychiatric interventions, an assessment and treatment plan must be provided to the treating physician prior to initiating treatment. The treatment plan must include specific, measurable, achievable, and realistic behavioral goals, with specific interventions and time frames to achieve those goals. The report should also address pertinent issues such as pre-existing, exacerbated or aggravated, and/or causative issues, as well as a realistic functional prognosis.

p. Time Frames for Cognitive Behavioral Therapy (CBT) or Similar Treatment

i. Time to Produce Effect: 12-16 hours of treatment (one hour individual sessions or alternately one to two hour group sessions).

ii. Frequency: one to two times weekly for the first two weeks, decreasing to one time per week thereafter.

iii. Maximum Duration: 24 one hour sessions.

iv. Note: Before CBT or other psychological/psychiatric interventions are done, the patient must have a full psychological evaluation. The CBT program must be done under the supervision of a psychologist with a PhD, PsyD, or EdD, or a Psychiatric MD/DO.

q. Time Frames for Other Psychological/Psychiatric Interventions

i. Time to Produce Effect: six to eight weeks.

ii. Frequency: one to two times weekly for the first two to four weeks (excluding hospitalization, if required), decreasing to one time per week for the second month. Thereafter, two to four times monthly with the exception of exacerbations, which may require increased frequency of visits. Not to include visits for medication management.

iii. Optimum Duration: two to six months.

iv. Maximum Duration: Commonly six months for most cases. Extensions under conditions as noted below. (Not to include visits for medication management). For select patients (e.g., ongoing medical procedures or complications, medication dependence, diagnostic uncertainty, delays in care due to patient or systemic variables), less intensive but longer supervised psychological/psychiatric treatment may be required. If counseling beyond six months is indicated, the nature of the psychosocial risks being managed or functional progress must be documented. Progress notes for each appointment should include goal setting, with specific, measurable, achievable, and realistic goals, and a timetable with an expected end point. In complex cases, goal setting may include maintaining psychological equilibrium while undergoing invasive procedures.

16. Restriction of activities.

a. Continuation of normal daily activities is the recommendation for most patients since immobility will negatively affect rehabilitation. Prolonged immobility results in a wide range of deleterious effects, such as a reduction in aerobic capacity and conditioning, loss of muscle strength and flexibility, increased segmental stiffness, promotion of bone demineralization, impaired disc nutrition, and the facilitation of the illness role.

b. Some level of immobility may occasionally be appropriate which could include splinting/casting or as part of a structured schedule that includes energy conservation or intentional rest breaks between activities. While these interventions may have been ordered in the acute phase, the provider should be aware of their impact on the patient's ability to adequately comply with and successfully complete rehabilitation. Activity should be increased based on the improvement of core strengthening.

c. Patients should be educated regarding the detrimental effects of immobility versus the efficacious use of limited rest periods. Adequate rest allows the patient to comply with active treatment and benefit from the rehabilitation program. In addition, complete work cessation should be avoided, if possible, since it often further aggravates the pain presentation and promotes disability. Modified return-to-work is almost always more efficacious and rarely contraindicated in the vast majority of injured workers.

17. Return-to-work

a. Return to work and/or work-related activities whenever possible is one of the major components in treatment and rehabilitation. Return-to-work is a subject that should be addressed by each workers' compensation

provider at the first meeting with the injured employee, and be updated at each additional visit. A return-to-work format should be part of a company's health plan, knowing that return-to-work can decrease anxiety, reduce the possibility of depression, and reconnect the worker with society.

b. A prolonged time off work is likely to lead to chronic disability. In complex cases, experienced nurse case managers may be required to assist in return-to-work. Other services, including psychological evaluation and/or treatment, jobsite analysis, and vocational assistance may be employed.

c. Two counseling sessions with an occupational physician, and work site visit if necessary, may be helpful for workers who are concerned about returning to work.

d. At least one study suggests that health status is worse for those patients who do not return to work than those who do. Self-employment and injury severity predict return to work. Difficulty with pain control, ADLs, and anxiety and depression were common among patients who did not return to work.

e. The following should be considered when attempting to return an injured worker with chronic pain to work.

i. Job History Interview: An authorized treating physician should perform a job history interview at the time of the initial evaluation and before any plan of treatment is established. Documentation should include the workers' job demands, stressors, duties of current job, and duties of job at the time of the initial injury. In addition, cognitive and social issues should be identified and treatment of these issues should be incorporated into the plan of care.

ii. Coordination of Care: Management of the case is a significant part of return-to-work and may be the responsibility of an authorized treating physician, occupational health nurse, risk manager, or others. Case management is a method of communication between the primary provider, referral providers including occupational and physical therapists, insurer, employer, and employee. Because case management may be coordinated by a variety of professionals, the case manager should be identified in the medical record.

iii. Communication: is essential between the patient, authorized treating physician, employer, and insurer. Employers should be contacted to verify employment status, job duties and demands, and policies regarding injured workers. In addition, availability of temporary and permanent restrictions, for what duration, as well as other placement options should be discussed and documented. All communications in the absence of the patient are required to be documented and made available to the patient.

iv. Establishment of Return-To-Work Status: Return-to-work for persons with chronic pain should be thought of as therapeutic, assuming that work is not likely to aggravate the basic problem or increase the discomfort. In some cases of chronic pain, the worker may not be currently working or even employed. The goal of return-to-work would be to return the worker to any level of employment with the current employer or to return them to any type of new employment. Temporary restrictions may be needed while recommended ergonomic or adaptive equipment is obtained; employers should obtain recommended equipment in a timely manner.

v. Establishment of Activity Level Restrictions: A formal job description for the injured worker is necessary to identify physical demands at work and assist in the creation of modified duty. A Job Site Evaluation may be utilized to identify tasks such as pushing, pulling, lifting, reaching, grasping, pinching, sitting, standing, posture, and ambulatory distance and terrain. If applicable, a job site evaluation may also be utilized to assess temperature, air flow, noise and the number of hours that may be worked per day in a specific environment. Also refer to Section, Jobsite Evaluation and Alterations. Due to the lack of predictability regarding exacerbation of symptoms affecting function, an extended, occupationally focused functional capacity evaluation may be necessary to determine the patient's tolerance for job type tasks over a continued period of time. Job requirements should be reviewed for the entire eight hours or more of the working day. When prescribing the FCE, the physician must assess the probability of return to work against the potential for exacerbation of the work related condition. Work restriction assigned by the authorized treating physician may be temporary or permanent. The case manager should continue to seek out modified work until restrictions become less cumbersome or as the worker's condition improves or deteriorates. Ergonomic changes recommended by the worksite evaluation should be put in place.

(a). Between one and three days after the evaluation, there should be a follow-up evaluation by the treating therapist and/or an authorized treating physician to assess the patient's status. Patients should be encouraged to report their status post FCE.

vi. Rehabilitation and Return-to-work: As part of rehabilitation, every attempt should be made to simulate work activities so that an authorized treating physician may promote adequate job performance. The use of ergonomic or adaptive equipment, therapeutic breaks, and interventional modalities at work may be necessary to maintain employment.

vii. Vocational Assistance: Formal vocational rehabilitation is a generally accepted intervention and can assist disabled persons to return to viable employment. Assisting patients to identify vocational goals will facilitate medical recovery and aid in the maintenance of MMI by 1) increasing motivation towards treatment and 2) alleviating the patient's emotional distress. Physically limited patients will benefit most if vocational assistance is provided during the interdisciplinary rehabilitation phase of treatment. To assess the patient's vocational capacity, a vocational assessment utilizing the information from occupational and physical therapy assessments may be performed. This vocational assessment may identify rehabilitation program goals, as well as optimize both patient motivation and utilization of rehabilitation resources. This may be extremely helpful in decreasing the patient's fear regarding an inability to earn a living, which can add to his/her anxiety and depression.

(a). Recommendations to Employers and Employees of Small Businesses - Employees of small businesses who are diagnosed with chronic pain may not be

able to perform any jobs for which openings exist. Temporary employees may fill those slots while the employee functionally improves. Some small businesses hire other workers and if the injured employee returns to the job, the supervisor/owner may have an extra employee. Case managers may assist with resolution of these problems, and with finding modified job tasks, or jobs with reduced hours, etc., depending upon company philosophy and employee needs.

(b). Recommendations to Employers and Employees of Mid-Sized and Large Businesses - Employers are encouraged by the OWCA to identify modified work within the company that may be available to injured workers with chronic pain who are returning to work with temporary or permanent restrictions. To assist with temporary or permanent placement of the injured worker, it is suggested that a program be implemented that allows the case manager to access descriptions of all jobs within the organization.

18. Therapy—active.

a. The following active therapies are widely used and accepted methods of care for a variety of work-related injuries. Active therapy is based on the philosophy that therapeutic exercise and/or activity are beneficial for restoring flexibility, strength, endurance, function, range of motion, and can alleviate discomfort. All active therapy plans should be made directly with patients in the interest of achieving long-term individualized goals.

b. Active therapy requires an internal effort by the individual to complete a specific exercise or task. This form of therapy requires supervision from a therapist or medical provider such as verbal, visual, and/or tactile instruction(s). Active therapy is intended to promote independence and self-reliance in managing the physical pain as well as to improve the functional status in regard to the specific diagnosis, general conditioning and well-being. At times, a provider may help stabilize the patient or guide the movement pattern but the energy required to complete the task is predominately executed by the patient. Therapy in this section should not be merely a repeat of previous therapy but should focus specifically on the individual goals and abilities of the patient with chronic pain.

c. The goal of active therapy is to teach the patient exercises that they can perform regularly on their own. Patients should be instructed to continue active therapies at home as an extension of the treatment process in order to maintain improvement levels. Follow-up visits to reinforce and monitor progress and proper technique are recommended. Home exercise can include exercise with or without mechanical assistance or resistance and functional activities with assistive devices.

d. On occasion, specific diagnoses and post-surgical conditions may warrant durations of treatment beyond those listed as "maximum." Factors such as exacerbation of symptoms, re-injury, interrupted continuity of care, need for post-operative therapy, and co-morbidities may also extend durations of care. Interventional injections require postoperative active therapy coupled with home exercise to improve function, with a reset of the recommended number of sessions, regardless of the number of therapy visits previously conducted. Specific goals with objectively measured functional improvement during treatment must be cited to justify extended durations of care. It is recommended that, if no functional gain is observed after the number of treatments under "time to produce effect" has been completed, then alternative treatment interventions, further diagnostic studies, or further consultations should be pursued.

e. Pain Neuroscience Education (PNE): an educational strategy used by physical therapists and other practitioners that focuses on teaching people in pain more about the neurobiological and neurophysiological processes involved in their pain experience, versus a focus on anatomical and pathoanatomical education. PNE helps patients develop an understanding of various pain processes including central sensitization, peripheral sensitization, inhibition, facilitation, the brain's processing of threat appraisal, and various biological systems involved in a pain experience. This reconceptualization of pain via PNE is then combined with various behavioral strategies including aerobic exercise, pacing, graded exposure, graded activity, and goal setting. PNE is likely to positively influence pain ratings, disability, fear-avoidance behaviors, pain catastrophization, and limitations in movement, pain knowledge, and healthcare utilization. PNE is recommended with active therapy for chronic pain patients.

f. The following active therapies are listed in alphabetical order:

i. …

(a). …

(b). Frequency: one to five times per week

(c). - (d). …

ii. Aquatic Therapy: is a well-accepted treatment which consists of the therapeutic use of aquatic immersion for therapeutic exercise to promote strengthening, core stabilization, endurance, range-of-motion, flexibility, body mechanics, and pain management. Aquatic Therapy is the implementation of active therapeutic procedures (individual or group) in a swimming or therapeutic pool heated to 88 to 92 degrees. The water provides a buoyancy force that lessens the amount of force of gravity applied to the body, and the pool should be large enough to allow full extremity range of motion and full erect posture. The decreased gravity effect allows the patient to have a mechanical advantage and more likely have a successful trial of therapeutic exercise. Aquatic vests, belts and other devices can be used to provide stability, balance, buoyancy, and resistance. In addition, the compression of the water against the affected extremity and ability to move easier with decreased gravity allow for resulting muscular compression against vessels improving lymphatic drainage resulting in decreased edema. Aquatic Therapy may also provide an additional stimulus to assist with desensitization.

(a). There is good evidence that aquatic exercise and land-based exercise show comparable outcomes for function and mobility among people with symptomatic osteoarthritis of the knee or hip.

(b). Indications: The therapy may be indicated for individuals who:

(i). Cannot tolerate active land-based or full-weight bearing therapeutic procedures;

(ii). Require increased support in the presence of proprioceptive deficit;

(iii). Are at risk of compression fracture due to decreased bone density;

(iv). Have symptoms that are exacerbated in a dry environment;

(v). Have a higher probability of meeting active therapeutic goals than in a dry environment.

(c). Time Frames for Aquatic Therapy

(i). Time to produce effect: four to five treatments

(ii). Frequency: three to five times per week

(iii). Optimum duration: four to six weeks

(iv). Maximum duration: six weeks

(d). After the supervised aquatics program has been established, either a self-directed aquatic program or a transition to a self-directed dry environment exercise program is recommended.

iii. Functional Activities: are well-established interventions which involve the use of therapeutic activity to enhance mobility, body mechanics, employability, coordination, and sensory motor integration.

(a). …

(b). Frequency: one to five times per week

(c). …

(d). Maximum duration: eight weeks

iv. Functional Electrical Stimulation: is an accepted treatment in which the application of electrical current to elicit involuntary or assisted contractions of atrophied and/or impaired muscles. Indications include muscle atrophy, weakness, and sluggish muscle contraction secondary to pain, injury, neuromuscular dysfunction, peripheral nerve lesion, or radicular symptoms. This modality may be prescribed for use at home when patients have demonstrated knowledge of how to self-administer and are in an independent exercise program.

(a). - (d). …

v. Neuromuscular Re-education: is a generally accepted treatment. It is the skilled application of exercise with manual, mechanical, or electrical facilitation to enhance strength, movement patterns, neuromuscular response, proprioception, kinesthetic sense, coordination, education of movement, balance and posture.

(a). There is some evidence that there is a modest benefit from adding a back school to other treatments such as NSAIDs, massage, transcutaneous electrical nerve stimulation (TENS), and other physical therapy modalities. However, a recent adequate quality systematic review found no evidence for the effectiveness of back schools for treating chronic low back pain.

(b). Indications include the need to promote neuromuscular responses through carefully timed proprioceptive stimuli, to elicit and improve motor activity in patterns similar to normal neurologically developed sequences, and improve neuromotor response with independent control.

(c). Time Frames for Neuromuscular Re-education

(i). Time to produce effect: two to six treatments

(ii). Frequency: one to three times per week

(iii). Optimum duration: four to eight weeks

(iv). Maximum duration: eight weeks

vi. Spinal Stabilization: is a generally well-accepted treatment. The goal of this therapeutic program is to strengthen the spine in its neutral and anatomic position. The stabilization is dynamic which allows whole body movements while maintaining a stabilized spine. It is the ability to move and function normally through postures and activities without creating undue vertebral stress.

(a). Time Frames for Spinal Stabilization

(i). Time to Produce Effect: four to eight treatments.

(ii). Frequency: one to three times per week.

(iii). Optimum Duration: four to eight weeks.

(iv). Maximum Duration: eight weeks.

vii. Therapeutic Exercise: with or without mechanical assistance or resistance, may include isoinertial, isotonic, isometric and isokinetic types of exercises. May also include alternative/complementary exercise movement therapy (with oversight of a physician or physical therapist).

(a). Indications include the need for cardiovascular fitness, reduced edema, improved muscle strength, improved connective tissue strength and integrity, increased bone density, promotion of circulation to enhance soft tissue healing, improvement of muscle recruitment, improved proprioception, and coordination, and increased range of motion are used to promote normal movement patterns.

(b). Yoga may be an option for motivated patients with appropriate diagnoses

(c). Therapeutic exercise programs should be tissue specific to the injury and address general functional deficits as identified in the diagnosis and clinical assessment. Patients should be instructed in and receive a home exercise program that is progressed as their functional status improves. Upon discharge, the patient would be independent in the performance of the home exercise program and would have been educated in the importance of continuing such a program. Educational goals would be to maintain or further improve function and to minimize the risk for aggravation of symptoms in the future.

(d). Available evidence supporting therapy mainly exists in the chronic low back literature.

(e). Time Frames for Therapeutic Exercise

(i). Time to produce effect: two to six treatments

(ii). Frequency: two to five times per week

(iii). Optimum duration: four to eight weeks and concurrent with an active daily home exercise program.

(iv). Maximum duration: 8 to 12 weeks of therapist oversight. Home exercise should continue indefinitely. Additional sessions may be warranted during periods of exacerbation of symptoms.

(f). Time Frames for Yoga:

(i). Time to Produce Effect - eight sessions

(ii). Maximum Duration: 48 sessions are the maximum expected duration

viii.. Work Conditioning: These programs are work-related, outcome-focused, individualized treatment programs. Objectives of the program includes, but are not limited to, improvement of cardiopulmonary and neuromusculoskeletal functions (strength, endurance, movement, flexibility, postural control, and motor control functions), patient education, and symptom relief. The goal

is for patients to gain full- or optimal- function and return to work. The service may include the time-limited use of modalities, both active and passive, in conjunction with therapeutic exercise, functional activities, general conditioning body mechanics and lifting techniques re-training. These programs are usually initiated once re-conditioning has been completed but may be offered at any time throughout the recovery phase. It should be initiated when imminent return of a patient to modified- or full-duty is not an option, but the prognosis for returning the patient to work at completion of the program is at least fair to good.

(a). Length of visit: two to four hours per day

(b). - (d). …

ix. …

(a). - (b). …

(c). Optimum duration: two to four weeks

(d). Maximum duration: six weeks. Participation in a program beyond six weeks must be documented with respect to need and the ability to facilitate positive symptomatic or functional gains.

19. Therapy - Passive.

a. Most of the following passive therapies and modalities are generally accepted methods of care for a variety of work-related injuries. Passive therapy includes those treatment modalities that do not require energy expenditure on the part of the patient. They are principally effective during the early phases of treatment and are directed at controlling symptoms such as pain, inflammation and swelling and to improve the rate of healing soft tissue injuries. They should be used adjunctively with active therapies such as postural stabilization and exercise programs to help control swelling, pain and inflammation during the active rehabilitation process. They may be used intermittently as a licensed practitioner deems appropriate, or regularly if there are episodes of acute pain superimposed upon a chronic pain problem.

b. On occasion, specific diagnoses and post-surgical conditions may warrant durations of treatment beyond those listed as "maximum." Factors such as exacerbation of symptoms, re-injury, interrupted continuity of care and co-morbidities may extend durations of care. Having specific goals with objectively measured functional improvement during treatment can support extended durations of care. It is recommended that if after six to eight visits no treatment effect is observed, alternative treatment interventions, further diagnostic studies or further consultations should be pursued.

c. The following passive therapies are listed in alphabetical order:

i. Electrical Stimulation (Unattended): low frequency transcutaneous muscle stimulator - Electrical stimulation, once applied, requires minimal on-site supervision by the licensed practitioner. Indications include pain, inflammation, muscle spasm, atrophy, decreased circulation, and the need for osteogenic stimulation. A home unit may be purchased or rented if treatment is effective and frequent use is recommended.

(a). - (b). …

(c). Optimum Maximum duration: four treatments for clinic use.

ii. Iontophoresis: is an accepted treatment which consists of the transfer of medication into superficial tissue, including, but not limited to, steroidal anti-inflammatories and anesthetics, through the use of electrical stimulation. Indications include pain (lidocaine), inflammation (hydrocortisone, salicylate, dexamethasone sodium phosphate), edema (mecholyl, hyaluronidase, salicylate), ischemia (magnesium, mecholyl, iodine), muscle spasm (magnesium, calcium), calcific deposits (acetate), scars and keloids (chlorine, iodine, acetate).

(a). Time to produce effect: two to four treatments

(b). Frequency: three times per week with at least 48 hours between treatments

(c). - (d). …

iii. Low Level Laser: Not recommended as there is no proven benefit for this intervention due to lack of studies of sufficient quality. There is not enough research at this time to support this modality in the treatment of chronic pain. Results of low level laser have been mixed and often of poor quality.

iv. Manual Treatment including Manipulation: is defined as osteopathic manipulative treatment, chiropractic manipulative treatment, manual therapy, manipulation, or mobilization. Manual treatments may be applied by osteopathic physicians (DOs), chiropractors (DCs), physical therapists (PTs), occupational therapists (OTs), or medical doctors (MDs). Some popular and useful techniques include but are not limited to: high velocity, low amplitude (HVLA); muscle energy (ME) or hold-relax; strain-counterstrain (SCS); a balanced ligamentous tension (BLT); and myofascial release (MFR). Under these different types of manipulation, many subsets of different techniques that can be described as a) direct - a forceful engagement of a restrictive/pathologic barrier, b) indirect - a gentle/non-forceful disengagement of a restrictive/pathologic barrier, c) the patient actively assists in the treatment, and d) the patient relaxing, allowing the practitioner to move and balance the body tissues. When the proper diagnosis is made and coupled with the appropriate technique, manipulation has no contraindications and can be applied to all tissues of the body, including muscles, tendons, ligaments, joints, fascia, and viscera. This may consist of a variety of techniques. Pre-treatment assessment should be performed as part of each manual treatment visit to ensure that the correct diagnosis and correct treatment is employed.

(a). The decision to refer a patient for spinal manipulation rather than for other treatments should be made on the basis of patient preference and relative safety, not on an expectation of a greater treatment effect. It may be the first line of treatment, in combination with active therapy for some patients, and should strongly be considered for patients with positive provocative testing for SI joint dysfunction or facet dysfunction who are not recovering in the first few weeks.

(b). Contraindications to HVLA manipulation include joint instability, fractures, severe osteoporosis, infection, metastatic cancer, local primary bone tumor with questionable osseous integrity, Paget's disease, active inflammatory arthritis, aortic aneurysm, and signs of progressive neurologic deficits.

(c). AHRQ supports use of spinal manipulation for chronic low back pain. In addition, based on multiple studies with some and good levels of evidence, there is good

evidence supporting the use of manual therapy for treating chronic low back pain and chronic neck pain. There is also good evidence that supervised exercise therapy with added manual mobilization shows moderate, clinically important reductions in pain compared to non-exercise controls in people with osteoarthritis of the knee. There is not sufficient evidence to reliably determine whether manual muscle energy technique (MET) is likely to be effective in practice.

(d). Time Frames for Manual Treatment Including Manipulation:

(i). Time to produce effect: six to nine treatments.

(ii). Frequency: one to three times per week for the first two weeks as indicated by the severity of the condition. Treatment may continue at one treatment per week for the next six weeks.

(iii). Optimum duration: four to six weeks.

(iv). Maximum duration: eight weeks. At week eight, patients should be re-evaluated. Care beyond eight weeks may be indicated for certain chronic pain patients in whom manipulation is helpful in improving function, decreasing pain and improving quality of life. In these cases, treatment may be continued at one treatment every other week until the patient has reached MMI and maintenance treatments, using the accompanying post MMI guideline, have been determined. Refer to Maintenance Management section. Extended durations of care beyond what is considered "maximum" may be necessary in cases of re-injury, interrupted continuity of care, exacerbation of symptoms, and in those patients with comorbidities.

v. Manipulation Under General Anesthesia (MUA): refers to manual manipulation of the lumbar spine in combination with the use of a general anesthetic or conscious sedation. It is intended to improve the success of manipulation when pain, muscle spasm, guarding, and fibrosis appear to be limiting its application in patients otherwise suitable for their use.

(a). There have been no high quality studies to justify its benefits given the risks of general anesthetic and conscious sedation. It is not recommended.

vi. Manipulation Under Joint Anesthesia (MUJA): refers to manipulation of the lumbar spine in combination with a fluoroscopically guided injection of anesthetic with or without corticosteroid agents into the facet joint at the level being manipulated.

(a). There are no controlled clinical trials to support its use. It is not recommended.

vii. Massage—Manual or Mechanical. Massage is manipulation of soft tissue with broad ranging relaxation and circulatory benefits.This may include stimulation of acupuncture points and acupuncture channels (acupressure), application of suction cups and techniques that include pressing, lifting, rubbing, pinching of soft tissues by or with the practitioners' hands. Indications include edema (peripheral or hard and non-pliable edema), muscle spasm, adhesions, the need to improve peripheral circulation and range-of-motion, or to increase muscle relaxation and flexibility prior to exercise.

(a). - (d). …

viii. Mobilization (Soft Tissue): is a generally well-accepted treatment. Mobilization of soft tissue is the skilled application of muscle energy, strain/counter strain, myofascial release, manual trigger point release, and manual therapy techniques designed to improve or normalize movement patterns through the reduction of soft tissue pain and restrictions. Soft tissue mobilization can also use various instruments to assist the practitioner. These are typically labeled "instrument assisted soft-tissue techniques". These can be interactive with the patient participating or can be with the patient relaxing and letting the practitioner move the body tissues. Indications include muscle spasm around a joint, trigger points, adhesions, and neural compression. Mobilization should be accompanied by active therapy.

(a). - (d). …

ix. Percutaneous Electrical Nerve Stimulation (PENS): Needles are used to deliver low-voltage electrical current under the skin. Theoretically this therapy prevents pain signals traveling through small nerve fibers from reaching the brain, similar to the theory of TENS.

(a). There is good evidence that PENS produces improvement of pain and function compared to placebo; however, there is no evidence that the effect is prolonged after the initial three week treatment episode. There are no well-done studies that show PENS performs better than TENS for chronic pain patients. PENS is more invasive, requires a trained health care provider and has no clear long-term effect; therefore it is not generally recommended.

(b). Time Frames for Percutaneous Electrical Nerve Stimulation (PENS)

(i). Time to Produce Effect: - one to four treatments.

(ii). Frequency: two to three times per week.

(iii). Optimum Duration: - nine sessions.

(iv). Maximum Duration: - 12 sessions per year.

x. Superficial Heat and Cold Therapy (Including Infrared Therapy): is a generally accepted treatment. Superficial heat and cold are thermal agents applied in various manners that lowers or raises the body tissue temperature for the reduction of pain, inflammation, and/or effusion resulting from injury or induced by exercise. Includes application of heat just above the surface of the skin at acupuncture points. Indications include acute pain, edema and hemorrhage, need to increase pain threshold, reduce muscle spasm and promote stretching/flexibility. Cold and heat packs can be used at home as an extension of therapy in the clinic setting.

(a). - (d). …

xi. Traction- Manual is an accepted treatment and an integral part of manual manipulation or joint mobilization. Indications include decreased joint space, muscle spasm around joints, and the need for increased synovial nutrition and response. Manual traction is contraindicated in patients with tumor, infection, fracture, or fracture dislocation.

(a). - (b). …

(c). Optimum and Maximum duration: one month

xii. Traction—Mechanical: Mechanical traction is indicated for decreased joint space, muscle spasm around joints, and the need for increased synovial nutrition and response. Traction modalities are contraindicated in patients with tumor, infections, fracture, or fracture dislocation. Non-

oscillating inversion traction methods are contraindicated in patients with glaucoma or hypertension.

(a). There is some evidence that mechanical traction, using specific, instrumented axial distraction technique, is not more effective than active graded therapy without mechanical traction. Therefore, mechanical traction is not recommended for chronic axial spine pain.

(b). Time Frames for Mechanical Traction

(i). Time to produce effect: one to three sessions up to 30 minutes. If response is negative after three treatments, discontinue this modality.

(ii). Frequency: two to three times per week

(iii). Optimum/Maximum duration: one month

xiii. Transcutaneous Electrical Nerve Stimulation (TENS): should include least one instructional session for proper application and use. Indications include muscle spasm, atrophy, and decreased circulation and pain control. Minimal TENS unit parameters should include pulse rate, pulse width and amplitude modulation.

(a). One double-blinded, placebo-controlled study, found that low frequency TENS induces analgesia which is detected on functional MRI with change in brain activity in multiple regions. There was no functional follow-up. High-frequency TENS may be more effective than low frequency for patients on opioids.

(b). Time Frames for Transcutaneous Electrical Nerve Stimulation (TENS)

(i). Time to produce effect: Immediate

(ii). Frequency: Variable

(iii). Optimum duration: three sessions. If beneficial, provide with home unit.

(iv). Maximum duration: three sessions. Purchase if effective.

xiv. Dry Needling (DN): Description: DN is a skilled intervention performed by physical therapists1 (PTs) and Chiropractors (DCs) that utilizes a solid filament needle to penetrate the skin and underlying tissues to treat relevant muscular, neural, and other connective tissues for the evaluation and management of neuromusculokeletal conditions, pain, movement impairments, and disability. The technique can be done with or without electrical stimulation. It has been used for tendinopathies, headaches and occipital neuralgia, plantar fasciitis, shoulder pain, lateral epicondylalgia, spinal pain, hip and knee pain. The goal of dry needling is to improve overall function and disability by decreasing pain and improving range-of-motion, strength, and/or muscle firing patterns. It is a technique that is utilized in conjunction with other physical therapy treatments including therapeutic exercise, manual therapy, stretching, neuromuscular re-education, postural education, and pain neuroscience education.

(a). Indications: Dry needling is indicated when myofascial trigger points are identified in muscles in conjunction with decreased range-of-motion, decreased strength, altered muscle firing patterns, and/or pain which negatively affect a patient's overall function.

(b). Complications: Potential but rare complications of dry needling include infection and pneumothorax. Severe pain on injection suggests the possibility of an intraneural injection, and the needle should be immediately repositioned.

(c). There is some evidence that the inclusion of two sessions of trigger point dry needling into a twice daily five-week exercise program was significantly more effective in improving shoulder pain-related disability than an exercise program alone at 3, 6, and 12 month follow-ups in people with chronic subacromial pain syndrome. Both interventions were equally effective in reducing pain over 12 months.

(d). There is some evidence that four sessions of trigger point deep dry needling with passive stretching over two weeks was significantly more effective in reducing neck pain and improving neck disability than passive stretching alone in the short-term and at six-month follow-up in people with chronic nonspecific neck pain.

(e). Based on a number of meta-analysis and systematic reviews, studies have shown some advantage for dry needling. However, there are also a number of studies with negative results. Because of the low quality of studies and heterogeneity, no form of evidence can be drawn from these reviews, which include a number of anatomic sites.

(f). Time Frames for Dry Needling (DN)

(i). Time to Produce Effect: three to six treatments

(ii). Frequency: one to three times per week

(iii). Optimum Duration: one to two months

(iv). Maximum Duration: 14 treatments within 6 months

xv. Ultrasound (Including Phonophoresis): is an accepted treatment which uses sonic generators to deliver acoustic energy for therapeutic thermal and/or non-thermal soft tissue effects. Indications include scar tissue, adhesions, collagen fiber and muscle spasm, and the need to extend muscle tissue or accelerate the soft tissue healing. Ultrasound with electrical stimulation is concurrent delivery of electrical energy that involves dispersive electrode placement. Indications include muscle spasm, scar tissue, pain modulation and muscle facilitation. Phonophoresis is the transfer of medication through the use of sonic generators to the target tissue to control inflammation and pain.

(a). Phonophoresis is the transfer of medication to the target tissue to control inflammation and pain through the use of sonic generators. These topical medications include, but are not limited to, steroidal anti-inflammatory and anesthetics.

(b). There is no high quality evidence to support the use of ultrasound for improving pain or quality of life in patients with non-specific chronic low back pain.

(c). Time Frames for Ultrasound (Including Phonophoresis)

(i). Time to produce effect: - one to four treatments

(ii). Frequency: one to two treatments per week

(iii). Optimum duration: - four to six treatments

(iv). Maximum duration: eight treatments

xvi. Vertebral Axial Decompression (VAX-D)/DRX, 9000: Motorized traction devices which purport to produce non-surgical disc decompression by creating negative intradiscal pressure in the disc space include devices with the trade names of VAX-D and DRX 9000.

(a). There are no good studies to support their use. They are not recommended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation Administration, LR 37:1692 (June 2011), amended LR 45:

§2113. Therapeutic Procedures—Operative

A. When considering operative intervention in chronic pain management, the treating physician must carefully consider the inherent risk and benefit of the procedure. All operative intervention should be based on a positive correlation with clinical findings, the clinical course, and diagnostic tests. A comprehensive assessment of these factors should have led to a specific diagnosis with positive identification of the pathologic condition. Operative treatment is indicated when the natural history of surgically treated lesions is better than the natural history for non-operatively treated lesions.

1. Surgical procedures are seldom meant to be curative and should be employed in conjunction with other treatment modalities for maximum functional benefit. Functional benefit should be objectively measured and includes the following:

a. return-to-work or maintaining work status;

b. fewer restrictions at work or performing activities of daily living (ADLs);

c. decrease in usage of medications prescribed for the work-related injury;

d. measurable functional gains, such as increased range-of-motion or documented increase in strength;

2. Education of the patient should include the proposed goals of the surgery, expected gains, risks or complications, and alternative treatment.

3. Smoking may affect soft tissue healing through tissue hypoxia. Patients should be strongly encouraged to stop smoking and be provided with appropriate counseling by the physician. If a treating physician recommends a specific smoking cessation program peri-operatively, this should be covered by the insurer. Physicians may monitor smoking cessation with laboratory tests such as cotinine levels. The surgeon will make the final determination as to whether smoking cessation is required prior to surgery. Similarly, patients with uncontrolled diabetes are at increased risk of post-operative infection and poor wound healing. It is recommended that routine lab work prior to any surgical intervention include a hemoglobin A1c. If it is higher than the recommended range, the surgery should be postponed until optimization of blood sugars has been achieved.

4. Prior to surgical intervention, the patient and treating physician should identify functional operative goals and the likelihood of achieving improved ability to perform activities of daily living or work activities, and the patient should agree to comply with the pre- and post-operative treatment plan including home exercise. The provider should be especially careful to make sure the patient understands the amount of post-operative therapy required and the length of partial- and full-disability expected post-operatively.

5. Monitored Anesthesia Care is acceptable for diagnostic and therapeutic procedures.

6. Neurostimulation

a. Description —Spinal cord stimulation (SCS) is the delivery of low-voltage electrical stimulation to the spinal cord or peripheral nerves to inhibit or block the sensation of pain. The system uses implanted electrical leads and a battery powered implanted pulse generator (IPG).

b. There is some evidence that SCS is superior to reoperation in the setting of persistent radicular pain after lumbosacral spine surgery, and there is some evidence that SCS is superior to conventional medical management in the same setting. Success was defined as achieving 50 percent or more pain relief. However, the study could not demonstrate increased return to work. Some functional gains have been demonstrated. These findings may persist at three years of follow-up in patients who had an excellent initial response and who are highly motivated.

c. There is some evidence that a higher-frequency, 500Hz to 10 KHz spinal cord stimulator is more effective than a traditional low frequency 50 Hz stimulator in reducing both back pain and leg pain in patients who have had a successful trial of an external stimulator. Two-thirds of the patients had radiculopathy and one-half had predominant back pain. The higher frequency device appears to lead to greater patient satisfaction than the low frequency device, which is likely to be related to the fact that the higher frequency device does not produce paresthesias in order to produce a pain response. In contrast to the low frequency stimulator, which requires recharging about twice per month, the higher frequency stimulator is recommended for every one to three days recharging for 0.5 to 3 hours. A United Kingdom study of cost effectiveness for high frequency spinal cord stimulators found high cost effectiveness compared to traditional non-rechargeable or rechargeable stimulators, re-operation, or medical management.

d. Some evidence shows that SCS is superior to re-operation and conventional medical management for severely disabled patients who have failed conventional treatment and have Complex Regional Pain Syndrome (CRPS I) or failed back surgery with persistent radicular neuropathic pain.

e. A recent randomized trial found that patients with spinal cord stimulators for CRPS preferred different types and levels of stimulation for pain relief. No difference was found between 40,500Hz, 1200 Hz, and 10KHz levels or burst stimulation.

f. SCS can be used for patients who have CRPS II. Spinal cord stimulation for spinal axial pain has traditionally not been very successful. Recent technological advances such as higher frequency and burst stimulation have demonstrated better results for axial spine pain. These technologically superior spinal cord stimulators are recommended for axial spine pain.

g. SCS may be most effective in patients with CRPS I or II who have not achieved relief with oral medications, rehabilitation therapy, or therapeutic nerve blocks, and in whom the pain has persisted for longer than six months.

h. It is particularly important that patients meet all of the indications before a permanent neurostimulator is placed because several studies have shown that workers' compensation patients are less likely to gain significant relief than other patients. As of the time of this guideline writing, spinal cord stimulation devices have been FDA

approved as an aid in the management of chronic intractable pain of the trunk and/or limbs, including unilateral and bilateral pain associated with the following: failed back surgery syndrome, intractable low back pain, leg pain and arm pain.

i. Particular technical expertise is required to perform this procedure and is available in some neurosurgical, rehabilitation, and anesthesiology training programs and fellowships. Physicians performing this procedure must be trained in neurostimulation implantation and participate in ongoing training workshops on this subject, such as those sponsored by the American Society of Interventional Pain Practitioners (ASIPP), North American Neuromodulation Society (NANS), or as sponsored by implant manufacturers. Permanent electrical lead and IPG placement should be performed by surgeons (orthopedic or neurosurgery) with fellowship training in spine based surgical interventions or other physicians who have completed an Accreditation Council for Graduate Medical Education (ACGME) accredited pain medicine fellowship or training and have completed the required number of supervised implantations during fellowship or training.

j. Complications —Serious, less common complications include spinal cord compression, paraplegia, epidural hematoma, epidural hemorrhage, undesirable change in stimulation, seroma, CSF leakage, infection, erosion, allergic response. Other complications consist of dural puncture, hardware malfunction or equipment migration, pain at implantation site, loss of pain relief, chest wall stimulation, and other surgical risks. In recent studies, device complication rates have been reported to be 25 percent at six months, 32 percent at 12 months, and 45 percent at 24 months. The most frequent complications are reported to be electrode migration (14 percent) and loss of paresthesia (12 percent), up to 24 percent required additional surgery. In a recent review of spinal stimulation, 34.6 percent of all patients reported a complication, most of them being technical equipment-related issues or undesirable stimulation.

k. Surgical Indications —Patients with established CRPS I or II, or radicular or trunk pain, or a failed spinal surgery with persistent functionally limiting radicular pain greater than axial pain, who have failed conservative therapy including active and/or passive therapy, pre-stimulator trial psychiatric evaluation and treatment, medication management, or therapeutic injections. Traditional SCS is not recommended for patients with the major limiting factor of persistent axial spine pain. Higher frequency stimulators may be used for patients with predominantly axial back pain or trunk pain. Traditional or other SCS may be indicated in a subset of patients who have a clear neuropathic radicular pain (radiculitis) with or without previous surgery. The extremity pain should account for at least 50 percent or greater of the overall back and leg pain experienced by the patient. Prior authorization is required. Habituation to opioid analgesics in the absence of a history of addictive behavior does not preclude the use of SCS. Patients with severe psychiatric disorders, issues of secondary gain, and one or more primary risk factors are not candidates for the procedure. The prognosis worsens as the number of secondary risk factors increases. Approximately, one third to one half of patients who qualify for SCS can expect a substantial long-lasting pain relief; however, it may not influence allodynia and hypesthesia. Patients' expectations need to be realistic, and therefore, patients should understand that the SCS intervention is not a cure for their pain but rather a masking of their symptomatology which might regress over time. There appears to be a likely benefit of up to three years, although some practitioners have seen benefits persist for longer periods.

i. Prior to surgical intervention, the patient and treating physician should identify functional operative goals and the likelihood of achieving improved ability to perform activities of daily living or work, as well as possible complications. The patient should agree to comply with the pre- and post-operative treatment plan including home exercise. The provider should be especially careful to make sure the patient understands the amount of post-operative therapy required and the length of partial- and full-disability expected post-operatively.

ii. Informed decision making should be documented for all invasive procedures. This must include a thorough discussion of the pros and cons of the procedure and the possible complications as well as the natural history of the identified diagnosis. Since many patients with the most common conditions will improve significantly over time, without invasive interventions, patients must be able to make well-informed decisions regarding their treatment.

iii. Smoking may affect soft tissue healing through tissue hypoxia. Patients should be strongly encouraged to stop smoking and be provided with appropriate counseling by the physician. If a treating physician recommends a specific smoking cessation program perioperative, this should be covered by the insurer. Typically the patient should show some progress toward cessation at about six weeks. Physicians may monitor smoking cessation with laboratory tests such as cotinine levels. The surgeon will make the final determination as to whether smoking cessation is required prior to surgery. Patients with demonstrated success may continue the program up to three months or longer if needed based on the operative procedure. Smoking cessation should continue throughout the post-operative period. Refer to Smoking Cessation Medications and Treatment, for further details.

iv. Patients must meet the following criteria in order to be considered candidates for neurostimulation:

(a). Traditional or other SCS may be indicated in a subset of patients who have a clear neuropathic or radicular pain (radiculitis) or trunk pain; are not candidates for surgical intervention on the spine; have burning pain in a distribution amenable to stimulation coverage and have pain at night not relieved by position. The extremity pain should account for at least 50 percent or greater of the overall arm or leg and back pain experienced by the patient. Higher frequency stimulators may be used for patients with predominantly axial back pain.

(b). Prior to the stimulator trial, a comprehensive psychiatric or psychological evaluation, and a chronic pain evaluation. Refer to Personality/Psychological Evaluation for Pain Management, for more information. This evaluation should include a standardized detailed personality inventory with validity scales (e.g., MMPI-2, MMPI-2-RF, or PAI); pain inventory with validity measures (e.g., BHI 2, MBMD); clinical interview and complete review of the medical

records. The psychologist or psychiatrist performing these evaluations should not be an employee of the physician performing the implantation. This evaluation must be completed, with favorable findings, before the screening trial is scheduled. Before proceeding to a spinal stimulator trial, the evaluation should find the following:

(i). No indication of falsifying information.

(ii). No indication of invalid results on testing; and

(iii). No primary psychiatric risk factors or "red flags" (e.g., psychosis, active suicidality, severe depression, or addiction). (Note that tolerance and dependence to opioid analgesics are not addictive behaviors and do not preclude implantation); and

(iv). A level of secondary risk actors or "yellow flags" (e.g., moderate depression, job dissatisfaction, dysfunctional pain conditions) judged to be below the threshold for compromising the patient's ability to benefit from neurostimulation.

(v). The patient is cognitively capable of understanding and operating the neurostimulation control device; and

(vi). The patient is cognitively capable of understanding and appreciating the risks and benefits of the procedure; and

(vii). The patient is familiar with the implications of having an implant, can accept the complications, potential disfigurement, and effort it takes to maintain the device; and

(viii). The patient is cognitively capable of understanding the course of injury both with and without neurostimulation; and

(ix). The patient has demonstrated a history of motivation in and adherence to prescribed treatments; and

(x). The patient understands the work related restrictions that may occur with placement of the stimulator. All reasonable surgical and non-surgical treatment has been exhausted; and

(xi). The topography of pain and its underlying pathophysiology are amenable to stimulation coverage (the entire painful area has been covered); and

(xii). A successful neurostimulation screening test of at least three to seven days for a percutaneous trial or 7 to 10 days for an open surgically implanted trial lead.

(c). For a spinal cord neurostimulation screening test, a temporary lead is either implanted surgically with an incision or percutaneously attached to the skin and attached to an external source to validate therapy effectiveness. A screening test is considered successful if the patient meets both of the following criteria: (a) experiences a 50 percent decrease radicular or CRPS in pain, which may be confirmed by visual analogue scale (VAS) or Numerical Rating Scale (NRS), and (b) demonstrates objective functional gains or decreased utilization of pain medications.

(i). Objective, measurable, functional gains must be evaluated by the primary treating physician prior to and before discontinuation of the trial. If the trial is with a surgically implanted lead below the skin, then the trial is from 7 to 10 days. If the trial is percutaneous, then the trial is three to seven days. Functional gains may include: standing, walking, positional tolerance, upper extremity activities, increased social participation, or decreased medication use.

l. Contraindications —

i. Unsuccessful SCS test - inability to obtain objective, documented, functional improvement or reduction of pain;

ii. those with cardiac pacemakers should be evaluated on an individual basis as some may qualify for surgery;

iii. patients who are unable to properly operate the system;

iv. patients who are anti-coagulated and cannot be without anticoagulation for a few days (e.g., patients with artificial heart valves);

v. patients with frequent severe infections;

vi. patients for whom a future MRI is planned unless the manufacturer has approval for the body part that will be the subject of the MRI.

m. Operative Treatment - Implantation of stimulating lead or leads connected by extensions to either an implanted neurostimulator or an implanted receiver powered by an external transmitter. The procedure may be performed either as an open or a percutaneous procedure, depending on the presence of epidural fibrosis and the anatomical placement required for optimal efficacy. During the final procedure for non-high frequency devices or for those without surgically implanted trial leads, the patient must be awakened to establish full coverage from the placement of the lead. One of the most common failures is misplaced leads. Functional improvement is anticipated for up to three years or longer when objective functional improvement has been observed during the time of neurostimulation screening exam.

n. Post-Operative Considerations -

i. MRI may be contraindicated depending on the model and implant location.

ii. Work restrictions postplacement include no driving when active paresthesias are present. This does not apply to higher frequency stimulators as no paresthesia is present. Thus, use of potentially dangerous or heavy equipment while the lower frequency simulator is active is prohibited. The physician may also limit heavy physical labor to prevent lead dislodgement.

o. Post-Operative Therapy - Active and/or passive therapy should be employed to improve function. Implantable stimulators will require frequent monitoring such as adjustment of the unit and replacement of implanted batteries. Estimated battery life of SCS implantable devices is usually 5 to 10 years depending on the manufacturer.

7. Dorsal Root Ganglion Stimulator (See Neurostimulation)

8. Peripheral Nerve Stimulation- There are no randomized controlled studies for this treatment. This modality should only be employed with a clear nerve injury or when the majority of pain is clearly in a nerve distribution in patients who have completed six months of other appropriate therapy including the same pre-trial psychosocial evaluation and treatment as are recommended for spinal cord stimulation. A screening trial should take place over three to seven days and is considered successful if the patient meets both of the following criteria: (a)

experiences a 50 percent decrease in pain, which may be confirmed by Visual Analogue Scale (VAS) or Numerical Rating Scale (NRS) and (b) demonstrates objective functional gains or decreased utilization of pain medications. Objective, measurable, functional gains must be evaluated by an independent occupational therapist and/or physical therapist and the primary treating physician prior to and before discontinuation of the trial. The primary treating doctor is not the doctor who placed the nerve stimulator. It may be used for proven occipital, ulnar, median, and other isolated nerve injuries.

9. Intrathecal drug delivery- Recommended in patients in whom other conservative measures have failed or in those requiring high dose oral opiates or experiencing side effects to control pain or in cases of spasticity or uncontrolled muscle spasms. Oral pain medication would not be appropriate for chronic pain in conjunction with an Intrathecal pain pump, except for up to the initial ten days after implant for purpose of postop incisional pain or weaning and stopping oral opiates. Treatment for concomitant acute pain separate from chronic pain can combine oral opiates and pump medication at reduced doses orally. Pumps require refilling every one to six months for the life of the patient. More than one medication may be needed in the pump. Once implanted the managing physician must arrange for continuity of care for refills and or pump adjustments. Oral opiates should be stopped 7-10 days after implantation or pump and Intrathecal catheter and pump should be titrated to control chronic pain. A PTM (Patient therapy manager) may be used for breakthrough pain. Acute pain may be treated concomitantly with short courses or oral opiates. Intrathecal pumps may be considered when dystonia and spasticity are dominant features or when pain is not able to be managed using any other non-operative treatment or in cases inadequate opiate management by other routes. Specific brands of infusion systems have been FDA approved for the following: chronic intraspinal (epidural and intrathecal) infusion of preservative-free morphine sulfate sterile solution in the treatment of chronic intractable pain, chronic infusion of preservative-free ziconotide sterile solution for the management of severe chronic pain, and chronic intrathecal infusion of baclofen for the management of severe spasticity. Other medications commonly used and acceptable in the pump as defined in the The Polyanalgesic Consensus Conference (PACC) Recommendations on Intrathecal Drug Infusion Systems Best Practices and Guidelines 2017 Tim Deer et al "Neuromodulation: Technology at the Neural Interface".

a. Due to lack of proven efficacy and safety, the following medications are not recommended: magnesium, benzodiazepines, neostigmine, tramadol, and ketamine.

b. Description - This mode of therapy delivers small doses of medications directly into the cerebrospinal fluid.

c. Complications - Intrathecal delivery is associated with significant complications, such as infection, catheter disconnects, CSF leak, arachnoiditis, pump failure, nerve injury, and paralysis.

i. Typical adverse events reported with opioids (i.e., respiratory depression, tolerance, and dependence) or spinal catheter-tip granulomas that might arise during intrathecal morphine or hydromorphone treatment have not currently been recorded for ziconotide. The most common presentation of an intraspinal mass is a sudden increase in dosage required for pain relief, with new neurologic defects secondary to a mass effect. Technical errors can lead to drug overdose which can be life-threatening. Withdrawal or death can occur if pump refill is denied or prevented.

ii. Surveys have shown technical problems requiring surgical correction in 18 percent to 40 percent of patients. CSF leakage may occur with multiple dural punctures since the needle is larger than the spinal catheter. Follow PACC guidelines on efficacy. The function of the pump depends on its electronic power source, which may be disrupted by the magnet of an MRI; therefore, after the patient has an MRI, the pump should be checked immediately after the MRI to ensure that it does not need to be restarted. The delivery rate can be affected by atmospheric pressure and body temperature. Some pumps are recommended to be emptied before the MRI and refilled immediately after the MRI.

d. Indications - Clinical studies are conflicting, regarding long-term, effective pain relief in patients with non-malignant pain. This treatment must be have preauthorization and the recommendation of at least one physician experienced in chronic pain management. The procedure should be performed by physicians with documented experience.

i. Prior to surgical intervention, the patient and treating physician should identify the possible functional operative goals and the likelihood of achieving improved ability to perform activities of daily living or work, as well as possible complications. The patient should agree to comply with the pre- and post-operative treatment plan including home exercise. The provider should be especially careful to make sure the patient understands the amount of post-operative therapy required and the length of partial- and full-disability expected post-operatively.

ii. Informed decision making should be documented for all invasive procedures. This must include a thorough discussion of the pros and cons of the procedure and the possible complications as well as the natural history of the identified diagnosis. Since many patients with the most common conditions will improve significantly over time, without invasive interventions, patients must be able to make well-informed decisions regarding their treatment.

e. This small eligible sub-group of patients must meet all of the following indications:

i. …

ii. All reasonable surgical and non-surgical treatment has been exhausted including failure of conservative therapy including active and/or passive therapy, medication management, or therapeutic injections; and

iii. Pre-trial psychiatric or psychological evaluation has been performed (same as for SCS); and

iv. There is no evidence of current addictive behavior. (Tolerance and dependence to opioid analgesics are not addictive behaviors and do not preclude implantation.); and

v. It is recommended that patients be tapered off of opioids before the trial or keep on same dose and wean and stop within two weeks post implant or wean and stop two to three weeks before trial per PACC Guidelines for Trialing; and

vi. A successful trial of continuous infusion by a percutaneous spinal infusion pump for a minimum of 24 hours or by bolus infusion. A screening test is considered successful if the patient (a) experiences a 50 percent decrease in pain, which may be confirmed by VAS, and (b) demonstrates objective functional gains or decreased utilization of other pain medications.

f. Contraindications - Infection, body size insufficient to support the size and weight of the implanted device. Patients with other implanted programmable devices should be given these pumps with caution since interference between devices may cause unintended changes in infusion rates.

10. Neuroablation with Rhizotomy as the Exception

a. Neuroablation or neuro-destructive procedures are not commonly used in the management of non-malignant pain. These techniques require specific expertise to perform, have erratic results, and high rates of complication. Therefore, the OWCA does not recommend the use of neuroablative procedures, except medial branch nerve rhizotomy, for injured workers with chronic pain.

11. Dorsal Nerve Root Resection: This procedure is not recommended. There exists the possibility of complications including unintended extensive nerve damage causing significant motor or sensibility changes from larger than anticipated lesioning of the ganglia at the dorsal ganglia level. For radio-frequency ablation refer to Radio Frequency Ablation - Dorsal Nerve Root Ganglion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation Administration, LR 37:1711 (June 2011), amended LR 45:

§2115. Maintenance Management

A. …

B. Maintenance care in CRPS and CPD requires a close working relationship between the carrier, the providers, and the patient. Providers and patients have an obligation to design a cost-effective, medically appropriate program that is predictable and allows the carrier to set aside appropriate reserves. Carriers and adjusters have an obligation to assure that medical providers can design medically appropriate programs. Designating a primary physician for maintenance management is strongly recommended.

C. Maintenance care will be based on principles of patient self-management. When developing a maintenance plan of care, the patient, physician and insurer should attempt to meet the following goals:

1. maximal independence will be achieved through the use of home exercise programs or exercise programs requiring special facilities (e.g., pool, health club) and educational programs;

2. modalities will emphasize self-management and self-applied treatment;

3. management of pain or injury exacerbations will emphasize initiation of active therapy techniques and may occasionally require anesthetic injection blocks;

4. dependence on treatment provided by practitioners other than an authorized treating physician will be minimized;

5. reassessment of the patient's function must occur regularly to maintain daily living activities and work function;

6. patients will understand that failure to comply with the elements of the self-management program or therapeutic plan of care may affect consideration of other interventions.

D. It is recommended that valid functional tests are used with treatments to track efficacy. The following are Specific Maintenance Interventions and Parameters:

1. Home Exercise Programs and Exercise Equipment: Most patients have the ability to participate in a home exercise program after completion of a supervised exercise rehabilitation program. Programs should incorporate an exercise prescription including the continuation of an age-adjusted and diagnosis-specific program for aerobic conditioning, flexibility, stabilization, and strength. Many patients will benefit from several booster sessions per year, which may include motivational interviewing and graded activity.

a. Some patients may benefit from the purchase or rental of equipment to maintain a home exercise program. Determination for the need of home equipment should be based on medical necessity to maintain MMI, compliance with an independent exercise program, and reasonable cost. Before the purchase or long-term rental of equipment, the patient should be able to demonstrate the proper use and effectiveness of the equipment. Effectiveness of equipment should be evaluated on its ability to improve or maintain functional areas related to activities of daily living or work activity. Prior to purchasing the equipment a physical therapist who has treated the patient may visit a facility with the patient to assure proper use of the equipment. Occasionally, compliance evaluations may be made through a four-week membership at a facility offering similar equipment. Home exercise programs are most effective when done three to five times a week.

2. Exercise Programs Requiring Special Facilities: Some patients may have higher compliance with an independent exercise program at a health club versus participation in a home program. All exercise programs completed through a health club facility should focus on the same parameters of an age-adjusted and diagnosis-specific program for aerobic conditioning, flexibility, stabilization, and strength. Selection of health club facilities should be limited to those able to track attendance and utilization, and provide records available for physician and insurer review. Prior to purchasing a membership, a physical therapist who has treated the patient may visit a facility with the patient to assure proper use of the equipment.

a. …

b. Maximum Maintenance Duration: three months. Continuation beyond three months should be based on functional benefit and patient compliance. Health club membership should not extend beyond three months if attendance drops below two times per week on a regular basis.

3. Patient Education Management. Educational classes, sessions, or programs may be necessary to reinforce self-management techniques. This may be performed as formal or informal programs, either group or individual.

a. …

4. Psychological Management. An ideal maintenance program will emphasize management options implemented in the following order: individual self-management (pain control, relaxation and stress management, etc.); group

counseling; individual counseling by a psychologist or psychiatrist; and in-patient treatment. Exacerbation of the injury may require psychological treatment to restore the patient to baseline. In those cases, use treatments and timeframe parameters listed in the Biofeedback and Psychological Evaluation or Intervention sections.

a. Maintenance duration: 6 to 10 visits during the first year and four to six visits per year thereafter. In cases of significant exacerbation or complexity, refer to Section G.15, on psychological treatment.

5. Non-opioid medication management: In some cases, self-management of pain and injury exacerbations can be handled with medications, such as those listed in the Medication section. Physicians must follow patients who are on any chronic medication or prescription regimen for efficacy and side effects. Laboratory or other testing may be appropriate to monitor medication effects on organ function.

a. …

6. Opioid Medication Management. In very selective cases, scheduled opioids or an implanted programmable pump with different medications including opioids may prove to be the most cost effective means of insuring the highest function and quality of life; however, inappropriate selection of these patients may result in a high degree of iatrogenic illness including addiction and drug overdose. A patient should have met the criteria in the opioids section of these guidelines before beginning maintenance opioids. Laboratory or other testing may be appropriate to monitor medication effects on organ function. The following management is suggested for maintenance opioids:

a. The medications should be clearly linked to improvement of function, not just pain control. All follow-up visits should document the patient's ability to perform routine functions satisfactorily. Examples include the abilities to: perform: work tasks, drive safely, pay bills or perform basic math operations, remain alert and upright for 10 hours per day, or participate in normal family and social activities. If the patient is not maintaining reasonable levels of activity the patient should usually be tapered from the opioid and tried on a different long-acting opioid.

b. A low risk opioid medication regimen is defined, as less than 50 MED per day. This may minimally increase or decrease over time. Dosages will need to be adjusted based on side effects of the medication and objective function of the patient. A patient may frequently be maintained on non- opioid medications to control side effects, treat mood disorders, or control neuropathic pain; however, only one long-acting opioid and one short-acting opioid for rescue use should be prescribed. Buccally absorbed opioids other than buprenorphine are not appropriate for these non-malignant pain patients. Transdermal opioid medications are not recommended, other than buprenorphine.

c. All patients on chronic opioid medication dosages need to sign an appropriate opioid contract with their physician for prescribing the opioids.

d. The patient must understand that continuation of the medication is contingent on their cooperation with the maintenance program. Use of non-prescribed drugs may result in tapering of the medication. The clinician should order random drug testing at least annually and when deemed appropriate to monitor medication compliance.

e. Patients on chronic opioid medication dosages must receive them through one prescribing physician.

i. Maintenance duration: 12 visits within a 12-month period to review the opioid plan. Laboratory and other monitoring as appropriate.

7. Therapy Management. Some treatment may be helpful on a continued basis during maintenance care if the therapy maintains objective function and decreases medication use. With good management, exacerbations should be uncommon; not exceeding two times per year and using minimal or no treatment modality beyond self-management. On occasion, exacerbated conditions may warrant durations of treatment beyond those listed below. Having specific goals with objectively measured functional improvement during treatment can support extended durations of care. It is recommended that if after six to eight visits no treatment effect is observed, alternative treatment interventions should be pursued.

a. Maintenance Duration: Active Therapy, Acupuncture, or Manipulation: 10 visits [for each treatment] during the first year and then decreased to five visits per year thereafter.

8. Injection Therapy

a. Trigger Point Injections and Dry Needling - These injections or dry needling may occasionally be necessary to maintain function in those with myofascial problems.

i. Maintenance duration for trigger point injections: Not more than four injections per session not to exceed four sessions per 12-month period.

ii. Maintenance duration for dry needling: No more than one to three times per week not to exceed 14 treatments within six months.

b. Epidural and Selective Nerve Root Injections - Patients who have experienced functional benefits from these injections in the past may require injection for exacerbations of the condition. Recall that the total steroid injections at all sites, including extremities, should be limited to 3-4 mg/kg per rolling 12 months to avoid side effects from steroids.

i. Maintenance duration: two to four injections per 12-month period. For chronic radiculopathy or post herpetic neuralgia or intercostal neuralgia, injections may be repeated only when a functional documented response produces a positive result. A positive result could include positive pain response, a return to baseline function as established at MMI, return to increased work duties, and measurable improvement in physical activity goals including return to baseline after an exacerbation. Injections may only be repeated when these functional and time goals are met and verified by the designated primary physician.

c. Time Frames for Zygapophyseal (Facet) Injections

i. Maintenance Duration: four injections per year and limited to three joint levels either unilaterally or bilaterally as in Facet Joint and Medial Branch Facet Joint. Injections may be repeated (instead of proceeding with RF) only when a functional documented response lasts for three months. A positive result would include a return to baseline function as established at MMI, return to increased work duties, and a measurable improvement in physical activity goals including return to baseline after an exacerbation.

Injections may only be repeated when these functional and time goals are met and verified by the designated primary physician.

d. Time Frames for Radiofrequency Medial Branch Neurotomy/ Facet Rhizotomy and Sacroiliac joint (lateral Branch Neurotomy and other peripheral nerves listed in these rules.

i. Maintenance Duration: two times per year not exceeding three levels. The patient must meet the criteria as described in Radio Frequency Denervation. The initial indications including repeat blocks and limitations apply. The long-term effects of repeat rhizotomies, especially on younger patients are unknown. In addition, the patient should always reconsider all of the possible permanent complications before consenting to a repeat procedure. There are no studies addressing the total number of RF neurotomies that should be done for a patient. Patient should receive at least six months with improvement of 50 percent or more in order to qualify for repeat procedures.

ii. Optimum/Maximum Maintenance Duration: twice a year after the initial rhizotomy.

9. Purchase or Rental of Durable Medical Equipment (DME). It is recognized that some patients may require ongoing use of self-directed modalities for the purpose of maintaining function and/or analgesic effect. Purchase or rental of modality based equipment should be done only if the assessment by the physician and/or physical/occupational therapist has determined the effectiveness, compliance, and improved or maintained function by its application. It is generally felt that large expense purchases such as spas, whirlpools, and special mattresses are not necessary to maintain function.

10. Implanted Programmable Pumps or Implanted Spinal Cord Stimulators: Facet pain, Sacroiliac joint pain, Genicular nerve pain, peripheral nerve pain and occasional acute exacerbation of radicular pain is common in patients with these implanted devices. It is necessary to continue to treat previously treated Genicular nerve pain, facet pain, sacroiliac joint pain, peripheral nerve pain and occasional radicular pain with injections, and maintenance RF Ablation and occasional Epidural injections as listed elsewhere in these rules. The presence of these implanted devices does not preclude diagnosis and treatment of these conditions as well as maintenance of these conditions both before and after implantation of these devices. Also these implanted devices require regular maintenance, adjustments; pump refills every one to six months, stimulator adjustments and management for the life of these devices.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation Administration, LR 37:1713 (June 2011), amended LR 45:

Subchapter B. Complex Regional Pain Syndrome

Editor's Note: Form LWC-WC 1009. Disputed Claim for Medical Treatment has been moved to §2328 of this Part.

§2117. Introduction

A. This document has been prepared by the Louisiana Workforce Commission, Office of Workers' Compensation (OWCA) and should be interpreted within the context of guidelines for physicians/providers treating individuals qualifying under Louisiana's Workers' Compensation Act as injured workers with cervical spine injuries. Although the primary purpose of this document is advisory and educational, these guidelines are enforceable under the Louisiana Workers Compensation Act. All medical care, services, and treatment owed by the employer to the employee in accordance with the Louisiana Workers' Compensation Act shall mean care, services, and treatment in accordance with these guidelines. Medical Care, services, and treatment that varies from these guidelines shall also be due by the employer when it is demonstrated to the medical director of the office by a preponderance of the scientific medical evidence, that a variance from these guidelines is reasonably required to cure or relieve the injured worker from the effects of the injury or occupational disease given the circumstances. Therefore, these guidelines are not relevant as evidence of a provider's legal standard of professional care. To properly utilize this document, the reader should not skip nor overlook any sections.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation Administration, LR 37:1716 (June 2011), amended LR 45:

§2119. General Guideline Principles

A. The principles summarized in this section are key to the intended implementation of all Office of Workers' Compensation medical treatment guidelines and critical to the reader's application of the guidelines in this document.

1. Application of Guidelines. The OWCA provides procedures to implement medical treatment guidelines and to foster communication to resolve disputes among the provider, payer, and patient through the Worker's Compensation Act.

2. Education. Education of the patient and family, as well as the employer, insurer, policy makers and the community should be the primary emphasis in the treatment of workers' compensation injuries. Currently, practitioners often think of education last, after medications, manual therapy, and surgery. Practitioners must implement strategies to educate patients, employers, insurance systems, policy makers, and the community as a whole. An education-based paradigm should always start with inexpensive communication providing reassuring and evidence-based information to the patient. More in-depth education is currently a component of treatment regimens which employ functional, restorative, preventive and rehabilitative programs. No treatment plan is complete without addressing issues of individual and/or group patient education as a means of facilitating self-management of symptoms and prevention. Facilitation through language interpretation, when necessary, is a priority and part of the medical care treatment protocol.

3. Treatment parameter duration Time frames for specific interventions commence once treatments have been initiated, not on the date of injury. Obviously, duration will be impacted by patient adherence, as well as availability of services. Clinical judgment may substantiate the need to accelerate or decelerate the time frames discussed in this document. Such deviation shall be in accordance with La. R.S. 23:1203.1.

4. -5. …

6. Positive Patient Response. Positive results are defined primarily as functional gains that can be objectively measured.

a. Objective functional gains include, but are not limited to, positional tolerances, range-of-motion (ROM), strength, and endurance, activities of daily living, ability to function at work, cognition, psychological behavior, and efficiency/velocity measures that can be quantified. Subjective reports of pain and function should be considered and given relative weight when the pain has anatomic and physiologic correlation. Anatomic correlation must be based on objective findings.

7. Re-Evaluation of Treatment Every Three to Four Weeks. If a given treatment or modality is not producing positive results within three to four weeks, or within the time to produce effect in the non-chronic pain guidelines, the patient should be re-evaluated by the treating physician that referred him to PT and consideration should be given for a referral to a pain specialist or surgeon or other appropriate specialist for other treatment options. Reconsideration of diagnosis should also occur in the event of poor response to a seemingly rational intervention.

8. Surgical Interventions. Surgery should be contemplated within the context of expected functional outcome and not purely for the purpose of pain relief. The concept of "cure" with respect to surgical treatment by itself is generally a misnomer. All operative interventions must be based upon positive correlation of clinical findings, clinical course, and diagnostic tests. A comprehensive assimilation of these factors must lead to a specific diagnosis with positive identification of pathologic conditions.

9. …

10. Six Month-Time Frame. Injuries resulting in temporary total disability require maintenance treatment and may not attain return to work in six months.

11. Return To Work. Return to work is therapeutic, assuming the work is not likely to aggravate the basic problem or increase long-term pain. An injured worker's return-to-work status shall not be the sole cause to deny reasonable and medically necessary treatment under these guidelines. Two good practices are: early contact with injured workers and provide modified work positions for short-term injuries. The practitioner may provide specific physical limitations and the patient should never be released to non-specific and vague descriptions such as "sedentary" or "light duty." The following physical limitations should be considered and modified as recommended: lifting, pushing, pulling, crouching, walking, using stairs, bending at the waist, awkward and/or sustained postures, tolerance for sitting or standing, hot and cold environments, data entry and other repetitive motion tasks, sustained grip, tool usage and vibration factors. Even if there is residual chronic pain, return-to-work is not necessarily contraindicated. The practitioner should understand all of the physical demands of the patient's job position before returning the patient to full duty and should request clarification of the patient's job duties. Clarification should be obtained from the employer or, if necessary, from including, but not limited to, occupational health nurse, physical therapist, occupational therapist, vocational rehabilitation specialist, or an industrial hygienist, chiropractor or another professional. American Medical Association clarifies "disability" as "activity limitations and/or participation restrictions in an individual with a health condition, disorder or disease" versus "impairment" as "a significant deviation, loss, or loss of use of any body structure or body function in an individual with a health condition, disorder or disease".

12. Delayed Recovery. Within the discretion of the treating physician, strongly consider a psychological evaluation, if not previously provided, as well as initiating interdisciplinary rehabilitation treatment and vocational goal setting, for those patients who are failing to make expected progress 6 to 12 weeks after initiation of treatment of an injury. The OWCA recognizes that 3 to 10 percent of all industrially injured patients will not recover within the timelines outlined in this document despite optimal care. Such individuals may require treatments beyond the limits discussed within this document, but such treatment requires clear documentation by the authorized treating practitioner focusing on objective functional gains afforded by further treatment and impact upon prognosis.

13. Recommendations and Inclusion of Medical Evidence. All recommendations are based on available evidence and/or consensus judgment. It is generally recognized that early reports of a positive treatment effect are frequently weakened or overturned by subsequent research. When interpreting medical evidence statements in the guideline, the following apply to the strength of recommendation.

Strong	Level 1 Evidence	We Recommend
Moderate	Level 2 and Level 3 Evidence	We Suggest
Weak	Level 4 Evidence	Treatment is an Option
Inconclusive	Evidence is Either Insufficient of Conflicting	

a. …

14. Treatment of Pre-Existing Conditions The conditions that preexisted the work injury/disease will need to be managed under two circumstances: (a) A pre-existing condition exacerbated by a work injury/disease should be treated until the patient has returned to their objectively verified prior level of functioning or Maximum Medical Improvement (MMI); and (b) A pre-existing condition not directly caused by a work injury/disease but which may prevent recovery from that injury should be treated until its objectively verified negative impact has been controlled. The focus of treatment should remain on the work injury/disease.

B. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation Administration, LR 37:1716 (June 2011), amended by the Louisiana Workforce Commission, Office of Workers Compensation, LR 40:1157 (June 2014).

§2125. Initial Evaluation

A. - A.1.e.v. …

vi. Pre-existing Conditions. Treatment of these conditions is appropriate when the preexisting condition is aggravated by work related injury.

f. - f. vi. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation Administration, LR 37:1718 (June 2011), amended LR 45:

§2127. Diagnostic Procedures

A. - A.2.b. …

B. Injections - diagnostic sympathetic

1. - 2. …

a. Since fluoroscopic and/or CT guidance during procedures is recommended to document technique and needle placement, an experienced physician should perform the procedure. The practitioner should have experience in ongoing injection training workshops provided by organizations such as the American Society of Interventional Pain Physicians (ASIPP) or Spine Intervention Society (SIS) and be knowledgeable in radiation safety. In addition, practitioners should obtain fluoroscopy training and radiation safety credentialing from their Departments of Radiology, as applicable.

3. - 5.a.…

i. Stellate Ganglion Block. For diagnosis and treatment of sympathetic pain involving the face, head, neck, and upper extremities secondary to CRPS-I and II. This block is commonly used for differential diagnosis and is the preferred treatment of CRPS-I pain involving the upper extremity. Kuntz Fiber Blockade (T1-T3 sympathetic chain) on the affected side is necessary for upper extremity pain not responsive to stellate ganglion blockade.

5.a.i.(a). - 5.a.iii. ...

iv. Thoracic Sympathetic Block. Useful for abdominal or pelvic visceral pain secondary to CRPS I and II. Use the same guidance as for lumbar sympathetic Block.

C. Thermography (infrared stress thermography)

1 - 4.- b. …

c. Digital Infrared Temperature monitoring should be used before and after sympathetic block where indicated to evaluate response to sympatholytic intervention.

D. - D.3.c. …

E. Other diagnostic tests not specific for CRPS. The following tests and procedures are not used to establish the diagnosis of CRPS but may provide additional information. The following are listed in alphabetical order.

1. - 4. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation Administration, LR 37:1719 (June 2011).

§2131. Therapeutic Procedures—Non-Operative

A. - C.4.a.iv.(b). …

b. Sympathetic Injections:

i. Description. Sympathetic injections are generally accepted, well-established procedures. They include stellate ganglion blocks, Kuntz Fiber blocks, thoracic sympathetic blocks, lumbar sympathetic, and intravenous regional (Bier) blocks. Regional blocks frequently use bretylium with additional agents (narcotics and or anti-inflammatory drugs). There is some evidence that bretylium reduces pain intensity. It is recommended that all patients receiving therapeutic blocks participate in PT and/or OT immediately after each block as well as in an appropriate exercise program that may include a functionally directed rehabilitation program.

ii. …

iii. Special Considerations. Except for Bier blocks, fluoroscopic and/or CT guidance during procedures is recommended to document technique and needle placement; an experienced physician should perform the procedure. The practitioner should participate in ongoing injection training workshops provided by organizations such as the American Society of Interventional Pain Physicians (ASIPP) and the Spinal Intervention Society (SIS) and be knowledgeable in radiation safety. In addition, practitioners should obtain fluoroscopy training and radiation safety credentialing from their Departments of Radiology, as applicable.

iv. - vi.(a). …

(b). Frequency: Variable, depending upon duration of pain relief and functional gains. During the first two weeks of treatment, blocks may be provided every three to five days, based on patient response. After the first two weeks, blocks may be given weekly with tapering for a maximum of seven injections over six weeks. If pain relief and functional gains plateau before seven injections in six weeks, a trial of spinal cord or DRG spinal stimulation should be considered. Refer to Chronic pain guidelines for treatment parameters.

(c). - (g). …

vii. Radiofrequency Sympathectomy in CRPS:

(a). Thoracic, Lumbar and Sacral sympathetic ganglia, including Kuntz Fibers, Splanchnic Ganglia, sacral and L5 sympathetic ganglia, can be treated with RF ablation after successful diagnostic blocks with at least 50% relief of pain and improved function. This procedure can be repeated no more than every 6 months.

5. - 5.b.…

c. Inpatient Pain Rehabilitation Programs are rarely needed but may be necessary for patients with any of the following conditions: High risk for medical instability; Moderate to severe impairment of physical/functional status; Moderate to severe pain behaviors; Moderate impairment of cognitive and/or emotional status; Dependence on medications from which he or she needs to be withdrawn; and the need for 24-hour supervised nursing.

d. Interdisciplinary pain programs, whether formal or informal, should be comprised of the following dimensions:

i. Communication. To ensure positive functional outcomes, communication between the patient, insurer and all professionals involved must be coordinated and consistent. Any exchange of information must be provided to all professionals, including the patient. Care decisions would be communicated to all.

ii. Documentation. Through documentation by all professionals involved and/or discussions with the patient, it should be clear that functional goals are being actively pursued and measured on a regular basis to determine their achievement or need for modification.

iii. Treatment Modalities. Use of modalities may be necessary early in the process to facilitate compliance with and tolerance to therapeutic exercise, physical conditioning, and increasing functional activities. Active treatments should be emphasized over passive treatments. Active treatments should encourage self-coping skills and management of pain, which can be continued independently at home or at work. Treatments that can foster a sense of dependency by the patient on the caregiver should be avoided. Treatment length should be decided based upon observed functional improvement. For a complete list of Active and Passive Therapies, refer to those Subparagrahps

of this guideline. All treatment timeframes may be extended based upon the patient's positive functional improvement.

iv. Therapeutic Exercise Programs. There is strong evidence that these programs, including aerobic conditioning and strengthening, are superior to treatment programs that do not include exercise. There is no sufficient evidence to support the recommendation of any particular exercise regimen over any other exercise regimen. A therapeutic exercise program should be initiated at the start of any treatment rehabilitation. Such programs should emphasize education, independence, and the importance of an on-going exercise regime.

v. Return-to-work. The authorized treating physician should continually evaluate the patient for their potential to return to work. When return-to-work is an option, it may be appropriate to implement a Work Hardening Program (as described in this section). For patients currently employed, efforts should be aimed at keeping them employed. For more specific information regarding return-to-work, refer to the Return-to-work section in this guideline.

vi. Patient Education. Patients with pain need to re-establish a healthy balance in lifestyle. All providers should educate patients on how to overcome barriers to resuming daily activity, including pain management, decreased energy levels, financial constraints, decreased physical ability, and change in family dynamics.

vii. Psychosocial Evaluation and Treatment. Psychosocial evaluation should be initiated, if not previously done. Providers of care should have a thorough understanding of the patient's personality profile; especially if dependency issues are involved. Psychosocial treatment may enhance the patient's ability to participate in pain treatment rehabilitation, manage stress, and increase their problem-solving and self-management skills.

viii. Vocational Assistance. Vocational assistance can define future employment opportunities or assist patients in obtaining future employment. Refer to Return-to-work section for detailed information.

e. Interdisciplinary programs are characterized by a variety of disciplines that participate in the assessment, planning, and/or implementation of the treatment program. These programs are for patients with greater levels of perceived disability, dysfunction, de-conditioning and psychological involvement. The following programs are listed in order of decreasing intensity.

i. Formal Rehabilitation Programs:

(a). Interdisciplinary Pain Rehabilitation. An Interdisciplinary Pain Rehabilitation Program provides outcomes-focused, coordinated, goal-oriented interdisciplinary team services to measure and improve the functioning of persons with pain and encourage their appropriate use of health care system and services. The program can benefit persons who have limitations that interfere with their physical, psychological, social, and/or vocational functioning. The program shares information about the scope of the services and the outcomes achieved with patients, authorized providers, and insurers.

(b). The interdisciplinary team maintains consistent integration and communication to ensure that all interdisciplinary team members are aware of the plan of care for the patient, are exchanging information, and implement the plan of care. The team members make interdisciplinary team decisions with the patient and then ensure that decisions are communicated to the entire care team.

(c). The medical director of the pain program should be board certified in his or her specialty area, have at least two years full-time experience in an interdisciplinary pain rehabilitation program, and ideally be board certified in pain management. Individuals who assist in the accomplishment of functional, physical, psychological, social and vocational goal must include, at the least, a medical director, pain physician(s), psychologist, Biofeedback Therapist, Occupational Therapist, Physical Therapist, and Registered Nurse. Other disciplines on the team may include, but are not limited to, case manager, exercise physiologist, psychiatrist, and/or nutritionist.

(i). Time to produce effect: three to four weeks

(ii). Frequency: No less than five hours/day, five days/week

(iii). Optimum duration: three to four weeks five times a week, followed by six to nine weeks of follow-up one to three times a week.

(iv). Maximum duration: Four months, including follow-up. Periodic review and monitoring thereafter on an as needed basis, is founded upon the documented maintenance of functional gains.

(d). Work Hardening is an interdisciplinary program addressing a patient's employability and return-to-work. It includes a progressive increase in the number of hours per day that a patient completes work simulation tasks until the patient can tolerate a full workday. A full workday is case specific and is defined by the previous employment of the patient. This is accomplished by addressing the medical, psychological, behavioral, physical, functional, and vocational components of employability and return-to-work.

(e). The interdisciplinary team should, at a minimum, be comprised of a qualified medical director who is board certified with documented training in occupational rehabilitation, team physicians having experience in occupational rehabilitation, occupational therapy, physical therapy, case manager, and psychologist. As appropriate, the team may also include: chiropractor, RN, or vocational specialist.

(i). Time to produce effect - two weeks

(ii). Frequency - two to five visits per week, up to eight hours/day.

(iii). Optimum duration - two to four weeks

(iv). Maximum duration - six weeks. Participation in a program beyond six weeks must be documented with respect to need and the ability to facilitate positive symptomatic or functional gains.

ii. Informal Rehabilitation Program. A coordinated interdisciplinary pain rehabilitation program is one in which the authorized treating physician coordinates all aspects of care. This type of program is similar to the formal programs in that it is goal oriented and provides interdisciplinary rehabilitation services to manage the needs of the patient in the following areas: functional, medical, physical, psychological, social, and vocational.

(a). This program is different from a formal program in that it involves lesser frequency and intensity of services/treatment. Informal rehabilitation is geared toward

those patients who do not need the intensity of service offered in a formal program or who cannot attend an all-day program due to employment, daycare, language or other barriers.

(b). Patients should be referred to professionals experienced in outpatient treatment of chronic pain. The OWCA recommends the authorized treating physician consult with physicians experienced in the treatment of chronic pain to develop the plan of care.

(i). Time to produce effect: three to eight weeks

(ii). Frequency: two to six hours per day, two to five days each week.

(iii). Optimum duration: 6 to 12 weeks, including follow-up.

(iv). Maximum duration: Four months, including follow-up. Periodic review and monitoring thereafter on an as needed basis, is founded upon the documented maintenance of functional gains.

6. - 6.a….

b. All medications should be given an appropriate trial in order to test for therapeutic effect. Trials of medication requiring specific therapeutic drug levels may take several months to achieve, depending upon the half-life of the drug. It is recommended that patients with CRPS be maintained on drugs that have the least serious side effects. For example, patients need to be tried or continued on acetaminophen and or antidepressant medications whenever feasible as part of their overall treatment for chronic pain. It is recommended that use of opioid analgesic and sedative hypnotic medications in chronic pain patients be used in a very limited manner, with total elimination desirable whenever clinically feasible. See Chronic Pain Medication Section for further guidance.

c. For the clinician to interpret the following material, it should be noted that: drug profiles listed are not complete; dosing of drugs will depend upon the specific drug, especially for off-label use; and not all drugs within each class are listed, and other drugs within the class may be appropriate for individual cases. Clinicians should refer to informational texts or consult a pharmacist before prescribing unfamiliar medications or when there is a concern regarding drug interactions.

d. …

i. Anticonvulsants. Although the mechanism of action of anticonvulsant drugs in neuropathic pain states remains to be fully defined, they appear to act as channel blocking agents. A large variety of sodium channels are present in nervous tissue, and some of these are important mediators of nociception, as they are found primarily in unmyelinated fibers and their density increases following nerve injury. While the pharmacodynamic effects of the various anticonvulsant drugs are similar, the pharmacokinetic effects differ significantly. Gabapentin and pregablin, by contrast, are relatively non-significant enzyme inducers, creating fewer drug interactions. All patients on these medications should be monitored for suicidal ideation. Many of these medications are not recommended for women of child bearing age due to possible teratogenic effects.

(a). Gabapentin and pregabalin are commonly prescribed for neuropathic pain. There is an association between older anticonvulsants including gabapentin and non-traumatic fractures for patients older than 50; this should be taken into account when prescribing these medications.

(b). Gabapentin and pregabalin have indirect (not GABA A or GABA B receptor mediated) GABA-mimetic qualities rather than receptor mediated actions. This can potentially result in euphoria, relaxation, and sedation. It is likely that they also affect the dopaminergic "reward" system related to addictive disorders. Misuse of these medications usually involves doses 3 to 20 times that of the usual therapeutic dose. The medication is commonly used with alcohol or other drugs of abuse. Providers should be aware of the possibility and preferably screen patients for abuse before prescribing these medications. Withdrawal symptoms, such as insomnia, nausea, headache, or diarrhea, are likely when high doses of pregabalin have been used. Tolerance can also develop.

(c). Gabapentin (Fanatrex, Gabarone, Gralise, Horizant, Neurontin)

(i). Description - Structurally related to gamma aminobutyric acid (GABA) but does not interact with GABA receptors. Gabapentin affects the alpha-2-delta-1 ligand of voltage gated calcium channels, thus inhibiting neurotransmitter containing intra-cellular vesicles from fusing with the pre-synaptic membranes and reducing primary afferent neuronal release of neurotransmitters (glutamate, CGRP, and substance P). It may also modulate transient receptor potential channels, NMDA receptors, protein kinase C and inflammatory cytokines, as well as possibly stimulating descending norepinephrine mediated pain inhibition.

(ii). Indications - As of the time of this guideline writing, formulations of gabapentin have been FDA approved for post-herpetic neuralgia and partial onset seizures.

[a]. There is strong evidence that gabapentin is more effective than placebo in the relief of painful diabetic neuropathy and post-herpetic neuralgia.

[b]. There is some evidence that gabapentin may benefit some patients with post-traumatic neuropathic pain. There is good evidence that gabapentin is not superior to amitriptyline. There is some evidence that nortriptyline (Aventyl, Pamelor) and gabapentin are equally effective for pain relief of postherpetic neuralgia. There is some evidence that the combination of gabapentin and morphine may allow lower doses with greater analgesic effect than the drugs given separately. There is strong evidence that gabapentin is more effective than placebo for neuropathic pain, even though it provides complete pain relief to a minority of patients. There is some evidence that a combination of gabapentin and nortriptyline provides more effective pain relief than monotherapy with either drug.

(iii). Relative Contraindications - Renal insufficiency. Dosage may be adjusted to accommodate renal dysfunction.

(iv). Dosing and Time to Therapeutic Effect - Dosage should be initiated at a low dose in order to avoid somnolence and may require four to eight weeks for titration. Dosage should be adjusted individually. It is taken three to four times per day, and the target dose is 1800 mg.

(v). Major Side Effects - Confusion, sedation, dizziness, peripheral edema. Patients should also be monitored for suicidal ideation and drug abuse.

(vi). Drug Interactions - antacids.

(vii). Laboratory Monitoring - Renal function.

ii. …

(a). Pain responses may occur at lower drug doses with shorter times to symptomatic response than are observed when the same compounds are used in the treatment of mood disorders. Neuropathic pain, diabetic neuropathy, post-herpetic neuralgia, and cancer-related pain may respond to antidepressant doses low enough to avoid adverse effects that often complicate the treatment of depression. First line drugs for neuropathic pain are the tricyclics with the newer formulations having better side effect profiles. SNRIs are considered second line drugs due to their costs and the number needed to treat for a response. Duloxetine may be considered for first line use in a patient who is a candidate for pharmacologic treatment of both chronic pain and depression. SSRIs are used generally for depression rather than neuropathic pain and should not be combined with moderate to high-dose tricyclics.

(b). All patients being considered for anti-depressant therapy should be evaluated and continually monitored for suicidal ideation and mood swings.

(i). Tricyclics and Older Agents (e.g., amitriptyline, nortriptyline, doxepin [Silenor, Sinequan, Adapin], desipramine [Norpramin, Pertofrane], imipramine [Tofranil], trazodone [Desyrel, Oleptro])

[a]. Description - Serotonergics, typically tricyclic antidepressants (TCAs), are utilized for their serotonergic properties as increasing CNS serotonergic tone can help decrease pain perception in non-antidepressant dosages. TCAs decrease reabsorption of both serotonin and norepinephrine. They also impact Na channels. Amitriptyline is known for its ability to repair Stage 4 sleep architecture, a frequent problem found in chronic pain patients and to treat depression, frequently associated with chronic pain. However, higher doses may produce more cholinergic side effects than newer tricyclics such as nortriptyline and desipramine. Doxepin and trimipramine also have sedative effects.

[i]. There is some evidence that a combination of some gabapentin and nortriptyline provides more effective pain relief than monotherapy with either drug, without increasing side effects of either drug.

[b]. Indications -Some formulations are FDA approved for depression and anxiety. For the purposes of this guideline, they are recommended for neuropathic pain and insomnia. They are not recommended as a first line drug treatment for depression.

[c]. Major Contraindications - Cardiac disease or dysrhythmia, glaucoma, prostatic hypertrophy, seizures, high suicide risk, uncontrolled hypertension and orthostatic hypotension. A screening cardiogram may be done for those 40 years of age or older, especially if higher doses are used. Caution should be utilized in prescribing TCAs. They are not recommended for use in elderly patients 65 years of age or older, particularly if they are at fall risk.

[d]. Dosing and Time to Therapeutic Effect - Varies by specific tricyclic. Low dosages, less than 100 mg, are commonly used for chronic pain and/or insomnia. Lower doses decrease side effects and cardiovascular risks.

[e]. Major Side Effects - Side effects vary according to the medication used; however, the side effect profile for all of these medications is generally higher in all areas except GI distress, which is more common among the SSRIs and SNRIs. Anticholinergic side effects including, but not limited to, dry mouth, sedation, orthostatic hypotension, cardiac arrhythmia, urinary retention, and weight gain. Dry mouth leads to dental and periodontal conditions (e.g., increased cavities). Patients should also be monitored for suicidal ideation and drug abuse. Anticholinergic side effects are more common with tertiary amines (amitriptyline, imipramine, doxepin) than with secondary amines (nortriptyline and desipramine).

[f]. Drug Interactions - Tramadol (may cause seizures, both also increase serotonin/norepinephrine, so serotonin syndrome is a concern), clonidine, cimetidine (Tagemet), sympathomimetics, valproic acid (Depakene, Depakote, Epilim, Stavzor), warfarin (Coumadin, Jantoven, Marfarin), carbamazepine, bupropion (Aplezin, Budeprion, Buproban, Forfivo, Wellbutrin, Zyban), anticholinergics, quinolones.

[g]. Recommended Laboratory Monitoring - Renal and hepatic function. Electrocardiogram (EKG) for those on high dosages or with cardiac risk.

iv. Opioids are the most powerful analgesics. Their use in acute pain and moderate-to-severe cancer pain is well accepted. Their use in chronic nonmalignant pain, however, is fraught with controversy and lack of scientific research. Deaths in the United States from opioids have escalated in the last 15 years. The CDC states the following in their 2016 Primary Care guideline for prescribing opioids: Opioid pain medication use presents serious risk, including overdose and opioid use disorder. From 1999 to 2014, more than 165,000 persons died from overdose related to opioid pain medication in the United States. In the past decade, while the death rates for the top leading causes of death such as heart disease and cancer have decreased substantially, the death rate associated with opioid pain medication has increased markedly. Sales of opioid pain medication have increased in parallel with opioid-related overdose deaths. The Drug Abuse Warning Network estimated that less than 420,000 emergency department visits were related to the misuse or abuse of narcotic pain relievers in 2011, the most recent year for which data are available. Opioid poisoning has also been identified in work-related populations.

(a). Effectiveness and Side Effects: Opioids include some of the oldest and most effective drugs used in the control of severe pain. The discovery of opioid receptors and their endogenous peptide ligands has led to an understanding of effects at the binding sites of these naturally occurring substances. Most of their analgesic effects have been attributed to their modification of activity in pain pathways within the central nervous system; however, it has become evident that they also are active in the peripheral nervous system. Activation of receptors on the peripheral terminals of primary afferent nerves can mediate anti-nociceptive effects, including inhibition of neuronal excitability and release of inflammatory peptides. Some of their undesirable effects on inhibiting gastrointestinal

motility are peripherally mediated by receptors in the bowel wall.

(i). Most studies show that only around 50 percent of patients tolerate opioid side effects and receive an acceptable level of pain relief. Depending on the diagnosis and other agents available for treatment, the incremental benefit can be small.

(ii). There is good evidence that opioids are more efficient than placebo in reducing neuropathic pain by clinically significant amounts. There is a lack of evidence that opioids improve function and quality of life more effectively than placebo. There is good evidence that opioids produce significantly more adverse effects than placebo such as constipation, drowsiness, dizziness, nausea, and vomiting. There is a lack of evidence that they are superior to gabapentin or nortriptyline for neuropathic pain reduction.

(iii). Patients should have a thorough understanding of the need to pursue many other pain management techniques in addition to medication use in order to function with chronic pain. They should also be thoroughly aware of the side effects and how to manage them. There is strong evidence that adverse events such as constipation, dizziness, and drowsiness are more frequent with opioids than with placebo. Common side effects are drowsiness, constipation, nausea, and possible testosterone decrease with longer term use.

(b). Hyperalgesia: Administration of opioid analgesics leads not only to analgesia, but may also lead to a paradoxical sensitization to noxious stimuli. Opioid induced hyperalgesia has been demonstrated in animals and humans using electrical or mechanical pain stimuli. This increased sensitivity to mildly painful stimuli does not occur in all patients and appears to be less likely in those with cancer, clear inflammatory pathology, or clear neuropathic pain. When hyperalgesia is suspected, opioid tapering is appropriate.

(c). Opioid Induced Constipation (OIC): Some level of constipation is likely ubiquitous among chronic opioid users. An observational study of chronic opioid users who also used some type of laxative at least four times per week noted that approximately 50 percent of the patients were dissatisfied and they continue to report stool symptoms. 71 percent used a combination of natural and dietary treatment, 64.3 percent used over-the-counter laxatives, and 30 percent used prescription laxatives. Other studies report similar percentages. There are insufficient quality studies to recommend one specific type of laxative over others.

(i). The easiest method for identifying constipation, which is also recommended by a consensus, multidisciplinary group, is the Bowel Function Index. It assesses the patient's impression over the last seven days for ease of defecation, feeling of incomplete bowel evacuation, and personal judgment re-constipation.

(ii). Stepwise treatment for OIC is recommended, and all patients on chronic opioids should receive information on treatment for constipation. Dietary changes increasing soluble fibers are less likely to decrease OIC and may cause further problems if GI motility is decreased. Stool softeners may be tried, but stimulant and osmotic laxatives are likely to be more successful. Osmotic laxatives include lactulose and polyethylene glycol. Stimulants include bisacodyl, sennosides, and sodium picosulfate, although there may be some concern regarding use of stimulants on a regular basis.

(iii). Opioid rotation or change in opioids may be helpful for some patients. It is possible that sustained release opioid products cause more constipation than short acting agents due to their prolonged effect on the bowel opioid receptors. Tapentadol is a u-opioid agonist and norepinephrine reuptake inhibitor. It is expected to cause less bowel impairment then oxycodone or other traditional opioids.Tapentadol may be the preferred opioid choice for patients with OIC.

(iv). Other prescription medications may be used if constipation cannot adequately be controlled with the previous measures. Naloxegol is a pegylaped naloxone molecule that does not pass the blood brain barrier and thus can be given with opioid therapy. There is good evidence that it can alleviate OIC and that 12.5 mg starting dose has an acceptable side effect profile.

(v). Methylnaltrexone does not cross the blood brain barrier and can be given subcutaneously or orally. It is specifically recommended for opioid induced constipation for patients with chronic non-cancer pain.

(vi). Misoprostol is a synthetic prostaglandin E1 agonist and has the side effect of diarrhea in some patients. It also has been tried for opioid induced constipation, although it is not FDA approved for this use.

(vii). Naldemedine is an opioid antagonist indicated for the treatment of opioidinduced constipation in adult patients with chronic pain.

(viii). Lubiprostone is a prostaglandin E1 approved for use in opioid constipation.

(ix). Most patients will require some therapeutic control for their constipation. The stepwise treatment discussed should be followed initially. If that has failed and the patient continues to have recurrent problems with experiencing severe straining, hard or lumpy stool with incomplete evacuation, or infrequent stools for 25 percent of the time despite the more conservative measures, it may be appropriate to use a pharmaceutical agent.

(d). Physiologic Responses to Opioids: Physiologic responses to opioids are influenced by variations in genes which code for opiate receptors, cytochrome P450 enzymes, and catecholamine metabolism. Interactions between these gene products significantly affect opiate absorption, distribution, and excretion. Hydromorphone, oxymorphone, and morphine are metabolized through the glucuronide system. Other opioids generally use the cytochrome P450 system. Allelic variants in the mu opiate receptor may cause increased analgesic responsiveness to lower drug doses in some patients. The genetic type can predict either lower or higher needs for opioids. For example, at least 10 percent of Caucasians lack the CYP450 2D6 enzyme that converts codeine to morphine. In some cases, genetic testing for cytochrome P450 type may be helpful. When switching patients from codeine to other medications, assume the patient has little or no tolerance to opioids. Many gene-drug associations are poorly understood and of uncertain clinical significance. The treating physician needs to be aware of the fact that the patient's genetic makeup may influence both the therapeutic response to drugs and the occurrence of adverse effects. A

Comprehensive genetic testing panel may be ordered by treating physician for these multiple P450 genes once in a lifetime and utilized whenever there is a question of metabolism or unusual response of any drugs used to treat pain conditions, because multiple drugs and associated genes can cause problems with opioid metabolism

(e). Adverse Events: Physicians should be aware that deaths from unintentional drug overdoses exceed the number of deaths from motor vehicle accidents in the US. Most of these deaths are due to the use of opioids, usually in combination with other respiratory depressants such as alcohol or benzodiazepines. The risk for out of hospital deaths not involving suicide was also high. The prevalence of drug abuse in the population of patients undergoing pain management varies according to region and other issues. One study indicated that one-fourth of patients being monitored for chronic opioid use have abused drugs occasionally, and one-half of those have frequent episodes of drug abuse. 80 percent of patients admitted to a large addiction program reported that their first use of opioids was from prescribed medication.

(i). There is good evidence that in generally healthy patients with chronic musculoskeletal pain, treatment with long-acting opioids, compared to treatments with anticonvulsants or antidepressants, is associated with an increased risk of death of approximately 69 percent, most of which arises from non-overdose causes, principally cardiovascular in nature. The excess cardiovascular mortality principally occurs in the first 180 days from starting opioid treatment.

(ii). There is some evidence that compared to an opioid dose under 20 MED per day, a dose of 20-50 mg nearly doubles the risk of death, a dose of 50 to 100 mg may increase the risk more than fourfold, and a dose greater than 100 mg per day may increase the risk as much as sevenfold. However, the absolute risk of fatal overdose in chronic pain patients is fairly low and may be as low as 0.04 percent. There is good evidence that prescription opioids in excess of 200 MED average daily doses are associated with a near tripling of the risk of opioid-related death, compared to average daily doses of 20 MED. Average daily doses of 100-200 mg and doses of 50-99 mg per day may be associated with a doubling of mortality risk, but these risk estimates need to be replicated with larger studies.

(iii). Doses of opioids in excess of 120 MED have been observed to be associated with increased duration of disability. Higher doses are more likely to be associated with hypo-gonadism, and the patient should be informed of this risk. Higher doses of opioids also appear to contribute to the euphoric effect. The CDC recommends Primary Care Practitioners limiting to 90 MED per day to avoid increasing risk of overdose or referral to a pain specialist.

(iv). In summary, there is strong evidence that any dose above 50 MED per day is associated with a higher risk of death and 100 mg or greater appears to significantly increase the risk. Interventional techniques such as Spinal Cord Stimulation or Intrathecal Catheters and Programmable pumps should be considered in order to stop oral opioids usage.

(v). Workers who eventually are diagnosed with opioid abuse after an injury are also more likely to have higher claims cost. A retrospective observational cohort study of workers' compensation and short-term disability cases found that those with at least one diagnosis of opioid abuse cost significantly more in days lost from work for both groups and in overall healthcare costs for the short-term disability groups. About 0.5 percent of eligible workers were diagnosed with opioid abuse.

(f). Dependence versus Addiction: The central nervous system actions of these drugs account for much of their analgesic effect and for many of their other actions, such as respiratory depression, drowsiness, mental clouding, reward effects, and habit formation. With respect to the latter, it is crucial to distinguish between two distinct phenomena: dependence and addiction.

(i). Dependence is a physiological tolerance and refers to a set of disturbances in body homeostasis that leads to withdrawal symptoms, which can be produced with abrupt discontinuation, rapid reduction, decreasing blood levels, and/or by administration of an antagonist.

(ii). Addiction is a primary, chronic, neurobiological disease, with genetic, psychological, and environmental factors influencing its development and manifestations. It is a behavioral pattern of drug craving and seeking which leads to a preoccupation with drug procurement and an aberrant pattern of use. The drug use is frequently associated with negative consequences.

(iii). Dependence is a physiological phenomenon, which is expected with the continued administration of opioids, and need not deter physicians from their appropriate use. Before increasing the opioid dose, the physician should review other possible causes for the decline in analgesic effect. Increasing the dose may not result in improved function or decreased pain. Remember that it is recommended for total morphine milligram equivalents (MME) per day to remain at 50 or below. Consideration should be given to possible new psychological stressors or an increase in the activity of the nociceptive pathways. Other possibilities include new pathology, low testosterone level that impedes delivery of opioids to the central nervous system, drug diversion, hyperalgesia, or abusive use of the medication.

(g). Choice of Opioids: No long-term studies establish the efficacy of opioids over one year of use or superior performance by one type. There is no evidence that one long-acting opioid is more effective than another, or more effective than other types of medications, in improving function or pain. There is some evidence that long-acting oxycodone (Dazidox, Endocodone, ETH-oxydose, Oxycontin, Oxyfast, OxyIR, Percolone, Roxicodone) and oxymorphone have equal analgesic effects and side effects, although the milligram dose of oxymorphone (Opana) is one-half that of oxycodone. There is no evidence that long-acting opioids are superior to short-acting opioids for improving function or pain or causing less addiction. A number of studies have been done assessing relief of pain in cancer patients. A recent systematic review concludes that oxycodone does not result in better pain relief than other strong opioids including morphine and oxymorphone. It also found no difference between controlled release and immediate release oxycodone. There is some evidence that extended release hydrocodone has a small and clinically

unimportant advantage over placebo for relief of chronic low back pain among patients who are able to tolerate the drug and that 40percent of patients who begin taking the drug do not attain a dose which provides pain relief without unacceptable adverse effects. Hydrocodone ER does not appear to improve function in comparison with placebo. A Cochrane review of oxycodone in cancer pain also found no evidence in favor of the longer acting opioid. There does not appear to be any significant difference in efficacy between once daily hydromorphone and sustained release oxycodone. Nausea and constipation are common for both medications between 26 to 32 percent. November 21, 2017, the FDA Commissioner, Scott Gottlieb, M.D., issued a Statement to promote development of generic versions of opioids formulated to deter abuse. One year earlier the FDA issued a statement encouraging development of Abuse Deterrant Formulations for opioids as a meaningful health benefit designed to reduce opoid abuse in the U.S. and to potentially and eventually remove conventional non deterrant opioids from the market if found to be unsafe.

(i). There is some evidence that in the setting of neuropathic pain, a combination of morphine plus nortriptyline produces better pain relief than either monotherapy alone, but morphine monotherapy is not superior to nortriptyline monotherapy, and it is possible that it is actually less effective than nortriptyline.

(ii). Long-acting opioids should not be used for the treatment of acute, sub-acute, or post-operative pain, as this is likely to lead to drug dependence and difficulty tapering the medication. Additionally, there is a potential for respiratory depression to occur. The FDA requires that manufacturers develop Risk Evaluation and Mitigation Strategies (REMS) for most opioids. Physicians should carefully review the plans or educational materials provided under this program. Clinical considerations should determine the need for long-acting opioids given their lack of evidence noted above.

(iii). Addiction and abuse potentials of commonly prescribed opioid drugs may be estimated in a variety of ways, and their relative ranking may depend on the measure which is used. One systematic study of prescribed opioids estimated rates of drug misuse were estimated at 21 to 29 percent and addiction at 8 to 12 percent. There is good evidence that in the setting of new onset chronic non-cancer pain, there is a clinically important relationship between opioid prescription and subsequent opioid use disorder. Compared to no opioid use, short-term opioid use approximately triples the risk of opioid use disorder in the next 18 months. Use of opioids for over 90 days is associated with very pronounced increased risks of the subsequent development of an opioid use disorder, which may be as much as one hundredfold when doses greater than 120 MED are taken for more than 90 days. The absolute risk of these disorders is very uncertain but is likely to be greater than 6.1 percent for long duration treatment with a high opioid dose. Pain physicians should be consulted when the MED reaches 100 to develop an updated treatment plan

(iv). Hydrocodone is the most commonly prescribed opioid in the general population and is one of the most commonly abused opioids in the population. However, the abuse rate per 1000 prescriptions is lower than the corresponding rates for extended release oxycodone, hydromorphone (Dilaudid, Palladone), and methadone. Extended release oxycodone appears to be the most commonly abused opioid, both in the general population and in the abuse rate per 1000 prescriptions. Tramadol, by contrast, appears to have a lower abuse rate than for other opioids.

(v). Types of opioids are listed below:

[a]. Buprenorphine: (various formulations) is prescribed as an intravenous injection, transdermal patch, buccal film, or sublingual tablet due to lack of bioavailability of oral agents. Depending upon the formulation, buprenorphine may be indicated for the treatment of pain or for the treatment of opioid dependence (addiction).

[i]. Buprenorphine for Opioid Dependence (addiction): FDA has approved a number of buccal films including those with naloxone and a sublingual tablet to treat opioid dependence (addiction).

[ii]. Buprenorphine for Pain: The FDA has approved specific forms of an intravenous and subcutaneous injectable, transdermal patch, and a buprenorphine buccal film to treat pain. However, by law, the transdermal patch and the injectable forms cannot be used to treat opioid dependence (addiction), even by DATA-2000 waivered physicians authorized to prescribe buprenorphine for addiction. Transdermal forms may cause significant skin reaction. Buprenorphine is not recommended for most chronic pain patients due to methods of administration, reports of euphoria in some patients, and lack of proof for improved efficacy in comparison with other opioids.

[iii]. There is insufficient evidence to support or refute the suggestion that buprenorphine has any efficacy in any neuropathic pain condition.

[iv]. There is good evidence transdermal buprenorphine is not inferior to oral tramadol in the treatment of moderate to severe musculoskeletal pain arising from conditions like osteoarthritis and low back pain. The population of patients for whom it is more appropriate than tramadol is not established but would need to be determined on an individual patient basis if there are clear reasons not to use oral tramadol.

In a well done study, 63 percent of those on buccal buprenorphine achieved a 30 percent or more decrease in pain at 12 weeks compared to a 47 percent placebo response. Approximately 40 percent of the initial groups eligible for the study dropped out during the initial phase when all patients received the drug to test for incompatibility.

[v]. There is strong evidence that in patients being treated with opioid agonists for heroin addiction, methadone is more successful than buprenorphine at retaining patients in treatment. The rates of opiate use, as evidenced by positive urines, are equivalent between methadone and buprenorphine. There is strong evidence that buprenorphine is superior to placebo with respect to retention in treatment, and good evidence that buprenorphine is superior to placebo with respect to positive urine testing for opiates.

[vi]. There is an adequate meta-analysis supporting good evidence that transdermal fentanyl and transdermal buprenorphine are similar with respect to analgesia and sleep quality, and they are similar with respect

to some common adverse effects such as constipation and discontinuation due to lack of effect. However, buprenorphine probably causes significantly less nausea than fentanyl, and it probably carries a lower risk of treatment discontinuation due to adverse events. It is also likely that both transdermal medications cause less constipation than oral morphine.

[vii]. Overall, due to cost and lack of superiority, buprenorphine is not a front line opioid choice. However, it may be used in those with a history of addiction or at high risk for addiction who otherwise qualify for chronic opioid use. It is also appropriate to consider buprenorphine products for tapering strategies and those on high dose morphine of 90 MED or more.

[b]. Codeine with Acetaminophen: Some patients cannot genetically metabolize codeine and therefore have no response. Codeine is not generally used on a daily basis for chronic pain. Acetaminophen dose per day should be limited to 2 grams.

[c]. Fentanyl (Actiq, Duragesic, Fentora, Sublimazem, Subsys): is not recommended for use with musculoskeletal chronic pain patients. It has been associated with a number of deaths and has high addiction potential. Fentanyl should never be used transbuccally in this population. If Fentanyl it is being considered for a very specific patient population, it requires support from a pain specialist. Subsys is only indicated for Cancer Pain.

[d]. Meperidine (Demerol): is not recommended for chronic pain. It and its active metabolite, normeperidine, present a serious risk of seizure and hallucinations. It is not a preferred medication for acute pain as its analgesic effect is similar to codeine.

[e]. Methadone: requires special precautions given its unpredictably long half-life and non-linear conversion from other opioids such as morphine. It may also cause cardiac arrhythmias due to QT prolongation and has been linked with a greater number of deaths due to its prolonged half-life. No conclusions can be made regarding differences in efficacy or safety between methadone and placebo, other opioids, or other treatments. There is strong evidence that in patients being treated with opioid agonists for heroin addiction, methadone is more successful than buprenorphine at retaining patients in treatment. The rates of opiate use, as evidenced by positive urines, are equivalent between methadone and buprenorphine. Methadone should only be prescribed by those with experience in managing this medication. Conversion from another opioid to methadone (or the other way around) can be very challenging, and dosing titration must be done very slowly (no more than every seven days). Unlike many other opioids, it should not be used on an "as needed" basis, as decreased respiratory drive may occur before the full analgesic effect of methadone is appreciated. If methadone is being considered, genetic screening is appropriate. CYP2B6 polymorphism appears to metabolize methadone more slowly than the usual population and may cause more frequent deaths.

[f]. Morphine: may be used in the non-cancer pain population. A study in chronic low back pain suggested that individuals with a greater amount of endogenous opioids will have a lower pain relief response to morphine.

[g]. Oxycodone and Hydromorphone: There is no evidence that oxycodone (as oxycodone CR) is of value in treating people with painful diabetic neuropathy, postherpetic neuralgia, or other neuropathic conditions. There was insufficient evidence to support or refute the suggestion that hydromorphone has any efficacy in any neuropathic pain condition. Oxycodone was not associated with greater pain relief in cancer patients when compared to morphine or oxymorphone.

[h]. Propoxyphene (Darvon, Davon-N, PP-Cap): has been withdrawn from the market due to cardiac effects including arrhythmias.

[i]. Tapentadol (Nucynta): is a mu opioid agonist which also inhibits serotonin and norepinephrine reuptake activity. It is currently available in an intermediate release formulation and may be available as extended release if FDA approved. Due to its dual activity, it can cause seizures or serotonin syndrome, particularly when taken with other SSRIs, SNRIs, tricyclics, or MAO inhibitors. It has not been tested in patients with severe renal or hepatic damage. It has similar opioid abuse issues as other opioid medication; however, it is promoted as having fewer GI side effects, such as constipation. There is good evidence that extended release tapentadol is more effective than placebo and comparable to oxycodone. In that study, the percent of patients who achieved 50 percent or greater pain relief was: placebo, 18.9 percent, tapentadol, 27.0 percent, and oxycodone, 23.3 percent. There is some evidence that tapentadol can reduce pain to a moderate degree in diabetic neuropathy, average difference 1.4/10 pain scale, with tolerable adverse effects. However, a high quality systematic review found inadequate evidence to support tapentadol to treat chronic pain. Tapentadol is not recommended as a first line opioid for chronic, subacute, or acute pain due to the cost and lack of superiority over other analgesics. There is some evidence that tapentadol causes less constipation than oxycodone. Therefore, it may be appropriate for patients who cannot tolerate other opioids due to GI side effects.

[j]. Tramadol (Rybix, Ryzolt, Ultram):

[i]. Description: an opioid partial agonist that does not cause GI ulceration or exacerbate hypertension or congestive heart failure. It also inhibits the reuptake of norepinephrine and serotonin which may contribute to its pain relief mechanism. There are side effects similar to opioid side effects and may limit its use. They include nausea, sedation, and dry mouth.

[ii]. Indications: mild to moderate pain relief. As of the time of this guideline writing, formulations of tramadol have been FDA approved for management of moderate to moderately severe pain in adults. This drug has been shown to provide pain relief equivalent to that of commonly prescribed NSAIDs. Unlike other pure opioids agonists, there is a ceiling dose to tramadol due to its serotonin activity (usually 300-400 mg per day). There is some evidence that it alleviates neuropathic pain following spinal cord injury. There is inadequate evidence that extended-release tramadol/acetaminophen in a fixed-dose combination of 75mg/650 mg is more effective than placebo in relieving chronic low back pain; it is not more effective in improving function compared to placebo. There is some evidence that tramadol yields a short-term analgesic response of little clinical importance relative to placebo in

post-herpetic neuralgia which has been symptomatic for approximately six months. However, given the effectiveness of other drug classes for neuropathic pain, tramadol should not be considered a first line medication. It may be useful for patients who cannot tolerate tricyclic antidepressants or other medications.

[iii]. Contraindications: use cautiously in patients who have a history of seizures, who are taking medication that may lower the seizure threshold, or taking medications that impact serotonin reuptake and could increase the risk for serotonin syndrome, such as monoamine oxidase inhibitors (MAO) inhibitors, SSRIs, TCAs, and alcohol. Use with caution in patients taking other potential QT prolonging agents. Not recommended in those with prior opioid addiction. Has been associated with deaths in those with an emotional disturbance or concurrent use of alcohol or other opioids. Significant renal and hepatic dysfunction requires dosage adjustment.

[iv]. Side Effects: may cause impaired alertness or nausea. This medication has physically addictive properties, and withdrawal may follow abrupt discontinuation.

[v]. Drug Interactions: opioids, sedating medications, any drug that affects serotonin and/or norepinephrine (e.g., SNRIs, SSRIs, MAOs, and TCAs).

[vi]. Laboratory Monitoring: renal and hepatic function.

(vi). Health care professionals and their patients must be particularly conscientious regarding the potential dangers of combining over-the-counter acetaminophen with prescription medications that also contain acetaminophen. Opioid and acetaminophen combination medication are limited due to the acetaminophen component. Total acetaminophen dose per day should not exceed 4 grams per any 24-hour period and is preferably limited to 2 grams per day to avoid possible liver damage.

(vii). Indications: The use of opioids is well accepted in treating cancer pain, where nociceptive mechanisms are generally present due to ongoing tissue destruction, expected survival may be short, and symptomatic relief is emphasized more than functional outcomes. In chronic non-malignant pain, by contrast, tissue destruction has generally ceased, meaning that central and neuropathic mechanisms frequently overshadow nociceptive processes. Expected survival in chronic pain is relatively long, and return to a high-level of function is a major goal of treatment. Therefore, approaches to pain developed in the context of malignant pain may not be transferable to chronic non-malignant pain. Opioids are generally not the best choice of medication for controlling neuropathic pain. Tricyclics, SNRIs, and anticonvulsants should be tried before considering opioids for neuropathic pain.

[a]. In most cases, analgesic treatment should begin with acetaminophen, aspirin, NSAIDs, and possibly Baclofen or Tizanidine. While maximum efficacy is modest, they may reduce pain sufficiently to permit adequate function. When these drugs do not satisfactorily reduce pain, medications specific to the diagnosis should be used (e.g., neuropathic pain medications as outlined in Section G.10, Medications).

[b]. There is good evidence from a prospective cohort study that in the setting of common low back injuries, when baseline pain and injury severity are taken into account, a prescription for more than seven days of opioids in the first six weeks is associated with an approximate doubling of disability one year after the injury. Therefore, prescribing after two weeks in a non-surgical case requires a risk assessment. If prescribing beyond four weeks, a full opioid trial is suggested including toxicology screen. Best practice suggests that whenever there is use of opioids for more than seven days, providers should follow all recommendations for screening and follow-ups of chronic pain use.

[c]. Consultation or referral to a pain specialist behavioral therapist should be considered when the pain persists but the underlying tissue pathology is minimal or absent and correlation between the original injury and the severity of impairment is not clear. Consider consultation if suffering and pain behaviors are present and the patient manifests risk behaviors described below, or when standard treatment measures have not been successful or are not indicated.

[d]. A psychological consultation including psychological testing (with validity measures) is indicated for all chronic pain patients as these patients are at high risk for unnecessary procedures and treatment and prolonged recovery.

[e]. Many behaviors have been found related to prescription-drug abuse patients. None of these are predictive alone, and some can be seen in patients whose pain is not under reasonable control; however, the behaviors should be considered warning signs for higher risk of abuse or addiction by physicians prescribing chronic opioids. Refer to subsection, High Risk Behavior, below.

(ix). Recommendations for Opioid Use: When considering opioid use for moderate to moderately severe chronic pain, a trial of opioids must be accomplished as described below and the patient must have failed other chronic pain management regimes. Physicians should complete the education recommended by the FDA, risk evaluation and mitigation strategies (REMS) provided by drug manufacturing companies.

[a]. General Indications - There must be a clear understanding that opioids are to be used for a limited term in the first instance (see trial indications below). The patient should have a thorough understanding of all of the expectations for opioid use. The level of pain relief is expected to be relatively small, two to three points on a VAS pain scale, although in some individual patients it may be higher. For patients with a high response to opioid use, care should be taken to assure that there is no abuse or diversion occurring. The physician and patient must agree upon defined functional goals as well as pain goals. If functional goals are not being met, the opioid trial should be reassessed. The full spectrum of side effects should be reviewed. The shared decision making agreement signed by the patient must clarify under what term the opioids will be tapered. Refer to subsection on the shared decision making agreement, below.

[b]. Therapeutic Trial Indications - A therapeutic trial of opioids should not be employed unless

the patient has begun multi-disciplinary pain management. The trial shall last one month. If there is no functional effect, the drug should be tapered. Chronic use of opioids should not be prescribed until the following have been met:

[i]. The failure of pain management alternatives, including active therapies, cognitive behavioral therapy, pain self-management techniques, and other appropriate medical techniques.

[ii]. Physical and psychological and/or psychiatric assessment including a full evaluation for alcohol or drug addiction, dependence or abuse, performed by two specialists with one being the authorized treating physician. The patient should be stratified as to low, medium, or high risk for abuse based on behaviors and prior history of abuse. High risk patients are those with active substance abuse of any type or a history of opioid abuse. These patients should generally not be placed on chronic opioids. If it is deemed appropriate to do so, physician addiction specialists should be monitoring the care. Moderate risk factors include a history of non-opioid substance abuse disorder, prior trauma particularly sexual abuse, tobacco use, widespread pain, poor pain coping, depression, and dysfunctional cognitions about pain and analgesic medications (see below). Pre-existing respiratory or memory problems should also be considered. Patients with a past history of substance abuse or other psychosocial risk factors should be co-managed with a physician addiction specialist.

[iii]. Risk Factors to Consider: history of severe post-operative pain, opioid analgesic tolerance (daily use for months), current mixed opioid agonist/antagonist treatment (e.g., buprenorphine, naltrexone), chronic pain (either related or unrelated to the surgical site), psychological comorbidities (e.g., depression, anxiety, catastrophizing), history of substance use disorder, history of "all over body pain", history of significant opioid sensitivities (e.g., nausea, sedation), and history of intrathecal pump use or nerve stimulator implanted for pain control.

[iv]. Employment requirements are outlined. The patient's employment requirements should also be discussed as well as the need to drive. It is generally not recommended to allow workers in safety sensitive positions to take opioids. Opioid naïve patients or those changing doses are likely to have decreased driving ability. Some patients on chronic opioids may have nominal interference with driving ability; however, effects are specific to individuals. Providers may choose to order certified driver rehabilitation assessment.

[v]. Urine drug screening for substances of abuse and substances currently prescribed. Clinicians should keep in mind that there are an increasing number of deaths due to the toxic misuse of opioids with other medications and alcohol. Drug screening is a mandatory component of chronic opioid management. It is appropriate to screen for alcohol and marijuana use and have a contractual policy regarding both alcohol and marijuana use during chronic opioid management. Alcohol use in combination with opioids is likely to contribute to death.

[vi]. Review of the Prescription Monitoring Program. Louisiana Revised Statutes 40:978 and 40:1001-1014. Informed, written, witnessed consent by the patient including the aspects noted above. Patients should also be counseled on safe storage and disposal of opioids.

[vii]. The trial, with a short-acting agent, should document sustained improvement of pain control, at least a 30 percent reduction, and of functional status, including return-to-work, and/or increase in activities of daily living. It is necessary to establish goals which are specific, measurable, achievable, and relevant prior to opioid trial or adjustment to measure changes in activity/function. Measurement of functional goals may include patient completed validated functional tools. Frequent follow-up at least every two to four weeks may be necessary to titrate dosage and assess clinical efficacy.

[c]. On-Going, Long-Term Management after a successful trial should include:

[i]. Prescriptions from a single practitioner;

[ii]. Ongoing review and documentation of pain relief, functional status, appropriate medication use, and side effects; full review at least every three months;

[iii]. Ongoing effort to gain improvement of social and physical function as a result of pain relief;

[iv]. Review of the Prescription Monitoring Program (PMP);

[v]. Shared decision making agreement detailing the following:

{a}. Side effects anticipated from the medication;

{b}. Requirement to continue active therapy;

{c}. Need to achieve functional goals including return to work for most cases;

{d}. Reasons for termination of opioid management, referral to addiction treatment, or for tapering opioids (tapering is usually for use longer than 30 days). Examples to be included in the contract include, but are not limited to:

{i}. Diversion of medication

{ii}. Lack of functional effect at higher doses

{iii}. Non-compliance with other drug use

{iv}. Drug screening showing use of drugs outside of the prescribed treatment or evidence of non-compliant use of prescribed medication

{v}. Requests for prescriptions outside of the defined time frames

{vi}. Lack of adherence identified by pill count, excessive sedation, or lack of functional gains

{vii}. Excessive dose escalation with no decrease in use of short-term medications

{viii}. Apparent hyperalgesia

{ix}. Shows signs of substance use disorder (including but not limited to work or family problems related to opioid use, difficulty controlling use, craving)

{x}. Experiences overdose or other serious adverse event

{xi}. Shows warning signs for overdose risk such as confusion, sedation, or slurred speech

{e}. Patient Agreements should be written at a sixth grade reading level to accommodate the majority of patients.

{f}. Use of random drug screening, initially, four times a year or possibly more with documented suspicion of abuse or diversion or for stabilization or maintenance phase of treatment. In addition to those four or more random urine drug screens, quantitative testing is appropriate in cases of inconsistent findings, suspicions, or for particular medications that patient is utilizing that is not in the qualitative testing.

{i}. Drugs or drug classes for which screening is performed should only reflect those likely to be present based on the patient's medical history or current clinical presentation, illicit substances, the practitioner's suspicion, and without duplication.

{ii}. Qualitative Urine Drug Testing (UDT) (i.e., immunoassay to evaluate, indicates the drug is present) that is utilized for pain management or substance abuse monitoring, may be considered medically necessary for: baseline screening/Induction phase before initiating treatment or at time treatment is initiated, stabilization phase of treatment with targeted weekly qualitative screening for a maximum of four weeks. (This type of monitoring is done to identify those patients who are expected to be on a stable dose of opioid medication within a four-week timeframe.) Maintenance phase of treatment with targeted qualitative screening once every one to three months. Subsequent monitoring phase of treatment at a frequency appropriate for the risk level of the individual patient. (This type of monitoring is done to identify those patients who are noncompliant or abusing prescription drugs or illicit drugs.) Note: In general, qualitative urine drug testing should not require more than four tests in a 12-month period. Additional testing, as listed above, would require clinical justification of medical necessity.

{iii}. Quantitative UDT (i.e., gas chromatography and or mass spectrometry [GCMS] as confirmatory, indicates the amount of drug is present) that is utilized for pain management or substance abuse monitoring, may be considered medically necessary under the following circumstances: When immunoassays for the relevant drug(s) are not commercially available, or in specific situations when qualitative urine drug levels are required for clinical decision making. The following qualitative urine drug screen results must be present and documented: Positive for a prescription drug that is not prescribed to the patient; or Negative for a prescription drug that is prescribed to the patient; or Positive for an illicit drug.

{iv}. Quantitative testing is not appropriate for every specimen and should not be done routinely. This type of test should be performed in a setting of unexpected results and not on all specimens. The rationale for each quantitative test must be supported by the ordering clinician's documentation. The record must show that an inconsistent positive finding was noted on the qualitative testing or that there was not an available qualitative test to evaluate the presence of semisynthetic or synthetic opioid, illicit drugs or other medications used for pain management in a patient. Simultaneous blood and urine drug screening or testing is not appropriate and should not be done.

{v}. Urine testing, when included as one part of a structured program for pain management, has been observed to reduce abuse behaviors in patients with a history of drug misuse. Clinicians should keep in mind that there are an increasing number of deaths due to the toxic misuse of opioids with other medications and alcohol. Drug screening is a mandatory component of chronic opioid management. Clinicians should determine before drug screening how they will use knowledge of marijuana use. It is appropriate to screen for alcohol and marijuana use and have a contractual policy regarding both alcohol and marijuana use during chronic opioid management. Alcohol use in combination with opioids is likely to contribute to death. From a safety standpoint, it is more important to screen for alcohol use than marijuana use as alcohol is more likely to contribute to unintended overdose.

{vi}. Physicians should recognize that occasionally patients may use non-prescribed substances because they have not obtained sufficient relief on the prescribed regime.

[vi]. Chronic use limited to two oral opioids.

[vii]. Transdermal medication use, other than buprenorphine, is generally not recommended.

[viii]. Use of acetaminophen-containing medications in patients with liver disease should be limited; including over-the-counter medications. Acetaminophen dose should not exceed 4 grams per day for short-term use or 2 to 3 grams/day for long-term use in healthy patients. A safer chronic dose may be 1800mg/day.

[ix]. Continuing review of overall therapy plan with regard to non-opioid means of pain control and functional status.

[x]. Tapering of opioids may be necessary for many reasons including the development of hyperalgesia, decreased effects from an opioid, lack of compliance with the opioid contract, or intolerance of side effects. Some patients appear to experience allodynia or hyperalgesia on chronic opioids. This premise is supported by a study of normal volunteers who received opioid infusions and demonstrated an increase in secondary hyperalgesia. Options for treating hyperalgesia include withdrawing the patient from opioids and reassessing their condition. In some cases, the patient will improve when off of the opioid. In other cases, another opioid may be substituted.

{a}. Tapering may also be appropriate by patient choice, to accommodate "fit-for-duty" demands, prior to major surgery to assist with post-operative pain control, to alleviate the effects of chronic use including hypogonadism, medication side effects, or in the instance of a breach of drug agreement, overdose, other drug use aberrancies, or lack of functional benefit. It is also appropriate for any of the tapering criteria listed in section E above.

{b}. Generally tapering can be accomplished by decreasing the dose 10 percent per week. This will generally take 6 to 12 weeks and may need to be done one drug class at a time. Behavioral support is required during this service. Tapering may occur prior to MMI or in some cases during maintenance treatment.

[xi]. Medication assisted treatment with buprenorphine or methadone may be considered for opioid abuse disorder, in addition to behavioral therapy.

[xii]. Inpatient treatment may be required for addiction or opioid tapering in complex cases. Refer to Interdisciplinary Rehabilitation Programs for detailed information on inpatient criteria.

[d]. Relative Contraindications - Extreme caution should be used in prescribing controlled substances for workers with one or more "relative contraindications": Consultation with a pain or addiction specialist may be useful in these cases.

[i]. history of alcohol or other substance abuse, or a history of chronic, benzodiazepine use;

[ii]. sleep apnea: If patient has symptoms of sleep apnea, diagnostic tests should be pursued prior to chronic opioid use;

[iii]. off work for more than six months with minimal improvement in function from other active therapy;

[iv]. severe personality disorder or other known severe psychiatric disease per psychiatrist or psychologist;

[v]. monitoring of behavior for signs of possible substance abuse indicating an increased risk for addiction and possible need for consultation with an addiction specialist.

[e]. High Risk Behavior: The following are high risk warning signs for possible drug abuse or addiction. Patients with these findings may need a consultation by a physician experienced in pain management and/or addiction. Behaviors in the first list are warning signs, not automatic grounds for dismissal, and should be followed up by a reevaluation with the provider.

[i]. Repeated behaviors in the first list may be more indicative of addiction and behaviors in the second list should be followed by a substance abuse evaluation:

{a}. First List: Less suggestive for addiction but are increased in depressed patients- Frequent requests for early refills; claiming lost or stolen prescriptions; Opioid(s) used more frequently, or at higher doses than prescribed; Using opioids to treat non-pain symptoms; Borrowing or hoarding opioids; Using alcohol or tobacco to relieve pain; Requesting more or specific opioids; Recurring emergency room visits for pain; Concerns expressed by family member(s); Unexpected drug test results; Inconsistencies in the patient's history.

{b}. Second List: More suggestive of addiction and are more prevalent in patients with substance use disorder- Buying opioids on the street; stealing or selling drugs; Multiple prescribers ("doctor shopping"); Trading sex for opioids; Using illicit drugs; Positive urine drug tests for illicit drugs; Forging prescriptions; Aggressive demands for opioids; Injecting oral/topical opioids; Signs of intoxication (ETOH odor, sedation, slurred speech, motor instability, etc.).

[ii]. Both daily and monthly users of nicotine were at least three times more likely to report non-medical use of opioid in the prior year. At least one study has demonstrated a prevalence of smokers and former smokers among those using opioids and at higher doses compared to the general population. It also appeared that smokers and former smokers used opioids more frequently and in higher doses than never smokers. Thus, tobacco use history may be a helpful prognosticator.

[iii]. In one study, four specific behaviors appeared to identify patients at risk for current substance abuse: increasing doses on their own, feeling intoxicated, early refills, and oversedating oneself. A positive test for cocaine also appeared to be related.

[iv]. One study found that half of patients receiving 90 days of continuous opioids remained on opioids several years later and that factors associated with continual use included daily opioid greater than 120 MED prior opioid exposure, and likely opioid misuse.

[v]. One study suggested that those scoring at higher risk on the Screener and Opioid Assessment for Patients with Pain-Revised (SOAPP-R), also had greater reductions in sensory low back pain and a greater desire to take morphine. It is unclear how this should be viewed in practice.

[f]. Dosing and Time to Therapeutic Effect - Oral route is the preferred route of analgesic administration because it is the most convenient and cost-effective method of administration. Transbuccal administration should be avoided other than for buprenorphine. A daily dosage above 50 MED may be appropriate for certain patients. However, when the patient's dosage exceeds 50 MED per day and/or the patient is sedentary with minimal function, consideration should be given to lowering the dosage. Some patients may require dosages above 90 MED per day. However, if the patient reaches a dosage above 90 MED per day, it is appropriate to taper or refer to a pain or addiction specialist. The provider should also adhere to all requirements in this guideline and closely monitor the patient as this is considered a high risk dosage. In some cases, buprenorphine may be a preferred medication for pain control in those patients. Consultation may be necessary.

[g]. Major Side Effects - There is great individual variation in susceptibility to opioid-induced side effects and clinicians should monitor for these potential side effects. Common initial side effects include nausea, vomiting, drowsiness, unsteadiness, and confusion. Occasional side effects include dry mouth, sweating, pruritus, hallucinations, and myoclonus. Rare side effects include respiratory depression and psychological dependence. Constipation and nausea/vomiting are common problems associated with long-term opioid administration and should be anticipated, treated prophylactically, and monitored constantly. Stool softeners, laxatives, and increased dietary fluid may be prescribed. Refer to Section G.10.g, Opioid Induced Constipation. Chronic sustained release opioid use is associated with decreased testosterone in males and females and estradiol in pre-menopausal females. Patients should be asked about changes in libido, sexual function, and fatigue. Appropriate lab testing and replacement treatment should be completed.

[h]. Naloxone or oral and injection Naltrexone: may be prescribed when any risk factors are present. The correct use of Naloxone and Naltrexone should be discussed with the patient and family.

[i]. Benzodiazepines: should not be prescribed when opioids are used.

[j]. Sedation: driving and other tasks - Although some studies have shown that patients on chronic opioids do not function worse than patients not on medication, caution should be exerted, and patients should be counseled never to mix opioids with the use of alcohol or other sedating medication. When medication is increased or trials are begun, patients should not drive for at least five days. Chronic untreated pain, sedatives especially when mixed with opiates or alcohol, and disordered sleep can also impair driving abilities.

[k]. Drug Interactions - Patients receiving opioid agonists should not be given a mixed agonist-antagonist such as pentazocine [Talacen, Talwin] or butorphanol [Stadol] because doing so may precipitate a withdrawal syndrome and increase pain.

[i]. All sedating medication, especially benzodiazepines, should be avoided or limited to very low doses. Over-the-counter medications such as antihistamines, diphenhydramine, and prescription medications such as hydroxyzine (Anx, Atarax, Atazine, Hypam, Rezine, Vistaril) should be avoided except when being used to manage withdrawal during tapering of opioids. Alcohol should not be used.

[l]. Recommended Laboratory Monitoring. Primary laboratory monitoring is recommended for acetaminophen/aspirin/ibuprofen combinations (renal and liver function, blood dyscrasias) although combination opioids are not recommended for long-term use. Morphine and other medication may require renal testing and other screening. A comprehensive genetic testing panel may be ordered by treating physician for these multiple P450 genes once in a lifetime and utilized whenever there is a question of metabolism or unusual response of any drugs used to treat pain conditions, because multiple drugs and associated genes can cause problems with opioid metabolism.

[m]. Sleep Apnea Testing: Both obstructive and central sleep apnea are likely to be exaggerated by opioid use or may occur secondary to higher dose chronic opioid use and combination medication use, especially benzodiazepines and sedative hypnotics. Patients should be questioned about sleep disturbance and family members or sleeping partners questioned about loud snoring or gasping during sleep. If present, qualified sleep studies and sleep medicine consultation should be obtained. Portable sleep monitoring units are generally not acceptable for diagnosing primary central sleep apnea. Type 3 portable units with two airflow samples and an 02 saturation device may be useful for monitoring respiratory depression secondary to opioids, although there are no studies on this topic.

[n]. Regular consultation of the Prescription Monitoring Program (PMP): Physicians should review their patients on the system whenever drug screens are done. This information should be used in combination with the drug screening results, functional status of the patient, and other laboratory findings to review the need for treatment and level of treatment appropriate for the patient.

[o]. Addiction: If addiction occurs, patients will require treatment. Refer to Section G.12, Opioid Addiction Treatment. After detoxification, they may need long-term treatment with naltrexone (Depade, ReVia, Vivitrol), an antagonist which can be administered in a long-acting form or buprenorphine which requires specific education per the Drug Enforcement Agency (DEA).

[p]. Potentiating Agents. There is some evidence that dextromethorphan does not potentiate the effect of morphine opioids and therefore is not recommended to be used with opioids.

v. - v.(d). …

vi. Other Agents:

(a). Agents not listed which may be useful in the treatment of CRPS and SMP include propranolol, nifedipine, calcitonin, bisphosphonates and short-term oral steroids, during the acute phase of the disease. Although propranolol, nifedipine, oral steroids, and calcitonin are used in practice, at this time there is a lack of well-designed studies to support their effectiveness compared to placebo. In individual patients, they may be effective. There is some evidence to support the use of intravenous bisphosphonate drugs, currently licensed for use in malignant bone disease and Paget's disease, in CRPS patients with abnormal bone scans. Oral use of bisphosphonates has not been studied in CRPS.

7. - 11.b.vi. …

vii. Vocational Assistance. Formal vocational assistance is a generally accepted intervention and can assist disabled persons to return to viable employment. Assisting patients to identify vocational goals will facilitate medical recovery and aid in the maintenance of MMI by increasing motivation towards treatment and alleviating the patient's emotional distress. Chronic pain patients may benefit most if vocational assistance is provided during the interdisciplinary rehabilitation phase of treatment. To assess the patient's vocational capacity, a vocational assessment may be utilized to identify rehabilitation program goals, as well as optimize both patient motivation and utilization of rehabilitation resources.

11.b.vii.(a). - 13.b.vi.(d). …

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation Administration, LR 37:1723 (June 2011), amended LR 45:

§2133. Therapeutic Procedures—Operative

A. - C.2. …

3. Sympathectomy

a. …

b. Indications. Single extremity CRPS-I or SMP; distal pain only (should not be done if the proximal extremity is involved). Local anesthetic Stellate Ganglion Block, Kuntz Fiber Block or Lumbar Sympathetic Block consistently gives 90 to 100 percent relief each time a technically good block is performed (with measured rise in temperature). The procedure may be considered for individuals who have limited duration of relief from blocks. Permanent neurological complications are common.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation Administration, LR 37:1733 (June 2011), amended LR 45:

§2135. Maintenance Management

A. - D.6.e.i. …

7. Therapy management. Some treatment may be helpful on a continued basis during maintenance care if the therapy maintains objective function and decreases medication use. Aggravation of the injury may require intensive treatment, including injections, PT and/or OT to get the patient back to baseline. In those cases, treatments and timeframe parameters listed in Section H, 13 and 14, Active and Passive Therapy.

7.a. - 9.a. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation Administration, LR 37:1734 (June 2011), amended LR 45:

Family Impact Statement

This amendment to Title 40 should have no impact on families.

Poverty Impact Statement

This amendment to Title 40 should have no impact on poverty or family income.

Provider Impact Statement

1. This Rule should have no impact on the staffing level of the Office of Workers' Compensation as adequate staff already exists to handle the procedural changes.

2. This Rule should create no additional cost to providers or payers.

3. This Rule should have no impact on ability of the provider to provide the same level of service that it currently provides.

Public Comments

All interested persons are invited to submit written comments or hearing request on the proposed Rule. Such comments or request should be sent to Sheral Kellar, OWC-Administration, 1001 North 23rd Street, Baton Rouge, LA 70802. Such comments should be received by 5 pm on October 10, 2019.

Ava Dejoie
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Pain Medical Treatment Guidelines

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rules will have no fiscal impact on state or local government units, other than the publication fees associated with the proposed rule changes.

LA R.S. 23:1203.1 requires the Office of Workers' Compensation Administration (OWCA) assistant secretary, with the assistance of the medical advisory council, to review and update the medical treatment schedule a minimum of once every two years. In accordance with LA R.S. 23:1203.1, the proposed rule amends the medical guidelines for evaluating chronic pain disorder and complex regional pain syndrome as contained in Title 40, Labor and Employment, Part I, Workers' Compensation Administration, Subpart 2, Medical Guidelines, Chapter 21.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The implementation of this proposed rule will have no anticipated effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rules update the medical guidelines for the treatment of injured workers. It is not anticipated that the proposed rules will result in a direct economic benefit. It is anticipated that the proposed rules will provide an indirect benefit to injured workers, employers, and insurers, by providing better medical treatment to injured workers, thus facilitating their recovery and return to work.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated direct effect on competition and employment. It is anticipated that the proposed rules will improve the medical treatment of injured workers and facilitate their return to the workforce.

Sheral Kellar	Evan Brasseaux
Assistant Secretary	Staff Director
1909#044	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health
Bureau of Health Services Financing

Managed Care for Physical and Behavioral Health
Reimbursement Methodology
Kick and Lump Sum Payments (LAC 50:I.3509)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:I.3509 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 currently provides a one-time supplemental lump sum payment, hereafter referred to as a "kick payment", to managed care organizations (MCOs) participating in the Healthy Louisiana Program to cover the cost of prenatal care, deliveries and postpartum care for MCO members. The department has now determined that it is necessary to amend the provisions governing MCO reimbursement to allow for expansion of the current kick payment methodology to include reimbursements for specific care events, services, and treatments in addition to obstetrical deliveries and for reimbursement of the MCO monthly capitation and kick payments in the aggregate on a lump sum basis when administratively necessary.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part I. Administration
Subpart 3. Managed Care for Physical and Behavioral Health
Chapter 35. Managed Care Organization Participation Criteria
§3509. Reimbursement Methodology

A. ...

1. The department will establish monthly capitation rates within an actuarially sound rate range certified by its actuaries. Consistent with all applicable federal rules and regulations, the rate range will initially be developed using fee-for-service claims data, Bayou Health shared savings claims data, Bayou Health managed care organization encounter data, Louisiana Behavioral Health Partnership (LBHP) encounter data, financial data reported by Bayou Health managed care organizations and the LBHP statewide management organization, supplemental ad hoc data, and actuarial analyses with appropriate adjustments.

2. As the Bayou Health managed care program matures and fee-for-service, shared savings and LBHP data are no longer available, there will be increasing reliance on Bayou Health managed care organization encounter data and/or financial data to set future rates, subject to comparable adjustments.

3. - 4.d....

5. Kick Payments. MCOs may be reimbursed a one-time supplemental lump sum payment, hereafter referred to as a "kick payment", for the provision of certain services that meet specific conditions, in an amount determined by the department's actuaries.

a. The kick payment is intended to cover the cost of a specific care event or treatment. Payment will be made to the MCO upon submission of satisfactory evidence of the event or treatment.

b. Only one kick payment will be made per event or treatment.

c. Repealed.

6. ...

7. The department, or its fiscal intermediary, may reimburse an MCO's monthly capitation payments or kick payments in the aggregate on a lump sum basis when administratively necessary.

B. - M.1. ...

2. If three attempts to contract with the provider prior to the delivery of the medically necessary service have not been documented, the MCO shall reimburse the provider the published Medicaid fee-for-service rate in effect on the date of service.

M.3. - N.2.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, Bureau of Health Services Financing, LR 37:1587 (June 2011), amended LR 39:92 (January 2013), LR 41:937 (May 2015), LR 41:2367 (November 2015), LR 42:755 (May 2016), amended by the Department of Health, Bureau of Health Services Financing, LR 45:

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 Act 820 of the 2008 Regular Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses, as described in R.S. 49:965.2 et seq.

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 Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 30, 2019.

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 October 10, 2019. 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 October 30, 2019 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 October 10, 2019. 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.

Rebekah E. Gee MD, MPH
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Managed Care for Physical and Behavioral Health—Reimbursement Methodology Kick and Lump Sum Payments

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will result in a budget neutral fiscal impact to the state since it allows the department to expand current kick payment provisions to reimburse managed care organizations (MCOs) for specified care events, services, or treatments in addition to obstetrical deliveries. The costs for these treatments are currently included in the MCO per member, per month rates and may instead be reimbursed via a one-time kick payment. It is anticipated that $648 ($324 SGF and $324 FED) will be expended in FY 19-20 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 $324 will be collected in FY 19-20 for the federal share of the expense for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule amends the provisions governing reimbursement to the managed care organizations (MCOs) participating in the Healthy Louisiana program to allow for expansion of the current kick payment methodology to include reimbursements for specific care events, services, and treatments in addition to obstetrical deliveries and for reimbursement of the MCO monthly capitation and kick payments in the aggregate on a lump sum basis when administratively necessary. Implementation of this proposed Rule will be beneficial to MCO members that have been diagnosed with, and are receiving treatment for conditions the department deems appropriate for kick payment reimbursement. It is anticipated that implementation of this proposed rule will not result in increased costs, as it seeks only to broaden the available payment methodologies for services whose costs are already incorporated into capitation rates. The proposed rule will be beneficial to MCOs by providing discrete, lump-sum, one-time payments to cover the costs of these specific treatments as outlined in the kick payment methodology.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Jen Steele	Evan Brasseaux
Medicaid Director	Staff Director
1909#076	Legislative Fiscal Office

Potpourri

POTPOURRI

Department of Agriculture and Forestry
Office of the Commissioner

Notice of Public Hearing

In compliance with Act 454 of the 2018 Regular Session of the Louisiana Legislature, codified as R.S. 49:953(C)(2), and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry will hold a hearing for the purpose of receiving comments on any rule of the Department, which any interested person believes is contrary to law, outdated, unnecessary, overly complex, or burdensome.

The hearing will take place at the Department of Agriculture and Forestry in the Veterans' Memorial Auditorium, 5825 Florida Boulevard, Baton Rouge, LA 70806, on Wednesday, November 20, 2019 from 9 a.m. to 12 p.m.

At the hearing, all interested persons will be afforded an opportunity to submit data, views, or arguments, either orally or in writing, regarding these rules only. The Department of Agriculture and Forestry will consider fully all written and oral comments. However, comments must be received in writing in order to be submitted to the legislative oversight committees. Written comments may be submitted in advance of the hearing to Todd Parker, Deputy Chief of Staff, 5825 Florida Boulevard, Baton Rouge, LA 70806. All written comments must include the name, contact information and signature of the person submitting the comments and must be postmarked no later than October 20, 2019.

To request reasonable accommodations for persons with disabilities, please contact Todd Parker, 225-922-1234, at least five business days prior to the scheduled hearing.

Mike Strain DVM
Commissioner

1909#066

POTPOURRI

Department of Children and Family Services

Notice of Public Hearing

The Department of Children and Family Services (DCFS) hereby gives notice of a public hearing pursuant to R.S. 49:953(C)(2)(a) (Act 454 of the 2018 Regular Legislative Session) for the purpose of allowing any interested person the opportunity to comment on any rule of the department, included in LAC Title 67, Social Services, which the person believes is contrary to law, outdated, unnecessary, overly complex, or burdensome.

The hearing will take place on Monday, October 21, 2019, at 10 a.m. at the Department of Children and Family Services, Iberville Building, 627 North Fourth Street, Room 1-127, Baton Rouge, LA.

Individuals with disabilities who require special services should contact the DCFS Appeals Unit at least seven working days in advance of the hearing. For assistance, call (225) 342-4120 (Voice and TDD).

All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Oral comments will be considered, but in order to be submitted to the legislative oversight committees, the comments must be in writing. Written comments may be submitted to DCFS Planning Unit, at P. O. Box 94065, Baton Rouge, LA 70804. The deadline for submitting written comments is October 21, 2019.

Marketa Garner Walters
Secretary

1909#028

POTPOURRI

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

2010 Sulfur Dioxide National Ambient Air Quality Standards—State Implementation Plan (SIP) Revision

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2051 et seq., the secretary gives notice that the Office of Environmental Assessment, Air Planning Division, will submit to the Environmental Protection Agency (EPA) a revision to the Louisiana State Implementation Plan (SIP) for sulfur dioxide. (1909Pot4)

On June 2, 2010, EPA strengthened the primary National Ambient Air Quality Standards (NAAQS) for SO_2. EPA revised the primary SO2 NAAQS by establishing a new 1-hour standard at a level of 75 parts per billion (ppb). As a result, the EPA designated a portion of Evangeline Parish as nonattainment for the new NAAQS on April 9, 2018, as part of the Data Requirements Rule (DRR). The designated nonattainment area is the rectangular portion of Evangeline Parish defined by vertices with UTM coordinates (NAD83 15R):

570250m E, 3400300m N
570250m E, 3403300m N
572400m E, 3403300m N
572400m E, 3400300m N

All interested persons may to submit written comments concerning the revision no later than 4:30 p.m., Friday, October 25, 2019, to Vivian H. Aucoin, Office of

Environmental Assessment, P.O. Box 4314, Baton Rouge, LA. 70821-4314 or by email at vivian.aucoin@la.gov. A public hearing will be held upon request. The deadline for requesting a public hearing is Friday, October 4, 2019.

The SIP revision will implement standards required by the Clean Air Act for the nonattainment area. The revision is available for review via LDEQ's electronic document management service (EDMS), AI# 174156, or at LDEQ Headquarters, 602 N. 5th Street, Baton Rouge, Louisiana, 70802.

Herman Robinson
General Counsel

1909#032

POTPOURRI

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

Notice of Public Hearing

Pursuant to Act No. 454 of the 2018 Regular Session of the Louisiana Legislature, codified as R.S. 49:953(C)(2), and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Department of Environmental Quality gives notice of a public hearing. The purpose of the hearing is to allow any interested person the opportunity to comment on any regulation contained in Title 33, Environmental Quality, which the person believes to be contrary to law, outdated, unnecessary, overly complex, or burdensome. (1909Pot1)

This hearing will be held on October 30, 2019, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. All interested persons will be afforded an opportunity to submit data, views, or arguments either orally or in writing regarding these rules only. The department will consider fully all written and oral comments; however, all oral comments must be followed up in writing to be submitted to the legislative oversight committees. Written comments may be submitted in advance of the hearing to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Affairs and Criminal Investigations Division, P.O. Box 4302, Baton Rouge, LA 70821-4302 or to Fax (225) 219-4068 or emailed to DEQ.Reg.Dev.Comments@la.gov. Comments must be received by October 30, 2019, at 4:30 p.m.

Should individuals with a disability need an accommodation in order to participate at the hearing, contact Deidra Johnson at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

Herman Robinson
General Counsel

1909#029

POTPOURRI

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

Notice of Public Hearing
Substantive Changes to Proposed Rule AQ383
Regulatory Permit for Boilers and Process Heaters
(LAC 33:III.323)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that the department is seeking to incorporate substantive changes to proposed regulation (LAC 33:III.323) (Log # AQ383S), which was originally noticed as AQ383 in the May 20, 2019, issue of the *Louisiana Register*. (1909Pot2)

The department has proposed substantive changes to address comments received during the public comment period of proposed Rule AQ383. The changes clarify the proposed Rule language. In the interest of clarity and transparency, the department is providing public notice and opportunity to comment on the proposed changes to the amendments of the regulation in question. The department is also providing an interim response to comments received on the initial regulation proposal.

A strikeout/underline/shaded version of the proposed Rule that distinguishes original proposed language from language changed by this proposal and the interim response to comments are available on the department's website under Rules and Regulations at http://deq.louisiana.gov/page/rules-regulations.

The following changes are to be incorporated into the Notice of Intent.

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 3. Regulatory Permits

§323. Regulatory Permit for Boilers and Process Heaters

A. - D.1. …

2. 40 CFR 60, subpart Db or Dc; and

D.3. - E.2.c. …

d. Records of visible emissions checks shall be kept on-site for at least five years and shall be made available for inspection by the Office of Environmental Compliance. These records shall include:

i. - iv. …

3. Alternatives

a. As an alternative to the requirement to conduct Method 9 testing, the permittee may assume that any visible emissions detected constitute opacity greater than 20 percent. In this case, no visible emissions detected shall be considered opacity less than or equal to 20 percent, even if a qualitative assessment suggests otherwise.

b. The permittee may determine opacity via any federally-approved alternative to Method 9 (e.g., Method ALT-082).

c. In lieu of performing daily visual inspections, the permittee may immediately perform a six-minute opacity reading in accordance with Method 9.

d. The inspection of each boiler or process heater's stack for visible emissions may be made using a video camera, provided the camera is capable of capturing images of the stack and a reasonable distance above the stack and is set at an angle suitable for visible emissions observations.

E.4. - G.2. …

3. This Subsection shall not apply to boilers or process heaters that must conduct a performance test in accordance with applicable federal requirements as described in LAC 33:III.323.D. If a performance test is required for only NO_X or CO, but not both, a performance test for the other pollutant shall be conducted during the performance test required by 40 CFR 60.8 and/or 40 CFR 63.7.

H. - K. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:

A public hearing on the substantive changes will be held on October 30, 2019, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the substantive changes. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are also invited to submit written comments on the substantive changes. Persons commenting should reference this proposed regulation as AQ383S. Such comments must be received no later than October 30, 2019, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Affairs and Criminal Investigations Division, P.O. Box 4302, Baton Rouge, LA 70821-4302, by fax (225) 219-4068, or emailed to DEQ.Reg.Dev.Comments@la.gov. The comment period for the substantive changes ends on the same date as the public hearing. Copies of these substantive changes can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ383S. These proposed regulations are available on the internet at http://deq.louisiana.gov/page/rules-regulations.

These substantive changes to AQ383 are available for inspection at the following LDEQ office locations from 8:00 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; and 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson
General Counsel

1909#030

POTPOURRI

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

Notice of Public Hearing
Substantive Changes to Proposed Rule AQ384
Regulatory Permit for Cooling Towers (LAC 33:III.325)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that the department is seeking to incorporate substantive changes to proposed regulation (LAC 33:III.325) (Log # AQ384S), which was originally noticed as AQ384 in the May 20, 2019, issue of the *Louisiana Register*. (1909Pot3)

The department has proposed substantive changes to address comments received during the public comment period of proposed rule AQ384. The changes clarify the proposed rule language. In the interest of clarity and transparency, the department is providing public notice and opportunity to comment on the proposed changes to the amendments of the regulation in question. The department is also providing an interim response to comments received on the initial regulation proposal.

A strikeout/underline/shaded version of the proposed rule that distinguishes original proposed language from language changed by this proposal and the interim response to comments are available on the department's website under Rules and Regulations at http://deq.louisiana.gov/page/rules-regulations.

The following changes are to be incorporated into the Notice of Intent.

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 3. Regulatory Permits

§325. Regulatory Permit for Cooling Towers

A. - D. …

E. Total dissolved solids (TDS). The permittee shall determine and record the concentration of TDS in the cooling water at least once per quarter using Standard Method 2540C or EPA Method 160.1. Alternate methods may be used with the prior approval of the department. The permittee shall average all recorded TDS concentrations and utilize the drift rate provided by the manufacturer and the design recirculation rate of the cooling water pump(s) to determine compliance with the particulate matter emission limitations for the cooling tower.

F. - I. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:

A public hearing on the substantive changes will be held on October 30, 2019, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the substantive changes. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are also invited to submit written comments on the substantive changes. Persons commenting should reference this proposed regulation as AQ384S. Such comments must be received no later than October 30, 2019, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Affairs and Criminal Investigations Division, P.O. Box 4302, Baton Rouge, LA 70821-4302, by fax (225) 219-4068, or emailed to DEQ.Reg.Dev.Comments@la.gov. The comment period for the substantive changes ends on the same date as the public hearing. Copies of these substantive changes can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ384S. These proposed regulations are available on the internet at http://deq.louisiana.gov/page/rules-regulations.

These substantive changes to AQ384 are available for inspection at the following LDEQ office locations from 8:00 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; and 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson
General Counsel

1909#031

POTPOURRI

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

Notice of Upcoming Rule Proposal
Proposed Rule RP066
Medical Event Reporting
(LAC 33:XV.613)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that the department has become aware of an error in regulation language found at LAC 33:XV.613. This error was part of regulations promulgated as RP064 in the June 20, 2019, issue of the *Louisiana Register*. Corrected rule language will be proposed September 20, 2019, as log number RP066. (1909Pot5)

A strikeout/underline/shaded version of the proposed Rule, RP066, which clarifies medical reporting is available on the department's website under Rules and Regulations at http://deq.louisiana.gov/page/rules-regulations.

If you have any questions or concerns, please contact Judith Schuerman at judith.schuerman@la.gov or by phone at (225) 219-3634.

Proposed Rule, RP066, is available for inspection on the department's website, or at the following LDEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; and 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson
General Counsel

1909#033

POTPOURRI

Office of the Governor
Board of Pardons
and
Committee on Parole

Notice of Public Hearing

The Board of Pardons and Committee on Parole hereby gives notice of a public hearing pursuant to R.S. 49:953(C)(2)(a) (Act 454 of the 2018 Regular Legislative Session) for the purpose of allowing any interested person the opportunity to comment on any rule of the board which the person believes is contrary to law, outdated, unnecessary, overly complex, or burdensome.

The hearing will take place at the board hearing room, 504 Mayflower Street, Baton Rouge, LA 70802 on November 1, 2019 at 8:30 am.

To request reasonable accommodations for persons with disabilities call the Board office at 225-342-9692.

Please direct any views, if any, in writing, regarding the Board's Rules, to Elizabeth Traylor at P.O. Box 94304, Baton Rouge, LA 70804-9304. Deadline for submitting written comments is October 25, 2019.

Oral comments regarding the Board's rules will be considered, but in order to be submitted to the legislative oversight committees the comments must be in writing.

Francis Abbott
Executive Director

1909#054

POTPOURRI

Office of the Governor
Office of Financial Institutions

Notice of Public Hearing

Pursuant to Acts 2018, No. 454, codified as R.S. 49:953(C)(2) of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., the Office of Financial Institutions hereby gives notice that a public hearing will be held on October 24, 2019, at the Louisiana Division of Administrative Law, 1020 Florida St. Baton Rouge, LA 70802, Room 201 at 10 a.m. The purpose of this hearing is to allow any interested person the opportunity to comment on any rule of the agency which the person believes is contrary to law, outdated, unnecessary, overly complex, or burdensome. Oral comments regarding the office's rules will be considered, but in order to be submitted to the legislative oversight committees, the comment must be received in writing prior to the hearing and must include the name, contact information, and signature of the person submitting the comment.

To request reasonable accommodations please call the Division at (225)342-1800. Written comments may be submitted to General Counsel Sue Rouprich at 8660 United Plaza Blvd., Baton Rouge, LA 70809.

John Ducrest, CPA
Commissioner

1909#024

POTPOURRI

Department of Health
Bureau of Health Services Financing

2020 First Quarter Hospital Stabilization Assessment

In compliance with 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 5 of the 2019 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 5. For the quarter July 1, 2019 through September 30, 2019, the quarterly assessment amount to all hospitals will be $20,044,547. This amounts to 0.1765440 percent of total inpatient and outpatient hospital net patient revenue of the assessed hospitals.

Rebekah E. Gee MD, MPH
Secretary

1909#072

POTPOURRI

Department of Justice

Notice of Public Hearing

The Louisiana Department of Justice hereby gives notice that a public hearing will be held on November 18, 2019 at 10 a.m. in the Claremont room of the Livingston Building at 1885 N. 3rd St. Baton Rouge, LA 70802. The purpose of the hearing is to allow any interested person the opportunity to comment on any rule of the agency which the person believes is contrary to law, outdated, unnecessary, overly complex, or burdensome.

The agency will consider all written and oral comments. However, only written comments received by the agency will be included in the agency's report to the legislative oversight committees. Written comments may be submitted via United States Postal Service or other mail carrier, or by personal delivery to Emily Andrews, Louisiana Department of Justice 1885 North 3rd St. Baton Rouge, LA 70802. Written Comments must be received no later than 11 a.m. on November 18, 2019.

To request reasonable accommodations for persons with disabilities please contact Emily Andrews at (225) 326-6000.

Emily Andrews
Assistant Attorney General

1909#043

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, La. R.S. 30:80 et seq., and as such are being declared Orphaned Oilfield Sites.

Operator	Field	District	Well Name	Well Number	Serial Number
Howard's Well Service	Bayou Mallet, South	L	Frank J Bollich Jr et al	005	207354(30)
James B. Perry	Monroe	M	Perry	002	7105
Roy D. Gish	Caddo Pine Island	S	Brandon	001	108609
Roy D. Gish	Caddo Pine Island	S	Gish A	002	169219
Roy D. Gish	Caddo Pine Island	S	Gish A	003	178511

Operator	Field	District	Well Name	Well Number	Serial Number
Roy D. Gish	Caddo Pine Island	S	Gish Swd	001	185169
Roy D. Gish	Caddo Pine Island	S	Gish A	001	185970
Roy D. Gish	Caddo Pine Island	S	Gish A	006	186188
Roy D. Gish	Caddo Pine Island	S	Washington	001	191381
Roy D. Gish	Caddo Pine Island	S	Washington	002	191382
Roy D. Gish	Caddo Pine Island	S	Gish	001	192358
Roy D. Gish	Caddo Pine Island	S	Gish	002	192590
Roy D. Gish	Caddo Pine Island	S	Gish	003	192885
Roy D. Gish	Caddo Pine Island	S	Gish	004	193012
Roy D. Gish	Caddo Pine Island	S	Gish	005	193024
Roy D. Gish	Caddo Pine Island	S	Gish A	004	193234
Roy D. Gish	Caddo Pine Island	S	Gish	006	193524
Roy D. Gish	Caddo Pine Island	S	Gish A	007	195648
Roy D. Gish	Caddo Pine Island	S	Fenner	002	198812
Roy D. Gish	Caddo Pine Island	S	Gish A	005	202608
Roy D. Gish	Caddo Pine Island	S	Gish B	006	203133
Roy D. Gish	Caddo Pine Island	S	Gish R	001	206664
Roy D. Gish	Caddo Pine Island	S	Gish R	002	207104

Operator	Field	District	Well Name	Well Number	Serial Number
Roy D. Gish	Caddo Pine Island	S	Gish B	001	207212
Roy D. Gish	Caddo Pine Island	S	Gish R	003	207223
Roy D. Gish	Caddo Pine Island	S	Gish R	004	207307
Roy D. Gish	Caddo Pine Island	S	Gish B	002	208829
Roy D. Gish	Caddo Pine Island	S	Gish B	003	212555
Roy D. Gish	Caddo Pine Island	S	Gish B	004	213663
Roy D. Gish	Caddo Pine Island	S	Gish B	005	214152
Roy D. Gish	Caddo Pine Island	S	Kirby A	002	217989
Roy D. Gish	Caddo Pine Island	S	Kirby A	003	217990
Roy D. Gish	Caddo Pine Island	S	Kirby A	004	218007
Roy D. Gish	Caddo Pine Island	S	Kirby A	005	218008
Roy D. Gish	Caddo Pine Island	S	Blanchard	001	218500
Roy D. Gish	Caddo Pine Island	S	Blanchard	002	218516
Roy D. Gish	Caddo Pine Island	S	Blanchard	003	218517
Roy D. Gish	Caddo Pine Island	S	Blanchard	004	218539
Roy D. Gish	Caddo Pine Island	S	Blanchard	005	218540
Roy D. Gish	Caddo Pine Island	S	K & C	001	218759
Roy D. Gish	Caddo Pine Island	S	Blanchard	006	218779

Operator	Field	District	Well Name	Well Number	Serial Number
Roy D. Gish	Caddo Pine Island	S	K & C	002	218780
Roy D. Gish	Caddo Pine Island	S	K & C	003	218781
Roy D. Gish	Caddo Pine Island	S	K & C	004	218782
Roy D. Gish	Caddo Pine Island	S	K&C A	001	218823
Roy D. Gish	Caddo Pine Island	S	Comegys A	001	218881
Roy D. Gish	Caddo Pine Island	S	Comegys A	002	218882
Roy D. Gish	Caddo Pine Island	S	Comegys A	003	218883
Roy D. Gish	Caddo Pine Island	S	Gish A	008	219122
Roy D. Gish	Caddo Pine Island	S	Gish A	009	219123
Roy D. Gish	Caddo Pine Island	S	Gish A	010	219124
Roy D. Gish	Caddo Pine Island	S	Gish A	011	219125
Roy D. Gish	Caddo Pine Island	S	Leroy Kirby	001	219214
Roy D. Gish	Caddo Pine Island	S	Gish A	013	219747
Roy D. Gish	Caddo Pine Island	S	Gish A	012	220471
Roy D. Gish	Caddo Pine Island	S	Gish A	014	220472
Roy D. Gish	Caddo Pine Island	S	Bradford Heirs	002	221919
Roy D. Gish	Caddo Pine Island	S	Bradford Heirs	003	221920
Roy D. Gish	Caddo Pine Island	S	Bradford Heirs	005	221980

Operator	Field	District	Well Name	Well Number	Serial Number
Roy D. Gish	Caddo Pine Island	S	Harris	001	222026
Roy D. Gish	Caddo Pine Island	S	Harris	002	222052
Roy D. Gish	Caddo Pine Island	S	Harris	005	222054
Roy D. Gish	Caddo Pine Island	S	Gish A	015	222082
Roy D. Gish	Caddo Pine Island	S	Gish A	016	222083
Roy D. Gish	Caddo Pine Island	S	Gish A	017	222084
Roy D. Gish	Caddo Pine Island	S	Gish A	018	222085
Roy D. Gish	Caddo Pine Island	S	Yarborough	003	222222
Roy D. Gish	Caddo Pine Island	S	Yarborough	001	222236
Roy D. Gish	Caddo Pine Island	S	Kirby	001	222353
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Roy D. Gish	Caddo Pine Island	S	Kirby	011	222500
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Roy D. Gish	Caddo Pine Island	S	Kirby	014	222544
Roy D. Gish	Caddo Pine Island	S	Kirby	015	222545
Roy D. Gish	Caddo Pine Island	S	Kirby	016	222546
Roy D. Gish	Caddo Pine Island	S	Kirby	017	222580
Roy D. Gish	Caddo Pine Island	S	Kirby	018	222581
Roy D. Gish	Caddo Pine Island	S	Kirby	019	222599
Roy D. Gish	Caddo Pine Island	S	Kirby	022	222602
Roy D. Gish	Caddo Pine Island	S	Kirby	024	222618
Roy D. Gish	Caddo Pine Island	S	Kirby	025	222619
Roy D. Gish	Caddo Pine Island	S	Kirby	026	222620
Roy D. Gish	Caddo Pine Island	S	Kirby	027	222621
Roy D. Gish	Caddo Pine Island	S	Gish A	019	222665
Roy D. Gish	Caddo Pine Island	S	Gish A	020	222794
Roy D. Gish	Caddo Pine Island	S	Gish A	021	222868
Roy D. Gish	Caddo Pine Island	S	Gish A	022	222869
Roy D. Gish	Caddo Pine Island	S	Gish A	023	222870
Roy D. Gish	Caddo Pine Island	S	Gish A	024	222871
Roy D. Gish	Caddo Pine Island	S	Gish A	025	223219

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Roy D. Gish	Caddo Pine Island	S	Gish A	026	223220
Roy D. Gish	Caddo Pine Island	S	Gish A	27	223667
Roy D. Gish	Caddo Pine Island	S	Gish A	29	223910
Roy D. Gish	Caddo Pine Island	S	Gish A	30	224092
Roy D. Gish	Caddo Pine Island	S	Gish A	31	224093
Roy D. Gish	Caddo Pine Island	S	Gish A	32	224467
Roy D. Gish	Caddo Pine Island	S	Gish A	33	224468
Roy D. Gish	Caddo Pine Island	S	Gish A	34	224469
Roy D. Gish	Caddo Pine Island	S	Kirby A	006	224693
Roy D. Gish	Caddo Pine Island	S	Kirby A	007	224694
Roy D. Gish	Caddo Pine Island	S	Gish A	035	224918
Roy D. Gish	Caddo Pine Island	S	Gish A	036	224919
Roy D. Gish	Caddo Pine Island	S	Gish A	037	225042
Roy D. Gish	Caddo Pine Island	S	Gish A	038	225043
Roy D. Gish	Caddo Pine Island	S	Harris	010	225249
Roy D. Gish	Caddo Pine Island	S	Harris	011	225433
Roy D. Gish	Caddo Pine Island	S	Gish A	039	227374
Roy D. Gish	Caddo Pine Island	S	Gish A	040	227375

Operator	Field	District	Well Name	Well Number	Serial Number
Roy D. Gish	Caddo Pine Island	S	Gish A	041	246897
Roy D. Gish	Caddo Pine Island	S	Gish A	044	247790
Roy D. Gish	Caddo Pine Island	S	R D Fenner Swd	001	970251
Roy D. Gish	Caddo Pine Island	S	Gish Swd	002	972723
Southern Oil & Gas Company	Caddo Pine Island	S	Dempsey	006	165841
Wg Gas LLC	Monroe	M	Rich Land Seed Co Inc Etal A	001	139808
Wg Gas LLC	Monroe	M	Rich Land Seed Co Inc Etal G	002	141221
Wg Gas LLC	Monroe	M	Richland Seed Co	001	247893
Wg Gas LLC	Monroe	M	Richland Seed Co Swd	002	248895

Richard P. Ieyoub
Commissioner

1909#026

POTPOURRI

Department of Natural Resources

Solicitation of Comments
Statewide Order No. 29-B
(LAC 43:XIX.305)

The Office of Conservation is seeking comments on the draft proposed regulatory amendment to LAC 43:XIX.Subpart I.Chapter 3. The objective of this draft regulatory amendment is to ensure timely delivery of accurate, clear and concise information as pertains to the ageny's statutory duties and responsibilities for public safety, welfare and environmental protection via regulatory compliance with applicable site evaluation and remediation standards where analytical data of record indicates regulatory exceedances exist. This potpourri announcement is not an agency engagement of the formal Louisiana Administrative Code rulemaking process and is intended only to obtain comments from interested parties prior to taking any further steps toward rulemaking. The deadline for submitting any comments for this potpourri announcement is 4 p.m. October 21, 2019 as detailed in the Public Comments section located at the end of this announcement. The following details the agency's draft proposed path to obtain the objective stated above. Statewide Order No. 29-B (LAC 43:XIX.305)

The Department of Natural Resources, Office of Conservation proposes to amend LAC 43:XIX, Subpart 1 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the power delegated under the laws of the state of Louisiana. The purpose of this proposed amendment is to ensure timely, accurate, clear and concise submittal of public record documentation and identification of: 1) the specific area(s) of property subject to the lawsuit for which a party listed as a settling (released) party has been established by the settlement to be removed from the damage claims of the lawsuit, and 2) each sample location within the specific area(s) identified in 1 above with environmental data exceeding a regulatory standard to be addressed by a released party(ies).

Title 43
NATURAL RESOURCES
Part XIX. Office of Conservation—General Operations
Subpart 1. Statewide Order No. 29-B

Chapter 3. Pollution Control—Onsite Storage, Treatment and Disposal of Exploration and Production Waste (E and P Waste) Generated from the Drilling and Production of Oil and Gas Wells (Oilfield Pit Regulations)

§305. Notification

A. - D.8. …

E. Legacy Oilfield Sites

1. The requirements in this section shall apply when:

a. the Office of Conservation receives notice of a settlement pursuant to La. R.S. 30:29.J.(1); and

b. and analytical results submitted pursuant to La. R.S. 30:29.1, or otherwise, for site evaluation and/or remediation sample locations on the property subject to the lawsuit include an exceedance(s) of an applicable regulatory standard(s) at one or more sample locations.

2. Each settlement notification provided to the Office of Conservation pursuant to La. R.S. 30:29.J.(1) must include a digital file(s) in the ESRI shapefile (.shp)* format that accurately depicts the property boundary of the lawsuit and property boundary(s) of each settling (released) party, that if approved by the court, will no longer be included in the lawsuit.

a. This electronic file package shall:

i. Use the NAD 1983 UTM Zone 15 North-WKID 26915 coordinate system,

ii. Be viewable and capable of being manipulated by the Office of Conservation, and

iii. Include a complete and detailed attribute table with;

(a). Each geographic area represented individually in the shape as a separate row,

(b). The property boundary[1] of the entire lawsuit identified by the assigned, unique six-digit Office of Conservation Reference Number, and

(c). The released party's property boundary identified with the unique three-digit code assigned by the Office of Conservation to the released party within the lawsuit (see example below).

FID	Shape*	Case_Id[1]	Settlement_ID	Area_Type
0	Polygon	XXX-XXX		Property
1	Polygon	XXX-XXX	XXX	Settlement

b. The regulatory deadline to comply with this requirement shall be on or before the close of business seven calendar days following the date the Office of Conservation receives either an electronic copy or hard copy of the settlement notification, whichever arrives first.

3. Within four working days of receipt of a complete and legible electronic copy or hard copy of a settlement notice, whichever arrives first, the Office of Conservation will provide to legal representatives of the released parties by email attachment Form ENV 30:29.1 including each sample location where analytical results indicate an exceedance(s) of an applicable regulatory standard(s).

4. Each released party shall complete per instructions and return Form ENV 30:29.1 to the Office of Conservation within ten (10) calendar days of electronic email receipt of the form from the agency indicating which of every sample location documented on the form the released party intends to address for regulatory compliance purposes.

5. In accordance with La. 30:29.J.(1), once parties in a lawsuit have reached a settlement in principle, the Office of Conservation and attorney general shall be given notice. The Office of Conservation shall then have no less than thirty (30) days to review that settlement and comment to the court before the court certifies the settlement.

6. The regulatory responsibility to meet the requirements of section 705.E.2 and 705.E.4 shall be the settling party or parties to be released (released party or parties) from the lawsuit.

7. The party that provides notice of settlement to the Office of Conservation shall, without exception, include with the settlement or settlement in principal when submitted to the agency, a current and comprehensive listing of all parties remaining in the lawsuit that have not either been dismissed by the court or have not previously settled with written court approval.

8. Violations of this section may result in the issuance of enforcement actions including but not limited to assessment of civil penalties as deemed necessary by the commissioner of conservation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2801 (December 2000), amended LR 33:1656 (August 2007), amended LR 45:

Public Comments

All interested parties will be afforded the opportunity to submit data, views, or arguments, in writing. Written comments will be accepted by hand delivery or USPS only, until 4 p.m., October 21, 2019, at Office of Conservation, Environmental Division, P.O. Box 94275, Baton Rouge, LA 70804-9275; or Office of Conservation, Environmental Division, 617 North Third Street, Room 874-D, Baton Rouge, LA 70802. Reference Docket No. R A 2019-04. All inquiries should be directed to Timothy Schroeder at the above addresses or by phone to (225) 342-8244.

Richard P. Ieyoub
Commissioner

1909#053

POTPOURRI

Department of Public Safety and Corrections
Gaming Control Board

Notice of Public Hearing

Under the authority of Act No. 454 of the 2018 Regular Legislative Session, codified as R.S. 49:953(C)(2), and in accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., the Gaming Control Board ("LGCB") will hold a hearing to receive public comments from any interested person regarding the rules of the LGCB in the Clermont Room of the Livingston Building located at 1885 North Third Street, Baton Rouge, LA 70802 on November 7, 2019 at 9:30 a.m.

All interested persons will be afforded an opportunity to submit data, views, or arguments either orally or in writing regarding gaming rules only, that the person believes is contrary to law, outdated, unnecessary, overly complex, or burdensome. The LGCB will consider fully all written and oral comments received from those in attendance at the hearing, as well as those written comments submitted in advance, which were timely received. Comments must be submitted in writing in order to be submitted to the legislative oversight committees.

Written comments must be dated and include the name, contact information, and signature of the person submitting the comments. Written comments must be postmarked no later than October 31, 2019. Written comments may be submitted to Earl G. Pitre, Jr., Assistant Attorney General, Louisiana Department of Justice, Gaming Division, 1885 North Third Street, Fifth Floor, Baton Rouge, LA 70802.

The hearing site is accessible to people using wheelchairs or other mobility aids. If other reasonable accommodations are required in order to participate in the hearing, please contact the Louisiana Department of Justice, Gaming Division at 225-326-6500 at least five business days prior to the scheduled hearing.

Ronnie Jones
Chairman

1909#025

POTPOURRI

Department of Transportation and Development

Notice of Public Hearing

In compliance with Act No. 454 of the 2018 Regular Session of the Louisiana Legislature, codified as R.S. 49:953(C)(2), and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Transportation and Development will hold a public hearing for the purpose of receiving comments on any rule of the Department of Transportation and Development which any interested person believes is contrary to law, outdated, unnecessary, overly complex, or burdensome. The hearing will be held at the Department of Transportation and Development on Thursday, November 21, 2019 at 1 p.m. in Room 112, 1201 Capitol Access Rd. Baton Rouge, LA 70802.

At the public hearing, all interested persons will be afforded an opportunity to submit data, views, or arguments either orally or in writing regarding these rules only. The Department of Transportation and Development will consider fully all written and oral comments. Comments must be received in writing in order to be submitted to the legislative oversight committees.

The hearing site is accessible to people using wheelchairs or other mobility aids. If other reasonable accommodations are required in order to participate in the hearings, please contact Shree Logan, at (225) 242-4672 at least five business days prior to the scheduled hearing.

Written comments may be submitted in advance of the hearing to Greg Hardy, Department of Transportation and Development, P.O. Box 94245, Baton Rouge, Louisiana 70804-9245. Comments must be postmarked no later than Thursday, November 14, 2019.

Shawn Wilson, Ph.D.
Secretary

1909#082

POTPOURRI

Department of Transportation and Development
Professional Engineering and Land Surveying Board

Notice of Public Hearing

Under the authority of Act No. 454 of the 2018 Regular Session of the Louisiana Legislature, codified as R.S. 49:953(C)(2), 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 will hold a public hearing on October 23, 2019 at 10 a.m. at the board office, which is located at 9643 Brookline Avenue, Suite 121, Baton Rouge, LA 70809-1433. The purpose of the hearing is to allow any interested person the opportunity to comment on any rule of the board which such person believes is contrary to law, outdated, unnecessary, overly complex or burdensome.

Interested persons are invited to attend and to submit oral or written comments at the hearing. Additionally, interested persons are invited to submit written comments in advance of the hearing to Donna D. Sentell, Executive Director, Louisiana Professional Engineering and Land Surveying Board, 9643 Brookline Avenue, Suite 121, Baton Rouge, LA 70809-1433. All written comments must be dated, must include the name and contact information of the person submitting the comments and must be received no later than October 21, 2019 at 4:30 p.m. if the person submitting is not in attendance. The board will consider all oral and written comments received from those in attendance at the hearing, as well as those written comments submitted in advance which are timely received. Oral comments must be submitted to the board in writing as outlined above in order to be submitted to the legislative oversight committees.

Any individual who needs special assistance in order to attend or speak at the hearing should notify Donna D. Sentell at (225) 925-6291 no later than October 21, 2019 at 4:30 p.m.

Donna D. Sentell
Executive Director

1909#006

POTPOURRI

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Notice of Public Hearing

Pursuant to Act No. 454 of the 2018 Regular Session of the Louisiana Legislature, codified as R.S. 49:953(C)(2), and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Wildlife and Fisheries Commission (the "Commission") and the Department of Wildlife and Fisheries (the "Department") will hold a public hearing on October 28, 2019, at 9 a.m. and may continue each day thereafter if necessary to receive all comments of those attending on October 28th.

The hearing will be held at LDWF Headquarters, 2000 Quail Drive, Baton Rouge, Louisiana 70808, in the Joe L. Herring Louisiana Room, for the purpose of receiving comments on any rule of the Commission or Department which any interested person believes is contrary to law, outdated, unnecessary, overly complex, or burdensome.

Interested persons are invited to attend and submit oral or written data, views, or arguments either orally or in writing. The Commission/Department will consider all written and oral comments. However, only written comments received by the Commission/Department will be included in the Commission/Department's report to the legislative oversight committees. Depending on the number of persons wishing to speak, each speaker's time may be limited.

Written comments may be submitted, via United States Postal Service, to: Susan Falcon, Wildlife and Fisheries Commission, P.O. Box 98000, Baton Rouge, LA 70898; or via other mail carrier or delivered to: Susan Falcon, Wildlife

and Fisheries Commission, 2000 Quail Drive, Baton Rouge, LA 70808. All written comments must include the name, contact information and signature of the person submitting the comments and must be received no later than 10 a.m. on October 28, 2019.

To request reasonable accommodations for persons with disabilities, please call Susan Falcon at (225) 763-5775 or email sfalcon@wlf.la.gov, no later than 4 p.m. on October 21, 2019. Any questions should be directed to Susan Falcon at the contact info above.

Alfred R. Sunseri
Chairman

1909#022

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