



# Office of the State Register LAC Handbook

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## **Part I. An Introduction to the *Louisiana Administrative Code***

This handbook will introduce you to various aspects of the *Louisiana Administrative Code* (LAC), including the codification system, the format, and the process of promulgating the LAC. The LAC is the official compilation of administrative rules published by agencies and boards in the state of Louisiana.

Revised Statutes (laws passed by the legislature), and the internal guidelines of agencies are not included in administrative rules. The Office of the State Register (OSR) compiles, maintains, and publishes the LAC according to the guidelines of the Administrative Procedure Act (APA), R.S. 49:950 et seq. The complete text of the APA, along with a quick reference table, can be found in Part V of this handbook.

A rule becomes part of the LAC when it is promulgated in the *Louisiana Register* (for information on the *Louisiana Register* and on promulgation, see Part II of this handbook). Rules that have been published in the *Louisiana Register* are compiled into individual books (according to the system described in Part III of this handbook) and are certified and notarized as the official version of the LAC. Each LAC book is updated with new amendments and is compiled every two years.

It is important that rulemaking agencies understand all concepts of the LAC because of the responsibility each individual agency has for writing and maintaining its rules accurately and conscientiously.

OSR consistently works with each agency to obtain approval when a new or amended book is ready for publication to ensure the accuracy of each agency's administrative rules.

## Part II. The *Louisiana Register*

The *Louisiana Register* (Register) is the official publication in which all new or amended LAC regulations must be promulgated (published and put into force). The Register, which is published on the twentieth of every month, also contains various announcements and declarations (that will not become part of the LAC).

*Louisiana Register* issues are labeled according to volume and number. Each volume consists of 12 monthly numbers of the *Register*. Volumes are numbered dating back to 1975, the first volume of the Register. The twelve 1975 issues are collectively called Volume 1. The 2011 issues are called Volume 37. The issues within a volume are numbered 1-12. The January issue is always Number 1, the August issue Number 8, etc. For information on citing the Register, see "Authority and Historical Notes" in Part IV of this handbook.

### Types of Documents

Agencies may submit four different types of documents for publication in the *Register*.

*Notice of Intent* (NOI): A Notice of Intent announces an agency's intention to promulgate new regulations or amendments to existing regulations. Every NOI must contain the proposed regulation, printed in full including all elements required by R.S. 49:953(A).

*Rule*: A Rule is published three to twelve months after its corresponding NOI and puts the new or amended regulation into force. [See R.S. 49:954]

*Declaration of Emergency*: A Declaration of Emergency, or "Emergency Rule (EMR)," is a temporary measure that remains in effect for no more than 120 days. Detailed guidelines for Emergency Rule preparation can be found in the APA, R.S. 49:953(B) and R.S. 49:954.(B)(2).

*Potpourri*: The Potpourri section of the Register contains announcements and various information that will never become part of the LAC.

*For details on how to format Emergency Rules and Notices of Intent, see Part IV of this handbook. For details on how to submit the various types of Louisiana Register documents, including the special procedures for final rule publication, see "How to Submit a Document".*

The Register also publishes all gubernatorial Executive Orders, occasional Legislation, Committee Reports, Governor's Reports and Policy and Procedure Memoranda.

## Research Tools

The Register contains two research tools, the Administrative Code Update (ACU), and the Cumulative Index. The ACU is printed quarterly (January, April, July, October) in the Register and an update for the previous year is published in each January issue. The Cumulative Index appears at the end of each Register issue.

The ACU, an especially useful resource for researching a particular Title or Part, looks like this:

### Administrative Code Update

#### JANUARY - DECEMBER 2013

LAC Title	Part #.Section #	Action	Month	Location: LR 39 Page#
4	III.103	Amended	Dec.	3271
	III.Chapter 11	Adopted	Dec.	3272
7	XIII.Chapters 1-11 (formerly Chapters 1-3)	Repromulgated	Oct.	2701
	XIII.101,121,141,171,183,193	Amended	July	1757
	XIII.145,741,767-779	Repromulgated	Nov.	3059
	XIII.239,241	Adopted	July	1757
	XXI.101	Amended	Dec.	3246

All changes to codified rules in 2013 will appear in this update, which lists the LAC citation of the relevant text, the action taken, the month of the Register issue, and the page number. All the amendments for any given Title and Part will be listed together in the ACU for a given year (dating back to 1986), making this a fast and efficient research tool. For information on LAC citation, see "Citing the LAC" in Part III of this handbook, and for information on the various types of actions (amended, adopted, etc.), see "Authority and Historical Notes" in Part IV of this handbook.

The Cumulative Index looks like this:

<b>AGRICULTURE AND FORESTRY</b>
<b>Agriculture and Environmental Sciences, Office of</b>
Apiary hearing, 1044P
Boll weevil eradication, 996N, 1068ER
Landscape architect exam, 765P
Pesticide, 291N, 541ER
Plant quarantine, 314P
Retail floristry exam, 153P, 405P, 765P, 1160P, 1299P
Sweet potato, 717N, 1210R
<b>Animal Health Services, Office of</b>
Livestock Sanitary Board
Animal disease, 414ER, 537ER, 782ER, 928ER
Brucellosis, 462N, 718N, 960R, 1044P
Contagious disease, 718N

The Cumulative Index records all action taken in a given year by a given agency. The Index in the March 2004 *Louisiana Register* will record all documents from January to March of 2004; the Index in the April *Louisiana Register* will record all documents from January to April; and so

on, until, in December, an entire year has been indexed. The numbers in each entry indicate the page number on which the document can be found, and the letters indicate the type of document. Document types are abbreviated as follows.

Emergency Rules—ER	Executive Orders—EO
Rules—R	Committee Reports—CR
Notices of Intent—N	Legislation—L
Potpourri—P	Policy and Procedure Manual—PPM
Governor's Report—GR	

## How to Submit a Document

### *Deadline*

A document to be published in a given month must be submitted to the Office of the State Register by **noon on the tenth day of that month** (for example: a document to be published in the April Register must be submitted by April 10). If the tenth of the month falls on a weekend, the deadline becomes **noon on the preceding Friday**.

The rule writer should be present upon document submittal. He/she will meet with an OSR representative to go over both electronic and hard copy submittal. Both electronic and hard copy submittal will need to be filed before the deadline. An incomplete filing will delay your printing date.

### *Required Materials*

The following materials must be submitted for each document.

1. An Insertion Order. This one-page form may be copied from any issue of the *Register*, obtained from the OSR website at <http://www.doa.louisiana.gov/osr/osr.htm>, or from our office. The Insertion Order provides us with basic information about the document, such as the type of document, the document title, the rulemaking agency, and the contact person at the agency. Each individual document must be accompanied by an original insertion order, and every insertion order must be signed by an agency designee. (A copy of the insertion order is included at the end of this booklet.)

2. A paper copy of the document text.

3. An electronic copy of the document text (see exception in the following section, *Special Procedures: Final Rule*). Electronic submission is to be e-mailed to [Reg.Submission@la.gov](mailto:Reg.Submission@la.gov).

The document must contain all materials to be printed, in specified order (see Notice of Intent Example).

All materials for a single document should be included **in one file** (see example in Part VII.C. of this document). Multiple documents may be attached as separate files in a single email; each file should, of course, be clearly labeled. Documents in Microsoft Word format are preferred. (Never submit a PDF file!)

4. The original Fiscal and Economic Impact Statement (FEIS), for Notices of Intent that include an FEIS, signed by the appropriate parties must also be submitted.

*For more information on the materials that must be submitted with each type of document, see Part IV of this handbook, "Document Formatting."*

**DO NOT USE: TRACKING, AUTOMATED NUMBERING, OR STRIKETHROUGH/UNDERSCORE FOR LOUISIANA REGISTER ELECTRONIC DOCUMENT FILES.**

### *Special Procedures: Final Rule*

When submitting a final Rule that was previously published as a Notice of Intent, DO NOT resubmit an electronic copy. Simply photocopy the Notice of Intent from the *Register* in which it was published and **mark in red ink** any changes to be made. When marking changes, keep the following guidelines in mind.

- ▶ In the introductory paragraph, phrases such as "proposed Rule" will be changed to "Rule," and phrases such as "intends to adopt" will become "has adopted."
- ▶ The Fiscal and Economic Impact Statement, along with the Family Impact Statement, Poverty Impact Statement, Small Business Analysis, Provider Impact Statement, Public Comments paragraph, and the Public Hearing paragraph will be deleted.

NOTE: For substantial changes, submit both the Notice of Intent and Potpourri Notice with red marking on the Notice of Intent to indicate changes.

***\*\*Reminder: Make sure to submit your Summary Report receipts from legislative oversight when turning in your Rule for printing. These are kept on file with your Rule for three years.\*\****

## Part III. Codification

The Administrative Procedure Act authorizes OSR to "prescribe a uniform system of indexing, numbering, arrangement of text and citation of authority and history notes for the *Louisiana Administrative Code*" (§954.1.E). This system of numbering is called "codification" and is used to number most of the LAC.

### The Codification System

We have divided the LAC into the following Titles, which are organized according to subject matter.

Title 1.	Administrative Law
Title 4.	Administration
Title 7.	Agriculture and Animals
Title 10.	Financial Institutions, Consumer Credit, Investment Securities and UCC
Title 13.	Economic Development
Title 16.	Community Affairs
Title 19.	Corporations and Business
Title 22.	Corrections, Criminal Justice and Law Enforcement
Title 25.	Cultural Resources
Title 28.	Education
Title 31.	Elections
Title 32.	Employee Benefits
Title 33.	Environmental Quality
Title 34.	Government Contracts, Procurement and Property Control
Title 35.	Horse Racing
Title 37.	Insurance
Title 41.	Military Forces of the State
Title 40.	Labor and Employment
Title 42.	Louisiana Gaming
Title 43.	Natural Resources
Title 46.	Professional and Occupational Standards
Title 48.	Public Health—General
Title 49.	Public Health—Food and Drugs
Title 50.	Public Health—Medical Assistance
Title 51.	Public Health—Sanitary Code
Title 52.	Ethics
Title 55.	Public Safety
Title 56.	Public Works
Title 58.	Retirement
Title 61.	Revenue and Taxation
Title 67.	Social Services
Title 70.	Transportation
Title 71.	Treasury
Title 73.	Weights, Measures and Standards
Title 76.	Wildlife and Fisheries

Each Title is divided into smaller units according to the outline form shown on the next page.

**Title 1**  
**Part I**  
**Subpart 1 (optional)**  
**Chapter 1**  
**Subchapter A (optional)**

**§101. Section**

A. Subsection

1. Paragraph

a. Subparagraph

i. Clause

(a). Subclause

(i). Division

(ii). Division

(b). Subclause

ii. Clause

b. Subparagraph

2. Paragraph

B. Subsection

AUTHORITY NOTE: Promulgated in accordance with R.S. 12:345.

HISTORICAL NOTE: Promulgated by the Department of XXX, Office of XXX, LR 25:234 (February 1999).

Note that Titles, Subparts, and Chapters are labeled with Arabic numerals, Parts with upper case Roman numerals, and Subchapters with uppercase letters. Note also that the Subpart and Subchapter headings are labeled "optional": while all codified material must be included in a Title, Part, and Chapter, each agency may (in consultation with OSR) decide whether or not to subdivide its Parts and Chapters into Subparts and Subchapters (for more details see "Numbering.")

Chapters are divided into Sections, which are labeled with the section symbol (§) followed by Arabic numerals. A Section number begins with the Chapter number followed by two digits, so that the first Section of Chapter 1 is labeled §101, the second Section §103, the third Section is §105, etc. The first Section of Chapter 13 is labeled §1301, the second is §1303, etc. (for information on even numbered Sections, see "Numbering" in this Part). Sections must be divided exactly as shown above, and all text must be appropriately labeled. Study the following example, paying close attention to the use of numerals, letters, and capitalization.



## Correct:

### §301. Responsible Automobile Usage

A. Excessive Speed. Individuals caught driving at excessive speeds in designated areas will be punished with one of the following measures:

1. confiscation of:
  - a. automobiles;
  - b. pets; and
  - c. either of the following power tools:
    - i. drills; or
    - ii. wheelbarrows;
2. fines; and
3. loss of license.

B. Excessive Swerving. Individuals who swerve too much may atone for themselves in one of the following ways.

1. If the individual swerves into a flowerbed, he may write an essay on horticulture.
2. If the individual swerves into a mailbox, he may repair the mailbox to its original condition and do volunteer work at the post office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:348.

HISTORICAL NOTE: Promulgated by the Department of Driving Safety, Office of Vehicles, LR 22:338 (March 1996).

*Note that no paragraph of text is left uncodified.  
The following examples are of incorrect codification.*

## Incorrect:

### §301. Responsible Automobile Usage

Individuals caught driving at excessive speeds in designated areas will be punished with excessive fines and a prolonged period of probation and evaluation supervised by a designated officer, who will provide guidance, support, and discipline.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:348.

HISTORICAL NOTE: Promulgated by the Department of Driving Safety, Office of Vehicles, LR 22:338 (March 1996).

### §301. Responsible Automobile Usage

A. Individuals caught driving at excessive speeds in designated areas will be punished with excessive fines and a prolonged period of probation and evaluation supervised by a designated officer, who will provide guidance, support, and discipline.

If the individual fails to meet the requirements of his supervising officer, he shall be assigned to the Division of Recalcitrant Drivers, where he will remain until discharged to the custody of his officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:348.

HISTORICAL NOTE: Promulgated by the Department of Driving Safety, Office of Vehicles, LR 22:338 (March 1996).

The first of these two Sections is flawed because of a failure to designate the text with "A." Even a single paragraph of text must be designated with the proper codification. The second incorrect example is flawed because the second paragraph is not labeled. It might appropriately be either incorporated into Subsection A or designated as Subsection B, but it cannot go unlabeled. (For more instructions on how to format codified text, see Part IV of this handbook.)

## Numbering

Most Parts, Chapters, and Sections are numbered with odd numbers. Using this method leaves room to incorporate new rules without changing the codification. An agency that has published §101 and §103 can adopt rules at a later date regarding similar subject matter in §102.

With each new Part, Chapter numbering begins anew (i.e., the first Chapter in any given Part will be Chapter 1), and with each new Chapter, Section numbering begins anew (i.e., the first Section in any given Chapter will begin with the Chapter number followed by two digits: XX01). Subparts and Subchapters do not affect numbering. The following sample outlines should make this point clear.

<b>Part I</b>	<b>Part I</b>
<b>Subpart 1</b>	<b>Chapter 1</b>
<b>Chapter 1</b>	<b>Chapter 3</b>
<b>Chapter 3</b>	<b>Chapter 5</b>
<b>Chapter 5</b>	<b>Chapter 7</b>
<b>Subpart 2</b>	<b>Chapter 9</b>
<b>Chapter 7</b>	
<b>Chapter 9</b>	
<b>Part III</b>	<b>Part III</b>
<b>Subpart 1</b>	<b>Chapter 1</b>
<b>Chapter 1</b>	<b>Chapter 3</b>
<b>Chapter 3</b>	<b>etc.</b>
<b>etc.</b>	

Note that the Chapter numbering in both of the above samples is the same, though the one on the left is divided into Subparts and the one on the right is not. The beginning of each new Subpart does not affect the Chapter numbering. However, the beginning of each new Part does affect Chapter numbering. Section numbering is likewise unaffected by Subchapters (see below).

<b>Chapter 1</b>	<b>Chapter 1</b>
<b>Subchapter A</b>	<b>§101</b>
<b>§101</b>	<b>§103</b>
<b>§103</b>	<b>§105</b>
<b>Subchapter B</b>	<b>§107</b>
<b>§105</b>	<b>etc.</b>
<b>etc.</b>	

## Authority and Historical Notes

Each Section ends with an Authority Note and a Historical Note. When researching, these notes serve as a resourceful and time-saving tool. The Authority Note indicates the Revised Statutes or other laws which authorize an agency to adopt or amend a regulation. The Historical Note shows the history of a Section by listing in chronological order each time the Section was promulgated, repromulgated, or amended in the *Louisiana Register* and the agency responsible for each amendment.

*See the "Codification System" of this Part for more information about numbering, and for additional information about Authority and Historical Notes, see "Authority and Historical Notes" in Part IV of this handbook.*

## Citing the LAC

References to portions of the *Louisiana Administrative Code* (LAC), or citations, begin with "LAC" and designate the Title, Part, Section, Subsection, Paragraph, etc., as in the following example:

LAC 43:I.705.A.2.c.iii

Note that since the Section number is listed, the Chapter is not. When an entire Chapter, instead of an individual Section, is cited, "Chapter" is spelled out, as in:

LAC 43:I.Chapter 7

The first example above refers to Title 43, Part I, Section 705, Subsection A, Paragraph 2, Subparagraph c, Clause iii. The second citation refers to Title 43, Part I, Chapter 7.

**LAC codification terms such as Part, Chapter, Section, Subsection, Paragraph, and Clause are always capitalized.**

# Part IV. Document Formatting

## The Basic Components

Documents submitted for publication in the *Louisiana Register (Register)* must be formatted according to the standards outlined in the following pages. Below is a general example of how a document should look.

*Please note the extensive use of the tab key in properly formatted documents.*

### RULE

#### Department of Driving Safety Office of Vehicles

#### Penalties for Speed and Swerving Violations (LAC 38:III.301)

The Department of Driving Safety, Office of Vehicles, in accordance with R.S. 91:348 and with the Administrative Procedure Act, R.S. 49:950 et seq., has amended LAC 38:III.301, Responsible Automobile Usage. This text has been amended in response to increased automobile misuse and to the new federal regulations contained in FCR 22:149. This Rule is hereby adopted on the day of promulgation.

### Title 38

### DRIVING SAFETY

### Part III.[2 spaces]Vehicle Control

#### Chapter 3.[tab]Violations and Penalties

#### §301.[tab]Responsible Automobile Usage

A.[tab]Excessive Speed. Individuals caught driving at excessive speeds in designated areas will be punished with one of the following measures:

- 1.[tab]confiscation of:
  - a.[tab]automobiles;
  - b.[tab]pets; and
  - c.[tab]either of the following power tools:
    - i.[tab]drills; or
    - ii.[tab]wheelbarrows;
- 2.[tab]fines; and
- 3.[tab]loss of license.

B.[tab]Excessive Swerving. Individuals who swerve too much may atone for themselves in one of the following ways.

- 1.[tab]If the individual swerves into a flowerbed, he may write an essay on horticulture.
- 2.[tab]If the individual swerves into a mailbox, he may repair the mailbox to its original condition and do volunteer work at the post office.

AUTHORITY NOTE:[tab]Promulgated in accordance with R.S. 27:348.

HISTORICAL NOTE:[tab]Promulgated by the Department of Driving Safety, Office of Vehicles, LR 22:338 (March 1996), amended LR 26:307 (February 2000), LR 27:604 (April 2001).

Jim Hagee  
Deputy Commissioner

The document, as you can see, contains the **department and office names**, a **title** (which includes the appropriate LAC citation), and an **introductory paragraph**. The introductory paragraph describes the rulemaking action (adopted, amended, repealed, promulgated, or repromulgated) and cites the authority that enables the agency to create/amend rules.

Additional information is required for Notices of Intent and Emergency Rules. See "Special Requirements: Notices of Intent" and "Special Requirements: Declaration of Emergency" in this Part for those requirements. The introductory paragraph is followed by a **heading** that identifies the Title, the Part, and the Chapter (see Part III of this handbook for an explanation of the LAC codification system). Note the exact placement of tabs and spaces and the use of capitalization. It is important that the format in the general example be closely followed. Be careful also when typing the Title, Part, and Chapter names as a simple typing error can permanently change the name and create confusion.

*NOTE:* Though the example is indented in each line of text (for clarity's sake), there is no need for agencies to do so. Our macros will indent the text automatically. **Do not use automatic outline functions such as auto numbering and track changes.**

Following the heading are the actual **Sections** that are being amended. Be sure to number the text as instructed in Part III of this handbook. Specific formatting instructions (including instructions for **Authority Notes** and **Historical Notes**) are found on the following pages.

The final feature of this sample document is the **Name/Title** of the agency that is publishing the rule. The **Name/Title** must be included in every document submitted for publication in the *Louisiana Register*.

Note that the sample document includes no extra boldface type, italics, underlining, highlighting, strikethrough effects, page numbers, or headers and footers. Do not include any of these effects. The only exception is in definitions, where italics should be used (see "Definitions" of this Part).

### ***Special Requirements: Notices of Intent***

Notices of Intent **must** include six additional components.

1. A Family Impact Statement is to be inserted according to the standards set forth in Section 972 of the Administrative Procedure Act (see Part V of this handbook, which contains the APA).
2. A Poverty Impact Statement is to be inserted according to the standards set forth in Section 973 of the Administrative Procedure Act (see Part V of this handbook, which contains the APA).
3. A Small Business Analysis is to be inserted according to the standards set forth in Sections 965.2 through 965.8 of the Administrative Procedure Act
4. A Provider Impact Statement is to be inserted according to the standards set forth in HCR 170 of the 2014 Regular Legislative Session.
5. A Public Comments paragraph, should include contact information for anyone who wishes to comment on the proposed rule. A Public Comments paragraph should be similar to the example below:

Interested persons may submit written comments to Bill Gravy, Administrative Officer, Department of Driving Safety, Box 43678, Baton Rouge, LA 70804, or by facsimile to (225) 342-1234. All comments must be submitted by 4:30 p.m., May 26, 2004.

6. An approved Fiscal and Economic Impact Statement. This statement is to be signed by designees from the rulemaking agency **and** the Legislative Fiscal Office. The original FEIS must be submitted to the Office of State Register (with signatures).

***For more information on how to format a Notice of Intent, refer to the example in Part VII.C. of this document: "Example Notice of Intents."***

### ***Special Requirements: Declarations of Emergency***

The opening paragraph of a Declaration of Emergency should be specially formatted according to guidelines contained in the APA (see Part V of this handbook). Make sure that the effective date is mentioned in the opening paragraph along with the basis and rationale for declared emergency.

## **Formatting Text**

### ***Contents***

*Addresses Agency • Names • Authority and Historical Notes  
Capitalization • Definitions • Lists • Money • Numbers • Other  
Abbreviations and Symbols • Preserving Old Text without Reprinting It  
Repealing a Section • Time • Miscellaneous*

**It is crucial that all documents submitted to our office be accurately formatted. Study the following guidelines carefully to help ensure the quality of your documents.**

### *1. Addresses*

In the addresses of the public hearing paragraph, titles such as "Mr." and "Mrs." and extraneous phrases such as "to the following address" should be omitted; "Louisiana" should be abbreviated as "LA" when it appears in a postal address.

*Incorrect:*

Written comments may be addressed to the following address: Mr. Bill Gravy, Assistant Secretary, Office of Vehicles, Department of Driving Safety, P.O. Box 44061, Baton Rouge, Louisiana 70804.

*Correct:*

Written comments may be addressed to Bill Gravy, Assistant Secretary, Office of Vehicles, Department of Driving Safety, P.O. Box 44061, Baton Rouge, LA 70804.

### *2. Agency Names*

Unless needed for clarity, avoid using "state" and "Louisiana" in conjunction with the names of boards, departments, commissions, and other such entities.

*Preferable:* Office of Vehicles; Department of Driving Safety

*Not Preferable:* State Office of Vehicles; Louisiana Department of Driving Safety

### 3. Authority and Historical Notes

For a general introduction to Authority and Historical Notes, see Part III of this handbook.

The formatting of Authority Notes is very simple and is demonstrated in the following example.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:997 and R.S. 38:671.

Historical Notes are more complicated and should be written accurately according to the following guidelines.

Historical Notes record four types of action. They are as follows.

- ▶ *Promulgated* indicates the initial creation and publication of a Section.
- ▶ *Amended* indicates a revision to a Section.
- ▶ *Repromulgated* indicates republication of a Section. This term is used when there are no changes in the content of the rule or when the rule is being reprinted with technical changes.
- ▶ *Repealed* indicates that a Section is being deleted in its entirety.

The Historical Note of a Section must record every action taken on that Section in the *Louisiana Register*. It begins by naming the rulemaking entity involved and then records the action taken and the *Louisiana Register* citation. Study the following example.

HISTORICAL NOTE: Promulgated by the Department of Horse and Buggy, Board of Wheels, LR 8:72 (February 1982), amended LR 10:224 (May 1984), LR 11:1031 (August 1985), amended by the Department of Driving Safety, Office of Vehicles, LR 16:331 (April 1990), LR 19:1330 (October 1993).

Note that for each entry, the agency name and the action taken are specified only when there is a difference in the previous entry. The action is not listed in each entry. Thus the last entry, which records the same action and agency as the previous entry, names only the *Louisiana Register* citation. The second entry does not name an agency because only the action type has changed (from "promulgated" to "amended"). The third entry names both agency and action because the agency has changed. (When the agency name has changed, the action is always named along with the new agency name.)

Note also the use of punctuation and capitalization in the above example. The following details are of particular importance.

- ▶ No periods or semicolons are used within the note.
- ▶ There is a space only between LR and the number immediately following.
- ▶ There are no commas separating month from year in the parenthetical dates.
- ▶ The words "AUTHORITY NOTE" and "HISTORICAL NOTE" are in all capital letters and are separated from the text by a tab.

*Louisiana Register* citations are simple and can be read as demonstrated using the following example.

LR 37:102 (January 2011)

The "LR" in the citation stands for *Louisiana Register*. The number preceding the colon (30 in this case) is the volume number, which changes each year (volume 30 applies to the year 2004). The number following the colon is the page number of the *Register* issue where the Section being cited begins. The parenthetical date indicates the month and year of the *Register* issue in which the cited Section can be found.

#### 4. Capitalization

Never use all capitals in the text except for acronyms. The first time an acronym is used it should be spelled out followed by the initial capital letters in parentheses. Avoid using an acronym as the first word of a sentence.

The governor shall administer the aid to families with old vehicles (AFOV) program. No AFOV volunteer shall work more than 12 hours per week.

Titles should be lowercased unless part of a proper name. The President of the U.S. is the one exception.

The governor shall contact Secretary Gravy if budget problems arise. The secretary may, at his discretion, contact the presidents of vehicle agencies around the state.

The word **state** should be lowercased unless it is part of a proper name or refers to the State of Louisiana as a governmental or legislating entity.

Vehicle owners within the state of Louisiana shall consult with State Vehicle Officer Smith to find out about registration requirements. The State of Louisiana has the authority to enact whatever regulations necessary to ensure the safety of drivers throughout the state.

Words such as **committee, board, department, and legislature** should not be capitalized unless it is part of a proper name.

The board may, if inundated with phone calls, enlist the help of the Committee on Vehicle Management or the department. If federal authorities collaborate with the Louisiana Legislature on a plan for phone management, and if the legislature sees fit, the board may apply for special consideration.

Capitalize **House** when referring to the **U.S. House of Representatives**. Also capitalize **U.S. Senate, U.S. Congress, U.S. Cabinet**, etc.

Capitalize **Regular Session** and **Extraordinary Session** when referring to the legislature.

Capitalize **Social Security** when referring to the administration, the act, a **Social Security** number, or Social Security payments. Capitalize **Civil Service** when referring to the U.S. system or state system. Lowercase these words when used in a general sense.

Capitalize **Title, Part, Subpart, Chapter, Subchapter, Section, Subsection, Paragraph, Subparagraph, and Clause** when referring to specific portions of the LAC. Do not capitalize these words when referring to non-LAC publications.

Capitalize the titles of forms and documents only when they appear with a number.

Applicants shall complete Form VH-112 and any additional forms that may be required for the certificate of registration.



For more general information on capitalization, call our department at 342-5015. OSR expects submitted documents to reflect proper usage of LAC uniform capitalization guidelines.

## 5. Definitions

Individual definitions are **not** codified with a number or a letter. Instead they are placed in alphabetical order with the defined word capitalized and italicized and a long dash (em dash) between the word and the definition. Study the following example.

### §101. Regulations over Really Big Trucks

#### A. Definitions

*Big Truck*—a truck weighing more than two tons.

*Load-Excessive*—a truck carrying a load of more than twice its own weight. The load-excessive designation may apply to trucks of any number of wheels. It may not apply to trucks carrying:

- a. gifts for needy children;
- b. fresh produce; or
- c. galvanized steel.

*Really Big Truck*—a truck weighing more than five tons.

*Super Rig*—a truck customized with an oversized diesel engine.

\* \* \*

*Tire-Excessive Truck*—a truck containing more than 20 tires.

B. Really big trucks may drive only on designated roads, though big trucks may drive anywhere. Load-excessive trucks must be deemed safe by an officer of the Department of Driving Safety.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:455.

HISTORICAL NOTE: Promulgated by the Department of Driving Safety, Office of Vehicles, LR 12:763 (November 1986), amended LR 16:402 (May 1990).

Note that the definitions (in alphabetical order as prescribed) are implicitly regarded as Paragraphs because they are directly under a Subsection (see Part III of this handbook, "Codification"). Thus the subpoints under the second definition are regarded as Subparagraphs and labeled a, b, c. If these definitions are directly under a Clause, they would be labeled as Subclauses; or if they are directly under a Section, they would be labeled as Subsections.

Note also that asterisks are used between *Super Rig* and *Tire-Excessive Truck*. The asterisks indicate that there are definitions in the existing text that do not need to be reprinted, and they preserve the definitions to prevent them from being deleted. Because definitions are not codified using the standard format, this procedure is acceptable. Definitions and other unlabeled text are the only cases in which this procedure is acceptable (see "Preserving Existing Text without Reprinting It").

And finally, note that words such as "means" and "is" do not follow the long dash. The long dash is used to replace these words.

#### *Correct:*

*Big Truck*—a truck weighing more than two tons.

#### *Incorrect:*

*Big Truck*—means a truck weighing more than two tons.

*Big Truck* means a truck weighing more than two tons.

## 6. Lists

Listed items that are not complete sentences should begin with a lowercase letter and should be separated by semicolons as in the following examples.

- A. The truck contains:
1. one exhaust pipe;
  2. four tires; and
  3. one steering wheel.
- A. A student may eat one of the following:
1. beans;
  2. soup; or
  3. spaghetti.

But if the items in the list are complete sentences, the following format is appropriate:

- A. A student may choose any of the following options.
1. If especially hungry, he may eat beans with a side of rice and a brownie for dessert.
  2. If lactose-intolerant, he may substitute water for his milk.
  3. If sufficiently talented and competent, he may prepare his own food.

## 7. Money

Dollar amounts should never be written as words.

*Correct:* \$3; \$57.43

*Incorrect:* three dollars; 3 dollars; 57 dollars; one million dollars

Decimals are not necessary in monetary amounts without change and should be deleted.

*Correct:* \$15

*Incorrect:* \$15.00

Use common sense, though. If, for instance, some figures in a table use decimals, all figures in that table, for the sake of consistency, should also include decimal amounts.

Amounts of less than a dollar should still be written using a dollar sign.

*Correct:* \$0.27

*Incorrect:* 27 cents; 27¢; \$.27

## 8. Numbers

Numbers with one digit are written as words. Numbers with more than one digit are written as numerals. Never include the numeral in parentheses after the word.

*Correct:* one; five; 10; 268

*Incorrect:* 1; 5; ten; two hundred sixty-eight (268)

Exceptions:

- ▶ When a number is the first word of a sentence, always write the number as a word.
- ▶ Numbers used in close proximity to one another should be consistently formatted, even if it means bending the rules.
- ▶ Always use numerals for age and units of measurement.

*Preferable:* "between the ages of 3 and 27"  
*Not Preferable:* "between the ages of three and 27"

▶ Percentages should be written as a numeral and a word (unless they appear in a table or a similar situation in which "%" is needed to save space).

*Correct:* 3 percent; 22 percent  
*Incorrect:* five percent; 5%; 22%

▶ Ordinal numbers are always spelled out (with one exception—see directly below).

*Correct:* third; twenty-fifth  
*Incorrect:* 3rd; 25th

▶ When denoting days of the month, ordinal numbers are always written as cardinal (normal) numerals.

*Correct:* May 15; November 6  
*Incorrect:* May 15th; November sixth

▶ See "Money" in this Part for guidelines on formatting dollar amounts.

### ***9. Other Abbreviations and Symbols***

Most of the instructions for formatting abbreviations and symbols can be found in the sections of this handbook that deal with numbers, money, time, and addresses. But here are a couple of additional guidelines.

Do not substitute the symbol "&" for the word "and."

When citing R.S. 49:950, do not write La. R.S. 49:950. The "La." is unnecessary.

### ***10. Preserving Existing Text Without Reprinting It***

Sometimes a few sentences of a relatively long Section will be amended. In such a case, it is impractical, unnecessary, and costly to print the entire Section, and only the amended portions should be printed.

Sounds simple, but the catch is that any text omitted from a Section printed in the *Register* is effectively deleted, unless it is done properly. Study carefully the following Section; we will take the appropriate steps to amend only a small portion.

#### **§301. Responsible Automobile Usage**

A. Excessive Speed. Individuals caught driving at excessive speeds in designated areas will be punished with one of the following measures:

1. confiscation of property;
2. fines; and
3. loss of license.

B. Excessive Swerving. Individuals who swerve too much may atone for themselves in various ways.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:348.

HISTORICAL NOTE: Promulgated by the Department of Driving Safety, Office of Vehicles, LR 22:338 (March 1996).

Perhaps we want to amend Subsection A to say "Do not drive too fast or you will regret it in one of the following ways:" and we want to amend Paragraph A.1 to say "public humiliation." We want to leave the rest of the Section as is, so we (wrongly) print the rule thus:

**§301. Responsible Automobile Usage**

A. Do not drive too fast or you will regret it in one of the following ways:

1. public humiliation;

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:348.

HISTORICAL NOTE: Promulgated by the Department of Driving Safety, Office of Vehicles, LR 22:338 (March 1996), amended LR 45:123 (January 2019).

It certainly does not make sense to print any of the unchanged text. But by omitting it, we have deleted it. The Section now officially reads as printed above, ending at Paragraph 1. We should have indicated that the rest of the text, though not being printed, **still exists**. Here is how we should have done so:

**§301. Responsible Automobile Usage**

A. Do not drive too fast or you will regret it in one of the following ways:

1. public humiliation;

A.2. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:348.

HISTORICAL NOTE: Promulgated by the Department of Driving Safety, Office of Vehicles, LR 22:338 (March 1996), amended LR 45:123 (January 2019).

The "A.2. - B. ..." after Paragraph 1 indicates that everything from Paragraph A.2 through Subsection B is being preserved but not printed.

This example makes this technique even clearer. Here is how we would print only the material after Paragraph A.1:

**§301. Responsible Automobile Usage**

- A. - A.1. ...
  - 2. fines; and
  - 3. loss of license.
- B. Excessive Swerving. Individuals who swerve too much may atone for themselves in various ways.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:348.  
HISTORICAL NOTE: Promulgated by the Department of Driving Safety, Office of Vehicles, LR 22:338 (March 1996), amended LR 45:123 (January 2019).

We use the standard citation above for Paragraph 1 (A.1), clearly indicating that it falls under Subsection A. This method is usually preferable for the sake of clarity. But if it is absolutely clear what is being referred to, the full citation is not necessary, as in the following example, in which everything is being printed but Paragraph A.2.

- A. Do not drive too fast or you will regret it in one of the following ways:
  - 1. public humiliation;
  - 2. ...
  - 3. loss of license.

The ellipsis in this case is perfectly clear.

Do not use asterisks to indicate omitted text unless the omitted text is not labeled such as tables or definitions, which are not codified like normal text (see "Definitions"). Use asterisks to show that an unlabeled portion of the Section is being saved and to insure that this portion is not inadvertently deleted.

## ***II. Repealing a Section***

When repealing an entire Section in the *Louisiana Register*, format the text as follows. The Section will not appear in subsequent LAC books.

**§301. Responsible Automobile Usage**

Repealed.  
AUTHORITY NOTE: Promulgated in accordance with R.S. 27:348.  
HISTORICAL NOTE: Promulgated by the Department of Driving Safety, Office of Vehicles, LR 22:338 (March 1996), repealed LR 23:1027 (August 1997).

## ***12. Time***

Avoid using "o'clock." The following format is preferable.

5 p.m.                  6:30 p.m.

Note that no zeros are used in 5 p.m. Avoid using 5:00 p.m. when the zeros are unnecessary. But, as with dollar amounts, use common sense and be consistent.

Note also that a.m. and p.m. are lowercased.

## ***13. Miscellaneous***

When using a reference in your rule, always verify that the reference is accurate. Example of a reference: (see LAC 22:I.303.A.2).

**Last, but not least, it is always a good idea to perform a spell check when your document is in final form.**

## Part V. Administrative Procedure Act

<b>Administrative Procedure Act Quick Reference</b>	
§953	Rule-Making Procedure
§953.A(2)(a) - (b)(iii)	Interested Persons/Comments
§953.B(1) - (4)(c)	Emergency Rule Guidelines
§954.B	Effective Dates
§963	Judicial Review of Rules
§968.D - N	Oversight Subcommittee Hearings
§969	Legislative Repeal of Rules
§970	Gubernatorial Repeal of Rules
§971	Oversight Subcommittee Rejection of Rules
§972	Family Impact Statement
§973	Poverty Impact Statement
§967	Exemptions
§968.B and C	First Legislative Rulemaking Report (Notice of Intent)
§968.D(1)(b)	Second Legislative Rulemaking Report (Summary Report)
§§978.1-978.8	Small Business Protection Act (Analysis and Statement)

### LEGISLATION

#### State Legislature 2020 Compilation

Administrative Procedure Act (R.S. 49:950 et seq.)

#### Title 49. STATE ADMINISTRATION

#### Chapter 13. Administrative Procedure

##### §950. Title and form of citation

This Chapter shall be known as the Administrative Procedure Act and may be cited as the Administrative Procedure Act.

Added by Acts 1982, No. 129, §1.

##### §951. Definitions

As used in this Chapter:

(1) "Adjudication" means agency process for the formulation of a decision or order.

(1.1) "Adopt", "adopted", or "adoption", when pertaining to a fee in this Chapter, shall include action proposed by an agency to adopt, apply, assess, charge, implement, levy, or otherwise collect a fee pursuant to authorization by law that the agency may adopt, apply, assess, charge, implement, levy or otherwise collect such fee.

(2) "Agency" means each state board, commission, department, agency, officer, or other entity which makes rules, regulations, or policy, or formulates, or issues decisions or orders pursuant to, or as directed by, or in implementation of the constitution or laws of the United States or the constitution and statutes of Louisiana, except the legislature or any branch, committee, or officer thereof, any political subdivision, as defined in Article VI, Section 44 of the Louisiana Constitution, and any board, commission, department, agency, officer, or other entity thereof, and the courts.

(3) "Decision" or "order" means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of any agency, in any matter other than rulemaking, required by constitution or statute to be determined on the record after notice and opportunity for an agency hearing, and including non-revenue licensing, when the grant, denial, or renewal of a license is required by constitution or statute to be preceded by notice and opportunity for hearing.

(4) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.

(5) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency, except that an agency is a "person" for the purpose of appealing an administrative ruling in a disciplinary action brought pursuant to Title 37 of the Louisiana Revised Statutes of 1950 prior to the final adjudication of such disciplinary action.

(6) "Rule" means each agency statement, guide, or requirement for conduct or action, exclusive of those regulating only the internal management of the agency and those purporting to adopt, increase, or decrease any fees imposed on the affairs, actions, or persons regulated by the agency, which has general applicability and the effect of implementing or interpreting substantive law or policy, or which prescribes the procedure or practice requirements of the agency. "Rule" includes, but is not limited to, any provision for fines, prices or penalties, the attainment or loss of preferential status, and the criteria or qualifications for licensure or certification by an agency. A rule may be of general applicability even though it may not apply to the entire state, provided its form is general and it is capable of being applied to every member of an identifiable class. The term includes the amendment or repeal of an existing rule but does not include declaratory rulings or orders or any fees.

(7) "Rulemaking" means the process employed by an agency for the formulation of a rule. Except where the context clearly provides otherwise, the procedures for adoption of rules and of emergency rules as provided in R.S. 49:953 shall also apply to adoption, increase, or decrease of fees. The fact that a statement of policy or an interpretation of a statute is made in the decision of a case or in an agency decision upon or disposition of a particular matter as applied to a specific set of facts involved does not render the same a rule within this definition or constitute specific adoption thereof by the agency so as to be required to be issued and filed as provided in this Subsection.

Acts 1995, No. 1057, §1, eff. June 29, 1995 and Jan. 8, 1996 (1/8/96 date applicable to Dept. of Health and Hospitals only); Acts 1997, No. 1224, §1; Acts 2010, No. 775, §1, eff. June 30, 2010.

NOTE: See Acts 2010, No. 775, §3, regarding its applicability.

#### **§952. Public information; adoption of rules; availability of rules and orders**

Each agency which engages in rulemaking shall:

(1) File with the Office of the State Register a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests.

(2) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available.

(3) Make available for public inspection all rules, preambles, responses to comments, and submissions and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions and publish an index of such rules, preambles, responses to comments, submissions, statements, and interpretations on a regular basis.

(4) Make available for public inspection all final orders, decisions, and opinions.

Acts 1966, No. 382, §2, eff. July 1, 1967. Amended by Acts 1978, No. 252, §1; Acts 1979, No. 578, §1, eff. July 18, 1979; Acts 1990, No. 1085, §1, eff. July 31, 1990; Acts 1993, No. 386, §1; Acts 2013, No. 220, §23, eff. June 11, 2013.

#### **§953. Procedure for adoption of rules**

A. Prior to the adoption, amendment, or repeal of any rule, the agency shall:

(1)(a) Give notice of its intended action and a copy of the proposed rules at least ninety days prior to taking action on the rule.

The notice shall include:

(i) A statement of either the terms or substance of the intended action or a description of the subjects and issues involved;

(ii) A statement, approved by the legislative fiscal office, of the fiscal impact of the intended action, if any; or a statement, approved by the legislative fiscal office, that no fiscal impact will result from such proposed action;

(iii) A statement, approved by the legislative fiscal office, of the economic impact of the intended action, if any; or a statement, approved by the legislative fiscal office, that no economic impact will result from such proposed action;



(iv) The name of the person within the agency who has the responsibility for responding to inquiries about the intended action;

(v) The time when, the place where, and the manner in which interested persons may present their views thereon; and

(vi) A statement that the intended action complies with the statutory law administered by the agency, including a citation of the enabling legislation.

(vii) The preamble, which explains the basis and rationale for the intended action and summarizes the information and data supporting the intended action.

(viii) A statement concerning the impact on family formation, stability, and autonomy as set forth in R.S. 49:972.

(ix) A statement concerning the impact on child, individual, or family poverty in relation to individual or community asset development as set forth in R.S. 49:973.

(x) A statement concerning the economic impact on small businesses, as set forth in R.S. 49:978.4, and the small business regulatory flexibility analysis, as set forth in R.S. 49:978.5.

(b)(i) The notice shall be published at least once in the Louisiana Register and shall be submitted with a full text of the proposed rule to the Louisiana Register at least one hundred days prior to the date the agency will take action on the rule.

(ii) Upon publication of the notice, copies of the full text of the proposed rule shall be available from the agency proposing the rule upon written request within two working days.

(c) Notice of the intent of an agency to adopt, amend, or repeal any rule and the approved fiscal and economic impact statements, as provided for in this Subsection, shall be mailed to all persons who have made timely request of the agency for such notice, which notice and statements shall be mailed at the earliest possible date, and in no case later than ten days after the date when the proposed rule change is submitted to the Louisiana Register.

(d) For the purpose of timely notice as required by this Paragraph, the date of notice shall be deemed to be the date of publication of the issue of the Louisiana Register in which the notice appears, such publication date to be the publication date as stated on the outside cover or the first page of said issue.

(2)(a) Afford all interested persons reasonable opportunity to submit data, views, comments, or arguments, orally or in writing. In case of substantive rules, opportunity for oral presentation or argument must be granted if requested within twenty days after publication of the rule as provided in this Subsection, by twenty-five persons, by a governmental subdivision or agency, by an association having not less than twenty-five members, or by a committee of either house of the legislature to which the proposed rule change has been referred under the provisions of R.S. 49:968.

(b)(i) Make available to all interested persons copies of any rule intended for adoption, amendment, or repeal from the time the notice of its intended action is published in the Louisiana Register. Any hearing pursuant to the provisions of this Paragraph shall be held no earlier than thirty-five days and no later than forty days after the publication of the Louisiana Register in which the notice of the intended action appears. The agency shall consider fully all written and oral comments and submissions respecting the proposed rule.

(ii) The agency shall issue a response to comments and submissions describing the principal reasons for and against adoption of any amendments or changes suggested in the written or oral comments and submissions. In addition to the response to comments, the agency may prepare a preamble explaining the basis and rationale for the rule, identifying the data and evidence upon which the rule is based, and responding to comments and submissions. Such preamble and response to comments and submissions shall be furnished to the respective legislative oversight subcommittees at least five days prior to the day the legislative oversight subcommittee hearing is to be held on the proposed rule, and shall be made available to interested persons no later than one day following their submission to the appropriate legislative oversight subcommittee. If no legislative oversight hearing is to be held, the agency shall issue a response to comments and submissions and preamble, if any, to any person who

presented comments or submissions on the rule and to any requesting person not later than fifteen days prior to the time of publication of the final rule.

(iii) The agency shall, upon request, make available to interested persons the report submitted pursuant to R.S. 49:968(D) no later than one working day following the submittal of such report to the legislative oversight subcommittees.

(3)(a) For the purposes of this Subsection, the statement of fiscal impact shall be prepared by the proposing agency and submitted to the Legislative Fiscal Office for its approval. Such fiscal impact statement shall include a statement of the receipt, expenditure, or allocation of state funds or funds of any political subdivision of the state.

(b) For the purposes of this Subsection, the statement of economic impact shall be prepared by the proposing agency and submitted to the Legislative Fiscal Office for its approval. Such economic impact statements shall include an estimate of the cost to the agency to implement the proposed action, including the estimated amount of paperwork; an estimate of the cost or economic benefit to all persons directly affected by the proposed action; an estimate of the impact of the proposed action on competition and the open market for employment, if applicable; and a detailed statement of the data, assumptions, and methods used in making each of the above estimates.

B.(1)(a) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon shorter notice than that provided in Subsection A of this Section and within five days of adoption states in writing to the governor of the state of Louisiana, the attorney general of Louisiana, the speaker of the House of Representatives, the president of the Senate, and the Office of the State Register, its reasons for that finding, it may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The provisions of this Paragraph also shall apply to the extent necessary to avoid sanctions or penalties from the United States, or to avoid a budget deficit in the case of medical assistance programs or to secure new or enhanced federal funding in medical assistance programs. The agency statement of its reason for finding it necessary to adopt an emergency rule shall include specific reasons why the failure to adopt the rule on an emergency basis would result in imminent peril to the public health, safety, or welfare, or specific reasons why the emergency rule meets other criteria provided in this Paragraph for adoption of an emergency rule.

(b) The agency statement required in Subparagraph (a) of this Paragraph shall be submitted to the speaker of the House of Representatives and the president of the Senate at their respective offices in the state capitol by electronic transmission if such means are available. If electronic means are not available, the agency statement shall be submitted to the office of the speaker of the House of Representatives and the president of the Senate in the state capitol by certified mail with the return receipt requested or by messenger who shall provide a receipt for signature. The return receipt, the receipt for signature, or the electronic confirmation receipt shall be proof of receipt of the agency statement by the respective offices.

(2) Notice of the emergency rule shall be mailed to all persons who have made timely request of the agency for notice of rule changes, which notice shall be mailed within five days of adoption of the emergency rule. The Office of the State Register may omit from the Louisiana Register any emergency rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the emergency rule in printed or processed form is made available on application to the adopting agency, and if the Louisiana Register contains a notice stating the general subject matter of the omitted emergency rule, the reasons for the finding of the emergency submitted by the agency, and stating how a copy thereof may be obtained.

(3) The validity of an emergency rule or fee may be determined in an action for declaratory judgment in the district court of the parish in which the agency is located. The agency shall be made a party to the action. An action for a declaratory judgment under this Paragraph may be brought only by a person to whom such rule or fee is applicable or who would be adversely affected by such rule or fee and only on the grounds that the rule or fee does not meet the criteria for adoption of an emergency rule as provided in Paragraph (1) of this Subsection. The court shall declare the rule or fee invalid if it finds that there is not sufficient evidence that such rule or fee must be adopted on an emergency basis for one or more of the reasons for adoption of an emergency rule as provided in Paragraph (1) of this Subsection. Notwithstanding any other provision of law to the contrary, the emergency

rule or fee shall remain in effect until such declaratory judgment is rendered. The provisions of R.S. 49:963 shall not apply to any action brought pursuant to this Paragraph. The provisions of this Paragraph are in addition to R.S. 49:963 and shall not limit any action pursuant to R.S. 49:963.

(4)(a) Within sixty days after receipt of the agency statement required in Paragraph (1) of this Subsection by the presiding officer of either house for an emergency rule or fee, an oversight subcommittee of that house may conduct a hearing to review the emergency rule or fee and make a determination of whether such rule or fee meets the criteria for an emergency rule or fee as provided in Paragraph (1) of this Subsection and those determinations as provided in R.S. 49:968(D)(3). If within such time period an oversight subcommittee finds an emergency rule or fee unacceptable, it shall prepare a written report containing a copy of the proposed rule or proposed fee action and a summary of the determinations made by the committee and transmit copies thereof as provided in R.S. 49:968(F)(2).

(b) Within sixty days after adoption of an emergency rule or fee, the governor may review such rule or fee and make the determinations as provided in Subparagraph (a) of this Paragraph. If within such time period the governor finds an emergency rule or fee unacceptable, he shall prepare a written report as provided in Subparagraph (a) and transmit copies thereof to the agency proposing the rule change and the Louisiana Register no later than four days after the governor makes his determination.

(c) Upon receipt by the agency of a report as provided in either Subparagraph (a) or (b) of this Paragraph, the rule or fee shall be nullified and shall be without effect.

C.(1) An interested person may petition an agency requesting the adoption, amendment, or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, considerations, and disposition. Within ninety days after submission of a petition, the agency shall either deny the petition in writing, stating reasons for the denial, or shall initiate rulemaking proceedings in accordance with this Chapter. Each agency with an appropriated operating budget of five million dollars or more shall include on its website a description of the procedure for submitting petitions in accordance with this Paragraph.

(2)(a) At least once prior to January 1, 2020, and at least once during every six-year period thereafter, each agency subject to Paragraph (1) of this Subsection which engages in rulemaking shall conduct a public hearing for the purpose of allowing 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 shall publish notice of the meeting in the Louisiana Register, give notice of the meeting electronically to the appropriate legislative oversight committees, and shall provide notice of the meeting to all persons who have made timely request of the agency for notice of rule changes, all no later than thirty days prior to the meeting.

(b) The notice of the meeting shall contain:

- (i) The name of the agency.
- (ii) The purpose of the meeting.
- (iii) The time and place of the meeting.
- (iv) The process for requesting reasonable accommodations for persons with disabilities.
- (v) The name and contact information of the person within the agency to whom interested persons should direct their views regarding the agency's rules, if in writing, and the deadline for submission of written comments.

(c) The agency shall consider fully all written and oral comments and submissions concerning its rules. The agency shall advise persons who provide oral comments that in order to be submitted to the legislative oversight committees, comments must be submitted to the agency in writing. The agency shall issue a response to each submission describing the principal advantages and disadvantages of the rule changes suggested in the submission. In addition, the agency may prepare a statement explaining the basis and rationale for the rule in question identifying the data and evidence upon which the rule is based. All such statements and responses to submissions shall be furnished to the respective legislative oversight committees in the manner provided by R.S.

49:968(K) and shall be made available to interested persons as soon as possible but no later than one day following their submission to the appropriate legislative oversight committees.

D. When a rule is adopted, amended, or repealed in compliance with federal regulations, the adopting agency's notice of intent and the actual text of the rule as published in the Louisiana Register, must be accompanied by a citation of the Federal Register issue in which the determining federal regulation is published, such citation to be by volume, number, date, and page number.

E.(1) No agency shall adopt, amend, or repeal any rule if the accompanying fiscal and economic impact statement approved by the Legislative Fiscal Office indicates that the rule change would result in any increase in the expenditure of state funds, unless the rule is adopted as an emergency rule pursuant to the requirements of this Section or unless the legislature has specifically appropriated the funds necessary for the expenditures associated with the rule change.

(2) The fiscal and economic impact statement shall be summarized by the agency as to the estimated costs or economic benefits or both, to directly affected persons, small businesses, or nongovernmental groups and the summary shall be published in the Louisiana Register.

(3) No later than the tenth day of the month, the office of the state register shall electronically transmit to the commercial division of the Department of State, the summary of the fiscal and economic impact statement.

F.(1) Notwithstanding any other provision of this Chapter to the contrary, if the Department of Environmental Quality proposes a rule that is not identical to a federal law or regulation or is not required for compliance with a federal law or regulation, the Department of Environmental Quality shall adopt and promulgate such proposed rule separately from any proposed rule or set of proposed rules that is identical to a federal law or regulation or required for compliance with a federal law or regulation. However, if the only difference between the proposed rule or set of proposed rules and the corresponding federal law or regulation is a proposed fee, the Department of Environmental Quality shall not be required to adopt and promulgate such proposed rule or set of proposed rules separately. For purposes of this Subsection, the term "identical" shall mean that the proposed rule has the same content and meaning as the corresponding federal law or regulation.

(2) When the Department of Environmental Quality proposes a rule that is not identical to a corresponding federal law or regulation, or is not required for compliance with a federal law or regulation, the Department of Environmental Quality shall provide a brief summary which explains the basis and rationale for the proposed rule, identifies the data and evidence, if any, upon which the rule is based, and identifies any portions of the proposed rule that differ from federal law or regulation if there is a federal law or regulation which is not identical but which corresponds substantially to the proposed rule. Such summary shall be provided along with the notice of intent and shall be published in the Louisiana Register or made available along with the proposed rule as provided in Item (A)(1)(b)(ii) of this Section. The Department of Environmental Quality may also provide such a summary when proposing a rule identical to a corresponding federal law or regulation or proposing a rule which is required for compliance with federal law or regulation to explain the basis and rationale for the proposed rule.

(3) Notwithstanding any other provision of this Chapter to the contrary, when the Department of Environmental Quality proposes a rule that is identical to a federal law or regulation applicable in Louisiana, except as provided in Paragraph (4) of this Subsection, it may use the following procedure for the adoption of the rule:

(a) The department shall publish a notice of the proposed rule at least sixty days prior to taking action on the rule as provided below. The notice, which may include an explanation of the basis and rationale for the proposed rule, shall include all of the following:

(i) A statement of either the terms or substance of the intended action or a description of the subjects and issues involved.

(ii) A statement that no fiscal or economic impact will result from the proposed rule.

(iii) The name of the person within the department who has responsibility for responding to inquiries about the intended action.

(iv) The time, place, and manner in which interested persons may present their views thereon including the notice for a public hearing required by R.S. 30:2011(D)(1).

(v) A statement that the intended action complies with the law administered by the department, including a citation of the specific provision, or provisions, of law which authorize the proposed rule.

(b) Notice of the proposed rule shall be published at least once in the Louisiana Register and shall be submitted with a full text of the proposed rule to the Louisiana Register at least seventy days prior to the date the department proposes to formally adopt the rule. The Office of the State Register may omit from the Louisiana Register any such proposed rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the Louisiana Register contains a notice stating the general subject matter of the omitted proposed rule, the process being employed by the department for adoption of the proposed rule, and stating how a copy of the proposed rule may be obtained.

(c) Notice of the intent of the department to adopt the rule shall be mailed to all persons who have made timely request for such notice, which notice shall be mailed at the earliest possible date, and in no case later than ten days after the date when the proposed rule is submitted to the Louisiana Register.

(d) For the purpose of timely notice as required by this Paragraph, the date of notice shall be deemed to be the date of publication of the issue of the Louisiana Register in which the notice appears, such publication date to be the publication date as stated on the outside cover or the first page of said issue.

(e) The department shall afford all interested persons an opportunity to submit data, views, comments, or arguments related to the proposed rule, in writing, during a period of no less than thirty days. The department shall consider fully all written comments and submissions respecting the proposed rule.

(f) The department shall make available to all interested persons copies of the proposed rule from the time the notice of its adoption is published in the Louisiana Register.

(g) The department shall issue a response to comments and submissions describing the principal reasons for and against adoption of any amendments or changes suggested in the written comments and submissions and specifically addressing any assertion that the proposed rule is not identical to the federal law or regulation upon which it is based. The department shall issue such response to comments and submissions to any person who presented comments or submissions on the rule and to any requesting person no later than fifteen days prior to the time of publication of the final rule.

(h) No later than fifteen days prior to the time of publication of the final rule in the Louisiana Register, the secretary or any authorized assistant secretary of the department shall do each of the following:

(i) Certify under oath, to the governor of the state of Louisiana, the attorney general of Louisiana, the speaker of the House of Representatives, the president of the Senate, the chairman of the House Committee on Natural Resources and Environment, the chairman of the Senate Committee on Environmental Quality, and the Office of the State Register that the proposed rule is identical to a specified federal law or regulation applicable in Louisiana.

(ii) Furnish the chairman of the Senate Committee on Environmental Quality and the chairman of the House Committee on Natural Resources and Environment the response to comments and submissions required under Subparagraph (g) of this Paragraph, together with a copy of the notice required under Subparagraph (a) of this Paragraph.

(i) Unless specifically requested, in writing, by the chairman of the House Committee on Natural Resources and Environment or the chairman of the Senate Committee on Environmental Quality within ten days of the certification provided under Subparagraph (h) of this Paragraph, there shall be no legislative oversight of the proposed rule. If, however, legislative oversight is properly requested, R.S. 49:968 and Items (A)(2)(b)(ii) and (iii) of this Section shall thereafter apply with respect to the proposed rule.

(j) In the absence of legislative oversight, the proposed rule may be adopted by the Department of Environmental Quality no earlier than sixty days, nor later than twelve months, after the official notice of the proposed rule was published in the Louisiana

Register; provided, however, that the proposed rule shall be effective upon its publication in the Louisiana Register, said publication to be subsequent to the act of adoption.

(4) The procedures set forth in Paragraph (3) of this Subsection for the adoption by the Department of Environmental Quality of rules identical to federal laws or regulations applicable in Louisiana shall not be available for the adoption of any rules creating or increasing fees.

G.(1) Prior to or concurrent with publishing notice of any proposed policy, standard, or regulation pursuant to Subsection A of this Section and prior to promulgating any policy, standard, or final regulation whether pursuant to R.S. 49:954 or otherwise under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., the Department of Environmental Quality, after August 15, 1995, shall publish a report, or a summary of the report, in the Louisiana Register which includes:

(a) A statement identifying the specific risks being addressed by the policy, standard, or regulation and any published, peer-reviewed scientific literature used by the department to characterize the risks.

(b) A comparative analysis of the risks addressed by the policy, standard, or regulation relative to other risks of a similar or analogous nature to which the public is routinely exposed.

(c) An analysis based upon published, readily available peer-reviewed scientific literature, describing how the proposed and final policy, standard, or regulation will advance the purpose of protecting human health or the environment against the specified identified risks.

(d) An analysis and statement that, based on the best readily available data, the proposed or final policy, standard, or regulation presents the most cost-effective method practically achievable to produce the benefits intended regarding the risks identified in Subparagraph (a) of this Paragraph.

(2) No regulation shall become effective until the secretary complies with the requirements of Paragraph (1) of this Subsection.

(3) This provision shall not apply in those cases where the policy, standard, or regulation:

(a) Is required for compliance with a federal law or regulation.

(b) Is identical to a federal law or regulation applicable in Louisiana.

(c) Will cost the state and affected persons less than one million dollars, in the aggregate, to implement.

(d) Is an emergency rule under Subsection B of this Section.

(4) For purposes of this Subsection, the term "identical" shall mean that the proposed rule has the same content and meaning as the corresponding federal law or regulation.

(5) In complying with this Section, the department shall consider any scientific and economic studies or data timely provided by interested parties which are relevant to the issues addressed herein and the proposed policy, standard, or regulation being considered.

H. The Department of Wildlife and Fisheries and the Louisiana Wildlife and Fisheries Commission may employ the timetables and provisions of Subsection B of this Section in promulgating rules and regulations relative to hunting seasons, trapping seasons, alligator seasons, shrimp seasons, oysters seasons, and finfish seasons and size limits, and all rules and regulations pursuant thereto. Rules adopted annually pursuant to this Subsection which open and close the offshore and fall shrimp seasons, the oyster seasons, the marine finfish seasons, the webless migratory game bird hunting season, and the trapping season shall be effective for the duration of the respective season. Notwithstanding the provisions of Paragraph (B)(4) of this Section, any legislative oversight hearing held on a rule proposed under the provisions of this Subsection shall be held no earlier than five days and no later than thirty days following the date of adoption of the rule.

I.(1) No later than the tenth day of the month, the office of the state register shall electronically transmit to the commercial division of the Department of State, all of the following information:

(a) The small business economic impact statement prepared by the agency pursuant to R.S. 49:978.4 and the small business regulatory flexibility analysis prepared pursuant to R.S. 49:978.5.

(b) The summary of the estimated costs to small businesses, citizens, and nongovernmental groups as is provided in Subsection E of this Section.

(c) Any potpourri notices which are submitted to the office of the state register pursuant to R.S. 49:978.4.

(2) Prior to electronically sending the information required in this Subsection and Subsection E of this Section to the commercial division of the Department of State, the office of the state register shall divide the information by agency.

Acts 1966, No. 382, §3, eff. July 1, 1967. Amended by Acts 1974, No. 284, §1, eff. Jan. 1, 1975; Acts 1975, No. 730, §1; Acts 1976, No. 279, §1; Acts 1978, No. 252, §1; Acts 1980, No. 392, §1. Acts 1983, No. 713, §1; Acts 1984, No. 953, §1; Acts 1985, No. 371, §1, eff. July 9, 1985; Acts 1986, 1st Ex. Sess., No. 11, §1, eff. Jan. 1, 1987; Acts 1987, No. 853, §1; Acts 1990, No. 1063, §1; Acts 1990, No. 1085, §§1 and 2, eff. July 31, 1990; Acts 1991, No. 104, §1, eff. June 30, 1991; Acts 1993, No. 119, §1; Acts 1993, No. 274, §1; Acts 1993, No. 386, §1; Acts 1995, No. 512, §1; Acts 1995, No. 642, §1; Acts 1995, No. 1057, §1, eff. June 29, 1995 and Jan. 8, 1996 (1/8/96 date applicable to Dept. of Health and Hospitals only); Acts 1996, 1st Ex. Sess., No. 36, §3, eff. May 7, 1996; Acts 1999, No. 1183, §1; Acts 2008, No. 580, §6; Acts 2010, No. 777, §1; Acts 2012, No. 781, §1, eff. June 13, 2012; Acts 2012, No. 854, §1, eff. Jan. 1, 2013; Acts 2013, No. 220, §23, eff. June 11, 2013; Acts 2014, No. 791, §18; Acts 2018, No. 454, §1, eff. January 1, 2019; Acts 2019, No. 204, §1, eff. Feb. 1, 2020; Acts 2020, No. 153, §1.

#### **§954. Filing; taking effect of rules**

A. No rule adopted on or after January 1, 1975, is valid unless adopted in substantial compliance with this Chapter. Each rulemaking agency shall file a certified copy of its rules with the Office of the State Register. No rule, whether adopted before, on, or after January 1, 1975, shall be effective, nor may it be enforced, unless it has been properly filed with the Office of the State Register. No rule adopted on or after November 1, 1978, shall be effective, nor may it be enforced, unless prior to its adoption a report relative to the proposed rule change is submitted to the appropriate standing committee of the legislature or to the presiding officers of the respective houses as provided in R.S. 49:968. No rule adopted on or after September 12, 1980, shall be effective, nor may it be enforced, unless the approved economic and fiscal impact statements, as provided in R.S. 49:953(A), have been filed with the Office of the State Register and published in the Louisiana Register. The inadvertent failure to mail notice and statements to persons making request for such mail notice, as provided in R.S. 49:953, shall not invalidate any rule adopted hereunder. A proceeding under R.S. 49:963 to contest any rule on the grounds of noncompliance with the procedures for adoption, as given in this Chapter, must be commenced within two years from the date upon which the rule became effective.

B. Each rule hereafter adopted shall be effective upon its publication in the Louisiana Register, said publication to be subsequent to the act of adoption, except that:

(1) If a later date is required by statute or specified in the rule, the later day is the effective date.

(2) Subject to applicable constitutional or statutory provisions, an emergency rule shall become effective on the date of its adoption, or on a date specified by the agency to be not more than sixty days future from the date of its adoption, provided written notice is given within five days of the date of adoption to the governor of Louisiana, the attorney general of Louisiana, the speaker of the House of Representatives, the president of the Senate, and the Office of the State Register as provided in R.S. 49:953(B). Such emergency rule shall not remain in effect beyond the publication date of the Louisiana Register published in the month following the month in which the emergency rule is adopted, unless such rule and the reasons for adoption thereof are published in that issue; however, any emergency rule so published shall not be effective for a period longer than one hundred twenty days, but the adoption of an identical rule under R.S. 49:953(A)(1), (2), and (3) is not precluded. The agency shall take appropriate measures to make emergency rules known to the persons who may be affected by them.

Acts 1966, No. 382, §4, eff. July 1, 1967. Amended by Acts 1968, No. 474, §1; Acts 1974, No. 284, §1, eff. Jan. 1, 1975; Acts 1975, No. 730, §1; Acts 1978, No. 252, §1; Acts 1980, No. 392, §1; Acts 1990, No. 248, §1; Acts 1990, No. 1085, §1, eff. July 31, 1990; Acts 2013, No. 220, §23, eff. June 11, 2013; Acts 2014, No. 791, §18.

**§954.1. Louisiana Administrative Code and Louisiana Register; publication; distribution; copies; index; interagency rules**

A. The Office of the State Register shall compile, index, and publish a publication to be known as the Louisiana Administrative Code, containing all effective rules adopted by each agency subject to the provisions of this Chapter, and all boards, commissions, agencies, and departments of the executive branch, notwithstanding any other provision of law to the contrary. The Louisiana Administrative Code shall also contain all executive orders issued by the governor on or after May 9, 1972, which are in effect at the time the Louisiana Administrative Code is published. The Louisiana Administrative Code shall be supplemented or revised as often as necessary and at least once every two years.

B. The Office of the State Register shall publish at least once each month a bulletin to be known as the Louisiana Register which shall set forth the text of all rules filed during the preceding month and such notices as shall have been submitted pursuant to this Chapter. It shall also set forth all executive orders of the governor issued during the preceding month and a summary or digest of and fiscal note prepared for each such order as required by the provisions of R.S. 49:215. In addition, the Office of the State Register may include in the Louisiana Register digests or summaries of new or proposed rules; however, if any conflict should arise between the written digest of a rule and the rule, the rule shall take precedence over the written digest.

C. The Office of the State Register shall publish such rules, notices, statements, and other such matters as submitted by the rulemaking agency without regard to their validity. However, the Office of the State Register may omit from the Louisiana Register or Louisiana Administrative Code any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or processed form is made available on application to the adopting agency, and if the Louisiana Register or Louisiana Administrative Code, as the case may be, contains a notice stating the general subject matter of the omitted rule and stating how a copy thereof may be obtained.

D. One copy, or multiple copies if practical, of the Louisiana Register and Louisiana Administrative Code shall be made available upon request to state depository libraries free of charge, and to other agencies or persons at prices fixed by the Office of the State Register to recover all or a portion of the mailing and publication costs. Notwithstanding the provisions of R.S. 49:951(2) to the contrary, the Office of the State Register shall provide free copies of the Louisiana Register and the Louisiana Administrative Code to the David R. Poynter Legislative Research Library, the Senate Law Library, and the Huey P. Long Memorial Law Library.

E. The Office of the State Register shall prescribe a uniform system of indexing, numbering, arrangement of text and citation of authority and history notes for the Louisiana Administrative Code.

F. The Office of the State Register may publish advertisements for bids and other legal notices in the Louisiana Register in addition to other publications thereof required by law.

G. The Office of the State Register is hereby authorized and empowered to promulgate and enforce interagency rules for the implementation and administration of this Section.

H. The governor shall be the publisher of the Louisiana Administrative Code and Louisiana Register provided for through the Office of the State Register.

Added by Acts 1974, No. 284, §1, eff. Jan. 1, 1975. Amended by Acts 1975, No. 730, §1; Acts 1976, No. 279, §1; Acts 1978, No. 252, §1; Acts 1982, No. 687, §1, eff. Aug. 2, 1982; Acts 1988, No. 604, §1, eff. July 14, 1988; Acts 1988, No. 937, §1, eff. July 26, 1988; Acts 1990, No. 9, §2; Acts 1993, No. 119, §1; Acts 2013, No. 220, §23, eff. June 11, 2013; Acts 2014, No. 791, §18.

**§954.2. Repealed by Acts 2004, No. 220, §1**

NOTE: See Acts 2004, No. 220, §2, relative to validity and effectiveness of certain rules, permits, and licenses.



### **§954.3. Environmental Regulatory Code**

The Department of Environmental Quality shall codify its rules and regulations in effect on March 1, 1992, in the Environmental Regulatory Code, and thereafter, shall update such codification of its rules and regulations on a quarterly basis. The secretary shall complete and offer for sale at cost the initial codification within one hundred and eighty days from March 1, 1992.

Acts 1991, No. 735, §2, eff. July 18, 1991.

### **§955. Adjudication; notice; hearing; records**

A. In an adjudication, all parties who do not waive their rights shall be afforded an opportunity for hearing after reasonable notice.

B. The notice shall include:

- (1) A statement of the time, place, and nature of the hearing;
- (2) A statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) A reference to the particular sections of the statutes and rules involved;
- (4) A short and plain statement of the matters asserted.

If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

C. Opportunity shall be afforded all parties to respond and present evidence on all issues of fact involved and argument on all issues of law and policy involved and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

D. Unless precluded by law, informal disposition may be made of any case of adjudication by stipulation, agreed settlement, consent order, or default.

E. The record in a case of adjudication shall include:

- (1) All pleadings, motions, intermediate rulings;
- (2) Evidence received or considered or a resume thereof if not transcribed;
- (3) A statement of matters officially noticed except matters so obvious that statement of them would serve no useful purpose;
- (4) Offers of proof, objections, and rulings thereon;
- (5) Proposed findings and exceptions;
- (6) Any decision, opinion, or report by the officer presiding at the hearing.

F. The agency shall make a full transcript of all proceedings before it when the statute governing it requires it, and, in the absence of such requirement, shall, at the request of any party or person, have prepared and furnish him with a copy of the transcript or any part thereof upon payment of the cost thereof unless the governing statute or constitution provides that it shall be furnished without cost.

G. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

Acts 1966, No. 382, §5, eff. July 1, 1967.

### **§956. Rules of evidence; official notice; oaths and affirmations; subpoenas; depositions and discovery; and confidential privileged information**

In adjudication proceedings:

(1) Agencies may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. They shall give effect to the rules of privilege recognized by law. Agencies may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

(2) All evidence, including records and documents in the possession of the agency of which it desires to avail itself, shall be offered and made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. In case of incorporation by reference, the materials so incorporated shall be available for examination by the parties before being received in evidence.

(3) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

(4) Any agency or its subordinate presiding officer conducting a proceeding subject to this Chapter shall have the power to administer oaths and affirmations, regulate the course of the hearings, set the time and place for continued hearings, fix the time for filing of briefs and other documents, and direct the parties to appear and confer to consider the simplification of the issues.

(5)(a) Any agency or its subordinate presiding officer shall have power to sign and issue subpoenas in the name of the agency requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence. No subpoena shall be issued until the party who wishes to subpoena the witness first deposits with the agency a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to R.S. 13:3661 and R.S. 13:3671.

(b) A subpoena issued pursuant to this Section shall be served by any agent of the agency, by the sheriff, by any other officer authorized by law to serve process in this state, by certified mail, return receipt requested, or by any person who is not a party and who is at least eighteen years of age. Witnesses subpoenaed to testify before an agency only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examinations, and to state the results thereof, shall receive such additional compensation from the party who wishes to subpoena such witness as may be fixed by the agency with reference to the value of the time employed and the degree of learning or skill required.

(c) Whenever any person summoned under this Section neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, the agency may apply to the judge of the district court for the district within which the person so summoned resides or is found, for an attachment against him as for a contempt. It shall be the duty of the judge to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him, to proceed to a hearing of the case; and upon such hearing, the judge shall have power to make such order as he shall deem proper, not inconsistent with the law for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience.

(6) The agency or a subordinate presiding officer or any party to a proceeding before it may take the depositions of witnesses, within or without the state and may conduct discovery in all manners as provided by law in civil actions. Depositions so taken and admissions, responses, and evidence produced pursuant to discovery shall be admissible in any proceeding affected by this Chapter. The admission of such depositions, admissions, responses, and evidence may be objected to at the time of hearing and may be received in evidence or excluded from the evidence by the agency or presiding officer in accordance with the rules of evidence provided in this Chapter.

(7) Repealed by Acts 1995, No. 760, §2, eff. June 27, 1995.

(8)(a) Records and documents, in the possession of any agency or of any officer or employee thereof including any written conclusions drawn therefrom, which are deemed confidential and privileged shall not be made available for adjudication proceedings of that agency and shall not be subject to subpoena by any person or other state or federal agency.

(b) Such records or documents shall only include any private contracts, geological and geophysical information and data, trade secrets and commercial or financial data, which are obtained by an agency through a voluntary agreement between the

agency and any person, which said records and documents are designated as confidential and privileged by the parties when obtained, or records and documents which are specifically exempt from disclosure by statute.

(c) Any violation of this prohibition shall be a waiver of governmental immunity from suit for damage resulting from any such disclosure.

(d) Notwithstanding the provisions of Subparagraphs (a) and (c) of this Paragraph the state boards and agencies identified in R.S. 13:3715.1(J) may make available and use records and documents, including any written conclusions drawn therefrom, which are otherwise deemed confidential or privileged and which are in the possession of such board or agency or any officer, employee, or agent thereof, or any attorney acting on its behalf in any adjudication proceedings of such agency, provided that in any case involving medical or patient records, the identity of any patient shall be maintained in confidence. Any such records shall be altered so as to prevent the disclosure of the identity of the patient to whom such records or testimony relates. Disclosure by such board or agency or any officer, employee, agent, or attorney acting on behalf of any of them, of any material otherwise deemed privileged or confidential under state law, which is made in response to a federal subpoena, shall not constitute a waiver of governmental immunity from suit for damages resulting from such disclosure. Such boards and agencies, including their officers, employees, agents, and attorneys, shall nevertheless assert any privilege which is recognized and applicable under federal law when responding to any such federal subpoena.

Acts 1966, No. 382, §6, eff. July 1, 1967. Amended by Acts 1976, No. 524, §1, eff. Aug. 5, 1976; Acts 1989, No. 156, §1; Acts 1995, No. 760, §§1, 2, eff. June 27, 1995; Acts 1999, No. 416, §1; Acts 1999, No. 765, §1.

#### **§956.1. Administrative proceedings; member of the legislature or personnel as witness**

An application for an order compelling discovery to a member or former member of the legislature in his capacity as a state lawmaker, or a legislative employee in his official capacity, when the legislature or either body thereof is not a party to the proceeding may be made to the agency in which the action is pending, but no order compelling discovery shall issue except in strict conformity with the provisions of R.S. 13:3667.3(D). For the purposes of this Section "legislative employee" shall mean the clerk of the House of Representatives, the secretary of the Senate, or an employee of the House of Representatives, the Senate, or the Legislative Bureau.

Acts 2006, No. 690, §4, eff. June 29, 2006; Acts 2008, No. 374, §4, eff. June 21, 2008; Acts 2012, No. 519, §4.

#### **§957. Examination of evidence by agency**

When in an adjudication proceeding a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, or the proposed order is not prepared by a member of the agency, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made final until a proposed order is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The proposed order shall be accompanied by a statement of the reasons therefor and of the disposition of each issue of fact or law necessary to the proposed order, prepared by the person who conducted the hearing or by one who has read the record. No sanction shall be imposed or order be issued except upon consideration of the whole record and as supported by and in accordance with the reliable, probative, and substantial evidence. The parties by written stipulation may waive, and the agency in the event there is no contest may eliminate, compliance with this Section.

Acts 1966, No. 382, §7, eff. July 1, 1967.

#### **§958. Decisions and orders**

A final decision or order adverse to a party in an adjudication proceeding shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified personally, by mail, or by electronic means of any decision or order. Upon request, a copy of the decision or order shall be

delivered or mailed forthwith to each party and to his attorney of record. The parties by written stipulation may waive, and the agency in the event there is no contest may eliminate, compliance with this Section.

Acts 1966, No. 382, §1, eff. July 1, 1967; Acts 2012, No. 289, §1, eff. May 25, 2012.

#### **§959. Rehearings**

A. A decision or order in a case of adjudication shall be subject to rehearing, reopening, or reconsideration by the agency, within ten days from the date of its entry. The grounds for such action shall be either that:

(1) The decision or order is clearly contrary to the law and the evidence;

(2) The party has discovered since the hearing evidence important to the issues which he could not have with due diligence obtained before or during the hearing;

(3) There is a showing that issues not previously considered ought to be examined in order properly to dispose of the matter;  
or

(4) There is other good ground for further consideration of the issues and the evidence in the public interest.

B. The petition of a party for rehearing, reconsideration, or review, and the order of the agency granting it, shall set forth the grounds which justify such action. Nothing in this Section shall prevent rehearing, reopening or reconsideration of a matter by any agency in accordance with other statutory provisions applicable to such agency, or, at any time, on the ground of fraud practiced by the prevailing party or of procurement of the order by perjured testimony or fictitious evidence. On reconsideration, reopening, or rehearing, the matter may be heard by the agency, or it may be referred to a subordinate deciding officer. The hearing shall be confined to those grounds upon which the reconsideration, reopening, or rehearing was ordered. If an application for rehearing shall be timely filed, the period within which judicial review, under the applicable statute, must be sought, shall run from the final disposition of such application.

Acts 1966, No. 382, §9, eff. July 1, 1967.

#### **§960. Ex parte consultations and recusations**

A. Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a case of adjudication noticed and docketed for hearing shall not communicate, directly or indirectly, in connection with any issue of fact or law, with any party or his representative, or with any officer, employee, or agent engaged in the performance of investigative, prosecuting, or advocating functions, except upon notice and opportunity for all parties to participate.

B. A subordinate deciding officer or agency member shall withdraw from any adjudicative proceeding in which he cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of a subordinate deciding officer or agency member, on the ground of his inability to give a fair and impartial hearing, by filing an affidavit, promptly upon discovery of the alleged disqualification, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be determined promptly by the agency, or, if it affects a member or members of the agency, by the remaining members thereof, if a quorum. Upon the entry of an order of disqualification affecting a subordinate deciding officer, the agency shall assign another in his stead or shall conduct the hearing itself. Upon the disqualification of a member of an agency, the governor immediately shall appoint a member pro tem to sit in place of the disqualified member in that proceeding. In further action, after the disqualification of a member of an agency, the provisions of R.S. 49:957 shall apply.

Acts 1966, No. 382, §10, eff. July 1, 1967.

#### **§961. Licenses**

A. When the grant, denial, or renewal of a license is required to be preceded by notice and opportunity for hearing, the provisions of this Chapter concerning adjudication shall apply.

B. When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall not expire until the application has been finally determined by the agency,

and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

C. No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gives notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for the retention of the license. 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.

Acts 1966, No. 382, §11, eff. July 1, 1967.

### **§962. Declaratory orders and rulings**

Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory orders and rulings as to the applicability of any statutory provision or of any rule or order of the agency. Declaratory orders and rulings shall have the same status as agency decisions or orders in adjudicated cases.

Acts 1966, No. 382, §12, eff. July 1, 1967; Acts 1995, No. 947, §6, eff. Jan. 1, 1996.

#### **§962.1. Judicial review, rule to show cause for permit applicants**

A. If the secretary does not grant or deny a permit, license, registration, variance, or compliance schedule for which the applicant had applied within the time period as provided for in R.S. 30:26 and 2022(C), R.S. 49:214.30(C)(2), and R.S. 56:6(26), the applicant has the authority, on motion in a court of competent jurisdiction, to take a rule on the secretary to show cause in not less than two nor more than thirty days, exclusive of holidays, why the applicant should not be granted the permit, license, registration, variance, or compliance schedule for which the applicant had applied. The rule may be tried out of term and in chambers.

B. In any trial or hearing on the rule, the applicant shall be entitled to a presumption that the facts as stated in the affidavit of the applicant, which shall be attached to the rule are true. The rule of the applicant shall be denied by the court only if the secretary provides clear and convincing evidence of an unavoidable cause for the delay. However, in denying the rule, the court shall decree that the secretary shall grant or deny the application within a time set by the court, or the application shall be granted without further action of the secretary or the court.

C. If the rule is made absolute, the order rendered thereon shall be considered a judgment in favor of the applicant granting the applicant the permit, license, registration, variance, or compliance schedule for which the applicant had applied.

D. The provisions of Subsections A, B, and C of this Section shall not apply to permit applications submitted under the Louisiana Pollutant Discharge Elimination System (LPDES) program under the Louisiana Department of Environmental Quality.

Acts 1991, No. 828, §2; Acts 1995, No. 601, §2.

### **§963. Judicial review of validity or applicability of rules**

A.(1) The validity or applicability of a rule may be determined in an action for declaratory judgment in the district court of the parish in which the agency is located.

(2) The agency shall be made a party to the action.

B.(1) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court.

(2) The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

C. The court shall declare the rule invalid or inapplicable if it finds that it violates constitutional provisions or exceeds the statutory authority of the agency or was adopted without substantial compliance with required rulemaking procedures.

D. An action for a declaratory judgment under this Section may be brought only after the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question and only upon a showing that review of the validity and applicability of the rule in conjunction with review of a final agency decision in a contested adjudicated case would not provide an adequate remedy and would inflict irreparable injury.

E. Upon a determination by the court that any statement, guide, requirement, circular, directive, explanation, interpretation, guideline, or similar measure constitutes a rule as defined by R.S. 49:951(6) and that such measure has not been properly adopted and promulgated pursuant to this Chapter, the court shall declare the measure invalid and inapplicable. It shall not be necessary that all administrative remedies be exhausted.

Acts 1966, No. 382, §13, eff. July 1, 1967; Acts 1991, No. 639, §1, eff. July 17, 1991; Acts 1997, No. 1043, §1, eff. July 11, 1997.

#### **§964. Judicial review of adjudication**

A.(1) Except as provided in R.S. 15:1171 through 1177, a person who is aggrieved by a final decision or order in an adjudication proceeding is entitled to judicial review under this Chapter whether or not he has applied to the agency for rehearing, without limiting, however, utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy and would inflict irreparable injury.

(2)(a) No agency or official thereof or other person acting on behalf of an agency or official thereof shall be entitled to judicial review under this Chapter.

(b) The provisions of Subparagraph (a) of this Paragraph shall not apply to the Department of Children and Family Services or an official thereof or other person acting on behalf of the department or official in appeals brought pursuant to Children's Code Article 616.1.1.

B. Proceedings for review may be instituted by filing a petition in the district court of the parish in which the agency is located within thirty days after the transmittal of notice of the final decision by the agency or, if a rehearing is requested, within thirty days after the decision thereon. Copies of the petition shall be served upon the agency and all parties of record.

C. The filing of the petition does not itself stay enforcement of the agency decision. The agency may grant, or the reviewing court may order, a stay ex parte upon appropriate terms, except as otherwise provided by Title 37 of the Louisiana Revised Statutes of 1950, relative to professions and occupations. The court may require that the stay be granted in accordance with the local rules of the reviewing court pertaining to injunctive relief and the issuance of temporary restraining orders.

D. Within thirty days after the service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

E. If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

F. The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

G. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (6) Not supported and sustainable by a preponderance of evidence as determined by the reviewing court. In the application of

this rule, the court shall make its own determination and conclusions of fact by a preponderance of evidence based upon its own evaluation of the record reviewed in its entirety upon judicial review. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by first-hand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

(7) Repealed by Acts 2002, 1st Ex. Sess., No. 89, §3, eff. April 18, 2002.

Acts 1966, No. 382, §14, eff. July 1, 1967; Acts 1995, No. 1105, §1, eff. June 29, 1995; Acts 1997, No. 128, §1, eff. June 12, 1997; Acts 1997, No. 1216, §2; Acts 1997, No. 1224, §1; H.C.R. No. 89, 1997 R.S., eff. June 2, 1997; Acts 1999, No. 1332, §1, eff. July 12, 1999; Acts 2002, 1st Ex. Sess., No. 89, §3, eff. April 18, 2002; Acts 2012, No. 289, §1, eff. May 25, 2012; Acts 2018, No. 90, §1, eff. May 10, 2018.

NOTE: R.S. 15:1171-1179 were included in the Unconstitutional Statutes Biennial Report to the Legislature, date March 14, 2016.

#### **§964.1. Judicial review; attorney fees; court costs; report**

A. If an agency or official thereof, or other person acting on behalf of an agency or official thereof, files a petition for judicial review of a final decision or order in an adjudication proceeding and such agency, official, or person does not prevail in the final disposition of the judicial review, the agency shall be responsible for the payment of reasonable attorney fees and court costs of the other party.

B. Notwithstanding any provision of R.S. 13:4521 to the contrary, an agency or official thereof, or other person acting on behalf of an agency or official thereof, which files a petition for judicial review of a final decision or order in an adjudication proceeding shall be required to pay court costs.

C. All payments for litigation expenses required by this Section shall be paid from the agency's regular operating budget. Each agency which has paid such litigation expenses shall submit a detailed report of all such payments from the prior fiscal year to its legislative oversight committees and to the Joint Legislative Committee on the Budget no later than November fifteenth of each year. For the purposes of this Subsection and of R.S. 49:992(H), the term "litigation expenses" shall mean court costs and attorney fees of the agency and of any other party if the agency was required to pay such costs and fees.

Acts 2003, No. 1271, §1, eff. July 11, 2003.

#### **§965. Appeals**

An aggrieved party may obtain a review of any final judgment of the district court by appeal to the appropriate circuit court of appeal. The appeal shall be taken as in other civil cases.

Acts 1966, No. 382, §15, eff. July 1, 1967.

#### **§965.1. Expenses of administrative proceedings; right to recover**

A. When a small business files a petition seeking: (1) relief from the application or enforcement of an agency rule or regulation, (2) judicial review of the validity or applicability of an agency rule, (3) judicial review of an adverse declaratory order or ruling, or (4) judicial review of a final decision or order in an adjudication proceeding, the petition may include a claim against the agency

for the recovery of reasonable litigation expenses. If the small business prevails and the court determines that the agency acted without substantial justification, the court may award such expenses, in addition to granting any other appropriate relief.

B. A small business shall be deemed to have prevailed in an action when, in the final disposition, its position with respect to the agency rule or declaratory order or ruling is maintained, or when there is no adjudication, stipulation, or acceptance of liability on its part. However, a small business shall not be deemed to have prevailed, if the action was commenced at the instance of, or on the basis of a complaint by, anyone other than an officer, agent, or employee of the agency and was dismissed by the agency on a finding of no cause for the action or settled without a finding of fault on the part of the small business.

C. An agency shall pay any award made against it pursuant to this Section from funds in its regular operating budget and shall, at the time of its submission of its proposed annual budget, submit to the division of administration and to the presiding officer of each house of the legislature a report of all such awards paid during the previous fiscal year.

D. As used in this Section:

(1) "Reasonable litigation expenses" means any expenses, not exceeding seven thousand five hundred dollars in connection with any one claim, reasonably incurred in opposing or contesting the agency action, including costs and expenses incurred in both the administrative proceeding and the judicial proceeding, fees and expenses of expert or other witnesses, and attorney fees.

(2) "Small business" means a small business as defined by the Small Business Administration, which for purposes of size eligibility or other factors, meets the applicable criteria set forth in 13 Code of Federal Regulations, Part 121, as amended.

Added by Acts 1982, No. 497, §1.

#### **§966. Construction and effect; judicial cognizance**

A. Nothing in this Chapter shall be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. Notwithstanding the foregoing, and except as provided in R.S. 49:967, any and all statutory requirements regarding the adoption or promulgation of rules other than those contained in Sections 953, 954, 954.1, and 968 of this Title are hereby superseded by the provisions of this Chapter and are repealed. Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons. Every agency is granted all authority necessary to comply with the requirements of this Chapter through the issuance of rules or otherwise.

B. If any provision of this Chapter or the application thereof is held invalid, the remainder of this Chapter or other applications of such provision shall not be affected. No subsequent legislation shall be held to supersede or modify the provisions of this Chapter except to the extent that such legislation shall do so expressly.

C. The courts of this state shall take judicial cognizance of rules promulgated in the Louisiana Register under the provisions of this Chapter.

D. Repealed by Acts 1978, No. 252, §3.

Acts 1966, No. 382, §16, eff. July 1, 1967. Amended by Acts 1979, No. 578, §§1, 2, eff. July 18, 1979; Acts 2013, No. 220, §23, eff. June 11, 2013; Acts 2014, No. 791, §18.

#### **§967. Exemptions from provisions of Chapter**

A. Chapter 13 of Title 49 of the Louisiana Revised Statutes of 1950 shall not be applicable to the Board of Tax Appeals, the Department of Revenue, with the exception of the Louisiana Tax Commission that shall continue to be governed by this Chapter in its entirety, unless otherwise specifically provided by law, and the administrator of the Louisiana Employment Security Law; however, the provisions of R.S. 49:951(2), (4), (5), (6), and (7), 952, 953, 954, 954.1, 968, 969, and 970 shall be applicable to such board, department, and administrator.

B.(1) The provisions of R.S. 49:968(F) and 970 shall not be applicable to any rule promulgated by the State Civil Service Commission or the Public Service Commission.



(2) The provisions of this Chapter shall not be applicable to entities created as provided in Part V of Chapter 6 of Title 34 of the Louisiana Revised Statutes of 1950.

C. The provisions of R.S. 49:963, 964, and 965 shall not be applicable to any rule, regulation, or order of any agency subject to a right of review under the provisions of R.S. 30:12.

D. Repealed by Acts 2010, No. 777, §3.

E. The provisions of R.S. 49:963, 964, and 965 shall not apply to any rule, regulation, or policy and procedure statements issued by or for the Department of Public Safety and Corrections, corrections services, concerning:

(1) The internal management and daily operations of a correctional institute, probation and parole district office, or headquarters function.

(2) General law statements that are substantially repetitions of state or federal law.

(3) The implementation and processes for carrying out a court-ordered sentence of death and any and all matters related to the regulations for the sentence of death.

F. The provisions of R.S. 49:963, 964, and 965 shall apply only to the regulations and policies of the Department of Public Safety and Corrections, corrections services, that affect the substantial rights of, or administrative remedies available to, the public or any offender incarcerated in a state correctional facility or local jail facility

Acts 1983, No. 409, §2. Acts 1984, No. 244, §1; Acts 1985, No. 869, §1, eff. July 23, 1985; Acts 1986, No. 494, §1; Acts 1990, No. 248, §1; Acts 1992, No. 53, §1; Acts 1997, No. 1172, §9, eff. June 30, 1997; Acts 1997, No. 1484, §1, eff. July 16, 1997; Acts 2010, No. 777, §3; Acts 2010, No. 889, §2.

#### **§967.1. Application of Chapter to rules and fees**

A.(1) The legislature recognizes that it is essential to the operation of a democratic government that prior to the adoption, amendment, or repeal of any rule or the adoption, increasing, or decreasing of any fee, that the provisions of this Chapter be followed, except as otherwise specifically excepted, exempted, or limited by law.

(2) The legislature further recognizes that it is essential to the operation of a democratic government that the people be made aware of all exceptions, exemptions, and limitations to this Chapter. In order to foster the people's awareness, the legislature declares that all exceptions, exemptions, and limitations to this Chapter pertaining to the adoption, amendment, or repeal of any rule or the adoption, increasing, or decreasing of any fee be cited or provided for in this Chapter or the Constitution of Louisiana.

B. The legislature further recognizes that there exist specific exceptions, exemptions, and limitations to the laws pertaining to the adoption, amendment, or repeal of any rule or the adoption, increasing, or decreasing of any fee throughout the revised statutes and codes of this state. Such exceptions, exemptions, and limitations are hereby continued in effect by incorporation into this Chapter by citation:

(1) R.S. 6:121.1(A), 121.3(A), 969.34, and 1092(F).

(2) R.S. 9:3552(C), 3556.2(A), and 3561(D)(2).

(3) R.S. 13:4202(B)(2).

(4) R.S. 18:1511.2(B).

(5) R.S. 22:1260.10(B).

(6) R.S. 27:220(C).

(7) R.S. 29:788(C).

(8) R.S. 30:4(I)(5), 918(B), and 925(A)(2) and (D).

(9) R.S. 37:1806.1(B) and 3012(B)(1).

(10) R.S. 40:5.3(B), 406(B)(1), and 600.6(A)(4)(b).

(11) R.S. 49:258(1).

(12) R.S. 51:1285(A), 1929.1(A), 2389.1(A), and 3090.

(13) R.S. 56:319(D), and 2014.

C. The legislature further recognizes that there exist provisions of law which authorize an agency to adopt, increase, or decrease a fee without specifically providing that such action shall be taken in accordance with this Chapter. Any action taken pursuant to such authorization shall be in accordance with this Chapter, unless it is specifically otherwise excepted, exempted, or limited in the Constitution of Louisiana or in law.

D. The provisions of this Chapter relative to fees shall not be applicable to a higher education management board created by Article VIII, Section 6, 7, or 7.1 of the Constitution of Louisiana.

Acts 2010, No. 775, §1, eff. June 30, 2010.

**§968. Review of agency rules; fees**

A. It is the declared purpose of this Section to provide a procedure whereby the legislature may review the exercise of rule-making authority and the adoption, increasing, or decreasing of fees, extensions of the legislative lawmaking function, which it has delegated to state agencies.

B. Prior to the adoption, amendment, or repeal of any rule or the adoption, increase, or decrease of any fee, the agency shall submit a report relative to such proposed rule change or fee adoption, increase, or decrease to the appropriate standing committees of the legislature and the presiding officers of the respective houses as provided in this Section. The report shall be so submitted on the same day the notice of the intended action is submitted to the Louisiana Register for publication in accordance with R.S. 49:953(A)(1). The report shall be submitted to each standing committee electronically if electronic means are available. If no electronic means are available, the report shall be submitted to the committee's office in the state capitol by certified mail with return receipt requested or by messenger who shall provide a receipt for signature. The electronic receipt by the committee, return receipt or the messenger's receipt shall be proof of receipt of the report by the committee.

(1) The Department of Economic Development, all of the agencies made a part of it, and those agencies transferred to or placed within the office of the governor pursuant to R.S. 36:4.1 shall submit the report to the House Committee on Commerce and the Senate Committee on Commerce, Consumer Protection, and International Affairs.

(2) Corrections services of the Department of Public Safety and Corrections and all the agencies of the department related to corrections and concealed weapons and concealed weapon permits, except as otherwise provided in this Subsection, the Louisiana State Board of Private Security Examiners, and the gaming enforcement section of the office of state police within the Department of Public Safety and Corrections shall submit all reports other than reports on proposed rule changes affecting prison enterprise programs, to the House Committee on Administration of Criminal Justice and the Senate Committee on Judiciary, Section C; however, the Crime Victims Reparation Board shall submit the report to the House Committee on the Judiciary and the Senate Committee on the Judiciary, Section B.

(3) The Department of Culture, Recreation and Tourism and all of the agencies made a part of it, except as otherwise provided in this Paragraph, shall submit the report to the House Committee on Municipal, Parochial and Cultural Affairs and the Senate Committee on Commerce, Consumer Protection, and International Affairs.

(a) The office of the state library, the office of the state museum, the State Board of Library Examiners, the Louisiana Archaeological Survey and Antiquities Commission, the Board of Directors of the Louisiana State Museum, the Board of Commissioners of the State Library of Louisiana, the Louisiana State Arts Council, the Louisiana State Capitol Fiftieth Anniversary Commission, and the Louisiana National Register Review Committee shall submit the report to the House Committee on Municipal, Parochial and Cultural Affairs and the Senate Committee on Education.

(b) The office of state parks and the State Parks and Recreation Commission shall submit the report to the House Committee on Municipal, Parochial and Cultural Affairs and the Senate Committee on Natural Resources.

(c) The office of tourism and promotion and the Louisiana Tourist Development Commission shall submit the report to the House Committee on Commerce and the Senate Committee on Commerce, Consumer Protection, and International Affairs.

(4) The Department of State and all of the agencies made a part of it shall submit a report to the House Committee on House and Governmental Affairs and the Senate Committee on Senate and Governmental Affairs.

(5) The Louisiana Workforce Commission and all of the agencies made a part of it shall submit the report to the House Committee on Labor and Industrial Relations and the Senate Committee on Labor and Industrial Relations.

(6) The Department of Transportation and Development and all of the agencies made a part of it shall submit the report, to the House Committee on Transportation, Highways and Public Works and the Senate Committee on Transportation, Highways and Public Works. The department shall also submit to the standing committees any policies or priorities developed for the expenditure or distribution of any monies from the Transportation Trust Fund as created by Article VII, Section 27 of the Constitution of Louisiana. The policies and priorities shall be submitted for review purposes only.

(7) Repealed by Acts 2001, No. 451, §5, eff. Jan. 12, 2004.

(8) The Department of Justice and all of the agencies made a part of it shall submit the report to the House Committee on the Judiciary and the Senate Committee on the Judiciary, Section C.

(9) The Department of Civil Service and all of the agencies made a part of it shall submit the report to the House Committee on House and Governmental Affairs and the Senate Committee on Senate and Governmental Affairs; however, the Board of Tax Appeals shall submit the report to the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.

(10) The Department of Revenue and all of the agencies made a part of it, except as otherwise provided in this Paragraph, shall submit the report to the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs; however, the office of charitable gaming shall submit the report to the House Committee on Administration of Criminal Justice and the Senate Committee on Judiciary, Section B.

(11) The Department of Natural Resources and all of the agencies made a part of it shall submit the report to the House Committee on Natural Resources and Environment and the Senate Committee on Natural Resources. However, for exercises of the commissioner of conservation's rulemaking authority pursuant to Chapter 13-A-1 of Title 38 of the Louisiana Revised Statutes of 1950, the department shall submit the report to the House Committee on Natural Resources and Environment and the Senate Committee on Environmental Quality.

(12) Public Safety Services of the Department of Public Safety and Corrections and all the agencies of the department related to public safety, except as otherwise provided in this Subsection, shall submit the report to the House Committee on the Judiciary and the Senate Committee on the Judiciary, Section B; however, the office of motor vehicles shall submit the report to the House Committee on Transportation, Highways and Public Works and the Senate Committee on the Judiciary, Section B; however, the office of the state fire marshal, code enforcement and building safety, shall submit the report to the House Committee on Commerce and the Senate Committee on Commerce, Consumer Protection and International Affairs.

(13) The Wildlife and Fisheries Commission and the Department of Wildlife and Fisheries and all of the agencies made a part of it shall submit the report to the House Committee on Natural Resources and Environment and the Senate Committee on Natural Resources.

(14) The Department of Insurance and all of the agencies made a part of it shall submit the report to the House Committee on Insurance and the Senate Committee on Insurance.

(15)(a) The Department of the Treasury and all of the agencies made a part of it, except as otherwise provided in this Paragraph, shall submit the report to the House Committee on Appropriations and the Senate Committee on Finance.

(b) Each retirement system made a part of the Department of the Treasury shall submit the report to the House Committee on Retirement and the Senate Committee on Retirement.

(16) The Louisiana Department of Health and all of the agencies made a part of it shall submit the report to the House Committee on Health and Welfare and the Senate Committee on Health and Welfare.

(17) The Department of Children and Family Services and all of the agencies made a part of it shall submit the report to the House Committee on Health and Welfare and the Senate Committee on Health and Welfare.

(18) The Department of Agriculture and Forestry and all of the agencies made a part of it shall submit all reports, and the Department of Public Safety and Corrections and all the agencies made a part of it shall submit reports on proposed rule changes affecting prison enterprise programs to the House Committee on Agriculture, Forestry, Aquaculture and Rural Development and the Senate Committee on Agriculture, Forestry, Aquaculture and Rural Development.

(19) The Department of Education and all of the agencies made a part of it shall submit the report to the House Committee on Education and the Senate Committee on Education.

(20) The Department of Public Service and all of the agencies made a part of it shall submit the report to the House Committee on Commerce and the Senate Committee on Commerce, Consumer Protection, and International Affairs.

(21)(a) Except as provided in Paragraph (1) of this Subsection, the office of the governor and the office of the lieutenant governor and all of the agencies within or part of either and any other agency for which provisions are not otherwise made in this Subsection, shall submit the report to the speaker of the House of Representatives and the president of the Senate, except that executive orders duly issued by the governor and attested to by the secretary of state are exempt from the provisions of this Chapter. The speaker of the House of Representatives and the president of the Senate shall promptly forward the report to the appropriate standing committee of their respective houses.

(b) The Louisiana Workforce Investment Council shall submit the report to the House Committee on Labor and Industrial Relations and the Senate Committee on Labor and Industrial Relations.

(c) The Office of Group Benefits shall submit the report to the House Committee on Appropriations and the Senate Committee on Finance.

(d) The office of broadband and connectivity shall submit the report to the House Committee on Commerce and the Senate Committee on Commerce, Consumer Protection, and International Affairs.

(22) The Department of Environmental Quality and all of the agencies made a part of it shall submit the report to the House Committee on Natural Resources and Environment and the Senate Committee on Environmental Quality.

(23) The Louisiana Sentencing Commission shall submit the report to the House Committee on the Administration of Criminal Justice and the Senate Committee on the Judiciary, Section C.

(24)(a) In addition to the submission of a report relative to a proposed rule change or fee adoption, increase, or decrease by an agency to the appropriate standing committee as specified in Paragraphs (1) through (23) of this Subsection, whenever the fiscal impact of the rule or fee adoption, increase, or decrease, as indicated by the statement of fiscal impact required by Paragraph (C)(5) of this Section, exceeds one million dollars, the report on the proposed rule change or fee adoption, increase, or decrease shall also be submitted to the Senate Committee on Finance and the House Committee on Appropriations and shall be subject to review by those committees in the same manner and to the same extent as the review of the standing committees provided for in Paragraphs (1) through (23) of this Subsection.

(b) Whenever the fiscal impact or economic impact of the proposed rule change or fee adoption, increase, or decrease is five hundred thousand dollars or more as indicated by the statement of fiscal impact or the statement of economic impact required by Subsection C of this Section, the agency shall transmit the report provided for in Subsection C of this Section to each member of the legislature via electronic mail on the same day the notice of the intended action is submitted to the Louisiana Register for publication in accordance with R.S. 49:953.

C. The report, as provided for in Subsection B of this Section, shall contain:

(1) A copy of the rule as it is proposed for adoption, amendment, or repeal and a statement of the amount of the fee to be adopted or the amount of the proposed increase or decrease. The rule shall be coded with any new rule or language that is to be

added to an existing agency rule underscored and any language that is to be deleted from an existing agency rule in struck-through type.

(2) A statement of the proposed action, that is, whether the rule is proposed for adoption, amendment, or repeal; a brief summary of the content of the rule if proposed for adoption or repeal; and a brief summary of the change in the rule if proposed for amendment.

(3) The specific citation of the enabling legislation purporting to authorize the adoption, amending, or repeal of the rule or purporting to authorize the adoption, increasing, or decreasing of the fee.

(4) A statement of the circumstances which require adoption, amending, or repeal of the rule or the adoption, increasing, or decreasing of the fee.

(5) A statement of the fiscal impact of the proposed action and a statement of the economic impact of the proposed action, both approved by the Legislative Fiscal Office.

D.(1)(a) The chairman of each standing committee to which reports are submitted shall appoint an oversight subcommittee, which may conduct hearings on all rules that are proposed for adoption, amendment, or repeal and on all proposed fee adoptions, increases, or decreases. Any such hearing shall be conducted after any hearing is conducted by the agency pursuant to R.S. 49:953(A)(2).

(b) The agency shall submit a report to the subcommittee, in the same manner as the submittal of the report provided for in Subsection B of this Section, which shall include:

(i) A summary of all testimony at any hearing conducted pursuant to R.S. 49:953(A)(2).

(ii) A summary of all comments received by the agency, a copy of the agency's response to the summarized comments, and a statement of any tentative or proposed action of the agency resulting from oral or written comments received.

(iii) A revision of the proposed rule if any changes to the rule have been made since the report provided for in Subsection B of this Section was submitted, or a statement that no changes have been made.

(iv) A concise statement of the principal reasons for and against adoption of any amendments or changes suggested.

(c) The agency shall publish on its website public notice that the report required by Subparagraph (b) of this Paragraph has been delivered to the appropriate standing committee as provided for in Subsection B of this Section within one business day from submission of the report to the appropriate standing committee. If the agency does not maintain a website, the agency may submit the public notice to the Office of the State Register for publication on a website maintained by the Office of the State Register.

(2)(a) Except as provided in Paragraph (H)(2) of this Section, any subcommittee hearing on a proposed rule shall be held no earlier than five days and no later than thirty days following the day the report required by Subparagraph (1)(b) of this Subsection is received by the subcommittee.

(b) The oversight subcommittee may consist of the entire membership of the standing committee and shall consist of at least a majority of the membership of the standing committee, at the discretion of the chairman of the standing committee, with the concurrence of the speaker of the House of Representatives or the president of the Senate. House and Senate oversight subcommittees may meet jointly or separately to conduct hearings for purposes of rules review.

(3) At such hearings, the oversight subcommittees shall:

(a) Determine whether the rule change or action on fees is in conformity with the intent and scope of the enabling legislation purporting to authorize the adoption thereof.

(b) Determine whether the rule change or action on fees is in conformity and not contrary to all applicable provisions of law and of the constitution.

(c) Determine the advisability or relative merit of the rule change or action on fees.

(d) Determine whether the rule change or action on fees is acceptable or unacceptable to the oversight subcommittee.

E.(1)(a) Each such determination shall be made by the respective subcommittees of each house acting separately. Action by a subcommittee shall require the favorable vote of a majority of the members of the subcommittee who are present and voting, provided a quorum is present.

(b) No later than three weeks before the deadline for legislative oversight action, the chairman of the subcommittee may request, by letter, the consent of the subcommittee members to have a mail ballot instead of a meeting to consider a proposed rule or proposed fee action. If no objection is received within ten days of the chairman's request, the chairman shall cause a mail ballot to be sent to the members of the subcommittee. In order for the subcommittee to reject a proposed rule or proposed fee action, a majority of ballots returned to the chairman at least twenty-four hours prior to the deadline for legislative oversight action must disapprove the change. Any determination by the subcommittee shall be made within the period provided for oversight hearings in Paragraph (D)(2) of this Section.

(2) Failure of a subcommittee to conduct a hearing or to make a determination regarding any rule proposed for adoption, amendment, or repeal shall not affect the validity of a rule otherwise adopted in compliance with this Chapter.

F.(1) If either the House or Senate oversight subcommittee determines that a proposed rule change or proposed fee action is unacceptable, the respective subcommittee shall provide a written report which contains the following:

(a) A copy of the proposed rule or a statement of the amount of the proposed fee action.

(b) A summary of the determinations made by the subcommittee in accordance with Subsections D and E of this Section.

(2) The written report shall be delivered to the governor, the agency proposing the rule change, and the Louisiana Register no later than four days after the committee makes its determination.

G. After receipt of the report of the subcommittee, the governor shall have ten calendar days in which to disapprove the action taken by the subcommittee. If the action of the subcommittee is not disapproved by the governor within ten calendar days from the day the subcommittee report is delivered to him, the rule change shall not be adopted by the agency until it has been changed or modified and subsequently found acceptable by the subcommittee, or has been approved by the standing committee, or by the legislature by concurrent resolution. If a proposed rule change is determined to be unacceptable by an oversight committee and such determination is not disapproved by the governor as provided in this Section, the agency shall not propose a rule change or emergency rule that is the same or substantially similar to such disapproved proposed rule change nor shall the agency adopt an emergency rule that is the same or substantially similar to such disapproved proposed rule change within four months after issuance of a written report by the subcommittee as provided in Subsection F of this Section nor more than once during the interim between regular sessions of the legislature.

H.(1) If both the House and Senate oversight subcommittees fail to find a proposed rule change unacceptable as provided herein, or if the governor disapproves the action of an oversight subcommittee within the time provided in R.S. 49:968(G), the proposed rule change may be adopted by the agency in the identical form proposed by the agency or with technical changes or with changes suggested by the subcommittee, provided at least ninety days and no more than twelve months have elapsed since notice of intent was published in the Louisiana Register.

(2) Substantive changes to a rule proposed for adoption, amendment, or repeal occur if the nature of the proposed rule is altered or if such changes affect additional or different substantive matters or issues not included in the notice required by R.S. 49:953(A)(1). Whenever an agency seeks to substantively change a proposed rule after notice of intent has been published in the Louisiana Register pursuant to R.S. 49:953(A)(1), the agency shall hold a public hearing on the substantive changes preceded by an announcement of the hearing in the Louisiana Register. A notice of the hearing shall be mailed within ten days after the date the announcement is submitted to the Louisiana Register to all persons who have made request of the agency for such notice. Any hearing by the agency pursuant to this Paragraph shall be held no earlier than thirty days after the publication of the announcement in the Louisiana Register. The agency hearing shall conform to R.S. 49:953(A)(2)(b), and a report on the hearing shall be made to the oversight committees in accordance with Subparagraph (D)(1)(b) of this Section. The agency shall make available to interested

persons a copy of such report no later than one working day following the submittal of such report to the oversight committees. Any determination as to the rule by the oversight committees, prior to gubernatorial review as provided in Subsection G of this Section, shall be made no earlier than five days and no later than thirty days following the day the report required by this Paragraph is received from the agency.

(3) If a rule or part of a rule that is severable from a larger rule or body of rules proposed as a unit is found unacceptable, the rules or parts thereof found acceptable may be adopted by the agency in accordance with Paragraph (1) of this Subsection.

I. If the governor disapproves the action of an oversight subcommittee, he shall state written reasons for his action and shall deliver a copy of his reasons to the House and Senate oversight subcommittees, the agency proposing the rule change, and the Louisiana Register.

J. The Louisiana Register shall publish a copy of the written report of an oversight subcommittee and the written report of the governor in disapproving any such action, or if unduly cumbersome, expensive, or otherwise inexpedient, a notice stating the general subject matter of the omitted report and stating how a copy thereof may be obtained.

K.(1) Each year, no later than thirty days prior to the beginning of the regular session of the legislature, each agency shall submit a report to the appropriate committees as provided for in Subsection B of this Section. This report shall contain a statement of the action taken by the agency with respect to adoption, amendment, or repeal of each rule proposed for adoption, amendment, or repeal during the previous year and a report of the action taken by the agency with respect to any proposed fee adoption, increase, or decrease during the previous year.

(2) The report required by Paragraph (1) of this Subsection shall also contain a recitation of each petition and submission, if any, received by the agency pursuant to R.S. 49:953(C) during the previous calendar year and the agency's response to each petition and submission, if any were received.

L. After submission of the report required by Subsection K of this Section to the standing committee, a public hearing may be held by the committee for the purpose of reviewing the report with representatives of the agency.

M. No later than the second legislative day of the regular session of the legislature, a standing committee to which proposed rule changes or proposed fee changes are submitted may submit a report to the legislature. This report shall contain a summary of all action taken by the committee or the oversight subcommittee with respect to agency rules and fees during the preceding twelve months. The report shall also contain any recommendations of the committee for statutory changes concerning the agency, particularly in statutes authorizing the making and promulgation of rules and fees of the agency.

N. A standing committee may, at any time, exercise the powers granted to an oversight subcommittee under the provisions of this Section.

Acts 1990, No. 312, §1; Acts 1990, No. 938, §1; Acts 1990, No. 1085, §1, eff. July 31, 1990; Acts 1991, No. 21, §2, eff. June 14, 1991; Acts 1991, No. 938, §5; Acts 1992, No. 377, §4, eff. June 17, 1992; Acts 1992, No. 447, §3, eff. June 20, 1992; Acts 1993, No. 119, §1; Acts 1993, No. 733, §1; Acts 1995, No. 1057, §1, eff. June 29, 1995 and Jan. 8, 1996 (1/8/96 date is applicable to Dept. of Health and Hospitals only); Acts 1996, 1st Ex. Sess., No. 36, §3, eff. May 7, 1996; Acts 1997, No. 1, §5, eff. April 30, 1997; Acts 1997, No. 1001, §1; Acts 1999, No. 568, §2, eff. June 30, 1999; Acts 2001, No. 8, §16, eff. July 1, 2001; Acts 2001, No. 9, §8, eff. July 1, 2001; Acts 2001, No. 300, §3; Acts 2001, No. 451, §5, eff. Jan. 12, 2004; Acts 2001, No. 1178, §7, eff. June 29, 2001; Acts 2003, No. 49, §3, eff. July 1, 2003; Acts 2003, No. 116, §3, eff. May 28, 2003; Acts 2003, No. 183, §7; Acts 2003, No. 358, §1; Acts 2003, No. 850, §3; Acts 2003, No. 1049, §1; Acts 2008, No. 580, §6; Acts 2008, No. 743, §4, eff. July 1, 2008; Acts 2010, No. 777, §1; Acts 2010, No. 861, §21; Acts 2010, No. 877, §3, eff. July 1, 2010; Acts 2012, No. 549, §1; Acts 2012, No. 725, §1, eff. Jan. 1, 2013; Acts 2012, No. 744, §1, eff. June 12, 2012; Acts 2013, No. 220, §23, eff. June 11, 2013; Acts 2014, No. 640, §3, eff. June 12, 2014; Acts 2014, No. 832, §7.(A), No. 454, §1, eff. Jan. 1, 2019; Acts 2020, 2<sup>nd</sup> Ex. Sess., No. 24, §2, see Act.

NOTE: R.S. 51:1365 as enacted by Acts 2020, 2<sup>nd</sup> Ex. Sess., No. 24, §3, provides that the provisions of Chapter 12 of Title 51 of the L.R.S. of 1950 regarding the Office of Broadband and Connectivity terminates on June 30, 2023.

### **§968.1. Review of rules relative to state content standards; elementary and secondary education**

A. Each rule proposed by the State Board of Elementary and Secondary Education to adopt, amend, suspend, or repeal state content standards for use in public elementary and secondary schools shall be submitted to the Senate Committee on Education and the House Committee on Education for review, in accordance with the provisions of this Chapter.

B. State content standards proposed to be adopted by rule pursuant to this Section shall not be subject to severability in consideration by a legislative committee or the governor in oversight determinations. The state content standards set forth in a proposed rule shall be considered in globo in any determination of acceptability or unacceptability for oversight purposes.

Acts 2015, No. 245, §2.

### **§969. Legislative veto, amendment, or suspension of rules, regulations, and fees**

A. In addition to the procedures provided in R.S. 49:968 for review of the exercise of the rulemaking authority delegated by the legislature to state agencies, as defined by this Chapter, the legislature, by Concurrent Resolution, may suspend, amend, or repeal any rule or regulation or body of rules or regulations, or any fee or any increase, decrease, or repeal of any fee, adopted by a state department, agency, board, or commission. The Louisiana Register shall publish a brief summary of any Concurrent Resolution adopted by the legislature pursuant to this Section. Such summary shall be published not later than forty-five days after signing of such Resolution by the presiding officers of the legislature.

B. Notwithstanding the provisions of Subsection A of this Section, a rule adopted by the State Board of Elementary and Secondary Education relative to state content standards adopted by the board for use in public elementary and secondary schools, may not be amended by the legislature and may be suspended or repealed only in its entirety.

Added by Acts 1980, No. 660, §1. Acts 1995, No. 1109, §1, eff. Oct. 1, 1995; Acts 2015, No. 245, §2.

### **§970. Gubernatorial suspension or veto of rules and regulations**

A. The governor, by executive order, may suspend or veto any rule or regulation or body of rules or regulations adopted by a state department, agency, board or commission, except as provided in R.S. 49:967, within thirty days of their adoption. Upon the execution of such an order, the governor shall transmit copies thereof to the speaker of the House of Representatives and president of the Senate.

B. Notwithstanding the provisions of Subsection A of this Section, the governor may suspend or veto a rule adopted by the State Board of Elementary and Secondary Education relative to state content standards adopted by the board for use in public elementary and secondary schools only in its entirety.

Added by Acts 1981, No. 453, §1; Acts 2015, No. 245, §2.

### **§971. Rejection of agency fee adoption, increases, or decreases; prohibition against fee increases and new fees; exceptions**

A.(1) If either the House or Senate oversight subcommittees appointed pursuant to R.S. 49:968 determines that a proposed fee adoption, increase, or decrease is unacceptable, the respective subcommittee shall provide a written report containing the reasons therefor to the governor, the agency proposing the fee adoption, increase, or decrease, and the other house of the legislature. If the oversight subcommittee of the other house of the legislature likewise determines that the proposed fee adoption, increase, or decrease is unacceptable the fee action shall not be adopted by the agency.

(2) If a proposed fee adoption, increase, or decrease is found unacceptable as provided in this Section, the agency shall not propose a fee or a fee change or an emergency fee or an emergency fee change that is the same or substantially similar to the disapproved fee action nor shall the agency adopt an emergency fee or fee change that is the same or substantially similar to the disapproved fee action within four months after issuance of the subcommittee report nor more than once during the interim between regular sessions of the legislature.

(3) However, no state agency which has the authority to impose or assess fees shall increase any existing fee or impose any new fee unless the fee increase or fee adoption is expressly authorized pursuant to a fee schedule established by statute or specifically authorized by a federal law, rules, or regulations for the purpose of satisfying an express mandate of such federal law,



rule, or regulation. No state agency shall adjust, modify or change the formula for any authorized fee in a manner that would increase the fee paid by any person by more than five percent of the relevant fee paid by such person in the previous fiscal year. Proposed fee increases of less than five percent shall be subject to oversight as required by R.S. 49:968.

(4)(a) The provisions of Paragraph (3) of this Subsection shall not apply to any department which is constitutionally created and headed by an officer who is duly elected by a majority vote of the electorate of the state.

(b) The provisions of Paragraph (3) of this Subsection shall not apply to any state professional and occupational licensing boards.

B. Action by a subcommittee shall require the favorable vote of a majority of the members of the subcommittee who are present and voting, provided a quorum is present.

Acts 1987, No. 240, §1; Acts 1995, No. 1005, §1, eff. Aug. 15, 1995; Acts 1995, No. 1057, §1, eff. June 29, 1995, and Jan. 8, 1996 (1/8/96 date is applicable to Dept. of Health and Hospitals only).

NOTE: See Acts 1987, No. 240, §2.

**§972. Family impact statement; issues to be considered; procedure; penalty**

A. Prior to the adoption and implementation of rules, each state agency shall consider and state in writing the impact of such rules on family formation, stability, and autonomy. This written consideration shall be known as the "family impact statement".

B. The family impact statement will consider and respond in writing to the following regarding the proposed rule:

- (1) The effect on the stability of the family.
- (2) The effect on the authority and rights of parents regarding the education and supervision of their children.
- (3) The effect on the functioning of the family.
- (4) The effect on family earnings and family budget.
- (5) The effect on the behavior and personal responsibility of children.
- (6) The ability of the family or a local government to perform the function as contained in the proposed rule.

C. All family impact statements must be in writing and kept on file in the state agency which has adopted, amended, or repealed a rule in accordance with the applicable provisions of law relating to public records.

D. For the purposes of this Section, "family" shall mean a group of individuals related by blood, marriage, or adoption who live together as a single household.

Acts 1999, No. 1183, §1.

**§973. Poverty impact statement; issues to be considered; procedure**

A. In the formation of rules, each state agency shall consider and state in writing the impact of such rules on child, individual, or family poverty in relation to individual or community asset development prior to the adoption and implementation of such rules. This written consideration shall be known as the "poverty impact statement".

B. The poverty impact statement shall consider and respond in writing to the following regarding the proposed rule:

- (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.

C. All poverty impact statements shall be in writing and kept on file in the state agency which has adopted, amended, or repealed a rule in accordance with the applicable provisions of law relating to public records.

D. For the purposes of this Section, the word "poverty" means living at or below one hundred percent of the federal poverty line.

Acts 2012, No. 854, §1, eff. Jan. 1, 2013.

**§974. Internet publication of certain information concerning proposed rules and fees; information required to be published; manner of publication; deadlines**

A.(1) Each agency shall include on its Internet website the information required by Subsection B of this Section.

(2)(a) If an agency does not have an Internet website, the department of which the agency is a part shall include the information required by Subsection B of this Section for the agency on the website of the department.

(b) If an agency in the office of the governor does not have an Internet website, the division of administration shall include the information required by Subsection B of this Section for the agency on the Internet website of the division of administration.

B. All of the following information shall be included on the website:

(1) A brief description of each rule or fee that the agency is in the process of adopting, amending, or repealing. For each such rule or fee, links to the following shall be included:

(a) The full text of the current rule or fee.

(b) A copy of the proposed rule or statement of the proposed fee in the form required by R.S. 49:968(C)(1).

(c) The name and contact information of the person within the agency who has the responsibility for responding to inquiries about the intended action as required by R.S. 49:953(A)(1)(a)(iv).

(d) The time when, the place where, and the manner in which interested persons may present their views concerning the intended action as required by R.S. 49:953(A)(1)(a)(v).

(e) The anticipated effective date for the proposed rule or fee.

(f) A copy of the notice of intent submitted to the Louisiana Register pursuant to R.S. 49:953(A)(1)(b) and the date the notice of intent will be published in the Louisiana Register.

(g) A copy of the report submitted to the legislative oversight subcommittees pursuant to R.S. 49:968(D)(1)(b) and a copy of the public notice required by R.S. 49:968(D)(1)(c).

(h) A copy of any announcement of a hearing and report made pursuant to R.S. 49:968(H)(2).

(i) A copy of any report received by the agency from a legislative oversight subcommittee pursuant to R.S. 49:968(F) or from the governor pursuant to R.S. 49:968(I).

(2) A copy of the annual report submitted to the legislative oversight subcommittees by the agency pursuant to R.S. 49:968(K).

C.(1)(a) The information required to be published pursuant to Subparagraphs (B)(1)(a) through (g) of this Section shall be published in the manner required by this Section no later than five days after the date on which the agency submits the report for the proposed rule or fee to the legislative oversight subcommittees pursuant to R.S. 49:968(B).

(b) The copy of the announcement required to be published pursuant to Subparagraph (B)(1)(h) of this Section shall be published in the manner required by this Section no later than five days after the announcement is submitted to the Louisiana Register in accordance with R.S. 49:968(H)(2).

(c) The copy of the report required to be published pursuant to Subparagraph (B)(1)(i) of this Section shall be published in the manner required by this Section no later than five days after the report is received by the agency.

(d) The copy of the annual report required to be published pursuant to Paragraph (B)(2) of this Section shall be published in the manner required by this Section no later than five days after the report is submitted to the legislative oversight subcommittees by the agency pursuant to R.S. 49:968(K).

(2) If an agency does not have an Internet website, the agency shall submit the information required by this Section to be published to the department or to the division of administration, as the case may be, in a manner which allows enough time for the information to be published as required by this Section prior to the applicable deadline provided in Paragraph (1) of this Subsection.

D.(1) All of the information required to be published pursuant to this Section shall be archived for a minimum of one year following the date of publication.

(2) Each agency, department, or the division of administration, as the case may be, shall include on its Internet home page a link to the information required to be published pursuant to this Section.

E. The provisions of this Section shall not be construed to require the publication of information concerning the adoption, amendment, or repeal of any rule or fee unless and until the agency gives notice of its intended action pursuant to R.S. 49:953(A).

Acts 2014, No. 401, §1, eff. Jan. 1, 2015.

## **PART II. SMALL BUSINESS PROTECTION ACT**

### **§978.1. Short title**

R.S. 49:978.1 through 978.8 may be cited as the Small Business Protection Act and are referred to therein as "this Act".

Acts 2008, No. 820, §1; Acts 2019, No. 204, §§1, 2, eff. Feb. 1, 2020.

### **§978.2. Intent; legislative findings**

A. It is the legislative intent and purpose of this Act to improve state rulemaking by creating procedures to analyze the availability of more flexible regulatory approaches for small businesses.

B. The legislature finds that:

(1) A vibrant and growing small business sector is critical to creating jobs in a dynamic economy.

(2) Small businesses bear a disproportionate share of regulatory costs and burdens.

(3) Fundamental changes that are needed in the regulatory and enforcement culture of state agencies to make them more responsive to small business can be made without compromising the statutory missions of the agencies.

(4) When adopting rules to protect the health, safety, and economic welfare of Louisiana, state agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on small employers.

(5) Uniform regulatory and reporting requirements can impose unnecessary and disproportionately burdensome demands, including legal, accounting, and consulting costs upon small businesses with limited resources.

(6) The failure to recognize differences in the scale and resources of regulated businesses can adversely affect competition in the marketplace, discourage innovation, and restrict improvements in productivity.

(7) Unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes.

(8) The practice of treating all regulated businesses as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental, and economic welfare legislation.

(9) Alternative regulatory approaches which do not conflict with the stated objective of applicable statutes may be available to minimize the significant economic impact of rules on small businesses.

(10) The process by which state regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, to examine the impact of proposed and existing rules on such businesses, and to review the continued need for existing rules.

C. Nothing in the Regulatory Flexibility Act shall be interpreted or construed to limit the ability of an agency to propose rules.

Acts 2008, No. 820, §1.

### **§978.3. Definitions**

The following words or terms as used in this Act shall have the following meanings unless a different meaning appears from the context:

(1) "Agency" means each state board, commission, department, agency, officer, or other entity which makes rules, regulations, or policy, or formulates, or issues decisions or orders pursuant to, or as directed by, or in implementation, of the constitution or

laws of the United States or the constitution and statutes of Louisiana, except the legislature or any branch, committee, or officer thereof, any political subdivision, as defined in Article VI, Section 44 of the Constitution of Louisiana, and any board, commission, department, agency, officer, or other entity thereof, and the courts.

(2) "Proposed rule" means a proposal by an agency for a new rule or for a change in, addition to, or repeal of an existing rule.

(3) "Rule" means each agency statement, guide, or requirement for conduct or action, exclusive of those regulating only the internal management of the agency and those purporting to adopt, increase, or decrease any fees imposed on the affairs, actions, or persons regulated by the agency, which has general applicability and the effect of implementing or interpreting substantive law or policy, or which prescribes the procedure or practice requirements of the agency. "Rule" includes but is not limited to any provision for fines, prices or penalties, the attainment or loss of preferential status, and the criteria or qualifications for licensure or certification by an agency. A rule may be of general applicability even though it may not apply to the entire state, provided its form is general and it is capable of being applied to every member of an identifiable class. The term includes the amendment or repeal of an existing rule but does not include declaratory rulings or orders or any fees.

(4) "Small business" means a business that is domiciled in this state, employs one hundred or fewer full-time employees, and meets at least one of the following conditions:

(a) Gross annual sales are less than ten million dollars.

(b) Total net worth of the business is less than two million dollars.

Acts 2008, No. 820, §1; Acts 2010, No. 861, §21.

### **§978.3. Small business economic impact statements; potpourri notices**

A.(1) Prior to the adoption of any proposed rule on or after July 1, 2009, that may have an adverse impact on small businesses, each agency shall prepare an economic impact statement that includes the following:

(a) An identification and estimate of the number of the small businesses subject to the proposed rule.

(b) 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.

(c) A statement of the probable effect on impacted small businesses.

(d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule.

(2) The small business economic impact statement shall be submitted to the office of the state register pursuant to R.S. 49:953.

B. If an agency determines, in its own judgment, that the input of small businesses and the public would be helpful in drafting a new proposed rule, the agency may issue a potpourri notice. If the agency issues a potpourri notice, it shall be submitted with the office of the state register.

Acts 2008, No. 820, §1; Acts 2019, No. 204, §§1, 2, eff. Feb. 1, 2020.

### **§978.4. Small business regulatory flexibility analysis**

A. Prior to the adoption of any proposed rule, each agency shall prepare a regulatory flexibility analysis in which the agency shall, where consistent with health, safety, environmental, and economic welfare, consider utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small businesses. The agency shall consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:

(1) The establishment of less stringent compliance or reporting requirements for small businesses.

(2) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.

(3) The consolidation or simplification of compliance or reporting requirements for small businesses.

(4) The establishment of performance standards for small businesses to replace design or operational standards required in the proposed rule.

(5) The exemption of small businesses from all or any part of the requirements contained in the proposed rule.

B. Prior to the adoption of any proposed rule by an agency which according to the economic impact statement required by R.S. 49:978.4 and the results of the regulatory flexibility analysis required by this Section would have an adverse impact on small businesses, the agency shall notify the Department of Economic Development of its intent to adopt the proposed rule.

C. The agency shall submit the small business flexibility analysis with the office of the state register, pursuant to R.S. 49:953.

Acts 2008, No. 820, §1; Acts 2019, No. 204, §§1, 2, eff. Feb. 1, 2020.

#### **§978.6. Conflicts of law**

Nothing in the Regulatory Flexibility Act shall be construed to conflict with or supersede any applicable federal law, rule, or regulation.

Acts 2008, 820, §1; Acts 2019, No. 204, §1, eff. Feb. 1, 2020.

#### **§978.7. Notification**

Upon receiving the electronic transfer of information from the office of the state register, as provided in R.S. 49:953, the commercial division of the Department of State shall perform all of the following items:

(1) By the fifteenth day of the month, the commercial division shall post information on the internet page of the commercial division under the heading of "Proposed State Rules and Regulations that May Affect Your Business".

(2) No later than the sixteenth day of the month, the division shall electronically transfer the information to the Louisiana Association of Business and Industry, the Louisiana Chapter of the National Federation of Independent Business, and to each person who has made a timely request of the department for this information.

Acts 2008, No. 820, §1; Acts 2019, No. 204, §1, eff. Feb. 1, 2020.

#### **§978.8. Small business advocate; posting of rules**

A. The secretary of state shall designate a small business advocate from the existing staff of the commercial division of the Department of State to implement and maintain the notification duties and functions required of the Department of State pursuant to R.S. 49:978.7.

B. The small business advocate shall coordinate the implementation and maintenance of the website of the commercial division of the Department of State relative to the receipt of information from the office of the state register, pursuant to R.S. 49:953. The department shall enter into an agreement with the office of the state register to arrange for the electronic receipt of the information on an ongoing basis.

C. The small business advocate shall administer the Small Business Protection Act.

Acts 2019, No. 204, §§1, 2, eff. Feb. 1, 2020.

### **Chapter 13-A. Revision of Louisiana's**

#### **Administrative Code**

#### **§981. Continuous revision under supervision of division of administration, office of the state register**

The Office of the State Register, as the official entity to receive, compute, index, and publish the Louisiana Register and Louisiana Administrative Code, shall direct and supervise the continuous revision, clarification, and coordination of the Louisiana Register and Louisiana Administrative Code in a manner not inconsistent with the provisions of this Chapter.

Acts 1993, No. 379, §1; Acts 2013, No. 220, §23, eff. June 11, 2013.

#### **§982. New regulation; incorporation in Louisiana Register and Louisiana Administrative Code; resolution of conflicting rules**

A. Upon receipt of any rules promulgated under the Administrative Procedure Act, the Office of the State Register shall prepare the "Louisiana Register", containing the rules to be promulgated in the Louisiana Administrative Code as they may have been amended or repromulgated and omitting therefrom those sections that have been repealed. There shall also be incorporated therein, in an appropriate place and classification, the text of all the new rules of a general and public nature, assigning to these rules an appropriate title, part, chapter, and section number, and indicating the statutory authority of the rules from which they are taken.

B. When a conflict between two or more rules affecting the same subject matter in the same provision or regulation cannot be resolved for the purpose of incorporating the text into the Louisiana Administrative Code, the Office of the State Register shall so notify the secretary of the department or administrative officer charged with the promulgation of the rule prior to preparing the Louisiana Administrative Code. The secretary or administrative officer shall be notified of the proposed correction. If no written disapproval of the secretary or administrative officer, or his designee, of the proposed correction is received by the Office of the State Register within seven days after the secretary or administrative officer receives the notice, the Office of the State Register shall then direct the printer to incorporate into the Louisiana Administrative Code the text of the provision of the rule properly promulgated.

Acts 1993, No. 379, §1; Acts 2013, No. 220, §23, eff. June 11, 2013.

**§983. Incorporation of current rules and regulations procedure**

A. In preparing the Louisiana Register or the Louisiana Administrative Code as provided for in R.S. 49:981, the Office of the State Register shall not alter the sense, meaning, or effect of any rule properly promulgated under the Administrative Procedure Act, but it may:

- (1) Renumber and rearrange sections or parts of sections.
- (2) Transfer sections or divide sections so as to give to distinct subject matters a separate section number, but without changing the meaning.
- (3) Insert or change the wording of headnotes.
- (4) Change reference numbers to agree with renumbered parts, chapters, or sections.
- (5) Substitute the proper section, chapter, or part number for the terms "this part", "the preceding section", and the like.
- (6) Strike out figures where they are merely a repetition of written words and vice-versa.
- (7) Change capitalization for the purpose of uniformity.
- (8) Correct manifest typographical and grammatical errors.
- (9) Make any other purely formal or clerical changes in keeping with the purpose of the revision.

B. The Office of the State Register shall notify the secretary or administrative officer charged with promulgation of the rule prior to making any proposed revision authorized by this Section. If no written disapproval of the secretary or administrative officer, or his designee, of the proposed revision is received by the Office of the State Register within seven days after the secretary or administrative officer receives the notice, the Office of the State Register shall proceed with the revision.

Acts 1993, No. 379, §1; Acts 2013, No. 220, §23, eff. June 11, 2013.

**§984. Alphabetical or numerical sequence of laws**

A. Whenever a rule defines terms, enumerates provisions or items, or otherwise sets forth provisions of a rule in a numerical or alphabetical listing or sequence, and such provision, as promulgated, fails to establish or fails to maintain an existing alphabetical or numerical sequence, the Office of the State Register, in preparing the Louisiana Register and the Louisiana Administrative Code as provided for by R.S. 49:983, shall rearrange and renumber or redesignate the provisions to the extent necessary to place all of them in consistent order.

B. The Office of the State Register shall notify the secretary or administrative officer charged with promulgation of the rule prior to making any proposed revision authorized by this Section. If no written disapproval of the secretary or administrative officer, or his designee, is received by the Office of the State Register within seven days after the secretary or administrative officer receives the notice, the Office of the State Register shall proceed with the revision.

C. This requirement is in addition to any other authority granted to the Office of the State Register in the preparation of the Louisiana Register or the Louisiana Administrative Code, particularly by R.S. 49:983.

Acts 1993, No. 379, §1; Acts 2013, No. 220, §23, eff. June 11, 2013.

**§985. Submitting copy to the proper party**

A draft of the Louisiana Administrative Code prepared by the Office of the State Register shall be submitted to the appropriate secretary or administrative officer charged with the promulgation of any rule prior to transmittal to the printer.

Acts 1993, No. 379, §1; Acts 2013, No. 220, §23, eff. June 11, 2013.

**§986. Filing of copy with commissioner of administration; certificate of correctness; printing**

Any edition of the Louisiana Administrative Code, or of any supplement thereto, prepared in the manner provided in R.S. 49:982 and 983, shall be certified by the Office of the State Register that each section therein has been compared with the original sections in the official copy of the Louisiana Register with the final provisions of the promulgated rules from which the sections were derived, and that with the exception of the changes of form permitted in R.S. 49:983, the sections are correct. The Office of the State Register shall order the printing of an edition sufficient in number to supply the demand. When the edition has been printed, the Office of the State Register shall affix to one copy of the printed edition the Office of the State Register's original certificate and file the same for record in his office. All other copies of the same edition may contain a printed facsimile of the office's certificate.

Acts 1993, No. 379, §1; Acts 2013, No. 220, §23, eff. June 11, 2013.

**§987. Printing and publication of Louisiana Register; proof of certified edition**

The Office of the State Register may enter into contracts with private publishers for the printing, publication, sale, and distribution of any edition of the Louisiana Register and the Louisiana Administrative Code prepared by the Office of the State Register and certified by it pursuant to the provisions of this Chapter. Those editions so authorized by the Office of the State Register and containing the printed facsimile of the Office of the State Register's certificate of correctness shall be admissible as prima facie evidence of the rules contained therein.

Acts 1993, No. 379, §1; Acts 2013, No. 220, §23, eff. June 11, 2013.

**Chapter 13-B. Division of Administrative Law**

**Part A. Administrative Law**

**§991. Creation of division of administrative law**

The division of administrative law, hereafter referred to as "division", is created in the Department of State Civil Service.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996; Acts 1997, No. 1162, §2, eff. July 1, 1998; Acts 2003, No. 956, §1, eff. July 1, 2003.

NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.

**§992. Applicability; exemptions; attorney fees; court costs**

A.(1) Prior to October 1, 1996, the provisions of the Administrative Procedure Act shall apply to all adjudications as defined by that Act.

(2) On and after October 1, 1996, the division shall commence and handle all adjudications in the manner required by the Administrative Procedure Act provided that the provisions of that Act are not inconsistent with the provisions of this Chapter.

B.(1) Notwithstanding any other provision of the law to the contrary except as provided by R.S. 49:967 and the provisions of this Section, all adjudications shall be resolved exclusively as required by the provisions of this Chapter and the Administrative Procedure Act.

(2) Except in the instance of adjudications initiated pursuant to Items (D)(2)(b)(iii), (vi), and (vii) of this Section, in an adjudication commenced by the division, the administrative law judge shall issue the final decision or order, whether or not on rehearing, and the agency shall have no authority to override such decision or order. Upon the issuance of such a final decision or order, the agency or any official thereof shall comply fully with the final order or decision of the administrative law judge.

(3) Nothing in this Section shall affect the right to or manner of judicial appeal in any adjudication, irrespective of whether or not such adjudication is commenced by the division or by an agency. However, no agency or official thereof, or other person acting on behalf of an agency or official thereof, shall be entitled to judicial review of a decision made pursuant to this Chapter.

C. The positions appointed by the director pursuant to this Chapter shall be in the classified service.

D.(1) Except as provided in Paragraphs (2) through (9) of this Subsection, the provisions of this Chapter shall apply to any board, commission, department, or agency of the executive branch of state government.

(2)(a) Except as otherwise provided in Subparagraph (b) of this Paragraph, any board, commission, department, or agency which is required, pursuant to a federal mandate and as a condition of federal funding, to conduct or to render a final order in an adjudication proceeding shall be exempt from the provisions of this Chapter to the extent of the federal mandate.

(b) This Subparagraph shall apply to the Louisiana Department of Health, the Department of Children and Family Services, the Department of Education, and any agency within these departments:

(i) If the department or an agency within the department is prohibited, pursuant to a federal mandate or as a condition of federal funding, from delegating by contract or other means its fair hearings function, then such fair hearings shall be exempt from the provisions of this Chapter to the extent of the federal mandate; however, if such federally mandated hearings function may be delegated by contract or other means, the department or agency shall delegate such function to the division. If the department or agency claims a federal mandate exemption, the department or agency shall have the burden of proving such exemption.

(ii) If the department or an agency within the department is prohibited, pursuant to a federal mandate or as a condition of federal funding, from delegating by contract or other means both its fair hearings function and its authority to render a final decision or order in an adjudication proceeding, then such fair hearings and adjudication proceedings shall be exempt from the provisions of this Chapter to the extent of the federal mandate; however, if such federally mandated hearings function and authority to render a final decision or order in an adjudication proceeding may be delegated by contract or other means, the department or agency shall delegate such function and authority to the division. If the department or agency claims a federal mandate exemption, the department or agency shall have the burden of proving such exemption.

(iii)(aa) If a department or an agency within the department may delegate its fair hearings function but is required by federal mandate to render the final decision or order in an adjudication proceeding, then in those cases, the division shall conduct the hearing and issue a recommended decision. The recommended decision shall be mailed or delivered to the head of the agency, who shall have, upon receipt of the recommended decision, thirty-five days to reject, modify, or approve the decision. If he rejects or modifies the recommended decision, he shall specify in writing the findings of fact or conclusions of law which are being rejected or modified which shall be considered to be the final decision or order in the adjudication proceeding. A copy of the department or agency's rejected or modified decision shall be forwarded to the division on the day it is issued. If the agency head does not reject or modify the recommended decision within thirty-five days, or if he approves the recommended decision, then the recommended decision of the division shall be certified as the final decision or order of the department or agency in the adjudication proceeding.

(bb) In Temporary Assistance for Needy Families (TANF) cases, if the secretary of the Department of Children and Family Services approves, rejects, or modifies the recommended decision of the division, that approved, rejected, or modified decision shall be issued by the division as the final decision of the Department of Children and Family Services.

(iv) The provisions of this Subparagraph shall not apply to any board which is exempt from this Chapter pursuant to Paragraph (5) of this Subsection or to any board or commission which chooses to continue to conduct hearings pursuant to Subsection G of this Section.

(v) The division shall adjudicate within seventy-two hours of receipt all stay requests related to involuntary discharges from nursing homes. The division shall adjudicate all appeals related to involuntary discharges from nursing homes within thirty days of receipt.

(vi) Notwithstanding any provision of law to the contrary, an adjudication of a decision by the Louisiana Department of Health to deny, suspend, or revoke the license of an outpatient abortion facility, ambulatory surgical center, home health agency, hospital, or nursing home, pursuant to R.S. 40:2009.7, 2110, 2116.37, 2141, or 2175.6 shall be heard by a three member panel of



division of administrative law judges. This panel shall be deemed to meet the requirements of a panel appointed by the secretary of the Louisiana Department of Health. The three member panel shall issue a final decision or order. The final decision or order shall be appealable to the district court for the parish of East Baton Rouge.

(vii) The provisions of this Subparagraph shall apply to hearings involving the Department of Education required under the Individuals with Disabilities Education Act, and the provisions of the Administrative Procedure Act shall not apply to these hearings. Hearings involving the Individuals with Disabilities Act shall proceed in accordance with regulations promulgated by the Board of Elementary and Secondary Education. Only an administrative law judge who has received training on the federal and state statutes and regulations with respect to children with disabilities and on educational placements in Louisiana's school systems shall conduct hearings pursuant to this Item. Any party aggrieved by the findings and decisions of the administrative law judge in hearings conducted pursuant to the Individuals with Disabilities Education Act, including local educational authorities, shall have a right to bring a civil action in state or federal court pursuant to federal law or regulation.

(3) The office of workers' compensation administration in the Louisiana Workforce Commission shall be exempt from the provisions of this Chapter.

(4) The office of unemployment insurance administration in the Louisiana Workforce Commission shall be exempt from this Chapter.

(5) Except as provided in R.S. 37:21.1, state professional and occupational licensing boards shall be exempt from the provisions of this Chapter.

(6) The Department of Agriculture and Forestry shall be exempt from the provisions of this Chapter.

(7) All adjudications by the assistant secretary of the office of conservation pursuant to Chapters 1 and 7 of Subtitle I of Title 30 of the Louisiana Revised Statutes of 1950, except determinations of violations of laws, rules, regulations, and orders, and determinations of penalties for such violations, shall be exempt from the provisions of this Chapter.

(8) The Public Service Commission and any entity which by law has its adjudications handled by the Public Service Commission shall be exempt from the provisions of this Chapter.

(9) Adjudications filed pursuant to R.S. 46:51.2 with the Department of Children and Family Services shall be exempt from the provisions of this Chapter.

(9) Adjudications filed pursuant to R.S. 46:51.2, involving a risk evaluation panel decision, with the Department of Children and Family Services shall be exempt from the provisions of this Chapter.

E. In the event that a person files a civil action to require that a state department, division, office, agency, board, commission, or other entity of state government conduct an adjudication as required by this Chapter and judgment is rendered in his favor, he shall be entitled to an award of reasonable attorney fees to be taxed as costs in the matter.

F. The provisions of this Chapter shall apply to all adjudications as defined in the Administrative Procedure Act pursuant to the Procurement Code.

G. Any board or commission authorized by law to conduct hearings may continue to hold such hearings.

H.(1) If an agency or official thereof, or other person acting on behalf of an agency or official thereof, files a petition for judicial review of a final decision or order in an adjudication proceeding and such agency, official, or person does not prevail in the final disposition of the judicial review, the agency shall be responsible for the payment of reasonable attorney fees and court costs of the other party.

(2) Notwithstanding any provision of R.S. 13:4521 to the contrary, an agency or official thereof, or other person acting on behalf of an agency or official thereof, which files a petition for judicial review of a final decision or order in an adjudication proceeding shall be required to pay court costs.

(3) All payments for litigation expenses required by this Subsection shall be paid from the agency's regular operating budget. Each agency which has paid such litigation expenses shall submit a detailed report of all such payments from the previous fiscal

year to its legislative oversight committees and to the Joint Legislative Committee on the Budget no later than November fifteenth of each year.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996; Acts 1997, No. 1172, §9, eff. June 30, 1997; Acts 1997, No. 1484, §1, eff. July 16, 1997; Acts 1999, No. 1332, §1, eff. July 12, 1999; Acts 2001, No. 527, §1; Acts 2003, No. 956, §1, eff. July 1, 2003; Acts 2003, No. 1271, §1, eff. July 11, 2003; Acts 2005, No. 204, §1; Acts 2008, No. 743, §7, eff. July 1, 2008; Acts 2009, No. 47, §2, eff. June 15, 2009; Acts 2010, No. 683, §1; Acts 2010, No. 877, §3, eff. July 1, 2010; Acts 2017, No. 348, §§4, 6, special eff. date. Acts 2018, No. 655, §2.

NOTE: R.S. 37:21.1 terminates on August 1, 2021. See Acts 2018, No. 655, §1

#### **§992.1. Applicability; ethics complaints**

All adjudications involving alleged violations of any provision of law under the jurisdiction of the Board of Ethics shall be resolved as required by the provisions of this Chapter and the Administrative Procedure Act to the extent that such provisions do not conflict with Part III of Chapter 15 of Title 42 of the Louisiana Revised Statutes of 1950.

Acts 2008, 1st Ex. Sess., No. 23, §2, eff. Aug. 15, 2008.

#### **§992.2. Applicability; Louisiana State Board of Dentistry; Louisiana Auctioneers Licensing Board**

A. Pursuant to the provisions of R.S. 37:21.1, a matter referred to the division of administrative law for an adjudication hearing shall be conducted under the provisions of this Chapter and the Administrative Procedure Act.

B. The provisions of this Section shall terminate on August 1, 2021; however, any matter which has been moved to the division of administrative law for adjudication in accordance with R.S. 37:21.1 prior to August 1, 2021, shall remain in the division of administrative law until the adjudication is final.

Acts 2018, No. 655, §2.

#### **§993. Definitions; rules**

A. The definitions for terms as provided by R.S. 49:951 shall apply to such terms used in this Chapter.

B. The division may promulgate rules according to the Administrative Procedure Act to insure compliance with the provisions of this Chapter.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996; Acts 2003, No. 956, §1, eff. July 1, 2003.

NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.

#### **§994. Administrative law judges**

A. The director of the division shall employ the administrative law judges for the division, each of whom shall have the following qualifications:

(1) An administrative law judge shall be a resident of Louisiana.

(2) An administrative law judge shall be licensed to practice law in Louisiana.

(3) An administrative law judge shall have been engaged in the actual practice of law for at least five years prior to his appointment.

B. An administrative law judge shall be an employee of the division.

C. Notwithstanding the provisions of this Section, all persons employed in affected agencies on October 1, 1996, who handle adjudications and whether or not they meet the qualifications of this Chapter shall, unless the person declines, be transferred to and employed in the division created by this Chapter to handle adjudications in the manner provided in this Chapter. However, no person other than those provided for in this Subsection shall be employed as an administrative law judge who does not meet the requirements of this Section.

D. The administrative law judge shall have the authority to:

(1) Regulate the adjudicatory proceedings assigned to him.

(2) Issue such decisions and orders as are necessary to promote a fair, orderly, and prompt adjudication.

(3) Exercise those powers vested in the presiding officer in the Administrative Procedure Act.

(4) If the parties do not object, conduct adjudications or conferences in person or by telephone, video conference, or similar communication equipment, and administer oaths in such proceedings.

(5) Continue an adjudication in any case when a party or subpoenaed necessary witness has been called to service in the uniformed services as defined in R.S. 29:403, including but not limited to a proceeding pursuant to R.S. 32:667.

E. All adjudications involving alleged violations of any provision of law under the jurisdiction of the Board of Ethics shall be heard by administrative law judges who are licensed to practice law in Louisiana.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996; Acts 2001, No. 84, §1; Acts 2001, 2nd Ex. Sess., No. 7, §2, eff. Oct. 16, 2001; Acts 2003, No. 956, §1, eff. July 1, 2003; Acts 2008, 1<sup>st</sup> Ex. Sess., No. 23, §2, eff. Aug. 15, 2008.

NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.

#### **§995. Director**

A. The governor shall appoint, and the Senate shall confirm, a director for the division, who shall have the following qualifications:

(1) The director shall be a resident of Louisiana.

(2) The director shall be licensed to practice law in Louisiana.

(3) The director shall have been engaged in the actual practice of law for at least five years prior to his appointment.

B.(1) The director shall serve a six-year term and may be reappointed and confirmed for subsequent six-year terms without limitation.

(2) If a vacancy occurs during the director's term, the governor shall appoint a successor to fill the remainder of the vacant term.

(3) The first director shall be appointed on July 1, 1996, and shall take such action in compliance with this Chapter as necessary to ensure that the provisions of this Chapter are implemented by October 1, 1996.

C. The director shall be a full-time unclassified employee of the division and he shall not accept or engage in additional employment of any kind.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996; Acts 2003, No. 956, §1, eff. July 1, 2003.

NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.

#### **§996. Duties of the director**

The director of the division shall take the following actions:

(1) Administer and cause the work of the division to be performed in such a manner and pursuant to such a program as may be appropriate.

(2) Organize the division into such sections as may be appropriate.

(3) Assign administrative law judges as appropriate to perform duties vested in or required by the division.

(4) Develop and maintain a program for the continual training and education of administrative law judges and agencies in regard to their responsibilities under this Chapter and the Administrative Procedure Act.

(5) Secure, compile, and maintain all records of adjudications held pursuant to this Chapter or the Administrative Procedure Act, and such reference materials and supporting information as may be appropriate.

(6) Develop uniform standards, rules of evidence, and procedures, including but not limited to standards for determining whether or not a summary or ordinary hearing should be held, to regulate the conduct of adjudications.

(7) Promulgate and enforce rules for the prompt implementation and coordinated administration of this Chapter as may be appropriate.

(8) Administer and supervise the conduct of adjudications.

(9) Assist agencies in the preparation, consideration, publication, and interpretation of rules as appropriate pursuant to the Administrative Procedure Act.

(10) Employ the services of the several agencies and their employees in such manner and to such extent as may be agreed upon by the director and the chief executive officer of such agency.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996; Acts 2003, No. 956, §1, eff. July 1, 2003; Acts 2003, No. 1056, §1.

NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.

**§997. Program of judicial evaluation**

A. The director shall develop and implement a program of judicial evaluation to aid in the performance of his duties.

B. The judicial evaluation shall focus on three areas of judicial performance including competence, productivity, and demeanor.

It shall include consideration of the following:

(1) Industry and promptness in adhering to schedules.

(2) Tolerance, courtesy, patience, attentiveness, and self-control in dealing with litigants, witnesses, and counsel and in presiding over adjudications.

(3) Legal skills and knowledge of the law and new legal developments.

(4) Analytical talents and writing abilities.

(5) Settlement skills.

(6) Quantity, nature, and quality of caseload disposition.

(7) Impartiality and conscientiousness.

C. The director shall develop standards and procedures for the judicial evaluation which shall include taking comments from randomly selected litigants and lawyers who have appeared before the administrative law judge under evaluation.

D. The judicial evaluation shall include a review of the methods used by the administrative law judge. The judicial evaluation shall not include a review of any result as determined by an administrative law judge in any adjudication.

E. Before implementing any action based on the findings of the judicial evaluation, the director shall discuss the findings and the proposed action with the affected judge.

F. The judicial evaluation and supporting documents shall be confidential and shall not be subject to open records provisions of R.S. 44:1 et seq.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996; Acts 2003, No. 956, §1, eff. July 1, 2003.

NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.

**§998. Prehearing conference**

A. The administrative law judge may conduct a prehearing conference pursuant to a motion of any party or on his own motion.

B. The administrative law judge shall set the time and place for the prehearing conference.

C. The administrative law judge shall give reasonable notice of the prehearing conference to all parties.

D. The prehearing conference may be conducted for the purpose of dealing with one or more of the following matters:

(1) Exploration of settlement possibilities.

(2) Preparation of stipulations.

(3) Clarification of issues.

(4) Rulings on the identities and limitation on the number of witnesses.

(5) Objections to proffers of evidence.

(6) Order of presentation of evidence and cross-examination.

(7) Rulings regarding issuance of subpoenas and protective orders.

(8) Schedules for the submission of written briefs.

(9) Schedules for the conduct of a hearing.

(10) Any other matter to promote the orderly and prompt conduct of the adjudication.

E. The administrative law judge shall issue a prehearing order, which he may direct one or more of the parties to prepare, incorporating the matters determined at the prehearing conference.

F. An administrative law judge assigned to render a decision or to make findings of fact and conclusions of law in a case of adjudication noticed and docketed for hearing shall not communicate, directly or indirectly, in connection with any issue of fact or law, with any party or his representative, or with any officer, employee, or agent engaged in the performance of investigative, prosecuting, or advocating functions, except upon notice and opportunity for all parties to participate.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996; Acts 2003, No. 956, §1, eff. July 1, 2003.

NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.

#### **§999. Disqualification and withdrawal of administrative law judge**

A. An administrative law judge shall voluntarily disqualify himself and withdraw from any adjudication in which he cannot accord a fair and impartial hearing or consideration, or when required to by applicable rules governing the practice of law in Louisiana.

B.(1) Any party may request the disqualification of an administrative law judge by filing an affidavit, promptly upon learning of the basis for the disqualification, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded.

(2) The director shall promptly determine whether or not to disqualify an administrative law judge based on the request, or alternatively, he may hold a preliminary hearing at least ten calendar days prior to the hearing date for the purpose of receiving evidence relating to the grounds alleged for disqualification.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996; Acts 2003, No. 956, §1, eff. July 1, 2003.

NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.

#### **§999.1. Contract for adjudication services; other governmental entities**

The division is authorized to provide administrative law judges on a contractual basis to any governmental entity not covered by this Chapter, and to conduct administrative hearings for such entity.

Acts 1999, No. 416, §1; Acts 2003, No. 956, §1, eff. July 1, 2003.

### **Part B. Suspension and Revocation of License or**

#### **Permit for Felonious Activity**

#### **§999.21. Suspension and ultimate revocation of license or permit; felony conviction**

A. As used in this Part, the following terms shall have the following definitions:

(1) "Enforcing authority" means any of the following who have authority to enforce the provisions of this Part:

(a) The issuing agency which issued the license or permit.

(b) The attorney general.

(2) "Holder of a license or permit" means the natural person or other entity in whose name a license or permit is issued and who holds such license or permit.

(3) "Issuing agency" means a state agency, board, commission, department, or other entity of the state which issues a license or permit.

(4) "License or permit" means any license or permit issued to any person or other entity by a state agency, except for any license or permit issued pursuant to any provisions of the law in Title 37 or Title 3 of the Louisiana Revised Statutes of 1950.

B. Notwithstanding any other provision of law to the contrary, and in addition to any other sanction or penalty which may be imposed, any license or permit issued by any issuing agency may be suspended and ultimately revoked in accordance with the procedures provided for in this Part if the natural person who is the holder of such permit or license, the natural person who owns in excess of fifty percent of an entity which holds the license or permit, or the natural person who is the chief executive officer of

an entity which holds the license or permit has been convicted of, or has entered a plea of guilty or nolo contendere to, any crime which is a felony under state or federal law related to obtaining or keeping the license or permit.

C. The license or permit may be suspended and its revocation shall be recommended to the courts by the issuing agency which has issued the license or permit upon its determination in the manner provided for in this Part that a person provided for in this Section has been convicted of, or has entered a plea of guilty or nolo contendere to, a felony under state or federal law related to obtaining or keeping the license or permit.

D. Such license or permit shall be revoked upon a final judgment by a court that the action of the issuing agency in suspending the license was in accord with the facts and law.

Acts 1997, No. 1162, §1, eff. July 1, 1998; Acts 2003, No. 956, §1, eff. July 1, 2003.

#### **§999.22. Enforcing authority; initiation of action**

A. Any enforcing authority may bring an action against the holder of a license or permit to suspend and ultimately revoke such license or permit in the manner and according to the procedure provided for in this Part if the enforcing authority obtains knowledge that the natural person who is the holder of the permit or license, or the natural person who owns in excess of fifty percent of the entity which holds the license or permit, or the natural person who is the chief executive officer of the entity which holds the license or permit has been convicted of, or has entered a plea of guilty or nolo contendere to, a crime which is a felony under state or federal law related to obtaining or keeping the license or permit.

B. The enforcing authority may initiate the action by providing written notice by certified mail of its intention to suspend and ultimately revoke the license or permit of the holder pursuant to this Part, sent to the holder of the license or permit, the person alleged to have been convicted of, or to have entered a plea of guilty or nolo contendere to, a felony under state or federal law related to obtaining or keeping the license or permit, and to the issuing agency which issued the license or permit, if different from the enforcing authority.

Acts 1997, No. 1162, §1, eff. July 1, 1998; Acts 2003, No. 956, §1, eff. July 1, 2003.

#### **§999.23. Hearing before the issuing agency**

A. An action to enforce the provisions of this Part shall be initiated by written application made by the enforcing authority to the issuing agency issuing the license or permit requesting such agency to order the suspension and recommend to the courts the revocation of the license or permit.

B. No determination shall be made and no license shall be ordered suspended and ultimately revoked without an adjudicatory hearing conducted in accordance with the Administrative Procedure Act and Part A of this Chapter.

C. Notwithstanding the provisions of R.S. 49:992 or any other law to the contrary, any hearing conducted pursuant to this Part may, at the request of the issuing agency, be conducted by an administrative law judge in an adjudicatory hearing pursuant to Part A of this Chapter.

D. For purposes of this Part, the enforcing authority shall prove by a preponderance of the evidence that a person has been convicted of, or has entered a plea of guilty or nolo contendere to, a crime which is a felony under state or federal law related to the obtaining or keeping of the license at issue.

Acts 1997, No. 1162, §1, eff. July 1, 1998; Acts 2003, No. 956, §1, eff. July 1, 2003.

#### **§999.24. Revocation**

A.(1) Within thirty days after the issuance of a written determination and order by an administrative law judge or an issuing agency that the license or permit of a holder should be suspended, and a recommendation to the courts that such license or permit should be revoked, the enforcing authority shall file a petition in the Nineteenth Judicial District Court requesting such judge or court to uphold the determination of such issuing agency and order the revocation of the license or permit. A copy of the written determination and order of the administrative law judge or the issuing agency and a certified transcript of all proceedings had, if any, shall be filed with the court at the same time as the petition of the enforcing authority.

(2) The holder of the license or permit that has been ordered suspended may also file a petition requesting that the order of the administrative law judge or the issuing agency be set aside at any time after it is issued.

B.(1) After or in conjunction with the filing of a petition as provided for in Subsection A of this Section, the holder of the license or permit that has been ordered suspended may file an application with the court with supporting affidavits requesting the court to make an initial determination as to whether the suspension of the license or permit by the administrative law judge or the issuing agency should be upheld.

(2) The court shall assign a hearing on the application for the initial determination not less than two nor more than ten days after the filing of such application, in open court or in chambers.

(3) The court shall review the written determination and order of the administrative law judge or issuing agency, any affidavits which were filed with the application, and the transcript of the proceedings, if any.

(4) If the court upon a review of such documents and consideration of the issues involved finds both that it is not probable that the order of the administrative law judge or the issuing agency will be upheld and that the suspension of the license or permit will result in irreparable injury, loss, or damage to the holder of the license or permit, the court shall issue an order enjoining the suspension until it renders a final judgment on the matter.

C.(1) Except for the procedure as provided in Subsection B of this Section, all of the cases provided for in this Section shall be tried in the same manner as civil cases and shall be heard and determined as speedily as possible.

(2) If the court finds that the action of the administrative law judge or the issuing agency is in accordance with the facts and law, the court shall render a judgment upholding the order of the administrative law judge or the issuing agency and revoking the license or permit of the holder. If not, the court shall either dismiss the order of the administrative law judge or the issuing agency and enjoin the suspension of the license or permit, or it shall remand the case to the administrative law judge or the issuing agency for further proceedings either with or without maintaining the suspension of the license or permit.

Acts 1997, No. 1162, §1, eff. July 1, 1998; Acts 2003, No. 956, §1, eff. July 1, 2003.

#### **§999.25. Additional ground or cause**

Notwithstanding any other law to the contrary, the provisions of this Part shall provide an additional ground or cause of action for suspension or revocation of a license or permit issued by an issuing agency and shall be in addition to any other sanction or penalty which such agency is specifically authorized to impose.

Acts 1997, No. 1162, §1, eff. July 1, 1998; Acts 2003, No. 956, §1, eff. July 1, 2003.





## Part VI. General Rule-Making Guides

### ► Read the Administrative Procedure Act (APA) (R.S. 49:950 et seq.)

The purpose of the APA was “to establish a basic, streamlined system to replace the hundreds of rules and regulations in some 189 state agencies, commissions, and boards.” (1982 *Louisiana Law Review*)

#### **Pay particular attention to the definition of a Rule:**

“Rule means each agency statement, guide, or requirement for conduct or action, exclusive of those regulating only the internal management of the agency and those purporting to adopt, increase, or decrease any fees imposed on the affairs, actions, or persons regulated by the agency, which has general applicability and the effect of implementing or interpreting substantive law or policy, or which prescribes the procedure or practice requirements of the agency.” [R.S. 49:951.A(6)].

“Rules are designed to implement, interpret, or prescribe law or policy, or to describe the organization, procedure, or practice requirements of any agency.” (Act of July 26, 1935, 49 Stat. 500, ch.417)

### ► When constructing your new Rules make sure to ask the question: “Will my Rules be adaptable in the field?”

Determine types of people your Rule will affect:

- Who will have to enforce your Rules?
- Who will be affected by Rules?

Include input from both of these parties to make your Rule effective.

Taking time to write effectively will save time, energy and money in the future.

### ► When writing your Rule:

- Do not restate the enabling statute in the Rule.
- Make sure you stay within the parameters of your statutory authority.
- Do not put timelines in the Rule that conflict with the enabling statute, i.e. “The statute says 40 days, and the Rule says 30 days.”
- Flesh out the statute. The Rule should implement and fill in the details of the statute.
- Avoid wording that is vague and can be misinterpreted.  
~Vivian Guillory, Division of Administrative Law

## ► Use Plain Language:

*Plain language is clear, concise, organized, and appropriate for the intended audience.*

- Write for your reader, not yourself.
- Use pronouns when you can.
- State your major point(s) first before going into details.
- Stick to your topic.
- Limit each paragraph to one idea and keep it short.
- Write in active voice. Use the passive voice only in rare cases.
- Use short sentences as much as possible.
- Use everyday words. If you must use technical terms, explain them on the first reference.
- Omit unneeded words.
- Keep the subject and verb close together.
- Use headings, lists, and tables to make reading easier.
- Proofread your work, and have a colleague proof it as well.

*National Archives (<https://www.archives.gov>) Plain Writing at the National Archives > Plain Writing Checklist*

## ► Use CCP 5059 for Computation of Time

Exclude legal holidays for periods of time less than seven days. (Don't count them as required days.)

Include legal holidays for periods of time greater than seven days. (Count each day regardless of holidays.)

### ***Louisiana Code of Civil Procedure***

Article 5059. Computation of time

A. In computing a period of time allowed or prescribed by law or by order of court, the date of the act, event, or default after which the period begins to run is not to be included. The last day of the period is to be included, unless it is a legal holiday, in which event the period runs until the end of the next day which is not a legal holiday.

B. A half-holiday is considered as a legal holiday. A legal holiday is to be included in the computation of a period of time allowed or prescribed, except when:

- (1) It is expressly excluded;
- (2) It would otherwise be the last day of the period; or
- (3) The period is less than seven days.

C.(1) A legal holiday shall be excluded in the computation of a period of time allowed or prescribed to seek rehearing, reconsideration, or judicial review or appeal of a decision or order by an agency in the executive branch of state government.

(2) Subparagraph (1) of this Paragraph shall not apply to the computation of a period of time allowed or prescribed to seek rehearing, reconsideration, or judicial review or appeal of a decision or order by the Department of Revenue.

Acts 2018, No. 128, §1.

\*\*See R.S. 1:55, Days of Public Rest, Legal Holidays, and Half-Holidays, for a complete list of holidays.\*\*



John D. Carpenter  
Legislative Fiscal Officer

**STATE OF LOUISIANA**  
**LEGISLATIVE FISCAL OFFICE**  
**BATON ROUGE**

Post Office Box 44097  
Capitol Station  
Baton Rouge, Louisiana 708  
Phone: 225.342.7233  
Fax: 225.342.7243

**TO:** All Departments, Boards and Commissions  
**FROM:** John D. Carpenter, Legislative Fiscal Officer  
**SUBJECT:** Fiscal and Economic Impact Statements

The Administrative Procedure Act requires that fiscal and economic impact statements be prepared by the appropriate agency and approved by the Legislative Fiscal Office prior to the adoption, amendment or repeal of any agency rule (see Section 953 of Title 49 of the Louisiana Revised Statutes). The purpose of this letter is to outline the procedures each agency should follow in complying with this law. These procedures became effective September 20, 1987.

- (1) Each notice of intent for the adoption, amendment or repeal of a rule (as defined in R.S. 49:951) which is forwarded to the Louisiana Register for publication must be accompanied by a fiscal and economic impact statement which has been approved by the Legislative Fiscal Office. Even if a proposed rule/amendment/repeal is anticipated to have no fiscal or economic impact, a statement to that effect must be submitted to the Legislative Fiscal Office for approval.
- (2) Preparation of fiscal and economic statements is the responsibility of the agency proposing the rule/amendment/repeal. The Legislative Fiscal Office is not authorized to prepare such statements if the proposing agency fails to do so.
- (3) Fiscal and economic information must be submitted using the attached forms or, if so desired, on identical forms reproduced on word processors and printed on legal-size pages. Forms which are not identical will be returned to the agency. If the space provided for responses is insufficient, attach additional pages.
- (4) Impact statement forms must be accompanied by the following: a) a copy of the notice of intent which will be forwarded by the agency to the Louisiana Register for publication; b) a copy of the rule proposed for adoption or repeal, or in the case of a rule change, copies of both the current proposed rules with amended portions indicated; and c) a copy of any federal regulations requiring adoption of the rule change, if applicable. Copies of the notice of intent and the rule or rule change must be identical to those which will be forwarded by the agency to the Louisiana Register for publication.
- (5) Fiscal and economic impact statements must be submitted to the Legislative Fiscal Office by the 20th of the month preceding the agency's planned filing of its "Notice of Intent" to adopt/amend/repeal a rule. If any substantive (non-technical) modifications are made to the language of the rule after its initial submission to the Legislative Fiscal Office (e.g., as a result of comments from the public), it is the responsibility of the agency to forward a copy of the modified rule and a revised fiscal and economic impact statement to the Legislative Fiscal Office for approval prior to a hearing by the appropriate legislative oversight subcommittee.

## ► Making Changes to your Proposed Rule after Initial Printing

All substantive (non-technical) changes made from public comments need to be submitted to the Legislative Fiscal Office for approval.

“If any substantive (non-technical) modifications are made to the language of the rule after its initial submission to the Legislative Fiscal Office (e.g., as a result of comments from the public), it is the responsibility of the agency to forward a copy of the modified rule and a revised fiscal and economic impact statement to the Legislative Fiscal Office for approval prior to a hearing by the appropriate legislative oversight subcommittee.”

Once an impact statement has been officially approved, no changes are permitted to it or the accompanying Notice of Intent and proposed Rule.

A public hearing pursuant to R.S. 49:968(H)(2) needs to be held if the changes are substantial (non-technical). A public hearing notice needs to be submitted to the Office of the State Register for publication. This publication will appear in the Potpourri Section of the *Louisiana Register*.

## ► Referencing a Document

Section 954.1(C) of the APA gives the Office of the State Register authority to omit any rule whose publication would be unduly cumbersome, expensive, or otherwise inexpedient if the rule is made available.

Office of the State Register does not reference rules that are written by state agencies, but will reference federal rules, national/regional occupational or trade standards (handbooks), and national/regional guidelines. (See LAC 1:I.309)

To reference a document, the agency will need to:

- file the book, standard, or guideline with the corresponding Notice of Intent or Emergency Rule;
- print explanatory wording inside of the rule text that references the document. This explanation must include referenced publication information such as title, publishing date, and edition.

## ► Regulatory Flexibility Analysis/Small Business Economic Impact Statement

Every Rule must have an accompanying Small Business Analysis (R.S. 49:956.6). If you choose, you may print your analysis with the Notice of Intent for public viewing.

### **Small Business Analysis**

Pursuant to R.S. 49:965.6, methods for reduction of the impact on small business, as defined in the Regulatory Flexibility Act, have been considered when creating this proposed Rule.

This proposed Rule may have an adverse impact on small businesses; therefore, a Small Business Economic Impact Statement has been prepared.

If the results of the regulatory flexibility analysis required by R.S. 49:965.6 indicates an adverse impact on small businesses, the agency needs to complete a Small Business Economic Statement, pursuant to R.S. 49:965.5, and file it with the Department of Economic Development.

## ► Provider Impact Statement

(House Concurrent Resolution 170 of the 2014 Regular Legislative Session)

### **HOUSE CONCURRENT RESOLUTION NO. 170**

#### **BY REPRESENTATIVE TIM BURNS**

#### **A CONCURRENT RESOLUTION**

To direct state agencies to consider certain provider impact issues and to issue certain provider impact statements prior to the adoption, amendment, or repeal of rules.

WHEREAS, the legislature has historically encouraged transparency in the policy development process; and  
WHEREAS, the members of the legislature need to be aware of the fiscal impact of any proposed policy changes as they impact the state budget and the fiscal impact on their constituents, including providers of services; and  
WHEREAS, the legislature needs information regarding the potential fiscal impact on the state budget, the general public, and providers of services funded by the state to make fully informed policy decisions regarding proposed policy changes, including those effectuated by the adoption, amendment, or repeal of rules, including emergency rules.

THEREFORE, BE IT RESOLVED by the Legislature of Louisiana that prior to the adoption, amendment, or repeal of any rule, including an emergency rule, each state agency shall consider and state in writing the impact of the proposed rule on a provider prior to the adoption and implementation of the rule.

BE IT FURTHER RESOLVED that this written consideration of impact shall be known as the "provider impact statement" and shall contain the following considerations regarding the proposed rule:

- (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 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.

BE IT FURTHER RESOLVED that the state agency shall include the provider impact statement in the notice required by R.S. 49:953(A)(1).

BE IT FURTHER RESOLVED that the state agency shall submit the provider impact statement on an emergency rule to the speaker of the House of Representatives and the president of the Senate at the same time in the same manner as the agency statement required by R.S. 49:953(A)(1)(a)(x).

BE IT FURTHER RESOLVED that if the state agency is reissuing an emergency rule previously published without revision, the state agency shall clearly indicate that the new publication is a reissue of a previously published rule and the date of the previous publication.

BE IT FURTHER RESOLVED that if the state agency is not materially or substantively revising an emergency rule previously published, the provider impact statement issued on the previously published rule shall suffice; however, if the emergency rule contains any material or substantive revisions from the previously published emergency rule, the agency shall revise the impact statement to reflect the revisions.

BE IT FURTHER RESOLVED that all provider impact statements shall be in writing and kept on file with the agency that adopted, amended, or repealed the rule and shall be available for inspection, copying, and reproduction in accordance with the Public Records Law.

BE IT FURTHER RESOLVED that for the purposes of this Resolution, "provider" means an organization that provides services for individuals with developmental disabilities, and "state agency" means each state board, commission, department, agency, officer, or other entity which makes rules, regulations, or policy, or formulates, or issues decisions or orders pursuant to, or as directed by, or in implementation of the constitution or laws of the United States or the constitution and statutes of Louisiana, except the legislature or any branch, committee, or officer thereof; any political subdivision, as defined in Article VI, Section 44 of Constitution of Louisiana and any board, commission, department, agency, officer, or other entity thereof; and the courts.

BE IT FURTHER RESOLVED that a copy of this Resolution be sent to the Office of the State Register in the division of administration.

BE IT FURTHER RESOLVED that the Office of State Register shall notify each state agency of the requirements of this Resolution.

► Sample Timetable for Rulemaking

(Section citations refer to the APA)

<b>MARCH 20</b>	<b>FISCAL OFFICE</b> —Submit Fiscal and Economic Impact Statement for Approval [§953(A)(3)(b)].
<b>APRIL 10</b>	<b>SUBMIT NOTICE OF INTENT AND APPROVED FISCAL STATEMENT 12 NOON TO STATE REGISTER</b> —Also submit to House Speaker, Senate President, House and Senate Oversight Committees [§953(A)(1)(b)(i) and §968(B)].
<b>APRIL 20</b>	<b>NOTICE OF INTENT PUBLISHED IN LOUISIANA REGISTER</b> —Publication date is the twentieth of each month [§954(1)(B)].
<b>APRIL 21 THRU MAY 10</b>	<b>PERIOD FOR REQUESTING PUBLIC HEARING</b> —Within 20 days after Notice of Intent is published [§953(A)(2)(a)].
<b>MAY 25 THRU MAY 30</b>	<b>PUBLIC HEARING</b> —35-40 days after Notice of Intent is published [§953(A)(2)(b)(i)].
<b>VARIABLE DATE</b>	<b>SECOND REPORT TO OVERSIGHT COMMITTEES</b> —[§968(D)(1-5)] <i>See Footnote 1.</i>
<b>VARIABLE DATE</b>	<b>POSSIBLE LEGISLATIVE OVERSIGHT COMMITTEE HEARING</b> —[§968(D)(2)(a)] <i>See Footnote 2, Footnote 3.</i>
<b>VARIABLE DATE</b>	<b>IF AGENCY RECEIVES UNFAVORABLE OVERSIGHT REVIEW, COMMITTEE SENDS NEGATIVE REPORT TO GOVERNOR</b> —No later than four days after committee makes its determination. Agency and State Register also receive a copy of the committee report [§968(F)(2)].
<b>As EARLY as JULY 10</b>	<b>IF AGENCY RECEIVES FAVORABLE OVERSIGHT REVIEW, AGENCY SUBMITS FINAL RULE TO STATE REGISTER BY 12 NOON</b> —This date reflects the minimum time frame in which a proposed Rule can receive oversight approval and be submitted for publication as a final Rule [§968(H)(1)].
<b>VARIABLE DATE</b>	<b>GOVERNOR APPROVES OR DISAPPROVES OVERSIGHT'S NEGATIVE REPORT</b> —Governor has 10 days to agree or disagree with oversight's report [§968(G)].
<b>As EARLY as JULY 20</b>	<b>FINAL RULE PUBLISHED IN LOUISIANA REGISTER</b> —No earlier than 90 days and no later than one year after Notice of Intent was published in <i>Louisiana Register</i> [§968(H)(1)].

<sup>1</sup> Report includes (1) summary of testimony at agency's public hearing; (2) summary of comments received; (3) copy of response to comments prepared by agency; (4) statement of tentative/proposed action by agency on oral/written comments received; (5) revision of proposed rule or statement that no changes have been made; (6) concise statement of reasons for/against adoption/amendment of changes suggested.

<sup>2</sup> Oversight committee hearing shall be held no earlier than 5 days and no later than 30 days following the day the agency turns in its report.

<sup>3</sup> If agency has decided to make substantive changes to the proposed Rule text, it should wait until after it holds a hearing on substantive changes before turning in its report as shown in Footnote 1 above. When holding a substantive change hearing, the agency must advertise the hearing date in the *Louisiana Register* (Potpourri Section) 30 days prior to the hearing.

## Part VII. Occupational Licensing Boards Requirements

Act 623 of the 2018 Regular Legislative Session enacted the Occupational Board Compliance Act, R.S. 37:41-47, to “ensure that occupational licensing boards and board members avoid liability under federal antitrust laws.” This legislation created the Occupation Licensing Review Commission (OLRC) and added additional rule-making requirements for Occupation Licensing Boards that are proposing to adopt, amend, or repeal an occupation regulation. The guide below has been approved by the OLRC.

### **Rule-Making Guide for Occupational Licensing Boards** **(R.S. 37:41-47 and R.S. 49:950 et seq.)**

#### **Things to do:**

Sign up for the Occupational Licensing Review Commission’s listserv notifications so that you can get e-mails with relevant information and upcoming commission meeting dates.

- You will need to submit your proposed regulation 10 days prior to the commission meeting to be on the meeting agenda.
- Proposed changes to be considered must be submitted electronically to [ORLC@LA.gov](mailto:ORLC@LA.gov)
- Make sure to send an agency representative to the committee meeting that is knowledgeable of the regulatory content of the proposed rule.

Make sure you understand the idea of “least restrictive regulation.” Below are some helpful guides:

- Write your rules with the objective of consumer protection while not stifling economic opportunity and growth.
- Make sure your rules are not an expansion of licensing requirements that do not serve the public interest.
- Review the occupational regulations from different states. Your rules should not be more burdensome than the national average.
- Ideally, your rules should not restrict entry or practice of a profession unless a public health or safety benefit can be proven.

#### **Relevant Definitions**

***Occupational Licensing Boards***—any state executive branch board, commission, department, or other agency that is all of the following:

- (a) regulates the entry of persons into, or regulating the conduct of persons within, a particular profession or occupation;
- (b) authorized to issue and revoke occupational licenses or registrations;
- (c) controlled by active market participants.

***Occupational Regulation***—a rule, regulation, restraint, practice, or policy allowing an individual to use an occupational title or work in a lawful occupation, including but not limited to registrations and occupational licenses. *Occupational regulation* excludes any license, permit, or regulation established by a parish or municipality.

#### **Additions to the Rule-Making Timeframe**

[Read the Occupational Licensing Review Commission’s Resolution.]

➤ **[First OLRC Report]**

**Submit the *occupational regulation* proposed for adoption/amendment/or repeal to the Occupational Licensing Review Commission (OLRC) for approval. [R.S. 37:45(C)(1)-(3)(b)(iv)] [OLRC Resolution, Item 2]**

Submit the following information to [ORLC@LA.gov](mailto:ORLC@LA.gov):

- A PDF version of the rule, regulation, restraint, practice, policy, registration, certification, or occupational license for which the licensing board is seeking approval
- A separate PDF document which contains a summary/explanation of the state policy with which the submission is in compliance (not required for emergency rules filed under the authority of La. R.S. 49:953 (B))
- The contact information for the person responsible for the submission (including that person's name, email address, and telephone number)

➤ **Submit your fiscal and economic statement (with your strikethrough/underscore version of your Notice of Intent) to the Legislative Fiscal Office for Review.** (This can be done while you are waiting for OLRC approval, by the 20<sup>th</sup> of the month before you submit your Notice of Intent to the Office of the State Register for printing.)

➤ **Submit the Notice of Intent to the Office of the State Register, Speaker of the House, President of the Senate, House and Senate Oversight Committees [R.S. 37:45(C)(1), R.S.953(A)(1)(b), and R.S.49:968(B)]**

- Notice of Intent is published in the *Louisiana Register* (20<sup>th</sup> of the submittal month).
- Period for requesting a public hearing (within 20 days after Notice of Intent is published).
- Possible Public Hearing (35-40 days after Notice of Intend is published).

➤ **[Second OLRC Report]**

**Submit a notice to the commission of the final rule for review/approval. This notice should be in pdf format and shall include the following information: [R.S. 37:44(D)]. [OLRC Resolution, Item 3]**

- A PDF version of the proposed rule text as it is required to be filed with the Louisiana Register
- A summary of any changes made to the proposed regulation or an indication that no changes were made to the initial proposed regulation
- Any comments received during the comment period or a recording of the minutes of any proceeding
- A separate PDF document that includes a summary/explanation of the state policy with which the submission is in compliance (not required for emergency rules filed under the authority of R.S. 49:953 (B))
- The contact information for the person responsible for the submission (including that person's name, email address, and telephone number)
- Many of the items listed above can also be used for your legislative summary report. Use the same electronic submittal method as in the first report and submit 10 days prior to the OLRC meeting date in which you need your final rule to be considered.

➤ **Submit Summary Report to House and Senate Oversight Committees [R.S. 49:968(D)(1)(a)-(c)]** The House and Senate Oversight Committees can call a hearing on the proposed rule within 5-30 days of submittal.

- The governor has 10 days upon receipt of a report of action taken by the House and Senate Oversight Committees to disapprove such action.

➤ **Final Rule can be submitted for printing in the Louisiana Register [R.S.49:968(H)(1)] with documentation of OLRC approval and House and Senate Oversight Committee Report submittal.**

- Rule would be printed and effective on the 20th of the submittal month. Rule can be effective upon a later date pursuant to R.S. 49:954(B)(1).

## **Emergency Rule Submittal**



Emergency Rules will need to be filed with the OLRC as well as the other five entities listed in R.S. 49:953(B). Remember to include the OLRC e-mail address ([OLRC@la.gov](mailto:OLRC@la.gov)) in your electronic submittal to the Speaker of the House, President of the Senate, Office of the Governor, Attorney General and Office of the State Register. This can be done in one e-mail to confirm the concurrent submission requirement.

### **Sample Rule-Making Timeframe (Estimate)**

1. Submittal to OLRC—**February 1, 2019 for the February 12, 2019** meeting
2. Submittal to Legislative Fiscal Office—**February 20, 2019**
3. Submittal to the *Louisiana Register*—**March 10, 2019 for March 20, 2019** printing
4. Submittal to OLRC—**May 1, 2019 for May 14, 2019** meeting
5. Submittal of Summary Report to Legislative Oversight—**May 16, 2019**
6. Submittal to *Louisiana Register* for Final Rule printing—**July 10, 2019 for July 20, 2019** printing

## RESOLUTION

**WHEREAS**, is it necessary for the Occupational Licensing Review Commission to adopt a resolution detailing the processes, procedures, and timelines that will govern the submission of proposed occupational regulations by occupational licensing boards: NOW, THEREFORE, BE IT RESOLVED BY THE OCCUPATIONAL LICENSING REVIEW COMMISSION, that the following shall be the definitions, processes, procedures, and timelines that will govern the submission of proposed occupational regulations by occupational licensing boards:

1. *Definitions.*

- A. OLB(s) – Occupational Licensing Board(s).
- B. Commission – Occupational Licensing Review Commission.
- C. Submission – Any documents required to be submitted to the Commission.

2. *Initial Proposed Regulation Submission Required.* OLBs must submit any proposed regulation to the Commission and receive written approval and authorization to initiate promulgation in accordance with the Administrative Procedures Act (APA) before the OLB may give notice of intent of the proposed rule to the Office of the Louisiana Register.

For emergency rules that are required to be filed with the office of the state register under the authority of La. R.S. 49:953(B), concurrent submission to the Commission is required upon initial filing.

For proposed occupational regulations not subject to promulgation and adoption in accordance with the APA, OLBs must submit the proposed regulation to the Commission for approval prior to enforcement.

3. *Final Proposed Regulation Submission Required.* Prior to submission of the notice of final regulation to the proper legislative oversight committees, OLBs shall submit the proposed regulation to the Commission and receive written approval to proceed from the Commission.

4. *Other Submissions Required.* A rule, regulation, restraint, practice, or policy that allows an individual to use an occupational title or work in a lawful occupation including registrations, certifications, and occupational licenses must be submitted to the Commission before it becomes effective.

5. *Medium and Manner of Submission.*

- A. OLBs shall submit all documents electronically to the Commission.
- B. An **initial** proposed regulation submission shall include a PDF version of the rule, regulation, restraint, practice, policy, registration, certification, or occupational license for which the OLB is seeking approval.
- C. A **final** proposed regulation submission shall include a PDF version of the proposed rule text as it is required to be filed with the Louisiana Register, a summary of any changes made to the proposed regulation or an indication that no changes were made to the proposed regulation, and any comments received during the comment period or a recording of the minutes of any proceeding.
- D. **All** submissions shall include a separate PDF document that includes a short explanation of the state policy with which the submission is in compliance. However, this is not required for emergency rules filed under the authority of La. R.S. 49:953(B).
- E. **All** submissions shall include the contact information for the person responsible for the submission including that person's name, email address, and telephone number.
- F. **All** submissions shall be sent to [boards@la.gov](mailto:boards@la.gov) for filing with the Commission.
- G. For submissions that are too large to submit through email, the submission must be made through readily usable electronic storage media such as a compact disc or a jump drive. Further, both storage media and any outer cover for the media must

contain the following information:

- a. Occupational Licensing Board name,
- b. Contact person,
- c. Phone number, and
- d. Email address.

The electronic storage media must be delivered to the following address:

Office of the Governor  
Attn: Occupational Licensing Review Commission  
P.O. Box 94004  
Baton Rouge, LA 70804


- H. The Commission shall issue an email response to the OLB acknowledging receipt of the submission.

*5. Review by Commission.* All submissions shall be reviewed by the Commission and shall be either approved, disapproved, disapproved with suggested amendment, or the OLB will be allowed to withdraw for revision.

*6. Approval by Commission.* All approved submissions shall be listed in a Resolution passed by the Commission. The Resolution shall include the date, the name of each OLB, and a description of each approved submission. The Resolution shall be sent to the OLB whose submission has been approved.

*7. Disapproval by Commission.* OLBs whose rules have been disapproved by the Commission shall receive an email response within 30 days of the date the OLB provides the proposed regulation to the Commission for review. The email shall state that the submission has been disapproved or disapproved with suggested amendment.

This Resolution was ADOPTED by unanimous vote of the Commission on January 31, 2019.

  
Erin Monroe Wesley, Chair

# Part VIII. Appendices

## A. Insertion Order

**OFFICE OF THE STATE REGISTER INSERTION ORDER** (eff.08/02)  
Claiborne Building 1201 North Third Street Suite 3-220 Post Office Box 94095  
Baton Rouge, LA 70804-9095 (225)342-5015 FAX (225)342-0284

(SUBMIT A SEPARATE INSERTION ORDER PER DOCUMENT)

EMERGENCY RULE     NOTICE OF INTENT     RULE     POTPOURRI

REFER TO INSTRUCTIONS ON REVERSE SIDE

This is your authority to publish in the (month) \_\_\_\_\_, 20\_\_\_\_ *Louisiana Register* the document indicated above.

Office/Board/Commission promulgating this document

Department under which office/board/commission is classified

(name) \_\_\_\_\_ (title) \_\_\_\_\_  
Name and title of person whose signature will appear in the publication (at the end of the document)

(name) \_\_\_\_\_ (phone) \_\_\_\_\_ (fax) \_\_\_\_\_  
Name, phone number, and FAX number of person to contact regarding this document

**E-Mail Contact**

E-mail address of contact person

Provide a short descriptive listing for this document to be used in the *Louisiana Register's* TABLE OF CONTENTS/INDEX. Description should match the fiscal statement title, if Notice of Intent:

**File Name**

\*Name of electronic document/file:

**Must contain Original Signature**

**Check Box if promulgating an Emergency Rule as well as Notice of Intent**

**Important:** If submitting both an Emergency Rule (ER) and a Notice of Intent (NOI) to be published this month, **AND** if the rule text in the NOI is identical to the rule text in the NOI, check here:

Signature of Agency Head or Designee

Print Name and Title of Agency Head or Designee

CERTIFICATION OF AVAILABLE FUNDS

DOCUMENT # \_\_\_\_\_

**ISIS AGENCY:** I certify the availability of fiscal year \_\_\_\_\_ appropriated funds for the payment of the above referenced publication and authorize the processing of an Interagency Billing with the following coding on the 30th of the month of the publication. Attach supplemental sheet for additional lines of coding.

AGENCY    ORGANIZATION #    OBJECT    SUB-OBJECT    REPORTING CATEGORY

**NON-ISIS AGENCY:** I certify the availability of fiscal year \_\_\_\_\_ appropriated funds for the payment of the above referenced publication and agree to place corresponding invoice in line for payment upon receipt.

Billing Address for Agencies:

Signature of Agency Head or Designee - Phone # \_\_\_\_\_

**Must contain Original Signature**

Agency Name

Street Address or Post Office Box

City    State    Zip Code

Lines/Other Charges \_\_\_\_\_ Typesetting \$ \_\_\_\_\_ TOTAL \$ \_\_\_\_\_

## B. LR Checklist

### EMERGENCY RULE (ER) INSTRUCTIONS:

1) For an ER which **HAS NOT BEEN PUBLISHED** in the *Louisiana Register* within recent months (either as a previous ER or as a NOI), send the **new** ER in MSWord and include with the completed insertion order: opening/introductory paragraphs containing effective date and number of days ER in effect; and rule text in LAC codified form with updated Authority and Historical Notes.

2) For an ER which **HAS BEEN PUBLISHED** in the *Louisiana Register* within recent months (either as a previous ER or as a NOI):

a) if **MINOR REVISIONS** are made, photocopy a copy of the previous ER or NOI from the *Louisiana Register*, and show changes/revisions with a red pen; or

\*b) if **MAJOR REVISIONS** are made, send a **new** ER in MSWord and include with the completed insertion order: opening/introductory paragraphs containing effective date and number of days ER in effect; and rule text in LAC codified form with updated Authority and Historical Notes.

**NOTE: All Emergency Rules should be submitted with a signed and dated hardcopy acknowledging adoption.**

### NOTICE OF INTENT (NOI) INSTRUCTIONS:

1) For a NOI which **HAS NOT BEEN PUBLISHED** in the *Louisiana Register* within recent months (either as a previous NOI or as an ER):

a) send the **new** NOI in MSWord and a hard copy. Include, with the original completed insertion order, the entire Notice of Intent: opening/introductory paragraphs, full text of the rule to be printed, family impact statement, poverty impact statement, provider impact statement, public comments paragraph, public hearing paragraph (if one is scheduled) and fiscal and economic impact summary. **ALSO** send fiscal and economic impact statement containing **ORIGINAL** signatures.

2) For a NOI which **HAS BEEN PUBLISHED** in the *Louisiana Register* within recent months (either as a previous NOI or as an ER):

a) if **MINOR REVISIONS** are made, photocopy the previous NOI or ER from the *Louisiana Register*, and show changes/revisions with a red pen and send the original completed insertion order. **ALSO** send the fiscal and economic impact statement containing **ORIGINAL** signatures; **OR**

\*b) if **MAJOR REVISIONS** are made, send a **new** MSWord document with opening/introductory paragraphs, full text of the rule to be printed, family impact statement, poverty impact statement, provider impact statement, public comments paragraph, public hearing paragraph (if one is scheduled) and fiscal and economic impact summary. Send the original completed insertion order and fiscal and economic impact statement containing **ORIGINAL** signatures.

### RULE (RUL) INSTRUCTIONS:

1) If the NOI was published in full (rule text included), photo copy the entire NOI from the *Louisiana Register* (including page numbers and document number at the end of the fiscal statement) and show changes/revisions with a red pen and include with the completed insertion order.

2) If the NOI referenced the reader to rule text in an ER, photo copy the entire NOI from the *Louisiana Register* (including page numbers and document number at the end of the fiscal statement) and photocopy the entire ER from the *Louisiana Register* (including page numbers and document number at the end of the document); show changes/revisions with a red pen and include with the completed insertion order.

3) If the NOI was referenced (rule text was not printed), photocopy the entire NOI from the *Louisiana Register* (including page numbers and document number at the end of the fiscal statement) and show changes/revisions with a red pen and include with the completed insertion order.

**NOTE: Any Rule submitted for publication should be accompanied by corresponding receipts of Summary Report submittal to the Legislative Oversight Committees.**

### POTPOURRI (POT) INSTRUCTIONS:

Send a completed insertion order and a MSWord copy of the document to be printed.

## C. Examples

### **Examples of Opening Paragraphs (Preambles)**

#### **NOTICE OF INTENT**

##### **Board of Elementary and Secondary Education**

Bulletin 741—Louisiana Handbook for School Administrators—High School Credit for Elementary Students (LAC 28:I.901)

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 approved for advertisement revisions to Bulletin 741, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). The proposed revisions to Standards 2.102.01, 2.105.04, and 2.105.17 were made to be consistent with LEAP for the Twenty-First Century High Stakes Testing Policy. The changes include:

- (1) 8th grade LEAP 21 shall be in lieu of a required credit exam for Option 1 and Option 2 students;
- (2) Students must score at an achievement level of "approaching basic" on the mathematics components of 8th grade LEAP 21 before enrolling in courses in the secondary program of studies for mathematics;
- (3) Students must score at an achievement level of "approaching basic" on the English language arts components of eighth grade LEAP 21 before enrolling in courses in the secondary program of studies for English.

#### **NOTICE OF INTENT**

##### **Department of Environmental Quality Office of Environmental Assessment**

Commercial Hazardous Waste Treatment,  
Storage and Disposal Facilities  
(LAC 33:V.Chapter 4, 517 and 5111) (HW071P)

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 Hazardous Waste regulations, LAC 33:V.Chapter 4 and LAC 33:V.517 and 5111 (Log #HW071P).

The proposed Rule applies to any permit for a new, non-existent commercial hazardous waste treatment, storage, or disposal facility. The rule will establish criteria to assess the impact of the facility on the citizens in the surrounding area, the local infrastructure, and on the environment. A siting fee equaling five percent of the application fee, authorized by R.S. 30:2178, is also established. This regulation is proposed in response to the March 19, 1999, Consent Decree and Petition for Rulemaking in the 19th Judicial District Court, Honorable Janice Clark, Judge Presiding. The basis and rationale for the proposed rule are to comply with R.S. 30:2178. Although there presently exist sufficient regulations to meet this statutory requirement, in an abundance of caution and in an effort to provide additional clarity and assistance to the regulated community and the public, the Department has decided to initiate rulemaking in response to the Petition as it related to this statute.

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

## **Example of a Family Impact Statement**

*(You can find information about the Family Impact Statement in the APA under Section 972)*

1. What effect will this rule have on the stability of the family? The proposed rule should have a positive effect on the stability of the family, as it will allow those families who could not previously afford adequate housing, the opportunity to own their own home.
2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? The proposed Rule will not affect the authority and rights of persons regarding the education and supervision of their children.
3. What effect will this have on the functioning of the family? This Rule may have a positive effect on the functioning of the family.
4. What effect will this have on family earnings and family budget? This Rule will not affect the family earnings or family budget.
5. What effect will this have on the behavior and personal responsibility of children? This Rule will not affect the behavior or personal responsibility of children.
6. What effect will this have on the ability of the family or local government to perform the function as contained in this proposed Rule? This Rule is designed to help the family to obtain the information and help needed to own their own home.

## **Example of a Poverty Impact Statement**

*(You can find information about the Poverty Impact Statement in the APA under Section 973)*

The proposed Rule should not have any 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.

## **Example of a Provider Impact Statement**

*(You can find information about the Provider Impact Statement in HCR 170 of the 2014 Regular Legislative Session)*

The proposed Rule does 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.

## **Example of a Public Comments Paragraph**

*(You can find information about Public Comments in the APA under Section 953.A(2)(a))*

Interested persons may submit written comments until 4:30 p.m., November 9, 2000, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064

## Notice of Intent Template

A Notice of Intent is a compilation of all the requirements in R.S. 49:953 (A)(1)(a). The entire Notice of Intent is to be printed in the *Louisiana Register* and submitted in accordance with Office of the State Register guidelines. The Notice of Intent must be in the following order and in one electronic document.

### NOTICE OF INTENT

**Department Name**

**Office Name**

**Title of Proposed Rule and LAC Citation**

*Example: Navigation Systems (LAC 52:XIX. 313 and 319)*

**Opening Paragraph**

This is a paragraph explaining what you are doing, why, and under what authority.

*Example: Notice is hereby given in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 44:718 (D), that the Board of Navigation proposes to amend Chapter 3 to facilitate the temporary registration of out-of-state vehicles containing factory navigation systems.*

**LAC Title Number**

**Title Name**

**Part Number and Name**

**Chapter Number and Name**

**Section Number and Name**

**Codified Contents of Section**

**Authority Note**

**Historical Note**

*\*\*Continue Sections as applicable\*\**

**Family Impact Statement**

**Poverty Impact Statement**

**Small Business Analysis**

**Small Business Statement (if needed)**

**Provider Impact Statement**

**Public Comments Paragraph**

**Public Hearing Paragraph (if needed)**

**Name of Person Responsible and Title**

**Fiscal and Economic Impact Summary**

**\*\*REMEMBER: DO NOT USE TRACK CHANGES, AUTOMATED NUMBERING, OR STRIKETHROUGH/ UNDERSCORE FOR LOUISIANA REGISTER ELECTRONIC DOCUMENT FILES.\*\***



## Emergency Rule Template

An Emergency is a compilation of all the requirements in R.S. 49:953 (B)(1)-(4). The entire Emergency Rule is to be printed in the *Louisiana Register* and submitted in accordance with Office of the State Register guidelines. The Emergency Rule must be in the following order and in one electronic document:

### EMERGENCY RULE

**Department Name**

**Office Name**

**Title of Proposed Rule and LAC Citation**

*Example: Navigation Systems (LAC 52:XIX. 313 and 319)*

**Opening Paragraph**

This is a paragraph explaining the nature of the emergency, pursuant to R.S. 49:953(B)(1), the department's basis and rationale for the action, when the Emergency Rule will be effective, and under what authority the agency is able to promulgate rules.

*Example: The Department of Social Services, Office of Family Support, has exercised the emergency provision in accordance with R.S. 49:953(B), the Administrative Procedure Act to adopt LAC 67:III:5591, Jobs for America's Graduates Louisiana (JAGS-LA) Program as a new TANF initiative. This Emergency Rule effective July 1, 2007, will remain in effect for a period of 120 days.*

*Pursuant to House Bill 1 of the 2007 Regular Session of the Louisiana Legislature, the agency is adopting the JAGS-LA Program to keep in school those students at risk of failing in school, to capture out-of-school youth in need of a high school education, to provide an avenue for achieving academically, and to assist students in ultimately earning recognized credentials that will make it possible for them to exit school and enter post-secondary education and/or the workforce.*

*The authorization for emergency action in this matter is contained in House Bill 1 of the 2007 Regular Session of the Louisiana Legislature.*

**LAC Title Number**

**Title Name**

**Part Number and Name**

**Chapter Number and Name**

**Section Number and Name**

**Codified Contents of Section**

**Authority Note**

**Historical Note**

*\*\*Continue Sections as applicable\*\**

**Name of Person Responsible and Title**

**REMEMBER: DO NOT USE TRACK CHANGES, AUTOMATED NUMBERING, OR STRIKETHROUGH/UNDERSCORE FOR LOUISIANA REGISTER ELECTRONIC DOCUMENT FILES.**

## Example of Legislative Summary Report (report with no changes and no comments)

~Editing and research by Ellen Tauzin, Senate Staff, and Greg Waddell, Attorney~

- When submitting your Summary Report, use the e-mail addresses provided on the Louisiana State Legislature APA webpage: <http://www.legis.la.gov/legis/APA.aspx>.
- Attach a copy of your original Notice of Intent with your report.

BOBBY JINDAL  
GOVERNOR



PAUL W. RAINWATER  
COMMISSIONER OF ADMINISTRATION

### State of Louisiana

Department of Health and Hospitals  
Board of Bewildered Bovine

October 20, 2011

Senator Willie L Mount  
Health and Welfare Committee  
P.O. Box 94183  
Baton Rouge, LA 70804

Dear Senator Mount,

Pursuant to R.S.49:968(D)(1)(b), the Board of Bewildered Bovine hereby announces its plan to proceed with rule-making by finalizing the August 20, 2011, Notice of Intent that was promulgated on page 3240 of the *Louisiana Register*.

This rule-making was affected by statutory changes in Regular Legislative Session 2010 that created the Board of Bewildered Bovine and charged the board with the task of herding in affected cattle. Without rules, the Board will not be able to perform its required duties. In order to flesh out the statute, the Board has clarified how the cattle are to be herded, in what condition they are to be kept, and how the owners can locate their expropriated cattle.

The Board has received no comments and therefore has not conducted a hearing pursuant to R.S. 49:953(A)(2).

The Board has made one change to the proposed rule. The change was technical, changing the spelling of the word "bovine" from "bovain" in Section 101.B. The full text of the proposed rule is attached with all changes highlighted.

Subject to legislative oversight by either the House or Senate "*Committee Name*", the board intends to submit a Rule to the Office of the State Register for publication. Please contact Elsie Borden at (225) 342-1234 if the board may be of any assistance to you concerning this rule.

Sincerely,

Ed Beefmaster  
Chairman  
Louisiana Board of Bewildered Bovine  
2005 Hereford Lane  
Baton Rouge, LA 70810  
(225) 342-COWS extension #MOO

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Example of Legislative Summary Report (continued)

**(report with changes and comments)**

~Editing and research by Ellen Tauzin, Senate Staff, and Greg Waddell, Attorney~

- When submitting your Summary Report, use the e-mail addresses provided on the Louisiana State Legislature APA webpage: <http://www.legis.la.gov/legis/APA.aspx>.
- Attach a copy of your original Notice of Intent with your report.

**BOBBY JINDAL**  
GOVERNOR



**PAUL W. RAINWATER**  
COMMISSIONER OF ADMINISTRATION

**State of Louisiana**

Department of Health and Hospitals  
**Board of Bewildered Bovine**

October 20, 2011

Senator Willie L Mount  
Health and Welfare Committee  
P.O. Box 94183  
Baton Rouge, LA 70804

Dear Senator Mount,

The Board of Bewildered Bovine hereby submits the following report required by La. R.S. 49:968(D)(1)(b) and announces its intention to proceed with rule-making by finalizing the August 20, 2011, Notice of Intent, captioned as "*Title of Notice of Intent*". This notice of intent was duly promulgated and published on page 3240 of the *Louisiana Register*.

This rule-making was affected by statutory changes in Regular Legislative Session 2010 that created the Board of Bewildered Bovine and charged the board with the task of herding in affected cattle. Without rules, the Board will not be able to perform its required duties. In order to flesh out the statute, the Board has clarified how the cattle are to be herded, in what condition they are to be kept, and how the owners can locate their expropriated cattle.

The Board held a public hearing pursuant to La. R.S. 49:953(A)(2) on *DATE*, and all oral and written comments along with the responses to the comments by the agency are attached herewith. Comments received were generally in reference to the following: the definition of Bovine, tagging of Bovine and type of Bovine disinfectant used upon capture. All comments were considered and were of enough concern to be added to our proposed rule.

Due to the fact that these were substantive changes to the proposed notice of intent, the Board published a notice of these changes in the (*Date*) edition of the Potpourri Section of the *Louisiana Register* along with the date and time for a second hearing. Pursuant to R.S. 49:968(H)(2), the board conducted the second public hearing on September 10, 20XX, to receive comments on the proposed changes. No one other than Board representatives were present, and no comments were received.

• 2005 Hereford Lane Baton Rouge, Louisiana 70810 • (225) 342-COWS  
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A copy of the full text of the revised notice of intent with the proposed changes highlighted is attached to this report. In summary, the proposed changes are the following: (summarize changes)

The Board has made substantial changes to Sections 101.A, 101.B, and 103. The changes are set forth below.

- We have added Indu-Brazilian to our breed types in Section 101.A.
- Section 101.B has been clarified to note that tagging should only be in the skin of the right outer ear not within 2 inches of the ear canal.
- Section 103, Disinfectant, has been changed to eliminate those disinfectants with a high percentage of almond oil to help prevent accidental allergy exposure.

Subject to legislative oversight by either the House or Senate "*Committee Name*", the board intends to submit a Rule to the Office of the State Register for publication. Please contact Elsie Borden at (225) 342-1234 if the board may be of any assistance to you concerning this rule.

Sincerely,

Ed Beefmaster  
Chairman  
Louisiana Board of Bewildered Bovine  
2005 Hereford Lane  
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