

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950, et seq.) and the provisions of RS 39:1410, The Division of Administration, Facility Planning and Control, has amended LAC 34:III.Chapter 1, Subchapter A. Procedure Manual. This change updates and clarifies the rules on budget, compensation, payments, and contractual terms for the designer's contracts. The requirements for sections regarding detailed technical responsibilities, however, have been deleted and relegated to the more appropriate procedure manual, which is published on Facility Planning and Control's website, and remains a part of the designer's contract. This Rule change, therefore, updates and clarifies the critical budget, compensation, and certain contractual aspects of the designer contract, which should remain within the administrative code, yet allows the technical sections to more easily adapt to required changes. This Rule is hereby adopted on the day of promulgation.

Title 34

GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

Part III. Facility Planning and Control

Chapter 1. Capital Improvement Projects

Subchapter A. Designer Contracts

§101. Condition of the Contract

A. The following rules shall be a part and condition of the contract between owner and designer, herein referred to as the "contract."

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:473 (September 1982), amended LR 11:849 (September 1985), LR 31:1076 (May 2005), LR 32:2047 (November 2006), LR 46:1566 (November 2020).

§103. Definitions

Available Funds for Construction (AFC)—the budgeted amount of funds, established by the owner prior to bidding, available for awarding the construction contract(s).

Consultants—individuals or organizations engaged by the owner or the designer to provide professional consultant services complementing or supplementing the designer's services. As applicable, consultants shall be licensed to practice in accordance with laws of the state of Louisiana. The owner shall engage or have the designer furnish as part of the designer's services the services of consultants, which are deemed necessary for the project. Typical consultants are architects, landscape architects, civil, structural, mechanical, and electrical engineers, and others required to provide the services required or implied by the scope of the project, compensation for which is included in designer's fee for basic services. Special consultants are those, other than the above, which the owner may approve to perform special services and for which compensation will be in accordance with §109.C.

Designer—a person or organization professionally qualified and licensed to practice architecture, engineering, or landscape architecture in accordance with the laws of the state of Louisiana, who is to perform basic services for the project, as named in the contract.

Owner—the State of Louisiana, Office of the Governor, Division of Administration, the responsibilities of which shall be exercised by the Commissioner of Administration or the designated representative, the Office of Facility Planning and Control (FP and C).

Project—a Capital Outlay Project for which funds have been appropriated or other public government project for which funds are available, as specifically defined in the program attached to and stated in the contract between owner and designer.

Standard of Care—the designer and their professional consultants shall perform their services consistent with the skill and care ordinarily provided by similar professionals practicing in the same or similar locality under the same or similar circumstances.

User Agency—the agency, department, division, board or institution which will be the principal user of and for which the facility is being designed and constructed, as named in the contract. Where reference is made hereinafter to the *user agency*, it will refer to both the "umbrella" and "local" entities of the department, board, agency, division, etc. (Examples: The LSU Board of Supervisors and the Department of Health are "umbrella" using agencies and "local" using agencies such as LSU-Alexandria and Pinecrest Support and Services Center are under their respective jurisdiction and administration).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:473 (September 1982), amended LR 11:849 (September 1985), LR 31:1076 (May 2005), LR 46:1567 (November 2020).

§105. Owner-User Agency Responsibilities

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:473 (September 1982), amended LR 11:849 (September 1985), LR 31:1076 (May 2005), LR 32:2047 (November 2006), repealed LR 46:1567 (November 2020).

§107. Available Funds for Construction (AFC)

A. The AFC, as defined by §103, shall be stated in the contract between owner and designer.

B. The designer shall be responsible for designing the project so that the base bid does not exceed the AFC. The use of any alternate bids must be pre-approved by the owner. The owner will take into consideration abnormal escalation in construction costs that can be substantiated prior to bid.

C.1. At the completion of the program completion phase the designer shall make recommendations regarding whether the AFC is realistic for the project when compared with the completed program. At this point, or at any other submissions of the project's statement of probable cost (construction cost estimate) by the designer, if such statement of probable cost is in excess of the AFC, the owner shall have the option to:

a. instruct the user agency to collaborate with the designer to revise the program so that the anticipated base bid will be within the AFC; such

program revisions shall be done without additional compensation to the designer, except for extensive program revisions authorized in writing by the owner;

b. provide additional funds to increase the AFC; or

c. abandon or suspend the project.

2. Any adjustment in the AFC, approved in writing by the owner during design shall include an appropriate adjustment in the fee. The fee shall not be modified at any time after advertising for bids, except as allowed per §109.A.1.d and §109.A.3.

D.1. When the lowest bona fide base bid exceeds the AFC, the owner shall have the option to:

a. have the designer, without additional compensation, modify the construction documents as required in order to rebid the project to be within the AFC;

b. provide additional funds to award the construction contract without adjustment of the fee if the project scope remains the same; or

c. abandon the project.

2. The lowest bona fide base bid is defined as the lowest base bid submitted by a responsible and responsive bidder, not withdrawn in accordance with R.S. 38:2214, and which complies in every respect with the bidding requirements of the contract documents.

E. When the lowest bona fide base bid is less than 90 percent of the AFC and the designer has reduced the original program scope to reduce costs, the owner shall have the option to have the designer, without additional compensation, modify the construction documents to restore elements of the program that were eliminated to reduce cost.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:474 (September 1982), amended LR 11:850 (September 1985), LR 31:1076 (May 2005), LR 32:2047 (November 2006), LR 46:1567 (November 2020).

§109. Compensation

A. The fee for basic services to be paid to the designer shall be as follows.

1. The fee for basic services, shall be calculated as the product of the fee percentage, adjusted for inflation, and the Available Funds for Construction (AFC), adjusted for inflation. The fee percentage shall be computed by the formula.

$$\text{FEE PERCENTAGE} = \frac{46.10}{\text{Log (AFC (1975 BCI/Current BCI))}}$$

The fee shall be computed by the following formula:

$$\text{FEE} = \text{FEE PERCENTAGE (AFC(1975 BCI/Current BCI)(Current CPI/1975 CPI)}$$

Where "BCI" = Building Cost Index as published by Engineering News Record and "CPI" = Consumer Price Index as published by U.S. Department of Labor, Bureau of Labor Statistics. Since the annual averages computed in December of the BCI and CPI are used, fee calculations are based upon the most current calendar year average of both indices.

a. Should fee modifications occur during the course of the project, the BCI and CPI index factors used to calculate the original fee shall be used.

b. If a project, through no fault of the designer, is inactive for more than 24 months, the current BCI and CPI index factors shall be applied to the project's remaining phases once re-activated, unless the new index factors reduce the fee. In that case, the index factors shall not be revised.

c. Multiple construction contracts. If the owner determines that the best interest of the project is served by bidding and constructing the project under two or more separate construction contracts, the design fee shall be established for each portion by application of the formula and modification factors herein.

d. Fee adjustments for alternates are as follows.

i. If an alternate, pre-approved by the owner, has a cost estimate within the AFC, the designer's compensation for said alternate is already included within the designer's base fee.

ii. If an alternate, pre-approved by the owner, has a cost estimate in excess of the AFC, the designer shall receive compensation for the value above the AFC for that portion of the phase completed as described in §111.A.1.a. (by increasing the AFC for designer fee purposes). If an alternate is based on a substitute system requiring additional design effort, then the total estimated cost shall be used in determining the AFC for design fee purposes for phases completed. If the scope contained in that alternate is not awarded at bid, but later included as a change order and the designer compensated per §111.A.1.a, the compensation shall be adjusted such that the designer shall not be compensated twice for the same work.

iii. If the lowest bona fide base bid, is less than 90 percent of the AFC, refer to §107.E regarding any additional compensation for alternates and change orders.

2. Modification Factors. Prior to selection, the owner shall have the discretion to evaluate the scope, function, complexity, image, and context of the project and apply modification factors listed below to the designer's compensation for basic services.

a. Complexity factor shall be based upon the complexity of the project scope as determined by the owner.

i. Simple (0.85 of basic compensation), to be determined by owner—single use projects generally of utilitarian character without complication or detail, such as pre-engineered buildings. Buildings with a high degree of repetition may be included in this classification.

ii. Average (1.00 of basic compensation), to be determined by owner—projects of conventional character requiring normal attention to design and detail, including complete mechanical and electrical systems.

iii. Medium complex (1.1 of basic compensation), to be determined by owner—projects of special character and/or function requiring an above average level of skill in design and containing more than ordinary requirements of scientific, mechanical and electrical equipment.

iv. Complex (1.15 of basic compensation), to be determined by owner—projects of highly specialized design character and function requiring a high degree of design skill

and requiring extensive, or special scientific, electronic, mechanical and electrical equipment and design expertise.

b. A renovation factor of up to 1.25 of applied fees, to be established and set by the owner for each individual project, will be multiplied by the fee percentage to arrive at the fee for renovation projects, when determined by the owner to be justified. This fee shall include verifying existing conditions and/or any other additional work incidental to renovation projects. The renovation factor will be set in proportion to additional work anticipated by the owner. The renovation factor will not be applied to reroofing projects, except in unusual circumstances.

c. An adjustment factor shall be applied, by the owner, based on the design phases required in relation to typical basic services as described in §111. If all design phases are required, the adjustment factor shall be 1.0. If design phases, based on those described in §111, are not required due to previous work, or for other reasons as determined by the owner, eliminated or reduced, then this factor may be reduced below 1.0, prior to designer selection, or negotiated with the designer if an existing contract is amended. If an adjustment factor less than 1.0 is applied, the reduction in total designer fee shall not be applied to each phase, but rather to reflect the phases reduced or eliminated, such that the designer earns the proper fee for work performed at each phase.

3. Change Orders. Preparation of documents required for change orders for any cause shall not be started without owner's written approval. Fee adjustments for change orders shall be as follows.

a. Routine change orders, which involve a small amount of effort, will not involve extra compensation. The designer shall notify and obtain the owner's prior written approval before preparing a change order for which he/she feels is due extra compensation for the extra effort involved. At the construction close-out phase, all such change orders will be reviewed by the owner and the designer's contract will be amended to reflect extra compensation for the change orders which the owner has determined merit additional fee. The fee will be computed by increasing the AFC (for designer fee purposes) by the amount of change orders that qualify for additional fee as described above and recalculating the fee.

b. Designer shall prepare change orders caused by errors or omissions of the designer without additional compensation. The designer shall be financially responsible for costs that result from errors. The owner shall participate in the cost of omissions to the extent of the value received by the owner. The designer will be notified of any claims of error or omission designations made to a change order prior to execution by the owner.

Errors—changes to the work caused by the designer for which the contractor is entitled to payment but for which the owner receives no value. Typically, these involve work that has been constructed and must be demolished and replaced. Therefore, where the owner receives no value, the designer is responsible for 100 percent of the cost.

Omissions—changes to the work caused by the designer for which the contractor is entitled to payment for which the owner receives value. Typically, these involve work that must

be added to contract with little or no change to the work that has been constructed.

B. Payment to the designer for additional services shall be made on the basis of a detailed scope of work, a proposal from the designer, and negotiations between the owner and designer. All additional services must be pre-approved in writing by the owner prior to start.

Direct Personnel Expense—if referenced as part of the designer's proposal, the normal, straight-time direct salaries of all the designer's personnel engaged in the project (technical but not clerical). This shall also include the direct salaries of designer's consultants involved in the additional services.

C. Reimbursable expenses are in addition to the compensation for basic and additional services and include actual expenditures made by the designer, his/her employees or professional consultants in the interest of the project as directed and authorized by the owner in writing prior to their occurrence.

1. The owner shall reimburse the designer the direct cost for all geotechnical investigations, topographic surveys, and other related information, prior approved by the owner and necessary for the design of the project.

2. The designer shall pay for the cost of printing and distribution of construction documents for the owner's and user agency's use, for regulatory agencies' approvals, and as required for the designer and consultant's own use. The owner will reimburse the designer the direct cost of printing and distribution of all other sets of construction documents, over and above the amount of the deposits on same retained by the designer. This will include necessary sets for the contractor to construct the project. If the designer proposes and the owner agrees to an alternative form of document distribution, such as an electronic format, the designer will be reimbursed the direct cost of this method in lieu of the reimbursement described above. The intent remains the same for the designer to bear costs for internal and consultant use.

D. Designer will be paid for prolonged contract administration and observation of construction should the contract time, as may be extended, be exceeded due to no fault of the designer and liquidated damages are required per the contract documents. The amount of such payment shall be computed by dividing 20 percent of the basic total fee by the number of days' construction time, as extended, and multiplying by the number of days of liquidated damages as required by the contract documents.

E. When the designer exceeds the established time schedule, including any extensions of time approved by the owner, unless the extension is due to actions by the owner or user, then the amount of the fee shall be reduced by an amount, as liquidated damages, as stated in the advertisement for designer's selection, for each calendar day past the original or extended date that the designer has not delivered all construction documents to the owner sufficiently complete, coordinated and ready to bid. Completeness of the construction document phase will be determined by the owner as described in §111.A.2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:474 (September 1982), amended LR 11:850 (September 1985), LR 31:1077 (May 2005), LR 32:2047 (November 2006), LR 46:1568 (November 2020).

§111. Payments to the Designer

A. Payments on account of designer's services shall be made as follows.

1. Basic Services

a. Upon satisfactory completion of all basic services for each phase, submission of all documents to the owner and upon the owner's and user's approval of same, which approval shall not be arbitrarily withheld, payment for the following phases of the designer's services will be made in one lump sum (with the exception of the construction documents phase as described below in Paragraph 2); such payments shall be up to the following percentages of the designer's fixed fee, either interim or final, as applicable, which percentages are cumulative.

Program completion phase	5 percent
Schematic design phase	15 percent
Design development phase	35 percent
Construction documents phase	60 percent
Bidding and contract phase	65 percent

b. Monthly in proportion to the contractor's certificate for payment for the following phase: Construction phase—95 percent.

c. Upon satisfactory completion and furnishing required documents to the owner for the following phase: Construction close-out phase—100 percent.

i. One percent of the designer's fee up to \$2,000 maximum may be withheld from construction close-out payment until completion of the one-year warranty inspection period.

2. A partial payment for the construction documents phase shall be made when the designer has completed 100 percent of the construction documents and has submitted these to the owner, the user agency, and the other required statutory agencies and the owner determines by inventory check and conformity that all required documents have been submitted, and are sufficiently complete, coordinated and ready to bid, then the designer shall be entitled to a payment of 80 percent of the fee for the construction documents phase. Should the owner's approval of the construction documents not be issued within 45 days of submittal due to no fault of the designer, then the designer shall be paid an additional payment of 10 percent of the fee for the construction documents phase. The balance of the fee for this phase will be due upon the completion of review by owner and user, when corrections have been made, and a complete set of bid documents are submitted to the owner. For projects with an AFC over \$10 million, interim payments up to 50 percent of the fee for the construction document phase may be made by agreement between the owner and the designer.

3. If any phase or phase payment is delayed through no fault of the designer, the owner and designer may negotiate a partial payment.

4. The designer shall promptly pay consultants. By signing the professional design services invoice, the designer agrees that all consultants will be promptly paid those amounts due them out of the amount paid to the designer within 45 days. Upon receipt of reasonable evidence of the designer's failure to pay consultants' amounts due them, the owner may withhold all or part of the designer's payment until the owner is satisfied that any amounts owed have been paid or otherwise settled.

B. Payments on account of designer's additional services and for reimbursable expenses shall be made on submission of designer's invoices with supporting data, and their written approval by owner and user agency and issuance of an amendment to the contract covering such services.

C. Payments to the designer on termination, abandonment or suspension shall be made in accordance with §§117 and 119, hereinafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:474 (September 1982), amended LR 11:851 (September 1985), LR 13:656 (November 1987), LR 31:1078 (May 2005), LR 46:1569 (November 2020).

§113. Designer's Services

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:475 (September 1982), amended LR 11:851 (September 1985), LR 31:1079 (May 2005), LR 32:2048 (November 2006), repealed LR 46:1569 (November 2020).

§115. Designer's Accounting Records

A. Records of direct reimbursable expenses and expenses pertaining to additional services on the project, and for services performed on the basis of multiplier times direct personnel expense, shall be kept on the basis of generally accepted accounting principles and shall be furnished and/or made available to the owner or the owner's authorized representative on request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:477 (September 1982), amended LR 11:854 (September 1985), LR 46:1569 (November 2020).

§117. Termination of Contract

A. The contract between owner and designer may be terminated by either party upon 30 days' written notice to the other party, should said other party fail to perform in accordance with its terms, through no fault of the terminating party, or the contract may be terminated by mutual consent.

B. In the event of termination by the owner due to failure of the designer to perform satisfactorily, the designer shall receive no compensation beyond that already paid or due for the last satisfactorily completed phase. Any work done shall become the property of the owner to be used at the owner's discretion without additional compensation to the designer. No compensation shall be paid to the designer for any uncompleted phase, except by written agreement between

owner and designer prior to termination. Such termination shall constitute the designer being held at fault under the terms of R.S. 38:2313(B)(5), which provides that problems with time delays, cost overruns or design inadequacies for which the designer is held to be at fault, shall be taken into account by the selection boards in considering past performance on public projects.

C. In the event the contract is terminated by mutual consent, the designer shall be paid for all work completed prior to termination, and all work done shall become the property of the owner to be used at the owner's discretion without additional compensation to the designer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:478 (September 1982), amended LR 11:854 (September 1985), LR 46:1569 (November 2020).

§119. Abandonment or Suspension

A. If any work designed or specified by the designer is abandoned or suspended in whole or part by the owner, the designer is to be paid for the services rendered up to receipt of written notice from the owner, as follows.

1. If the abandonment or suspension occurs at the completion of a phase, the designer shall submit to the owner all required deliverables and shall be paid the full amount due on completion of such phase as described in §111.A.1.

2. If the abandonment or suspension occurs during a phase, the designer shall submit to the owner all documents prepared by him/her up to receipt of written notice from the owner, and the owner shall compensate the designer up to the percentage completion of that phase.

B. Should the project be reactivated, the new fee will be computed on the basis of the revised AFC and §109.A.1.b if inactive for more than 24 months. The designer's fee for the phases of work required to complete the project shall be the percentages for such phases stated in §111.A.1 applied to the new fee. Any required code update or scope change may merit additional services per §109.B, as the anticipated project design effort warrants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:478 (September 1982), amended LR 11:854 (September 1985), LR 46:1569 (November 2020).

§121. Ownership of Documents

A. Per R.S. 38:2317, any and all plans, designs, specifications, or other construction documents resulting from professional services paid for by the owner shall remain the property of the owner whether the project for which they were prepared was constructed or not. If a project is terminated for any reason prior to completion of the project, electronic copies of the most current drawings and specifications shall be transmitted by the designer to the owner.

B. Upon completion of the project, record drawings (asbuilts) shall be furnished to the owner and the user agency. The designer shall have the right to re-use the construction documents on other projects not constructed for the owner.

C. The right of ownership provided for above shall not be transferable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control in LR 8:478 (September 1982), amended LR 11:854 (September 1985), LR 46:1571 (November 2020).

§123. Successors and Assigns

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:478 (September 1982), amended LR 11:855 (September 1985), repealed LR 46:1571 (November 2020).

§125. Extent of Agreement

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control in LR 8:478 (September 1982), amended LR 11:855 (September 1985), repealed LR 46:1571 (November 2020).

§127. Governing Law

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:478 (September 1982), amended LR 11:855 (September 1985), LR 31:1080 (May 2005), repealed LR 46:1571 (November 2020).

§129. Other Conditions

A. Insurance. Prior to the signing of the contract between owner and the designer, the designer shall furnish to the owner proof of coverage for the following.

1. Insurance. Professional liability insurance shall be required as per the owner's requirements on a project by project basis. Refer to Exhibit B of the contract for the extent of coverage required. Insurance will be required at the time of contract execution between the owner and the designer. Proof of coverage will be required at that time. No deductible shall be in excess of 5 percent of the amount of the policy.

2. Comprehensive general liability with minimum limits of \$500,000 per accident/occurrence.

3. Comprehensive automobile liability insurance with minimum limits of \$300,000 per accident/occurrence.

4. The designer shall provide a certificate of insurance as proof of workmen's compensation coverage.

B. Affidavit. The designer, on signing the contract, shall submit to the owner, on such form as the owner shall designate, a noncollusion affidavit.

C. When the time schedule has been established by the owner and designer, a completion date shall be set up for delivery of 100 percent completed, coordinated and ready to bid construction documents to the owner. If the designer is delayed through no fault of his/her own, then the completion date shall be extended accordingly, provided the designer makes such request in writing before starting the subsequent

phase and the owner approves such as justified. The designer shall continue to work during this process.

D. Non-Binding Mediation

1. In an effort to resolve any conflicts that arise during or following the completion of the project, the owner and the designer agree that all disputes between them arising out of or relating to this agreement shall be submitted to nonbinding mediation unless the parties mutually agree otherwise. If non-binding mediation is not successful, then arbitration is the only remedy available to all parties of the contract. Arbitration, mediation and/or any legal action resulting from this contract shall take place in East Baton Rouge Parish.

2. The owner and designer further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants to likewise include providing for mediation as the primary method for dispute resolution between the parties to those agreements.

3. If this non-binding mediation fails to resolve any conflicts, then the following arbitration clause shall take effect. All claims, disputes and other matters arising from the contract shall, at the option of the owner, be decided by arbitration. To the extent possible, such arbitration proceedings shall be conducted in accordance with the construction industry association rules of the American Arbitration Association. Any such arbitration proceeding shall, at the option of the owner, be consolidated with or joined to other arbitration proceedings between the owner and other persons or entities under contract with the state for the construction, repair or alterations of the project in question.

E. Fault. Time delays, cost overruns, design inadequacies or other problems with performance of the designer may result in the designer being held "at fault." The owner shall determine if the designer is to be held at fault as provided in R.S. 38:2313.B.(5).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:478 (September 1982), amended LR 11:855 (September 1985), LR 13:656 (November 1987), LR 31:1081 (May 2005), LR 46:1571 (November 2020).

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Director

2011#026

RULE

**Department of Insurance
Office of the Commissioner**

**Regulation 81—Automobile Liability Insurance Premium
Discount and Insurer Premium Tax Credit
(LAC 37:XIII.Chapter 95)**

The Department of Insurance, pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S.

49:950 et seq., has amended Regulation 81—Automobile Liability Insurance Premium Discount and Insurer Premium Tax Credit. The purpose of the amendment to Regulation 81 is to clarify the applicability and calculation of the discount offered through the insurance premium discount program for active military personnel based in Louisiana and to update statutory references that have changed due to recodification. This Rule is hereby adopted on the day of promulgation.

Title 37

INSURANCE

Part XIII. Regulations

**Chapter 95. Regulation Number 81— Automobile
Liability Insurance Premium Discount
and Insurer Premium Tax Credit**

§9501. Authority

A. This regulation is adopted pursuant to R.S. 22:11 and 22:1482.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 and R.S. 22:1482.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:673 (March 2005), amended LR 46:1572 (November 2020).

§9503. Purpose

A. The purpose of this regulation is to implement the provisions of Acts 2004, No. 770 of the Louisiana Legislature, Regular Session, as well as to implement the amendment thereto as set forth in Acts 2005, No. 408 of the Louisiana Legislature, Regular Session. The original law created an insurance premium discount program for active military personnel based in Louisiana. The amendment creates a program whereby an insurer is entitled to a tax credit against the premium taxes imposed under R.S. 22:838 and R.S. 22:831 for the amount of the military discount provided to qualified active military personnel for the liability portion of their personal automobile liability policy. Both laws require the commissioner to adopt a regulation to implement the military discount program and to develop procedures for an insurer to follow to claim a tax credit and for other related matters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 and R.S. 22:1482.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:673 (March 20, 2005), amended LR 32:94 (January 2006), LR 46:1572 (November 2020).

§9509. Definitions

A. For the purposes of this regulation the following terms shall have the meaning ascribed herein unless the context clearly indicates otherwise.

Active Military Personnel—

a. a single or married person who is based in this state and serving on full time active duty status in the military as a member of:

- i. the Army, Navy, Marine Corps or Air Force; or
- ii. the Reserve or National Guard; or
- iii. the Coast Guard.

b. *Active military personnel* who are deployed out-of-state or overseas whose spouse and dependents remain in this state shall be considered as based in this state for purposes