



State of Louisiana
Louisiana Department of Health
Office of Public Health

June 5, 2017

TO: The Honorable John A. Alario, Jr., President, Louisiana State Senate
The Honorable Fred H. Mills Jr. Chairman, Senate Health & Welfare Committee
The Honorable Eric LaFleur, Chairman, Finance Committee, Louisiana State Senate
The Honorable Taylor F. Barras, Speaker, House of Representatives
The Honorable Henry Cameron, Chairman, House Appropriations Committee
The Honorable Frank A. Hoffmann, Chairman, House Health & Welfare Committee
Catherine Brindley, Editor, Louisiana Register

FR: Rebekah E. Gee, M.D., M.P.H., Secretary

RE: **Second Legislative Oversight Report – Milk Laboratory**

Under the authority of R.S. 40:4 and 40:5, and in accordance with the Administrative Procedure Act (R.S. 49:950 et seq.), the State Health Officer, acting through the Louisiana Department of Health, Office of Public Health intends to amend Part I (General Provisions) of Title 51 Public Health -Sanitary Code regarding Milk Laboratory proposed changes.

The Louisiana Department of Health published a notice of intent in the April 20, 2017 issue of the Louisiana Register. A public hearing was held May 30, 2017. No members from the public were present to provide oral or written testimony. Program staff did not receive any written correspondence regarding the proposed amendments.

Subject to legislative oversight by either the House or Senate, LDH intends to adopt the notice of intent as a final rule in the July 20, 2017, issue of the Louisiana Register. Enclosed are copies of the following documents:

1. Public Hearing Certification.
2. Public Hearing Attendance Roster.
3. Public Hearing Posting.
4. Notice of Intent as published in the Louisiana Register, April 20, 2017.

If you have any questions, please contact Chief Sanitarian Tenney Sibley, DHH OPH Sanitarian Services Division at (225) 342-7550.

REG:MBS:JG:TS:amr-g

Attachments

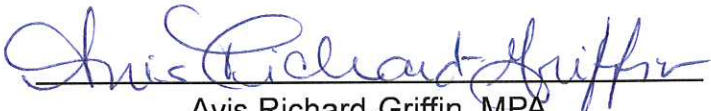
C: Jimmy Guidry, State Health Officer | M. Beth Scalco, Assistant Secretary, OPH | Avis Richard-Griffin, DHH/OPH Rulemaking Liaison Officer | Tenney Sibley, Chief Sanitarian, Sanitarian Services Division, OPH

Public Hearing Number: 2017-05-30-4

Topic: Public hearing held to receive public comments on amendments to Milk Products Laboratory Testing under Title 51 of the Louisiana Administrative Code. Under the authority of R.S. 40:4 and 40:5, and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the state health officer, acting through the Louisiana Department of Health, Office of Public Health (LDH-OPH), intends to reenact and amend parts of Section 309 of Part VII (Dairy Products Regulations) of Title 51. This Rule is being proposed to eliminate a current requirement that certain testing of raw milk samples be performed at a state-run facility. A public hearing was held at the Bienville Building, Room 173, 628 N. 4th Street, Baton Rouge, LA 70802.

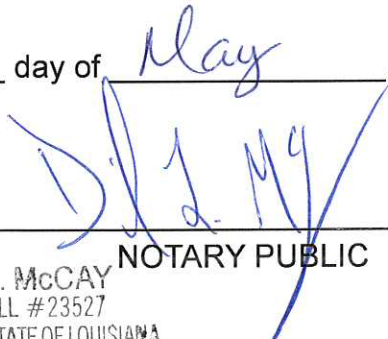
Attachments:

- Sign-In Sheet dated: May 30, 2017
- Public Hearing Posted Announcement
- Notice as published to the April 20, 2017 issue of the Louisiana Register



Avis Richard-Griffin, MPA
OPH Rulemaking Hearing Officer

SWORN TO BEFORE ME on this the 30 day of May, 2017.


NOTARY PUBLIC

DAVID L. McCAY
LA BAR ROLL #23527
NOTARY PUBLIC, STATE OF LOUISIANA
MY COMMISSION IS FOR LIFE

Printed Name of Notary Public

Bar Roll Number


Sign-in Sheet - May 30, 2017

Hearing Location: Bienville Building, 628 North Fourth Street, Room 173, Baton Rouge LA 70802, beginning at 10 a.m.

Sign-sheet dated: May 30, 2017. Topic: Public Hearing – Sanitary Code (multiple hearings shown below): Under the authority of R.S. 40:4 and 40:5, and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the state health officer, acting through the Louisiana Department of Health, Office of Public Health (LDH-OPH), the following rules are being proposed:

1. Preventive Health and Health Services Block Grant to receive public comments and input on the 2017 workplan.
2. Administrative Procedures (LAC 51:1. Chapter 1) to set forth the manner in which service of compliance orders and other matters required to be served or delivered to the respondents thereof may be accomplished.
3. Dairy Products (LAC 51:VII.101) amendments are being proposed to update the references to the most current version of the federal Food and Drug Louisiana Register Vol. 43, No. 04 April 20, 2017 806 Administration's Pasteurized Milk Ordinance (PMO) as well as revising certain references to the Code of Federal Regulations (CFR) cited in the text. Such amendments are required in order for LDH-OPH to be able to enforce the 2015 PMO regulations over the production and distribution of milk and dairy products.
4. Milk Products Laboratory Testing (LAC 51:VII.309) to reenact and amend parts of Section 309 of Part VII (Dairy Products Regulations) of Title 51. This Rule is being proposed to eliminate a current requirement that certain testing of raw milk samples be performed at a state-run facility.
5. Molluscan Shellfish Reuse (LAC 51:XXIII.2101) to amend Title 51, Public Health-Sanitary Code, Part XXIII (Retail Food Establishments), Chapter 21, (Equipment and Utensils), Section 2101, (General). This proposed action is necessary to assure that mollusk and crustacean shells are not used more than once as serving containers.
6. Notice of Parental Rights Form (LAC 48:V.12317) to ensure that following a fetal demise, parents are given notice of their rights to choose to provide for the disposition of any fetal remains as required by Act 59 of the 2016 Regular Legislative Session, the notice of parental Rights form and procedures are to be adopted to Part V (Preventive Health Services) of the Louisiana Administrative Code (LAC 48, Public Health—General).

Name/Title	Group/Business Representing	Postal or Email Address	(Area code) Phone Number
TENNEY Sibley/Prog Mgr	OPH - San Services	tenney.sibley@la.gov	225-342-7547
Silas Corkern	OPH - Env Services	SilasCorkern@la.gov	225-342-7510

Avis Richard-Griffin, MPA is the Rulemaking Hearing Officer for the Louisiana Department of Health Office of Public Health.	Signature of Hearing Officer: 	Date: 5/30/2017	Page 1 of 2
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Sign-in Sheet - May 30, 2017

Name/Title	Group/Business Representing	Postal or Email Address	(Area code) Phone Number
Kimberly B. Jones / H&B Director	BPCCH	Kimberly.Jones@h&b.gov	(225) 342-0057
Denise Howell	BPCCH	Denise.Howell@h&b.gov	(225) 342-1328
Avis Richard-Griffin	LDH	avis.richard-griffin@la.gov	(225) 342-9513

Avis Richard-Griffin, MPA is the Rulemaking Hearing Officer for the Louisiana Department of Health Office of Public Health.

Signature of Hearing Officer:

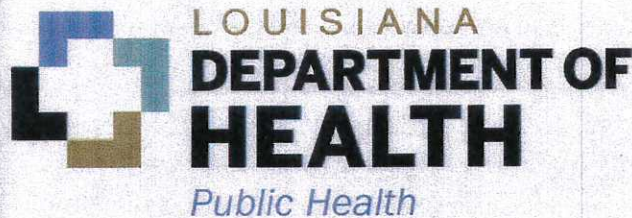
Avis Richard-Griffin

Date:

5/30/2017

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PUBLIC HEARING: MAY 30, 2017



AGENDA

**LDH Bienville Building
628 N. 4th Street, Room 173
Baton Rouge, LA 70802
Beginning at 10 a.m.**

Public Hearings will be held on Notices of Intent published in the April 20, 2017 issue of the Louisiana Register for the following proposed rules:

- 1. NOTICE OF INTENT :** Department of Health Office of Public Health Title 51 PUBLIC HEALTH—SANITARY CODE Part I. General Provisions Chapter 1. General §101. Definitions [formerly paragraph 1:001]
- 2. NOTICE OF INTENT:** Department of Health Office of Public Health Dairy Products (LAC 51:VII.101)
- 3. NOTICE OF INTENT:** Department of Health Office of Public Health Milk Products Laboratory Testing (LAC 51:VII.309)
- 4. NOTICE OF INTENT:** Department of Health Office of Public Health Molluscan Shellfish Reuse (LAC 51:XXIII.2101)
- 5. NOTICE OF INTENT:** Department of Health Office of Public Health Notice of Parental Rights Form (LAC 48:V.12317)

As published, the Public Hearings will begin at 10 a.m. on Tuesday, May 30, 2017, in Room 173 of the Bienville Building, 628 North Fourth Street, Baton Rouge, LA 70802.

Persons attending the hearing may have their parking ticket validated when one parks in the 7-story Galvez Parking Garage which is located between N. Sixth and N. Fifth / North and Main Streets. (cater-corner and across the street from the Bienville Building). All interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.*

PUBLIC HEARING: MAY 30, 2017

Section 101 of the Public Health Sanitary Code related to Regulation of Milk Products. The proposed rule change is essentially technical. In Section 101, the proposed rule modifies a number of definitions to specify appropriate citations of other documents, including the Code of Federal Regulations, the Pasteurized Milk Ordinance, and Methods of Making Sanitation Ratings of Milk Shippers.

It is not anticipated that the proposed action will result in any implementation costs to the state or local governmental units. The proposed rule changes will result in an estimated cost of \$373 to publish the notice of intent and final rule in the Louisiana Register. OPH has sufficient funds in its annual operating budget to implement the proposed rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no anticipated effects on revenue collections of state or local governmental units anticipated as a result of promulgating the proposed rule change.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs or benefits to any affected persons or non-governmental groups as a result of the proposed rule change.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no effects on competition and employment anticipated as a result of these proposed rule changes.

M. Beth Scalco
Assistant Secretary
1704#067

Evan Brasseaux
Staff Director
Legislative Fiscal Office

✓ **NOTICE OF INTENT**

**Department of Health
Office of Public Health**

Milk Products Laboratory Testing
(LAC 51:VII.309)

Under the authority of R.S. 40:4 and 40:5, and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the state health officer, acting through the Louisiana Department of Health, Office of Public Health (LDH-OPH), intends to reenact and amend parts of Section 309 of Part VII (Dairy Products Regulations) of Title 51. This Rule is being proposed to eliminate a current requirement that certain testing of raw milk samples be performed at a state-run facility.

Title 51

PUBLIC HEALTH—SANITARY CODE

Part VII. Dairy Products Regulations

Chapter 1. Milk and Dairy Products

§309. Laboratory Examination of Dairy Products

**Including Frozen Desserts and Tests for
Environmental Pathogens**

A. The following laboratory examinations shall be performed on milk and dairy products, including frozen desserts:

1. - 2. ...

3. Sediment tests, tests for aflatoxins, beta lactams, tetracyclines, sulfonamides, tests for added water and other tests determined to be necessary by the state health officer shall be performed on raw milk samples collected from each farm bulk milk tank truck load of raw milk that unloaded at

each dairy plant, transfer station and receiving station on two consecutive days during each consecutive six month period.

4. All raw milk samples collected from each farm bulk milk tank represented on each load of raw milk that was found to have a USDA sediment standard that exceed number three or was found to be positive for any of the other tests listed in §309.A.3 above shall be tested using the same test from which the sediment result that exceed three or the positive result on the other tests were obtained on the sample from the load of raw milk.

A.5. - C. ...

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2651 (September 2011), amended LR 43:

Family Impact Statement

After considering R.S. 49:972, it is anticipated that the proposed Rule change will have no effect on the:

1. family stability;
2. authority rights of parents regarding the education and supervision of their children;
3. family function;
4. family earnings and family budget;
5. behavior and personal responsibility of children; or
6. ability of the family or a local government to perform the function as contained in the proposed Rule.

Poverty Impact Statement

After considering R.S. 49:973, it is anticipated that the proposed Rule change will have no effect on the:

1. household income, assets, and financial security;
2. early childhood or education development;
3. employment or workforce development;
4. taxes and tax credits; or
5. child and dependent care, health care, nutrition, transportation, and utilities assistance.

Small Business Analysis

It is anticipated that the proposed Rule will not have a significant adverse effect on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental, and economic factors has considered and, where possible, utilized regulatory methods in drafting the proposed rule to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

Provider Impact Statement

After considering HCR 170 of the 2014 Regular Legislative Session, it is anticipated that the proposed Rule change will have no effect on the:

1. staffing level requirements or qualifications required to provide the same level of service;
2. total direct and indirect effect on the cost to the provider to provide the same level of service; or
3. overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments on the proposed Rule to Tenney Sibley, Director, Office of Public Health, Center for Environmental Services, P.O. Box 4489, Baton Rouge, LA 70821-4489, telephone: (225) 342-7550, or faxed to (225) 342- 7552. If comments are to be shipped or hand-delivered, please deliver to the Bienville Building,

628 N. 4th Street, Baton Rouge, LA 70802. Written comments will be accepted until 4:30 p.m., May 30, 2016.

Public Hearing

LDH-OPH will conduct a public hearing on May 30, 2017 beginning at 10 a.m. in room 173 of the Bienville Building located at 628 North Fourth Street, Baton Rouge, LA 70802. Persons attending the hearing may have their parking ticket validated when one parks in the 7-story Galvez Parking Garage which is located between N. 6th and N. 5th/North and Main Sts. (cater-corner and across the street from the Bienville Building). All interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

Jimmy Guidry, MD
State Health Officer
and
Rebecca E. Gee, MD, MPH
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Milk Products Laboratory Testing

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The Louisiana Department of Health (LDH), Office of Public Health (OPH) proposes to amend Title 51, Part VII of the Public Health Sanitary Code related to Regulation of Milk Products.

In Section 309 of Part VII of Title 51, the proposed rule repeals language that requires certain testing on raw milk samples be conducted at a state-run facility known as the Milk and Dairy Residue Monitoring Facility, which is housed at the new LDH laboratory in Baton Rouge. The testing required by the repealed language is already being performed by industry. Therefore, requiring additional testing to be performed specifically at the state-run laboratory is redundant and unnecessary.

OPH will inspect and verify that industry continues to test raw milk samples. Any cost savings resulting from no longer testing raw milk samples will be used to provide inspection and other public health services. Approximately half of the cost savings will be used to provide inspections and the remaining cost savings will be used for sanitarian services. The proposed rule changes will result in an estimated cost of \$639 to publish the notice of intent and final rule in the Louisiana Register. OPH has sufficient funds in its annual operating budget to implement the proposed rule. It is not anticipated that the proposed action will result in any costs to local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no anticipated effects on revenue collections of local governmental units anticipated as a result of promulgating the proposed rule change.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs or benefits to any affected persons or non-governmental groups as a result of the proposed rule change. Testing is already being performed by the industry.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no effects on competition and employment anticipated as a result of these proposed rule changes.

M. Beth Scalco
Assistant Secretary
1704#066

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health Office of Public Health

Molluscan Shellfish Reuse (LAC 51:XXIII.2101)

Under the authority of R.S. 40:4 and 40:5, and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the state health officer, acting through the Department of Health, Office of Public Health (LDH-OPH), intends to amend Title 51, Public Health—Sanitary Code, Part XXIII (Retail Food Establishments), Chapter 21, (Equipment and Utensils), Section 2101, (General). This proposed action is necessary to assure that mollusk and crustacean shells are not used more than once as serving containers. The proposed changes are as follows.

Title 51

PUBLIC HEALTH—SANITARY CODE

Chapter 21. Equipment and Utensils

§2101. General

[formerly paragraph 22:13]

A. ...

B. Mollusk and crustacean shells may not be used more than once as serving containers. This prohibition does not apply to the removal of the animal from the shell for preparation then returning the same animal to the same shell for service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:324 (February 2002), repromulgated LR 28:1417 (June 2002), amended LR 28:2532 (December 2002), amended by the Department of Health, Office of Public Health, LR 43:

Family Impact Statement

After considering R.S. 49:972, it is anticipated that the proposed Rule change will have no effect on the:

1. family stability;
2. authority rights of parents regarding the education and supervision of their children;
3. family function;
4. family earnings and family budget;
5. behavior and personal responsibility of children; or
6. ability of the family or a local government to perform the function as contained in the proposed Rule.

Poverty Impact Statement

After considering R.S. 49:973, it is anticipated that the proposed Rule change will have no effect on the:

1. household income, assets, and financial security;
2. early childhood or education development;