

NOTICE OF INTENT

Department of Health and Hospitals Office of Public Health

Backflow and Cross Connection Control in Water Supplies (LAC 51:XII.344 and 346)

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 and Hospitals, Office of Public Health (DHH-OPH), intends to amend Part XII (Water Supplies) of the Louisiana state *Sanitary Code* (LAC 51). The amendments are necessary to ensure that public water supplies continue to protect their water systems from backflow and cross connections which may occur on customer premises and which can cause contamination of the water supply.

As required by Act 836 of the 2014 Regular Legislative Session, Part XIV (Louisiana state Plumbing Code) of the Louisiana state *Sanitary Code* (LAC 51, *Public Health—Sanitary Code*) became null and void on January 1, 2016. In accordance with the Act, the Louisiana state Uniform Construction Code Council (LSUCCC) promulgated new state plumbing regulations through an emergency rule under the state Uniform Construction Code (LAC 17:I). Before January 1, 2016, comprehensive backflow protection/cross connection control regulations designed to protect public health applicable to plumbing were contained in Part XIV (Plumbing) of the state *Sanitary Code*. Effective January 1, 2016, some of these same backflow protection/cross connection control regulations applicable to plumbing have been adopted by the LSUCCC under the state Uniform Construction Code, particularly within the 2012 *International Plumbing Code* and within the 2012 *International Residential Code* (see December 20, 2015 *Louisiana Register*, Volume 41, page 2545).

The state health officer, through DHH-OPH, finds it necessary to promulgate a Rule that finalizes the requirements of an Emergency Rule (the “ER”) concerning cross connection control/protection of the water supply which became effective on February 23, 2016. This Rule maintains the requirements of the ER which amended Part XII (Water Supplies) of Title 51 (*Public Health—Sanitary Code*) in order to direct public water systems to utilize the backflow and cross connection control regulations contained in the state Uniform Construction Code. Prior to the adoption of the ER, Part XII was outdated because it directed water suppliers to Part XIV of the state *Sanitary Code* relative to protecting its system from backflow and cross connections on customer premises. As mentioned above, plumbing regulations formerly contained under Part XIV of the state *Sanitary Code* have been repealed effective January 1, 2016.

In addition, the ER adopted comprehensive qualification requirements for persons involved in installing, repairing, testing, and maintaining backflow prevention devices and methods. This Rule keeps those requirements in place to ensure that all persons involved in the installation, repair, testing and maintenance of backflow prevention devices are qualified to perform such work.

For these reasons, Part XII (Water Supplies) of the Louisiana state *Sanitary Code* (LAC 51:XII) is proposed to be amended as follows.

Title 51

PUBLIC HEALTH—SANITARY CODE

Part XII. Water Supplies

Chapter 3. Water Quality Standards

§344. Protection of Water Supply/Containment

Practices

A. As used in this Section, “mandatory containment practices” means the containment practices prescribed in and required by the state Uniform Construction Code, LAC 17:I, including maintenance and testing requirements, and any additional or related requirements of this Part.

B. In order to protect its water supply from potential contamination, each water supplier shall develop and implement a written backflow prevention plan outlining the policies and procedures it will use to verify that its customers comply with mandatory containment practices, and shall make a reasonable effort to ensure that only customers who comply with mandatory containment practices connect or remain connected to its water supply.

C. Unless otherwise directed by the state health officer, a water supplier shall disconnect or refuse to connect customers who:

1. fail to comply with mandatory containment practices; or
2. fail to provide or allow adequate confirmation of such compliance.

D. If a water supplier has a reasonable basis to believe that an unprotected or improperly protected cross connection exists on the premise of any customer not required to comply with mandatory containment practices, the water supplier shall take reasonable steps to perform one or more of the following:

1. confirm that the cross connection on the premise is eliminated or does not exist;
2. confirm that approved fixture isolation backflow protection is installed at the cross connection on the premise in accordance with the fixture isolation practices prescribed in and required by the state Uniform Construction Code (LAC 17:I);
3. confirm that approved containment backflow protection is installed; or
4. discontinue water service to the customer.

E. When deemed necessary to protect public health, the state health officer may issue an administrative order or emergency order requiring a water supplier to comply with this Section.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(8) and 40:5(A)(2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:2795 (November 2012), amended LR 42:

§346. Installer, Repairer, Tester and Maintainer Qualifications for Backflow Prevention Devices and Methods

A. Installer/Repairer/Maintainer Qualifications. Backflow preventers shall be installed, repaired and/or maintained by a state Plumbing Board of Louisiana (SPBLA) -licensed plumber who holds an SPBLA water supply protection specialist endorsement on his/her plumbing license pursuant to R.S. 37:1361 et seq., and its implementing regulations (LAC 46:LV.101 et seq.).

Backflow preventers associated with a landscape irrigation system may be installed, repaired and/or maintained by a Horticulture Commission of Louisiana-licensed landscape irrigation contractor who holds an SPBLA-issued special water supply protection specialist endorsement in accordance with R.S. 3:3808(P). Backflow preventers located on public property or otherwise under the complete control of the water supplier (for example, water meter and the piping upstream of the water meter, if provided), may be installed, repaired and/or maintained by a backflow prevention assembly repairer who meets the ASSE 5130-2009 (backflow prevention assembly repairer professional qualification standard) or other individuals holding a backflow prevention assembly repairer certificate from a nationally recognized backflow certification organization approved by the state health officer.

B. Field Tester Qualifications. Backflow preventers shall be tested by a state Plumbing Board of Louisiana (SPBLA) - licensed plumber who holds an SPBLA water supply protection specialist endorsement on his/her plumbing license pursuant to R.S. 37:1361 et seq., and its implementing regulations (LAC 46:LV.101 et seq.); or, by a backflow prevention assembly tester who meets ASSE 5110-2009 (backflow prevention assembly tester professional qualification standard), or other individuals holding a testing certificate from a nationally recognized backflow certification organization approved by the state health officer. Backflow preventers associated with a landscape irrigation system may be tested by a Horticulture Commission of Louisiana-licensed landscape irrigation contractor who holds an SPBLA-issued special water supply protection specialist endorsement in accordance with R.S. 3:3808(P).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8) and R.S. 40:5(A)(2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 42:

Family Impact Statement

1. The effect on the stability of the family. The stability of the family would be severely affected should one or more family members experience illness or death from contaminated drinking water caused by backflow due to a cross connection. The intent of the adoption of this Rule is to help to ensure that all family members are provided safe drinking water by continuing to properly authorize water suppliers to adopt and enforce a backflow and cross connection control program for their water supply system.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. None.

3. The effect on the functioning of the family. The functioning of the family would be severely affected should one or more family members experience illness or death from contaminated drinking water caused by backflow due to a cross connection. The intent of the adoption of this Rule is to help to ensure that all family members are provided safe drinking water by continuing to properly authorize water suppliers to adopt and enforce a backflow and cross connection control program for their water supply system.

4. The effect on the family earnings and family budget. The affect on the family earnings and family budget would be severely effected should one or more family members experience illness or death from contaminated drinking water caused by backflow due to a cross

connection. The intent of the adoption of this Rule is to help to ensure that all family members are provided safe drinking water by continuing to properly authorize water suppliers to adopt and enforce a backflow and cross connection control program for their water supply system.

5. The effect on the behavior and personal responsibility of children. None.

6. The ability of the family or local government to perform the function as contained in the proposed Rule. No additional impact is expected on the family to perform the function as contained in the proposed Rule because residential customer's homes have been and continue to be required free of cross connections under both the old and the new state plumbing regulations. In fact, the new state plumbing regulations adopted on January 1, 2016 by the Louisiana state Uniform Construction Code Council (LSUCCC) contain less cross connection control regulations for residential customers than had the prior Department of Health and Hospitals plumbing regulations (which were repealed on January 1, 2016). Therefore, the ability of the family to perform the function of this Rule is somewhat easier as compared to the plumbing regulations that existed prior to January 1, 2016 because certain cross connection control regulations, particularly as regards containment devices for certain types of cross connections which may exist in some residences, have now been eliminated under the new LSUCCC plumbing regulations.

Local governmental units which own or operate a public water system are already required to have a cross connection control program; however, the existing Rule in Part XII (Water Supplies) of the Louisiana state *Sanitary Code* refers water suppliers to the old state plumbing code regulations which have now been repealed effective January 1, 2016. The intent of this Rule now points water suppliers to seek the new plumbing code regulations adopted by the LSUCCC's new plumbing regulations which were adopted and are effective on January 1, 2016.

Poverty Impact Statement

1. The effect on household income, assets, and financial security. A positive effect on household income, assets, or financial security is expected because the new state plumbing regulations adopted on January 1, 2016 by the Louisiana state Uniform Construction Code Council (LSUCCC) contain less cross connection control regulations for residential customers than had the prior Department of Health and Hospitals plumbing regulations (which were repealed on January 1, 2016). Therefore, the effect on household income, assets, and financial security to perform the function of this Rule has been lessened as compared to the plumbing regulations that existed prior to January 1, 2016 because certain cross connection control regulations, particularly as regards containment devices for certain types of cross connections which may exist in some residences, have now been eliminated under the new LSUCCC plumbing regulations.

2. The effect on early childhood development and preschool through postsecondary education development. There will be no effect on childhood development and preschool through postsecondary education development.

3. The effect on employment and workforce development. Please refer to Part IV of the Fiscal and Economic Impact Statement contained elsewhere in this Notice of Intent.

4. The effect on taxes and tax credits. Certain cross connection control regulations, particularly as regards containment devices for certain types of cross connections which may exist in some residences, have now been eliminated under the new LSUCCC plumbing regulations effective January 1, 2016. In as much as these households no longer have to purchase, install, test or maintain such containment devices, any taxes previously required to be paid for such devices will no longer be collected. There will be no affect on tax credits.

5. The effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance. There will be no affect on child and dependent care, housing, nutrition, transportation, and utilities assistance. In as much as preventative public health regulations have now been lessened effective January 1, 2016 by the adoption of the new state plumbing regulations by the LSUCCC, health care costs for low income households potentially could increase should the public water supply become contaminated because of the lessening of previous public health standards regarding plumbing and cross connection control regulation

Small Business Analysis

In accordance with the Regulatory Flexibility Act (R.S. 49:965.2-965.8), this small business regulatory flexibility analysis and small business economic impact statement is being submitted for the rules and regulations proposed for adoption, amendment, or repeal (proposed Rule). The summary statement, which is based on the attached worksheet, will be published in the *Louisiana Register* with the proposed rules and regulations. The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered.

The Office of Public Health's Engineering Services Section does not expect that adoption of the proposed amendments will have a significant economic impact on a substantial number of small business entities.

1. Regulatory Flexibility Analysis. The Office of Public Health's Engineering Services Section has performed a regulatory flexibility analysis for the revision of Part XII of the state sanitary code. DHH-OPH does not expect that the proposed Rule change will have significant economic impact on a substantial number of small businesses.

2. Small Business Economic Impact Statement. A small business economic impact statement has not been prepared because it is estimated that the proposed Rule is not expected to have a significant adverse impact on a substantial number of small businesses.

3. Notice to Department of Economic Development. No notice of intent to adopt the proposed Rule has been provided to the Department of Economic Development because it is estimated that the adoption and promulgation of the proposed Rule is not expected to have a significant adverse impact on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. Per HCR 170, "provider" means an organization that provides services for individuals with developmental disabilities. In particular, there should be no known or foreseeable:

1. effect on the staffing level requirements or qualifications required to provide the same level of service;
2. total direct and indirect effect on the cost to the providers 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. Such comments must be received no later than Monday, May 30, 2016 at COB, 4:30 p.m., and should be addressed to Amanda Laughlin, Chief Engineer, Engineering Services Section, Office of Public Health, P.O. Box 4489, Baton Rouge, LA 70821-4489, or faxed to (225) 342-7303. If comments are to be shipped or hand-delivered, please deliver to the Bienville Building, 628 North Fourth Street, Room 132, Baton Rouge, LA 70802.

Public Hearing

DHH-OPH will conduct a public hearing at 9 a.m. on Wednesday, May 25, 2016, in Room 118 of the Bienville Building, 628 North Forth Street, Baton Rouge, LA. Persons attending the hearing may have their parking ticket validated when one parks in the 7-story Galvez parking garage which is located between North Sixth and North 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.

Rebekah E. Gee MD, MPH
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Backflow and Cross Connection Control in Water Supplies

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

The proposed rule revises LAC 51:XII (Water Supplies) by amending Section 344 (Protection of Water Supply/Containment Practices) and adding a new Section 346 (Installer, Repairer, Tester and Maintainer Qualifications for Backflow Prevention Devices and Methods). In accordance with Act 836 of the 2014, Part XIV (Louisiana State Plumbing Code) of the Louisiana State Sanitary Code [LAC 51 (Public Health Sanitary Code)] became null and void on January 1, 2016. Backflow and cross connection control regulations on customer premises were formerly contained within the Plumbing Code that was repealed. In order to address repealed regulations, the proposed rule directs public water systems to utilize the backflow and cross connection control regulations adopted within the Louisiana State Uniform Construction Code (LSUCC) when implementing their cross connection control program for their water system. Also, the proposed rule implements new regulations to ensure that all persons involved in the installation, repair, testing and maintenance of backflow prevention devices are qualified to perform such work.

The Office of Public Health does not anticipate that the proposed action will result in any additional implementation costs to state or local governmental units. The proposed rule changes will result in an estimated cost of \$800 (\$480 in FY 15-16 and \$320 in FY 16-17) to publish the notice of intent and final rule in the Louisiana Register. OPH has sufficient funds to implement the proposed action.

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 changes.

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

The 2012 International Plumbing Code and the 2012 International Residential Code, published by the International Code Council (ICC), were adopted by reference under the Louisiana State Uniform Construction Code (LSUCC). The LSUCC contains model plumbing regulations (inclusive of backflow and cross connection control regulations) for the state. Water suppliers will have to obtain state-issued amendments to these model regulations. Access to such codes and amendments thereto is free by use of the Internet.

However, water suppliers may voluntarily purchase hard copies of the ICC model codes should note that the current cost for non-members of the ICC is \$87.00 for the 2012 IPC and \$128.00 for the 2012 IRC (soft cover book prices). The LSUCCC will, according to state law (R.S. 40:1730.26.3), have to evaluate and update the most recently ICC-published editions of the IPC and IRC no later than 5 years from the date of publication by the ICC. Therefore the LSUCC will have to adopt the 2015 editions of the IPC and IRC with applicable state amendments no later than May 30, 2019. For non-members of the ICC, the current soft cover book prices for the 2015 editions of the IPC and IRC are \$87.00 and \$128.00 respectively. This cost, for those whom decide to purchase copies, is expected every 3 to 5 years thereafter when yet newer ICC codes are published.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule implements regulations to ensure that all persons involved in the installation, repair, testing and maintenance of backflow prevention devices are qualified to perform such work. If the proposed rule is not adopted, then the qualifications for persons installing, repairing, testing and maintaining backflow prevention devices and methods will default to only the laws and regulations applicable to or adopted by the State Plumbing Board of Louisiana and the Horticulture Commission of Louisiana. Since some areas of the state have limited number of licensed plumbers and irrigation contractors, some public water systems would be unable to comply with backflow protection and cross connection control guidelines.

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