



LOUISIANA DEPARTMENT OF INSURANCE

JAMES J. DONELON
COMMISSIONER

February 11, 2014

The Honorable John A. Alario
President of the Senate
P.O. Box 94183
Baton Rouge, LA 70804

HAND DELIVERED

The Honorable Charles E. "Chuck" Kleckley
Speaker of the House
P.O. Box 94062
Baton Rouge, LA 70804

HAND DELIVERED

The Honorable Dan "Blade" Morrish
Senate Committee on Insurance
P.O. Box 94183
Baton Rouge, LA 70804

HAND DELIVERED

The Honorable Greg Cromer
House Committee on Insurance
P.O. Box 94062
Baton Rouge, LA 70804

HAND DELIVERED

RE: Public Hearing—Proposed Amendments to Regulation 66 – Requirements
for Officers, Directors, and Trustees of Domestic Regulated Entities

Dear President Alario, Speaker Kleckley, Senator Morrish and Representative Cromer:

The Louisiana Department of Insurance (LDI) 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 December 10, 2013, Notice of Intent (NOI), captioned as "Regulation 66 – Requirements for Officers, Directors, and Trustees of Domestic Regulated Entities."

The LDI originally scheduled a public hearing regarding the proposed amendments to Regulation 66 for Wednesday, January 29, 2014 at 10:00 a.m. in the Poydras Hearing Room at the LDI, but because of an office closure due to a winter storm, the hearing was postponed until Wednesday, February 5, 2014 at 10:00 a.m.

The purpose of the public hearing was to afford all interested persons the reasonable opportunity to submit data, views, comments, or arguments, orally or in writing, regarding the NOI to amend Regulation 66. From 10:00 a.m. until 10:30 a.m. on the date of the hearing, the undersigned was present at the Poydras Hearing Room at the LDI, but no member of the public appeared.

The purposes of the amendments are to update the requirements and applicability of Regulation 66 in light of legislation that has passed since the initial promulgation of Regulation 66, to clarify and enumerate items to be submitted pursuant to Regulation 66, and to enable officers, directors, and trustees of domestic regulated entities to address, resolve, and report potential conflicts of interest.

Other than one request for a copy of the proposed amendments, there have been no oral or written comments or submissions received by the LDI regarding the proposed amendments since the NOI was published, nor were any presented at the public hearing. The LDI recommends that the proposed amendments to Regulation 66 should be adopted as presented in the NOI. Subject to legislative oversight by either the House or Senate Insurance Committees, the LDI intends to submit a Rule to the offices *Louisiana Register* for publication.

For your review and consideration, the LDI is attaching a copy of the original Notice of Intent regarding Regulation 66 as it appeared in the *Louisiana Register* on December 20, 2013. All statutory references in the NOI were updated to reflect the re-codification of Title 22 which became effective on January 1, 2009 pursuant to Acts 2008, No. 415, § 1.

Thank you for your consideration of this matter, and please contact me at (225) 342-5750 or ccoulter@ldi.la.gov if you have any questions or comments.

Sincerely,



John S. "Chip" Coulter
Louisiana Department of Insurance

Enclosure:

Notice of Intent to amend Regulation 66
(*Louisiana Register* Vol 39, No. 12; December 20, 2013)

considered. The proposed action includes revision of the state Sanitary Code to include the recommendations resulting from a recent evaluation of DHH, OPH's molluscan shellfish program which was conducted by a shellfish specialist with the United States Food and Drug Administration (USFDA). It is estimated that the proposed rulemaking is not expected to have a significant adverse impact on small businesses; however, failure to adopt the proposed Rule would likely lead to an adverse impact on small businesses because fishers and dealers of oysters and other mollusks would be unable to legally sell some of their harvest to out-of-state firms and individuals. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable USFDA recommendations while minimizing the adverse impact of the proposed Rule on small businesses.

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

Public Comments

In addition, all interested persons are invited to submit written comments on the proposed Rule. Such comments must be received no later than Tuesday, February 25, 2014, at COB, 4:30 p.m., and should be addressed to Gordon Leblanc, Sanitarian 7, Sanitarian Services-Molluscan Shellfish Program, Office of Public Health, mail bin #10, box 16, P.O. Box 4489, Baton Rouge, LA 70821-4489 or faxed to (225) 342-7607. If comments are to be shipped or hand-delivered, please deliver to the Bienville Building, 628 North Fourth Street, room 155, Baton Rouge, LA 70802.

Public Hearing

DHH, OPH will conduct a public hearing at 10 a.m. on Tuesday, February 25, 2014, in Room 118 of the Bienville Building, 628 North Fourth 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 and 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.

Kathy H. Kliebert
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Shellstock Refrigeration

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

The proposed Rule amends Title 51, Part IX, Marine and Fresh Water Animal Food Products, of the *Louisiana Administrative Code* to comply with the National Shellfish Sanitation Program Model Ordinance refrigeration requirements for shellstock.

The proposed Rule will result in an estimated one-time cost of \$491 to publish the Notice of Intent and the final Rule in the *Louisiana Register*. The Office of Public Health (OPH) has

sufficient funds to implement the proposed action. There is no impact anticipated by this proposed action on local government.

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

There will be no effect on revenue collections of state or local governmental units as a result of the proposed Rule change.

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

Shellstock harvesters will be directly affected by the proposed action. Harvesters will have to identify each lot of shellstock by harvesting tags prior to placing under refrigeration limiting the possibility of switching tags. As a result, these proposed Rule changes may result in additional records to be kept by the harvesters. However, since this activity is part of harvester's operations currently, the department anticipates the cost to be minimal. There could also be additional costs associated with fines and penalties imposed by the Louisiana Department of Wildlife and Fisheries for those individuals who harvest illegally.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Failure to adopt this proposed Rule could have a significant impact on employment in the private sector because it is anticipated that shellstock harvesters and dealers would be unable to continue to sell their raw product in interstate commerce.

J.T. Lane
Assistant Secretary
1312#052

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Insurance Office of the Commissioner

Regulation 66—Requirements for Officers, Directors,
and Trustees of Domestic Regulated Entities
(LAC 37:XIII.Chapter 51)

Under the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., notice is hereby given that the Department of Insurance proposes to amend Regulation 66. The purposes of the amendment are to update the requirements and applicability of Regulation 66 in light of legislation that has passed since the initial promulgation of Regulation 66, to clarify and enumerate items to be submitted pursuant to Regulation 66, and to enable officers, directors, and trustees of domestic regulated entities to address, resolve, and report potential conflicts of interest.

Title 37 INSURANCE

Part XIII. Regulations

Chapter 51. Regulation 66—Requirements for Officers, Directors, and Trustees of Domestic Regulated Entities

§5101. Authority

A. Regulation 66 is promulgated pursuant to the authority vested in the commissioner under the Louisiana Insurance Code, R.S. 22:1 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 258, 372, 392, 467, 1772, 1804, 1922, and 2198, R.S. 23:1200.1, and R.S. 33:1348 and 1358.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:78 (January 1999), amended LR 40:

§5103. Purpose

[Formerly §5101]

A. The purpose of Regulation 66 is to require that officers, directors and trustees of domestic regulated entities, as herein defined, file biographical and other applicable, relevant, and appropriate information with the commissioner for review and approval. The purpose of this review and approval is to determine and ensure that a domestic regulated entity continues to meet minimum standards with regard to its officers, directors, and trustees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 258, 372, 392, 467, 1772, 1804, 1922, and 2198, R.S. 23:1200.1, and R.S. 33:1348 and 1358.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:78 (January 1999), amended LR 40:

§5105. Scope and Applicability

A. Regulation 66, as amended, shall apply to all individuals serving as an officer, director, or trustee of a domestic regulated entity and to all individuals nominated or otherwise suggested for such positions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 258, 372, 392, 467, 1772, 1804, 1922, and 2198, R.S. 23:1200.1, and R.S. 33:1348 and 1358.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:78 (January 1999), amended LR 40:

§5107. Definitions

[Formerly §5103]

A. For the purpose of Regulation 66, the following definitions shall be applicable.

Director—person(s) designated in the articles of incorporation, by-laws, or other organizational documents as such, and person(s) designated, elected, or appointed by any other name or title to act as *director(s)*, and their successor(s).

Domestic Regulated Entity—any Louisiana domiciled entity which is required to obtain a license or certificate of authority from or register with the commissioner. This definition shall include, but is not limited to, all *domestic regulated entities* such as stock and mutual insurers, domestic captive insurers, mutual holding companies, non-profit funeral service associations, domestic service insurers, reciprocal insurers, Lloyd's plans, fraternal benefit societies, viatical settlement providers, viatical settlement investment agents, viatical settlement brokers, vehicle mechanical breakdown insurers, property residual value insurers, health maintenance organizations, risk indemnification trusts, third party administrators, interlocal risk management agencies, or any plan of self-insurance providing health and accident or workers compensation coverage to employees of two or more employers. This term shall not include motor vehicle rental insurers, insurance agencies, brokers, managing general agents, producers, reinsurance intermediary brokers, claims adjusters, public adjusters, or insurance producers acting as viatical settlement brokers pursuant to R.S. 22:1792(A)(1).

Officer—a president, vice-president, treasurer, secretary, controller, actuary, partner, and any other person who performs for the domestic regulated entity a part of the substantive functions corresponding to those performed by the foregoing *officers*. *Officer* shall also include the administrator of a plan of self-insurance providing health and accident or workers' compensation coverage to employees of two or more employers or a risk indemnification trust.

Trustee—the *trustee* of a trust, which provides health and accident or workers' compensation coverage to employees of two or more employers or of a risk indemnification trust.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 258, 372, 392, 467, 1772, 1804, 1922, and 2198, R.S. 23:1200.1, and R.S. 33:1348 and 1358.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:78 (January 1999), amended LR 40:

§5109. Review of Officers, Directors and Trustees by Commissioner Required

[Formerly §5105]

A. No person shall serve as an officer, director, or trustee of a domestic regulated entity who has not first submitted the information required by §5111 to the commissioner or to whom, after review of the information required by §5111, the commissioner has refused to issue a letter of no objection.

B. No domestic regulated entity may elect, appoint or otherwise accept as an officer, director, or trustee any individual who has failed to submit the information required by §5111 to the commissioner or to whom, after review of the information required by §5111, the commissioner has refused to issue a letter of no objection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 258, 372, 392, 467, 1772, 1804, 1922, and 2198, R.S. 23:1200.1, and R.S. 33:1348 and 1358.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:78 (January 1999), amended LR 40:

§5111. Procedure for Requesting Letter of No Objection from Commissioner

[Formerly §5107]

A. Each person elected, appointed or who otherwise becomes an officer, director or trustee of a domestic regulated entity shall, within 30 days of being elected, appointed, or otherwise chosen, submit to the commissioner a request for a letter of no objection regarding his service in that capacity. The request shall be made by the domestic regulated entity, in writing, in a form approved by the commissioner.

B. Each request for a letter of no objection shall include:

1. a biographical affidavit;
2. a third party background verification;
3. fingerprints submitted by card or electronic means;
4. a statement from the domestic regulated entity indicating the position for which the individual has been elected, appointed, or otherwise chosen;
5. a sworn statement from the individual confirming that he has no conflict of interest which would interfere with his service in the position or confirmation from the domestic regulated entity that the individual has disclosed any

conflicts to that entity and that the entity has waived any such conflicts; and

6. a true copy of an acceptance of trust, an oath of office, or other such document signed by the individual. The form of these documents shall include a sworn statement that the individual agrees to abide by and direct the activities of the domestic regulated entity in compliance with all applicable provisions of the statutory and regulatory laws of Louisiana.

C. The commissioner may request additional information to determine the competence, experience, and integrity of the individual and to ensure that the individual will not jeopardize the policyholders, members of the domestic regulated entity, or of the public.

D. The fingerprint card and any criminal background information obtained pursuant to Regulation 66 shall be maintained by the fraud section of the department as confidential and shall not be subject to public disclosure pursuant to R.S. 22:1929.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 258, 372, 392, 467, 1772, 1804, 1922, and 2198, R.S. 23:1200.1, and R.S. 33:1348 and 1358.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:79 (January 1999), amended LR 40:

§5113. Conditions for Refusal of Letter of No Objection [Formerly §5109]

A. The commissioner may refuse to issue a letter of no objection if he finds:

1. the competence, experience, and integrity of the individual are such that it would not be in the best interest of policyholders, members or clients of the domestic regulated entity, or of the public to allow the person to serve in the proposed position;

2. the individual has been convicted of, has pled guilty or *nolo contendere* to, or has participated in a pretrial diversion program pursuant to any charge of any felony or misdemeanor involving moral turpitude, public corruption, or a felony involving dishonesty or breach of trust;

3. the individual knowingly makes a materially false statement or omission of material information in the request for a letter of no objection;

4. any other reason now or hereinafter as applicable statutes and regulations may provide.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 258, 372, 392, 467, 1772, 1804, 1922, and 2198, R.S. 23:1200.1, and R.S. 33:1348 and 1358.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:79 (January 1999), amended LR 40:

§5115. Waiver of Submission of Biographical and Other Applicable, Relevant, and Appropriate Information [Formerly §5111]

A. The commissioner may waive the requirement that an individual submit a biographical affidavit, third party background verification, and fingerprint card under the following conditions:

1. the individual has served as an officer, director, or trustee of a domestic regulated entity for a period of five consecutive years; or

2. the individual has received a letter of no objection from the commissioner within one year of being elected,

appointed, or otherwise chosen as an officer, director, or trustee, and the individual has attested to the fact that no material change has occurred in the biographical and other applicable, relevant, and appropriate information submitted in support of that request.

B. Individuals who qualify for a waiver of the submission of the biographical and other applicable, relevant, and appropriate information must submit a true copy of the conflict of interest statement required by §5111.B.5, and the acceptance of trust, oath of office, or other such document signed by the individual, witnessed, and notarized, as required by §5111.B.6.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 258, 372, 392, 467, 1772, 1804, 1922, and 2198, R.S. 23:1200.1, and R.S. 33:1348 and 1358.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:79 (January 1999), amended LR 40:

§5117. Rescission of Letter of No Objection

A. The commissioner may rescind a letter of no objection if he finds that the individual submitted materially false information or omitted any material information in association with the request for a letter of no objection, or if subsequent events occur that cause the commissioner to question the competence, experience, and integrity of the individual, or if the individual has been convicted of, has pled guilty or *nolo contendere* to, or has participated in a pretrial diversion program pursuant to any charge of any felony or misdemeanor involving moral turpitude, public corruption, or a felony involving dishonesty or breach of trust.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 258, 372, 392, 467, 1772, 1804, 1922, and 2198, R.S. 23:1200.1, and R.S. 33:1348 and 1358.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 40:

§5119. Effective Date

A. Regulation 66, as amended, shall become effective on April 1, 2014.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 258, 372, 392, 467, 1772, 1804, 1922, and 2198, R.S. 23:1200.1, and R.S. 33:1348 and 1358.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 40:

Family Impact Statement

1. Describe the effect of the proposed regulation on the stability of the family. The proposed regulation should have no measurable impact upon the stability of the family.

2. Describe the effect of the proposed regulation on the authority and rights of parents regarding the education and supervision of their children. The proposed regulation should have no impact upon the rights and authority of children regarding the education and supervision of their children.

3. Describe the effect of the proposed regulation on the functioning of the family. The proposed regulation should have no direct impact upon the functioning of the family.

4. Describe the effect of the proposed regulation on family earnings and budget. The proposed regulation should have no direct impact upon family earnings and budget.

5. Describe the effect of the proposed regulation on the behavior and personal responsibility of children. The

proposed regulation should have no impact upon the behavior and personal responsibility of children.

6. Describe the effect of the proposed regulation on the ability of the family or a local government to perform the function as contained in the Rule. The proposed regulation should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in the Rule.

Poverty Impact Statement

1. Describe the effect on household income, assets, and financial security. The proposed regulation should have no effect on household income assets and financial security.

2. Describe the effect on early childhood development and preschool through postsecondary education development. The proposed regulation should have no effect on early childhood development and preschool through postsecondary education development.

3. Describe the effect on employment and workforce development. The proposed regulation should have no effect on employment and workforce development.

4. Describe the effect on taxes and tax credits. The proposed regulation should have no effect on taxes and tax credits.

5. Describe the effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance. The proposed regulation should have no effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance.

Small Business Statement

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

1. Identification and Estimate of the Number of the Small Businesses Subject to the Proposed Rule. The proposed regulation should have no measurable impact upon small businesses.

2. The Projected Reporting, Record Keeping, and Other Administrative Costs Required for Compliance with the Proposed Rule, Including the Type of Professional Skills Necessary for Preparation of the Report or Record. The proposed regulation should have no measurable impact upon small businesses.

3. A Statement of the Probable Effect on Impacted Small Businesses. The proposed regulation should have no measurable impact upon small businesses.

4. Describe any Less Intrusive or Less Costly Alternative Methods of Achieving the Purpose of the Proposed Rule. The proposed regulation should have no measurable impact on small businesses; therefore, will have no less intrusive or less cost alternative methods.

Public Comments

Interested persons may submit written comments on the proposed amendments to Regulation 66 until 5 p.m., Wednesday, January 29, 2014, to Chip Coulter, Division of Legal Services, Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804.

Public Hearing

A public hearing on the proposed amendments to Regulation 66 will be held Wednesday, January 29, 2014, at 10 a.m. in the Poydras hearing room at the Louisiana Department of Insurance, 1702 North Third Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

James J. Donelon
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Regulation 66—Requirements for Officers, Directors, and Trustees of Domestic Regulated Entities

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

There is no anticipated direct material effect on state or local governmental expenditures as a result of the proposed changes to Regulation 66 with regard to requirements for officers, directors and trustees of domestic regulated entities. The purpose of the proposed amendment is to update the requirements and applicability of Regulation 66 in light of legislation that has passed since its initial promulgation and to ensure that a domestic regulated entity continues to meet minimum standards with regard to its officers, directors and trustees.

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

The proposed amendment will have no impact on state or local governmental revenues.

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

The proposed amendment could minimally impact directly affected persons or non-governmental groups.

There are approximately 147 active domestic entities that would be subject to the proposed regulation. These entities will be required to provide a third party background verification for each person elected, appointed or who otherwise becomes an officer, director or trustee of a domestic regulated entity. The minimal costs of the third party background verification are approximately \$230 to \$270.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed Rule change should have no impact upon competition and employment in the state.

Denise Brignac
Deputy Commissioner
1312#050

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office