

# Notices of Intent

## NOTICE OF INTENT

### Department of Agriculture and Forestry Office of Forestry

Forestry Productivity Program  
(LAC 7:XXXIX.Chapter 13)

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Office of Forestry, proposes to amend rules and regulations regarding the Louisiana Forest Productivity Program.

The proposed rule establishes increased maximum cost-share rates for two practices related to reforestation. These increases will allow the department to comply with the intent of the legislation and reimburse landowners with a full 50 percent of the cost of these practices. The proposal also increases the initial implementation period for approved practices from 18 months to 24 months, and eliminates the procedure for requesting an additional 6-month extension. This change will reduce the paperwork and confusion among program participants, and assure that landowners have two full tree planting seasons to complete their approved practices.

These rules comply with and are enabled by R.S. 3:4412 and R.S. 3:4413.

#### Title 7

### AGRICULTURE AND ANIMALS

#### Part XXXIX. Forestry

#### Chapter 13. Forestry Productivity Program

#### §1307. Extent of State Participation

A. Financial assistance by the state to any one landowner participating in this program shall be limited to a total value of \$10,000 during a fiscal year.

B. The state's participation under any cooperative agreement shall be limited to either or both of the following types of assistance:

1. a direct grant, for the purpose of assisting the landowner in implementing an approved forestry practice authorized by a cooperative agreement through the use of the landowner's resources or through the landowner's contacts with private firms; or

2. utilization of the state's personnel, equipment, or materials to implement an approved forestry practice authorized by a cooperative agreement, if private sector services are unavailable.

C. A direct grant shall not exceed 50 percent of the cost of implementing the cooperative agreement or the maximum cost share rates established by these regulations, whichever is less. In the event that state personnel, equipment or materials are utilized to implement an approved forestry practice the landowner shall be invoiced by the department for the cost of implementing the forestry practice. The landowner shall promptly pay such invoice and may subsequently submit the paid invoice for reimbursement under this program and these rules and regulations.

D. The maximum cost share rates are established as follows.

Maximum Cost-Share Rates 50 Percent of the Cost Not to Exceed the Following Rates		
<b>FPP1</b>	<b>Artificial Regeneration Component</b>	
<b>Code</b>	<b>Tree Planting</b>	<b>Maximum C/S Rate</b>
01	Pine (loblolly or slash, planting and seedling cost)	\$40/acre
02	Hardwood (planting and seedling cost)	\$70/acre
03	Labor Only (pine or hardwood)	\$23/acre
04	Longleaf Pine (planting and seedling cost)	\$65/acre
<b>Direct Seeding</b>		
05	Pine (seed and labor cost)	\$12/acre
06	Hardwood (seed and labor cost)	\$28/acre
<b>Site Preparation</b>		
11	Light (discing, mowing, or sub-soiling)	\$10/acre
12	Burn Only (cut-over areas or agricultural lands)	\$8/acre
13	Chemical and Burn (aerial, ground, or injection)	\$60/acre
14	Mechanical and Burn	\$75/acre
15	Post-site Preparation (aerial, ground, or injection)	\$45/acre
<b>FPP2</b>	<b>Site Preparation for Natural Regeneration</b>	
21	Burning Only	\$8/acre
22	Chemical or Mechanical	\$45/acre
23	Chemical and Burning	\$60/acre
<b>FPP3</b>	<b>Control of Competing Vegetation</b>	
31	Chemical Release (aerial, ground, or injection)	\$45/acre
32	Precommercial Thinning (mechanical)	\$45/acre
33	Burning Only (longleaf pine)	\$4/acre

E. The commissioner, with the advice of the State Forester's Forestry Planning Committee, shall review annually the cost share rates established in this Section and determine if any of the rates require adjustment.

F. The state shall not provide reimbursement under this program for any forestry practice implemented by a landowner unless a cooperative agreement is on file with the department prior to implementation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4412 and R.S. 3:4413.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:1679 (September 1998), amended by the Office of Forestry, LR 28:

#### §1315. Forestry Practice Implementation Period

A. Each landowner shall have 24 months to complete the forestry practice or practices authorized by the cooperative agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4413 and R.S. 3:4415.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:1680 (September 1998), amended by the Office of Forestry, LR 28:

### Family Impact Statement

The proposed amendment to LAC 7:XXXIX.Chapter 13 regarding the Louisiana Forest Productivity Program should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on:

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

Interested persons should submit written comments on the proposed rules to Donald Feduccia through the close of business on November 26, 2001, at P.O. Box 1628, Baton Rouge, LA 70821 (5825 Florida Boulevard, Baton Rouge). No preamble regarding these rules is necessary.

Bob Odom  
Commissioner

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Forestry Productivity Program

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
There will be no additional implementation costs or savings to state or local governments required by the implementation of this action. The proposed rule increases the rate at which the Office of Forestry allocates funds from the Forest Productivity Program. Total allocations are limited to severance tax revenue statutorily dedicated to the program. Although available revenue and landowner requests will fluctuate annually, funds paid out for these affected practices would increase as a result of this action.
- 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 this action.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
Recipients of FPP cost-share payments for the practices affected by this change will be allowed to receive increased payments which will more accurately meet the 50-percent cost-share intentions of the program. However, if the rate of program revenue were fixed, then these additional payments would result in a lower number of approved plans and acres treated in total.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
No effect on competition on employment.

Skip Rhorer	Robert E. Hosse
Assistant Commissioner	General Government Section Director
0110#093	Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Civil Service Division of Administrative Law

Hearing Procedures CAdjudication  
(LAC 4:III.Chapters 1-7)

Notice is hereby given, in accordance with R.S. 49:950 et seq., that the Division of Administrative Law, pursuant to authority vested in the Director by R.S.49:996(7) and in accordance with applicable provisions of the Administrative Procedure Act, proposes to adopt rules establishing hearing procedures to regulate DAL adjudications. These rules are intended to supplement procedures already existing in the Administrative Procedure Act.

These proposed rules have no known impact upon family stability or autonomy as described in RS. 49:972.

#### Title 4

#### ADMINISTRATION

#### Part III. Division of Administrative Law

#### Chapter 1. General Rules

#### §101. Purpose

A. Adjudications conducted by the Division of Administrative Law shall be governed by the Administrative Procedure Act (APA), R.S. 49:950 et seq., and the Division of Administrative Law Act, R. S. 49:991 et seq. To the extent that these rules are not in conflict with other statutory authority, this Chapter establishes additional procedures for regulating adjudications conducted by the Division. These rules are not intended to be a comprehensive guide for Division hearings but are intended only as a supplement to the APA. Adjudications conducted pursuant to federal law or R.S. 49:999.1, may be governed by other rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by Department of Civil Service, Division of Administrative Law, LR 28:

#### §103. Definitions

A. The following terms used in this Chapter shall have the meanings listed below, unless the context otherwise requires, or unless specifically redefined in a particular section.

*Administrative Hearings Clerk* the person who, directly or through his/her designee, maintains custody of and receives filings to the adjudicatory record for the Division.

*Division* the Division of Administrative Law.

*Pleading* a petition, motion, response, request or any statement of position filed in connection with an adjudication or appeal.

*Referring Agency* the state agency for which an adjudicatory hearing is being held.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:

**§105. Conflicts**

A. Except as otherwise required by law, this Chapter shall govern procedures used in Division adjudications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:

**§107. Severability**

A. If any provision of these rules, or the application thereof, is held to be invalid, the remaining provisions shall not be affected, so long as they can be given effect without the invalid provision. To this end, the provisions of these rules are declared to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:

**§109. Computation of Time**

A. In computing any period of time prescribed or allowed in these rules, except where otherwise required by law, the day on which the designated period begins shall not be included. The last day of the designated period shall be included unless it is a Saturday, Sunday, or a legal holiday as provided in R.S. 1:55, in which event the designated period shall run until the end of the next day which is not a Saturday, Sunday, or a legal holiday.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:

**Chapter 3. Filing and Notices**

**§301. Administrative Hearings Clerk**

A. The administrative hearings clerk shall be the official custodian of adjudicatory records for the Division. The clerk shall certify copies of official documents in his/her custody; distribute decisions, recommendations, orders, subpoenas, and notices issued by the administrative law judges; and perform other duties as assigned by the director.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:

**§303. Docket Number**

A. At the time a request for docketing or hearing is received by the Division, the matter shall be assigned a docket number. The docket number shall be used on all subsequent pleadings, amendments or supplements filed in the case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:

**§305. Official Recordings; Copies of Official Recordings; Transcripts**

A. The Division shall make an official recording of the hearing.

B. Copies of tapes shall be available for purchase from the administrative hearings clerk.

C. A verbatim transcript shall be made when requested by a party or required by law. Requests for a transcript shall be in writing and submitted to the administrative hearings clerk. The administrative hearings clerk will furnish an estimate of the transcription costs. The estimated costs must

be paid before the recording will be transcribed. Actual costs must be paid in full before delivery of the transcript.

D. When a transcript of any part of the proceeding has been made, the original shall be filed into the adjudicatory record.

E. Copies of public records held by the Division may be purchased pursuant to Division of Administration regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:

**§307. Filing of Pleadings and Documents**

A. Any pleading, document or other item which is being filed into the adjudicatory record shall be filed by hand delivery, mail, or if less than 25 pages, by facsimile transmission with the administrative hearings clerk.

B. Unless otherwise provided by law, all pleadings, documents or other items shall be deemed filed on the date received by the administrative hearings clerk. Receipt of a filing by facsimile transmission on or before the due date shall be considered as timely filed, provided the original document is filed into the adjudicatory record within five working days of receipt of the facsimile.

C. Parties requesting discovery shall serve such requests on any other party, his/her counsel of record, or other designated representative, but discovery requests shall not be filed in the record of the proceedings. The party responsible for service of the discovery materials shall retain the original and become the custodian of such materials. The provisions of this Section shall not be construed to preclude the filing of any discovery materials as exhibits or as evidence in connection with a motion or hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:

**§309. Notices**

A. This section shall apply to notices of hearings, orders, decisions and other pertinent documents sent by the Division.

B. Notices shall be sent by regular mail unless otherwise required by law. Notices may be sent to the counsel of record only. Otherwise, notices are sent to the party's last known address as filed in the adjudicatory record. Parties shall promptly send address changes to the Division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:

**§311. Pleadings Form and Content**

A. Unless otherwise required by law, pleadings should:

1. state the name, mailing address and telephone number of the person filing the pleading, and his/her attorney bar roll number, if applicable;

2. be legibly written in ink, typewritten or printed with one-inch top, bottom and side margins and should be on strong durable white paper, no larger than 8 1/2 by 11 inches;

3. be divided into separately numbered paragraphs and double-spaced;

4. state clearly, concisely and particularly all relevant facts that support the relief sought;

5. state the relief sought;
6. when appropriate, identify any statute, regulation, rule, written statement of law or policy, decision, order, permit, or license and the particular aspect of each upon which the pleading relies;
7. be signed in ink by the party filing same or by his or her duly authorized agent or attorney. The signature of the person signing the document constitutes a certification that he or she has read the document and that, to the best of his or her knowledge, information and belief, every statement contained in the document is true; and
8. certify that service has been made in accordance with these rules.
  - B. The heading should be similar in format to and shall include the information contained in the following example:

STATE OF LOUISIANA  
DIVISION OF ADMINISTRATIVE LAW

DEPARTMENT OF \_\_\_\_\_ \*

\*

\*

IN THE MATTER OF \_\_\_\_\_ \* DOCKET NO. :

\*

\*

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(TITLE OF PLEADING)

C. The certificate of service should be similar in format to and shall include the information contained the following example:

I certify that a copy of this document has been sent to all parties of record by (mail, fax, hand delivery) on this \_\_ day of \_\_, 200\_\_.

D. Failure to comply with this Section shall not invalidate the pleadings, but the administrative law judge shall have discretion to rule whether pleadings are in substantial compliance with this Section, to require the amendment or supplementation of any pleading, or to take such other action as may be appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:

**§313. Service of Pleadings**

A. Except where otherwise required by law, on or before the day that a pleading is filed with the administrative hearings clerk, service of same shall be made by the party who prepared the pleading, upon all other parties, attorneys or designated representatives by hand delivery, mail or facsimile transmission to the other party at the number designated for facsimile transmission.

B. Unless otherwise provided herein, service by mail or by facsimile transmission is effective on the date mailed or transmitted. Personal or domiciliary service is effective when delivered or tendered, even if delivery is refused.

C. When a party is represented by an attorney or other designated representative or has appointed an agent for service of process, notice may be given to the party through the attorney, other designated representative or agent.

D. Service on a party or person shall be given at the last known address filed into the adjudicatory record. Any party

or person shall timely file into the adjudicatory record notice of any change of address.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:

**Chapter 5. Adjudications**

**§ 501. Administrative Law Judge: Regulating Adjudications**

A. The administrative law judge shall have the authority to regulate the course of the proceedings and maintain order in accordance with R.S. 49:994.D.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:

**§503. Commencement of Adjudications**

A. A case is commenced for purposes of this Chapter upon the filing of a docketing or hearing request with the administrative hearings clerk by a party or a referring agency accompanied by a notice of violation or request for a hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:

**§505. Location of Hearings**

A. Hearings will be held in the venue required by statute.

B. Department of Public Safety, Office of Motor Vehicle hearings held pursuant to R.S. 32:661 et seq., will be scheduled in one of the following regions: where the arrest was made, where the attorney is located, or where the police officer is assigned if the officer is subpoenaed.

C. Unless a statute requires otherwise, the location of hearings will be determined by the Division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:

**§507. Telephone Hearings**

A. The administrative law judge may designate that all or any portion of a proceeding be conducted by telephone, unless prohibited by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:

**§509. Representation**

A. Parties shall have the right to retain counsel but shall not be required to do so. Counsel seeking to withdraw from the representation of a party shall file a Motion to Withdraw. Leave to withdraw shall not be withheld unreasonably.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:

**§511. Consolidation**

A. When two or more adjudications involving common issues of law or fact are separately pending before the Division, the administrative law judge, upon his or her own motion or that of any party, at any time prior to the adjudicatory hearing, may order the consolidation of the matters or may order a joint hearing on any of the common issues. If the matters are pending before two or more

administrative law judges, the approval of each administrative law judge is required. The matter with the higher docket number shall be transferred to the administrative law judge to whom the matter with the lower docket number was assigned.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:

### §513. Separation of Actions

A. Upon motion of the administrative law judge or of any party, the administrative law judge may separate actions, which were cumulated or consolidated if separation would simplify the proceedings, permit a more orderly disposition of the matter, or otherwise be in the interest of justice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:

### §515. Continuances

A. Except where otherwise prohibited by law, a continuance may be granted in any case for good cause shown. Motions for continuance should be in writing.

AUTHORITY NOTE: Promulgated in accordance with R. S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:

### §517. Motions

A. Any party may file motions relating to an adjudication.

B. Except as otherwise permitted by the administrative law judge, all motions, other than those made during a hearing or conference, shall be submitted in writing and served on all parties as provided in §123 of these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:

### §519. Subpoenas

A. The Division shall order the issuance of a subpoena upon written request of a party and compliance with the requirements of this rule.

B. Unless otherwise provided, to request the issuance of a subpoena, the following procedure shall be followed.

1. The subpoena shall be prepared and served by the requestor who shall file the return of service into the adjudicatory record. In Department of Public Safety/Office of Motor Vehicles cases the subpoena shall be prepared by the administrative hearings clerk and delivered to the appropriate law enforcement agency to be served upon the witness.

2. A request on behalf of any party shall be accompanied by a check or money order to cover witness fees pursuant to R.S. 49:956(5), R.S. 13:3662.A (law enforcement officers), LAC 55.III.201, or other applicable law. Witness fees for experts shall be set by the administrative law judge in accordance with R.S. 49:950 et seq. The check or money order shall be made payable to each witness subpoenaed, or as provided for law enforcement witnesses.

3. Additional witness fees must be submitted in order for a subpoena to be reissued due to a continuance or other reason.

4. The subpoena should include the following:
  - a. the heading contained in §311.B of these rules;
  - b. the name of the party and the representative or attorney requesting the subpoena;
  - c. the docket number of the case;
  - d. the complete name, service address (with directions if necessary), and telephone number of the person being subpoenaed;
  - e. a sufficient description of any document or item to be produced; and
  - f. the date, time, place and proceeding for which the subpoena is requested.

C. A subpoena adapted from the Louisiana Code of Civil Procedure formulary is acceptable. Sample subpoena forms are available from the administrative hearings clerk.

D. Failure of a witness to appear or respond to a subpoena will not be grounds for a continuance or dismissal unless Paragraph B.1 above has been complied with, and the request for the subpoena was received by the Division at least 10 days before the date required for appearance, production or inspection. However, the administrative law judge may grant a continuance when the interest of justice requires it.

E. Only the administrative law judge may dismiss a witness who appears at a hearing pursuant to a subpoena issued by the Division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:

### §521. Discovery

A. Any party to a proceeding may conduct discovery in all manners as provided by law in civil actions as provided by R.S. 49:956.

B. In the interest of administrative economy, the parties should first attempt to obtain discovery by agreement or through the Public Records Act, R.S. 44:1 et seq.

C. The administrative law judge, for good cause, may issue any order to protect a party or person from annoyance, embarrassment, oppression, disclosure of confidential information, undue burden or expense.

D. The following Section applies only in cases adjudicated pursuant to the Louisiana Implied Consent Law, R.S. 32:661 et seq.

1. Requests for discovery should be made at the same time as the request for hearing.

2. Failure to request discovery at the time the hearing request is filed may result in a continuance if a response is not timely received, but not necessarily a dismissal of the case.

AUTHORITY NOTE: Promulgated in accordance with R. S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:

### §523. Exhibits

A. Maps, drawings and other exhibits should not exceed 8 1/2 by 14 inches unless they are folded or reduced to the required size.

B. During the hearing, copies of exhibits should be furnished to the administrative law judge and all parties, unless the administrative law judge rules otherwise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:

**§525. Confidentiality**

A. Except as otherwise provided by law, all portions of adjudicatory records are subject to review by all parties and the general public.

B. A motion for protective order, or other request to limit discovery, may be considered as a request for confidentiality. In the event a protective order is issued or discovery is otherwise limited, the administrative law judge may designate in writing as confidential that portion of the adjudicatory record necessary to enforce the provisions of the protective order.

C. Any portion of the adjudicatory record deemed to be confidential by statutory authority should be brought to the attention of the Division in order to help ensure the confidentiality of that portion of the record.

AUTHORITY NOTE: Promulgated in accordance with R. S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:

**§527. Prehearing Order**

A. The administrative law judge may require, prior to the adjudicatory hearing, that the parties submit a joint proposed prehearing order approved and signed by all parties or their counsel of record. Except as otherwise ordered by the administrative law judge, the proposed prehearing order should set forth the following:

1. a brief but comprehensive statement of the factual and legal contentions of each party;
2. a list of the legal authority (including statutes, code articles, regulations and cases) to be relied upon by each party at the adjudicatory hearing;
3. a detailed itemization of all pertinent uncontested facts established by pleadings, stipulations and admissions;
4. a detailed itemization of all contested issues of fact;
5. a list of all contested issues of law;
6. a list and brief description of all exhibits to be offered in evidence by each party. Exhibits to be used solely for impeachment or rebuttal need not be included on the list;
7. a list naming the fact witnesses and the expert witnesses each party may call and a short statement as to the nature of their testimony. Witnesses to be called solely for impeachment or rebuttal need not be included on the list;
8. a list of all matters to be officially noticed;
9. a statement by each party as to the estimated length of time necessary to present its case;
10. all other stipulations;
11. a list of all pending motions;
12. a statement as to any other matters that may be relevant to a prompt disposition of the case;
14. the following certification: "We hereby certify that we have conferred for the purpose of preparing this joint proposed prehearing order and that we have no objections to the contents of this prehearing order other than those attached hereto"; and this order:

"IT IS ORDERED that this matter be set for hearing at \_\_\_\_\_ o'clock, \_\_\_\_M. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ and to continue thereafter until completed."

ADMINISTRATIVE LAW JUDGE

B. In the event that any party disagrees with the proposed prehearing order, or any part thereof, he shall attach to the order a signed statement of his opposition and reasons therefor but shall, nevertheless, sign the joint proposed prehearing order which shall be deemed to be approved in all respects except those covered in the statement of opposition.

C. The person who has certified the prehearing order should attend the prehearing conference and the adjudicatory hearing. Any counsel or other representative attending the prehearing conference shall be knowledgeable of aspects of the case and possess the necessary authority to commit his client, associate counsel and witnesses to changes, stipulations and hearing dates.

D. At the conclusion of the prehearing conference, the administrative law judge shall sign the order setting the case for the adjudicatory hearing. Thereafter no amendments to the prehearing order shall be made except at the discretion of the administrative law judge based upon consent of the parties or for good cause shown. If a party fails to cooperate in preparing or filing a prehearing order, the administrative law judge may proceed with the prehearing conference, sign the prehearing order as drafted, continue the prehearing conference, continue the hearing, or order such other action as necessary to facilitate the hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by Department of Civil Service, Division of Administrative Law, LR 28:

**§529. Rehearing, Reopening, Reconsideration**

A. Unless otherwise provided by law, a decision on the merits shall become final as to any party thirty days after mailing of the notice unless a petition for reconsideration, reopening or rehearing is filed with the Division within ten days from date of mailing pursuant to R.S. 49:959.

B. Any requests for reconsideration, reopening or rehearing shall be granted or denied by the administrative law judge who originally decided the case or any judge to whom the matter is subsequently assigned.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:

**§531. Termination of Adjudications; Voluntary Withdrawal; Involuntary Waiver; Failure to Appear; Abandonment**

A. The administrative law judge may issue an order terminating an adjudication based upon voluntary waiver, withdrawal of the request for a hearing, rescission by the agency of the underlying action, settlement, stipulation, consent order, or any other procedure allowed by law.

B. In accordance with R.S. 49:955.A, a party who requests an administrative hearing may be deemed to have waived its right to a hearing if after having been provided with reasonable notice the party fails to appear on the day and time set for hearing. In such instances, the rule to show cause, hearing request, or the party's appeal may be dismissed based on the party's waiver of the right to a hearing. The order of dismissal shall be mailed to the party's last known address.

C. Abandonment

1. Except as otherwise provided by law, an action is abandoned when the parties fail to take any step in its prosecution or defense for a period of three years.

2. This provision shall be operative without formal order. However, on ex parte motion of any party, other interested person or the administrative hearings clerk, supported by affidavit, the administrative law judge shall enter an order of dismissal as of the date of its abandonment.

3. The affidavit shall specify that no step has been taken for a period of three years in the prosecution or defense of the action.

4. The order shall be mailed to all parties, and the parties shall have thirty days from date of mailing to move to set aside dismissal based on a showing of good cause.

5. Any formal discovery as authorized by these rules and the Administrative Procedure Act and served on all parties, whether or not filed of record, including the taking of a deposition with or without formal notice, shall be deemed to be a step in the prosecution or defense of an action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:

**Chapter 7. Mediation**

**§701. Mediation**

A. Any party may request a pre-trial mediation conference.

B. Mediation shall not be conducted over the objection of a party.

C. The administrative law judge to whom the case was originally assigned shall not conduct the mediation. The order setting the matter for mediation shall designate another administrative law judge to act as mediator.

D. Each party, representative or attorney shall negotiate in good faith, and be prepared to obtain the authority necessary to settle and compromise the litigation. The mediator may permit telephone appearances in lieu of a personal appearance for good cause and convenience of the parties.

E. Mediation shall not unduly delay the hearing schedule. The presiding administrative law judge may continue scheduled dates on motion of a party or on his/her own motion.

F. Confidentiality of mediations shall be governed by R.S. 9:4112.

G. Each party or representative should submit information sufficient to explain the gist of the case to the assigned mediator at least one day prior to the conference. The submittals need not be in any certain form and may consist of any documents, exhibits or writings the party wishes the mediator to consider before the conference. The mediator may use all statements, documents, exhibits or other types of information submitted, as he/she deems appropriate to foster settlement unless a party has expressly stated otherwise.

H. The mediator shall not draft settlement agreements. Agreements may be recited on the record before the presiding administrative law judge and later reduced to writing by the parties or their representatives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:

**Family Impact Statement**

Promulgation of DAL Procedural Rules has the following effect upon:

1. the stability of the family
2. the authority and rights of parents regarding the education and supervision of their children
3. the functioning of the family
4. family earnings and family budget
5. the ability of the family or a local government to perform functions a contained in the proposed rule

Interested persons may submit written comments on the proposed rules until 5:00 p.m., November 20, 2001, to Vivian Guillory, Deputy General Counsel, Division of Administrative Law, P.O. Box 44033, Baton Rouge, LA 70804-4033.

Ann Wise  
Director

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**  
**RULE TITLE: Hearing Procedures**

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

There are no costs or savings to state or local governmental units as a result of promulgation of these rules. However, the cost for promulgating these rules in the State Register is estimated to be \$500.

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

There is no estimated effect on revenue collections of state or local governmental units associated with promulgation of these rules.

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

There are no estimated costs and/or benefits to directly affected persons or non-governmental groups associated with promulgation of these rules. Any costs associated with transcripts or witness fees are not revenue for the state but are used to cover the costs of the services. We have statutory authority to do video conferencing; however, we do not have the funding to implement it at this time. The rules may be amended in the future should funding become available

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no known effect upon competition and employment.

Ann Wise  
Director  
0110#064

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Board of Elementary and Secondary Education

Restructuring of BESE Standing Committees and the  
Addition of a Study Group for Board Development  
(LAC 28:I.103)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education approved for advertisement the following revisions to standing and special committees of the board. The committees and charges have been revised to reflect adjustments made in order to better address critical initiatives.

#### Title 28 EDUCATION

#### Part I. Board of Elementary and Secondary Education

#### Chapter 1. Organization

#### §103. Board Committees

A. ...

B. Standing committees composed of not less than three members of the Board and appointed by the President are:

1. 8(g) Committee. Charge: to allocate funds to any or all constitutional categories to enhance elementary and secondary education; to consider all administrative matters of the 8(g) program; and to establish expectations of academic excellence and require accountability of performance.

2. Accountability and Assessment Committee. Charge: to consider all matters relating to student, school, and district accountability; to consider all student assessment issues; to determine necessary student and school level interventions based on results of established assessment; to coordinate resources for school improvement; to monitor the performance of student and schools; to align the school approval process with the accountability system; and to provide for remediation related to high stakes testing.

3. Board Administration/Relations Committee. Charge: to improve the credibility and visibility of the Board and communicate the problems and needs of education through activities of the Board and Superintendent, Department, and Regional Service Centers; to consider routine administrative matters of the Board; to administer the Superintendent's evaluation; to receive updates on the benefits of the Department's reorganization; to consider program and personnel issues impacting the state Special Schools; to develop policies and procedures for charter school approval and implementation; and to administer loan fund activities of charter schools.

4. Finance/Audit Review Committee. Charge: to provide for a budget process; to annually develop and adopt a formula to equitably allocate education funds to parish and city school systems; to formally review operational plans developed by BESE, SDE, and Special Schools prior to submission to the Office of Planning and Budget; to approve grant allocations; to grant budget approval and any revisions for the SDE, BESE, Special Schools, and local districts; to review and approve all contracts and leases with agencies under its jurisdiction; to review and address SDE, BESE, and Special Schools audit reports and plans to correct irregularities; to consider payment of invoices submitted for

approval; and to serve as liaison with the LCTCS Board to oversee the administration of Carl Perkins funds.

5. Legal/Due Process Committee. Charge: to consider legal issues and matters of litigation; to serve as an Administrative court of last resort prior to adjudication in the judicial court system (usually revocation/reinstatement of teaching certificates, employee grievances involving property rights, and all due process matters); and to approve nonpublic schools in compliance with *Brumfield v. Dodd*.

6. Legislative/Policy Oversight Committee. Charge: to study the impact of current and proposed state and federal legislation; to identify the Board's role in new legislation; to develop position statements and/or white papers on education related legislation pending before the Legislature and to develop committee/floor strategies for proposed legislation; to draft legislative education reform recommendations; and to receive reports/studies on program results and/or evaluations of grant allocations to local systems.

7. Quality Educators Committee. Charge: to make recommendations regarding teacher certification standards, including course studies and teacher licensing tests; to consider waivers and/or appeals to standards in special circumstances; to provide for teacher evaluation and assistance, including mentoring; to provide for professional development and leadership development designed to improve teaching and learning; to review the impact of professional development activities on teaching and learning; to coordinate activities of the Technology Center; and to coordinate partnerships between secondary and post-secondary institutions.

8. Student and School Standards/Instruction Committee. Charge: to consider all matters relative to school and student standards; to set standards for high school graduation options; to monitor technical assistance in local curriculum development to align with the State content standards; to monitor curriculum based initiatives; to provide for the education needs of special populations; to provide for adequate textbooks and materials of instruction; to consider matters related to secondary career training programs, such as JTPA; to monitor Department activities related to secondary vocational education; to build an articulated framework from 9-16; to consider school support matters such as nutrition and transportation services, parental involvement, community based learning, school safety, migrant education, child welfare and attendance; to make recommendations for community support in the area of adult/parental education and training; and to organize issues-related information to guide Board decisions.

C. Special Committees. The Board may establish short-term committees with a specified focus area to study selected strategic initiatives. Each special committee shall be terminated when the purpose for which it was created has been considered and finally acted on by the Board.

1. Special Early Childhood Committee. Charge: to consider all matters pertaining to Pre-K - Grade 3 instruction, including early childhood instruction, kindergarten screening, early math, and literacy initiatives; and to receive results of reading and math assessments.

2. Strategic Planning Study Group. Charge: to provide opportunity for dialogue before deliberation on pre-selected topics/initiatives in a more informal setting; to provide for

strategic planning; and to review goals, implementation, and appropriate performance indicators for education initiatives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3.D and R.S. 17.6.A(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 16:297 (April 1990), amended LR 24:1496 (August 1998), LR 27:283 (March 2001), LR 28:

Interested persons may submit comments until 4:30 p.m., December 10, 2001, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody  
Executive Director

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Restructuring of BESE Standing Committees and the Addition of a Study Group for Board Development

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

This action will have no fiscal effect other than \$80 for advertising in the *Louisiana Register*.

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

This action will have no effect on revenue collections of state or local governmental units.

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

This action will have no effect on cost and/or economic benefits to directly affected persons or nongovernmental groups.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This action will have no effect on competition and employment.

Weegie Peabody  
Executive Director  
0110#041

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Education Board of Elementary and Secondary Education

Bulletin 741CBESE Test Security Policy  
(LAC 28:I.901)

In accordance with R. S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 741, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). Test scores from the Louisiana Educational Assessment Program are included in school and district accountability. Investigation of testing irregularities that may impact the test scores must be conducted at the same level of diligence in each district. In addition, student level data is now available to districts electronically through the LDE website. The

security of data is critical. The BESE Test Security Policy was changed to clarify procedures for investigating testing irregularities, monitoring of test administration and security, the addition of investigation requirements for erasure analysis, and the security of electronic data.

## Title 28 EDUCATION

### Part I. Board of Elementary and Secondary Education Chapter 9. Bulletins, Regulations, and State Plans

#### Subchapter A. Bulletins and Regulations

#### §901. School Approval Standards and Regulations

##### A. Bulletin 741

\*\*\*

Board of Elementary and Secondary Education  
Test Security Policy

The Board of Elementary and Secondary Education holds the test security policy to be of utmost importance and deems any violation of test security to be serious.

#### Test Security

1. Tests administered by or through the State Board of Elementary and Secondary Education shall include, but not be limited to:

- a. all criterion-referenced tests (CRTs) and norm-referenced tests (NRTs);
- b. all alternate assessments.

2. For purposes of this policy, school districts shall include local education agencies, Special School Districts, approved special schools such as the Louisiana School for the Visually Impaired and Louisiana School for the Deaf, laboratory schools, charter schools, Louisiana School for Math, Science and the Arts; and participating nonpublic/other schools that utilize tests administered through the State Board of Elementary and Secondary Education or the Louisiana Department of Education.

3. It shall be a violation of test security for any person to do any of the following:

- a. administer tests in a manner that is inconsistent with the administrative instructions provided by the Louisiana Department of Education (LDE) that would give examinees an unfair advantage or disadvantage;
- b. give examinees access to test questions prior to testing;
- c. examine any test item at any time (except for students during the test or test administrators while providing the accommodations "Tests Read Aloud" or "Communication Assistance" for students determined to be eligible for those accommodations);
- d. copy, reproduce, discuss, or use at any time in a manner inconsistent with test regulations all or part of any secure test booklet, answer document, or supplementary secure materials (e.g., writing prompts, science tasks);
- e. coach examinees in any manner during testing or alter or interfere with examinees' responses in any manner;
- f. provide answers to students in any manner during the test, including provision of cues, clues, hints, and/or actual answers in any formCwritten, printed, verbal, or nonverbal;
- g. administer published parallel, previously administered, or current forms of any statewide assessment (e.g., Louisiana Educational Assessment Program for the 21st Century [LEAP 21], Graduation Exit Examination for

the 21st Century [GEE 21], Graduation Exit Examination ["old" GEE], LEAP Alternate Assessment [LAA], or Forms K, L, M, and all new forms of The Iowa Tests) as a practice test or study guide;

h. fail to follow security regulations for distribution and return of secure test booklets, answer documents, supplementary secure materials (e.g., writing prompts, science tasks), as well as overages as directed; or fail to account for and secure test materials before, during, or after testing;

i. conduct testing in environments that differ from the usual classroom environment without prior written permission from the Louisiana Department of Education, Division of Student Standards and Assessments;

j. fail to report any testing irregularities to the District Test Coordinator (a "testing irregularity" is any incident in test handling or administration that leads to a question regarding the security of the test or the accuracy of the test data), who must report such incidents to the Division of Student Standards and Assessments;

k. participate in, direct, aid, counsel, assist in, encourage, or fail to report any of the acts prohibited in this section.

4. Each school district as described in this policy shall develop and adopt a district test security policy that is in compliance with the State's test security policy. A "Statement of Assurance" regarding the LEA's test security policy must be submitted annually to the Louisiana Department of Education, Division of Student Standards and Assessments. This statement must include the name of the individual designated by the district superintendent or institution to procure test materials. The policy shall provide:

a. for the security of the test materials during testing, including test booklets, answer documents, supplementary secure materials (e.g., writing prompts, science tasks), video tapes, and completed observation sheets;

b. for the storage of all test materials, except district and school test coordinator manuals and test administration manuals, in a predetermined, secure, locked area before, during, and after testing; all secure materials, including any parallel forms of a test, must be kept in locked storage at both the district and school levels; secure materials must never be left in open areas or unattended;

c. a description and record of professional development on test security, test administration, and security procedures for individual student test data provided for all individuals with access to test materials or individual student test data ("access" to test materials by school personnel means any contact with or handling the materials but does not include reviewing tests or analyzing test items, which are prohibited);

d. a list of personnel authorized to have access to the locked, secure storage area;

e. procedures for investigating any testing irregularities, including violations in test security, such as plagiarism and excessive wrong-to-right erasures identified through erasure analysis;

f. procedures for the investigation of employees accused of irregularities or improprieties in the administration of standardized tests, as required by the amended R.S. 17:81.6;

g. procedures for the investigation of any missing test booklets, answer documents, or supplementary secure materials (e.g., writing prompts, science tasks);

h. procedures for ensuring the security of individual student test data in electronic and paper formats.

5. Procedures for investigating missing secure materials, any testing irregularity (including cheating), and any employees accused of improprieties must, at a minimum, include the following.

a. The district test coordinator shall initiate the investigation upon the district's determination of an irregularity or breach of security or upon notification by the State Department of Education. The investigation shall be conducted by the district test coordinator and other central office staff as designated by the district superintendent.

b. The location of the predetermined, locked, secure area for storage of materials shall be examined, and the individuals with access to secure materials shall be identified.

c. Interviews regarding testing administration and security procedures shall be conducted with the principal, school test coordinator(s), test administrator(s), and proctor(s) at the identified schools. All individuals who had access to the test materials at any time must be interviewed.

d. Interviews shall be conducted with students in the identified classes regarding testing procedures, layout of the classroom, access to test materials before the test, and access to unauthorized materials during testing.

e. After completion of the investigation, the district shall provide a report of the investigation and a written plan of action to the state superintendent within 30 calendar days of the initiation of the investigation. At a minimum, the report shall include the nature of the situation, the time and place of occurrence, and the names of the persons involved in or witnesses to the occurrence. Officials from the Louisiana Department of Education are authorized to conduct additional investigations.

6. Test materials, including all test booklets, answer documents, and supplementary secure materials (e.g., writing prompts, science tasks) containing secure test questions, shall be kept secure and accounted for in accordance with the procedures specified in the test administration manuals and other communications provided by the Louisiana Department of Education. Secure test materials include test booklets, answer documents, and any supplementary secure materials (e.g., writing prompts, science tasks). Procedures described in the test manuals shall include, but are not limited to, the following.

a. All test booklets, answer documents, and supplementary secure materials (e.g., writing prompts, science tasks) must be kept in a predetermined, secure, locked storage area prior to and after administration of any test; test administrators are to be given access to the tests and any supplementary secure materials only on the day the test is to be administered, and these are to be retrieved immediately after testing is completed for the day and stored in a locked, secure location each day of testing.

b. All test booklets, answer documents, and supplementary secure materials (e.g., writing prompts, science tasks) must be accounted for and written documentation kept by test administrators and proctors for

each point at which test materials are distributed and returned.

c. Any discrepancies noted in the serial numbers of test booklets, answer documents, and any supplementary secure materials (e.g., writing prompts, science tasks), or the quantity received from contractors must be reported to the Division of Student Standards and Assessments (LDE) by the designated institutional or school district personnel prior to the administration of the test.

d. In the event that test booklets, answer documents, or supplementary secure materials (e.g., writing prompts, science tasks) are determined to be missing while in the possession of the institution or school district or in the event of any other testing irregularities or breaches of security, the designated institutional or school district personnel must immediately notify by telephone the Division of Student Standards and Assessments (LDE) and follow the detailed procedures for investigating and reporting specified in this policy.

7. Only personnel trained in test security and administration shall be allowed to have access to or administer any standardized tests.

8. Each district superintendent or institution must annually designate one individual in the district or institution as district test coordinator who is authorized to procure test materials that are utilized in testing programs administered by or through the State Board of Elementary and Secondary Education or the Louisiana Department of Education. The name of the individual designated must be provided in writing to the Division of Student Standards and Assessments (LDE) and included on the "Statement of Assurance."

9. Testing shall be conducted in class-sized groups. *Bulletin 741* (2.038.01-.02) states that K-3 classroom enrollment should be no more than 26 students, and in grades 4-12, no more than 33, "except in certain activity types of classes in which the teaching approach and the materials and equipment are appropriate for large groups." For grades K-8, the maximum class size for Health and Physical Education classes may be no more than 40. Class size for exceptional students is generally smaller (*Bulletin 741*, 2.038.05). Permission for testing in environments that differ from the usual classroom environment must be obtained in writing from the Louisiana Department of Education, Division of Student Standards and Assessments, at least 30 days prior to testing. If testing outside the usual classroom environment is approved by the Division of Student Standards and Assessments, the LEA must provide at least one proctor for every 30 students.

10. The State Superintendent of Education may disallow test results that may have been achieved in a manner that is in violation of test security.

11. The Louisiana Department of Education shall establish procedures to identify:

a. improbable achievement of test score gains in consecutive years;

b. situations in which collaboration between or among individuals may occur during the testing process;

c. a verification of the number of all tests distributed and the number of tests returned;

d. excessive wrong-to-right erasures for multiple-choice tests;

e. any violation to written composition or open-ended responses that involves plagiarism;

f. any other situation that may result in invalidation of test results.

12. In cases in which test results are not accepted because of a breach of test security or action by the Louisiana Department of Education, any programmatic, evaluative, or graduation criteria dependent upon the data shall be deemed not to have been met, but individuals will be allowed to retake the test at the next test administration.

13. Individuals shall adhere to all procedures specified in all manuals that govern mandated testing programs.

14. Any individual who knowingly engages in any activity during testing that results in invalidation of scores derived from the Louisiana Educational Assessment Program for the 21st Century (LEAP 21), Graduation Exit Examination for the 21st Century (GEE 21), or Graduation Exit Examination ("old" GEE) shall forfeit the test results but will be allowed to retake the test at the next test administration.

15. Anyone known to be involved in the presentation of forged, counterfeit, or altered identification for the purposes of obtaining admission to a test administration site for any test administered by or through the State Board of Elementary and Secondary Education or the Louisiana Department of Education shall have breached test security. Any individual who knowingly causes or allows the presentation of forged, counterfeit, or altered identification for the purpose of obtaining admission to any test administration site must forfeit all test scores but will be allowed to retake the test at the next test administration.

16. School districts must ensure that individual student test data are protected from unauthorized access and disclosure. District Test Coordinators and other authorized users of the LEAP Web Reporting System must ensure the security of passwords, any disks or CDs with downloaded individual student test data, and student-level test data open on a computer screen. District Test Coordinators are responsible for providing training regarding the security and confidentiality of individual student test data (in paper and electronic format) and of aggregated data of fewer than ten students.

17. Louisiana Department of Education staff will conduct site visits during testing to observe test administration procedures and to ensure that appropriate test security procedures are being followed. Schools with prior violations of test security or other testing irregularities will be identified for visits. Other schools will be randomly selected.

18. Any teachers or other school personnel who breach test security or allow breaches in test security shall be disciplined in accordance with the provisions of R.S. 17:416 et seq., R.S. 17:441 et seq., R.S. 17:81.6 et seq., policy and regulations adopted by the Board of Elementary and Secondary Education, and any and all laws that may be enacted by the Louisiana Legislature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.A.(10), (11), (15), R.S. 17:7(5), (7), (11); R.S. 17:10, 11; R.S. 17:22.(2), (6).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975), amended by the Board of Elementary and Secondary Education LR

26:635 (April 2000); LR 26:1260 (June, 2000), LR 26:1260-1261 (June 2000), LR 28:

Interested persons may submit written comments until 4:30 p.m., December 10, 2001, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody  
Executive Director

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE:

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
The only implementation costs are \$320 for publication in the Louisiana Register of the proposed BESE Test Security Policy. This is an update of the BESE Test Security Policy approved in December 1998. There will not be an increase or reduction in workload or additional paperwork. The BESE Test Security Policy will be available on the LDE website.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There is no estimated effect on revenue collections.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There is no estimated effect on competition and employment.

Marlyn J. Langley  
Deputy Superintendent  
0110#045

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Board of Elementary and Secondary Education

Bulletin 1934C Starting Points Preschool Regulations  
(LAC 28:XXI.Chapters 1, 3, and 5)

Editor's Note: Bulletin 1934 was promulgated as a rule in LR 19:1549 (December 1993), amended in LR 21:1220 (November 1995), LR 24:295 (February 1998), and LR 25:254 (February 1999) in uncodified format. The historical notes will reflect the first time this bulletin was printed in a codified format in the *Louisiana Register*.

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to Bulletin 1934, *Starting Points Preschool Regulations*, referenced in LAC 28:I.906.B. In July, 2001, the Department of Social Services changed the primary funding to the Starting Points Preschool Program. The funding was changed from the Child Care Block Grant to the Temporary Assistance to Needy Families (TANF) Block Grant. Because of this change in funding, the eligibility requirements for program participation also changed. These changes necessitate revisions in Bulletin 1934, *Starting Points Preschool Regulations*. Changes in the rule include deletion of a minimal co-pay by parents; change

in eligibility requirements to include only that the student meet the requirements for free or reduced lunch; and deletion of all references to parental employment or attendance in a job training/educational program. This requires the repealing of text and adopting of new language in §303. §§305, 307, 309, 311, and 507 are also repealed. Other sections are being amended.

### Title 28

### EDUCATION

### Part XXI. Bulletin 1934

### Starting Points Preschool Regulations

### Chapter 1. General Provisions

#### §101. Purpose

A. The Department of Social Services, lead agency for the Temporary Assistance to Needy Families Block Grant, has allocated a portion of these funds to the Louisiana Department of Education for program development. The purpose of this program is to assist low income families by providing quality early childhood programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), amended LR 28:

#### §103. Program Philosophy

A. Local Starting Points Preschool Programs will adhere to the developmental philosophy as outlined by the National Association for the Education of Young Children. Developmentally appropriate practices have proven to be effective in early childhood education. Inherent in this philosophy is the provision of a child-centered program directed toward the development of cognitive, social, emotional, communication and motor skills in a manner and at a pace consistent with the needs and capabilities of the individual child.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), amended LR 28:

### Chapter 3. Eligibility

#### §301. Eligibility Criteria

A. In order to qualify for the Starting Points Preschool Program, participants must:

1. be one year younger than the age eligible for kindergarten;
2. meet the requirements of law for immunization and documentation required for regular school enrollment; and
3. qualify for free or reduced price meals pursuant to the federal child nutrition program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), amended LR 28:

#### §303. Eligibility Verification

A. School systems must maintain, at each program site, documentation of the student or his family's eligibility to receive free or reduced price meals pursuant to the federal child nutrition program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), amended LR 28:

**§305. Screening**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), repealed LR 28:

**§307. Income Verification**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), repealed LR 28:

**§309. Employment Verification**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), repealed LR 28:

**§311. Job Training/ Educational Program Verification**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), repealed LR 28:

**§313. Changes in Eligibility Requirements**

A. The parent(s) or guardian(s) must report any changes in their eligibility criteria within ten working days of the change.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), amended LR 28:

**Chapter 5. Program Structure**

**§501. Class Size Limitation** Error! Bookmark not defined.

A. The class assignment of teachers and aides for the program shall be as follows.

Enrollment	Teacher	Aide
10-12	1	0
13-15	1	1/2 time
16-20	1	1

B. The class size may not exceed 20 students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999).

**§503. Teacher Qualifications**

A. Each classroom teacher must be certified in one of the following areas:

1. early childhood education;
2. nursery school education;
3. Kindergarten; or
4. early intervention.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), amended LR 28:

**§505. Length of School Day and School Year**

A. The length of the school day and the school year shall follow the provision established in R.S. 17.154.1. The school day that systems operate shall be a full day with a minimum of 360 minutes of instructional time per day. Instructional days will be based upon the school calendar of each local school system/nonpublic school with a minimum of 177 days of instruction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.154.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), amended LR 28:

**§507. Program Location**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), repealed LR 28:

**§509. Health Requirements**

A. All children enrolled in the Starting Points Preschool Program will comply with the immunization requirements as established by the Department of Health and Hospitals. All local nonpublic schools/school systems will administer a vision and hearing screening test to each student.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), amended LR 28:

**§511. Curriculum**

A. The curriculum for the Starting Points Preschool Program shall be developmentally appropriate and address all areas of development:

1. social;
2. emotional;
3. cognitive; and
4. physical.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), LR 28:

**§513. Yearly Report**

A. Each local school system/nonpublic school will be required to report annually to the Louisiana Department of Education documenting the effectiveness of the program. The school system/nonpublic school must also submit a final budget detailing exactly how the allocated funds were spent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), amended LR 28:

**§515. Monitoring**

A. Programs Coordinators from the Elementary Standards Section will monitor records at each program site annually to ensure that federal requirements are being met. The *Early Childhood Environment Rating Scale-Revised (ECERS-R)* will be used to measure the quality of the program. Each new teacher and those teachers scoring below 5.0 on the

ECERS-R will be monitored on a yearly basis until an average score of 5.0 is attained on the scale. All continuing sites serving ten or more Starting Points children will be evaluated on a three-year cycle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), amended LR 28:

#### **§517. Religious Activities**

A. According to the federal regulations for the Temporary Assistance to Needy Families Block Grant, funds provided "under grant or contract may not include sectarian worship or instruction."

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), amended LR 28:

#### **§519. Adherence to Regulations**

A. Local school systems/nonpublic schools must adhere to all state and federal regulations and guidelines. Failure to do so will result in withdrawal of program funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), amended LR 28:

Interested persons may submit written comments until 4:30 p.m., December 10, 2001, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody  
Executive Director

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Bulletin 1934C Starting Points Preschool Regulations**

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

There should be no increase in cost to state or local governmental units.

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

There should be no effect on revenue collections of state or local governmental units.

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

Parents and students will be directly affected by the proposed rule change. The funding of the Starting Points Preschool Program has been changed from the Child Block Grant to the Temporary Assistance to Needy Families (TANF) Block Grant, therefore the eligibility requirements have changed. There has been a deletion of the \$5 to \$20 co-pay by the parents and a deletion of all references to requirements of parental employment or attendance in a job/training or education program. The change in eligibility requirements is that the students must meet the requirements for free and reduced lunch pursuant to the federal child nutrition program. Due to these changes, it is anticipated that more students may be eligible to participate in this program.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There should be no effect on competition and employment.

Marlyn Langley  
Deputy Superintendent  
Management and Finance  
0110#025

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Board of Elementary and Secondary Education**

#### **Bulletin 1943C Policies and Procedures for Louisiana Teacher Assistance and Assessment (LAC 28:XXXVII.Chapters 1-35)**

Editors Note: Bulletin 1943 was promulgated as a rule in LR 21:164 (February 1995), amended LR 21:463 (May 1995), repromulgated LR 21:676 (July 1995), amended LR 22:98 (February 1996), LR 22:277 (April 1996), LR 24:2088 (November 1998). The historical notes will reflect the first time this bulletin was printed in a codified format in the *Louisiana Register*.

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., notice is hereby given that the State Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 1943C *Policies and Procedures for Louisiana Teacher Assistance and Assessment*, referenced in LAC 28:I.917.C. The State Board of Elementary and Secondary Education (SBESE) approved the Louisiana Teacher Assessment Programs, Bulletin 1943C *Policies and Procedures for Louisiana*

Teacher Assistance and Assessment, at their August 2001 meeting based on SBESE action in April 2001. Bulletin 1943 had to be revised in order to be in conformity with R.S. 17:3881-3884, 17:3891-3896, and 17:3901-3904, Act 838 of the Regular Session of the 1997 Louisiana Legislature. These revisions include: the services of a mentor or mentor support team; identification of the provisions of the two-year assistance period; identification of assessment procedures for year two of employment; and the revisions to the out-of-state exclusion procedures for experienced teachers. The *Policies and Procedures for Louisiana Teacher Assistance and Assessment* are the criteria by which new teachers will be assessed under the Louisiana Teacher Assistance and Assessment Program.

#### **Title 28**

#### **EDUCATION**

#### **Part XXXVII. Bulletin 1943C Policies and Procedures for Louisiana Teacher Assistance and Assessment Chapter 1. Philosophy**

#### **§101. Goals of the Program**

A. Goals of the Louisiana Teacher Assistance and Assessment Program are:

1. to enhance learning and improve teaching;
2. to ensure that teachers certified in Louisiana are competent professionals;
3. to provide new teachers a system of support and assistance that will result in strengthened instructional knowledge and skills.

B. Educators throughout Louisiana have been instrumental in carefully planning and coordinating efforts to ensure that these goals will be reached. The coordinated

efforts of all aspects of the Louisiana education community have resulted in the passage of Act 1 of the 1994 Third Extraordinary Session of the Louisiana Legislature and its amendments in 1997.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

### **§103. Beliefs and Principles**

A. Assessment of programs and practices is essential to any ongoing effort to improve any profession. Assessment is not *apart from* but *a part of* the educational process. However, sound assessment practices must be based on a set of beliefs and principles which are congruent with the outcomes desired.

B. Stated below are the fundamental beliefs about the Louisiana Teacher Assistance and Assessment Program, the new teachers, the mentors, the assessors, the assistance and assessment processes, and the assessment instruments. It is hoped that they are reflective of what educators across Louisiana believe and desire to accomplish, just as they are reflective of the beliefs and goals of the many educators who have contributed to the development of this assessment program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

### **§105. The Program**

A. The primary goal of the assistance and assessment program is the improvement of teaching and learning.

B. An equally important goal is to ensure that teachers certified in Louisiana are competent professionals.

C. A sound personnel assessment program focuses on performance as well as credentials.

D. To be useful, the Louisiana Teacher Assistance and Assessment Program must be coupled with a strong professional development program, tailored to the needs of each teacher.

E. To be useful, the Louisiana Teacher Assistance and Assessment Program must be coupled with strong programs of student assessment and program assessment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

### **§107. The Teacher**

A. Teachers want to be competent professionals.

B. All teachers can improve performance.

C. All new teachers want and need the advice and assistance of competent, experienced colleagues.

D. It is possible to assess differences in levels of quality of teacher performance.

E. Essential to competent performance in any position is a nucleus of practices and behaviors which can be identified, assessed, and improved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

### **§109. The Mentor Teacher**

A. Those who serve as mentors to Louisiana's new teachers must themselves be competent, caring teachers.

B. Rigorous and comprehensive training as mentors and assessors is essential for the mentor.

C. The mentor must have excellent communication and interpersonal skills and be fair, objective, honest, and ethical.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

### **§111. The Assessor**

A. Rigorous and comprehensive training is essential for the assessor.

B. The assessor must have a commitment to improving education and to assisting others to improve.

C. The assessor must be fair, objective, honest, and ethical.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

### **§113. The Process**

A. The assistance and assessment processes should encourage diversity in professional teaching behavior.

B. Multiple data sources and data collection procedures are necessary to obtain a reliable picture of professional practice and behavior.

C. Effectiveness of educational practices and teacher behavior must be assessed in light of learner characteristics and needs. School and/or school system characteristics, needs, and organizational structures will also be considered.

D. The assessment process should focus on the identification of patterns of behavior.

E. The assistance process should focus on improvement of teaching performance as defined by the Louisiana Components of Effective Teaching.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

### **§115. The Assessment Instruments**

A. No single assessment instrument is adequate for assessing teacher performance.

B. Assessment instruments must be developed from the criteria upon which teachers are to be assessed.

C. Instruments should be understood by all professional educators in the school system.

D. Instruments must assess the knowledge and skills considered important to effective teaching.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

## **Chapter 3. Purpose**

### **§301. Purposes of the Program**

A. The Louisiana Teacher Assistance and Assessment Program is a uniform statewide program of assessment for new teachers entering service for the first time in a

Louisiana Public School System. The program has two basic purposes.

1. It is the purpose of the teacher assistance and assessment program to provide new teaching employees of the public school systems in this state with a planned program of leadership and support from experienced educators during the most formative stages of a teacher's experience in Louisiana schools.

2. It is further the purpose of the assistance and assessment program to provide assurance to the state, prior to the issuance of a permanent Louisiana teacher certificate, that the new teaching employee demonstrates competency in the understanding and use of the Louisiana Components of Effective Teaching, determined by the state to be the basis for effective professional performance.

B. To accomplish the first purpose, data regarding the new teacher's strengths and weaknesses will be collected during the first year by the mentor and principal, and a professional development plan designed, which when implemented can lead to improvement. In addition, each new teacher during the first semester and throughout two school years shall be provided a mentor who will lead professional development activities designed to enhance teacher competencies found to be essential to student learning. During the second year of employment, data shall be collected by an assessment team as the basis for recommendations to the Louisiana Department of Education (LDE) and the State Board of Elementary and Secondary Education (SBESE) regarding the teacher's certification. In addition, the mentor teacher will continue to provide a program of encouragement, support, and professional development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

## **Chapter 5. Assessment**

### **§501. Meeting Assessment Standards**

A. Should a new teacher not meet the assessment standards for certification during the first assessment period, the teacher may continue for a second assessment period in the assistance and assessment program, following a process parallel to that of the first assessment period.

B. A teacher who does not meet the assessment standards for certification defined in this document within two years must leave teaching in the public schools of Louisiana for at least two years and undertake activities defined by the Year Two assessment team before re-entry into the teaching profession and the Louisiana Teacher Assessment Program. Upon re-entry into teaching in Louisiana Public Schools, the teacher shall also re-enter the Louisiana Teacher Assistance and Assessment Program. If, after another two years in the program, the teacher cannot meet the assessment standards for certification, the teacher will be denied all authority to teach in Louisiana Public Schools according to R.S. 17:3893.C of Act 1 of the 1994 Louisiana Legislature, Third Extraordinary Session and its amendments in 1997.

C. Additional statements of beliefs and principles that undergird this program appear in Chapter 1 of this bulletin.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

### **§503. Teachers Subject to the Program**

A. New teachers subject to this assistance and assessment program, as specified by Act 1 of the 1994 Third Extraordinary Session of the Louisiana Legislature and its 1997 amendments, include general education teachers, vocational education teachers, special education teachers, and "any person employed as a full-time employee of a local board who is engaged to directly and regularly provide instruction to students." Teachers required to participate in this program include those who hold Type C certificates, those who hold temporary authorization to teach (TTA, 665), teachers moving for the first time from Louisiana nonpublic schools to public schools, and new teachers from out-of-state who do not meet the conditions outlined in Part B of this Section.

B. Beginning August 1, 1998, experienced teachers from other states who enter Louisiana public schools for the first time and provide appropriate evaluation results from their immediate previous teaching assignment are excluded from participation in the Louisiana Teacher Assistance and Assessment Program. (Section 391 of R.S. 17:3881-3895 Amended 1997). To implement this legislation, the following definitions and guidelines have been established.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

### **§505. Definitions**

*Appropriate Evaluation Results* C satisfactory annual evaluation results as defined by and certified by the immediate previous out-of-state school district(s).

*Experienced in Other States* C two or more years of creditable experience in a public school approved/accredited by the state or regional accreditation agency.

*Immediate Previous Teaching Assignment* C as it pertains to assessment shall be defined as the teaching assignment last held by the applicant for a period of two creditable years or more within a 5-year period immediately preceding employment in a Louisiana public school.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

### **§507. Procedures to Request Exclusion**

A. To request exclusion from the Teacher Assistance and Assessment Program, the teacher must have submitted to the Louisiana Department of Education (LDE), Office of Quality Educators, Division of Teacher Standards, Assessments, and Certification, Bureau of Professional Accountability the following materials:

1. a completed exclusion request form forwarded by the employing Louisiana school system. Each teacher applying for exclusion shall sign a release to solicit needed personnel evaluation information from the previous school system. The request form and release must be sent to the LDE within six weeks of the date of employment to be considered for exclusion.

B. The request for exclusion will be reviewed by an appropriate LDE staff member, and a copy of the request

form indicating approval or denial of the request will be returned to the employing LEA submitting the request.

Note: Approval of requests for exclusion will be granted if the completed exclusion request form contains the signature(s) of the administrative authority(ies) responsible for authorizing the results of the evaluation(s).

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 28:

**§509. Timely Implementation of the Program**

A. To ensure fair and timely assistance to and assessment of every new teacher, a yearly schedule of activities must be maintained. Failure of a local school system to meet these timelines will result in State Board review and could result in loss of State funding.

1. Report to the LDE by the dates set in the deadline schedule established by the LDE new teacher names and required information about new teachers employed.

Note: New teachers employed after the established dates will begin the Assistance and Assessment Program the following semester.

2. Report to the LDE names and other necessary information about persons to be trained as assessors or mentors by the dates set in the deadline schedule established by the LDE.

3. The activities listed below shall be completed within the specified time frames for each scheduled activity. Note that a teacher may enter the Assistance and Assessment Program during the first semester of employment, either Fall or Spring.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 28:

**§511. Timelines for Activities**

Activity	Fall Semester Entry	Spring Semester Entry
Assignment of Mentor	Upon employment or entry to the school	
New Teacher Orientation to Assistance and Assessment Program (LEA)	First 2-3 weeks of employment	
Mentor/Teacher Activities	August-June	January-December
Preconference Interviews and "Full" Observations of New Teacher by Principal or Designee and Mentor	February-April	September-November
Professional Development Plan and Conference (Mentor, Principal, and New Teacher)	After "full" observation	
Assignment of Assessor Team	August-Year Two	January-Year Two
First Assessor Visit	September-October	January-February
Second Assessor Visit	October-November	February-March
Assessor-Team Consensus Meeting	November-Early December	March-Early April
Teacher Summary Conference	By Mid-December	By Mid-April
Assessment Results and Recommendations Forwarded to LED	By Mid-January	By Mid-May

Note: This is a general schedule for a typical school year. The LED will prepare a recommended assessment schedule for each school year, outlining exact dates for completion of Assistance and Assessment Program activities.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 28:

**Chapter 7. Glossary**

**§701. Assessment Terminology**

A. The Louisiana Teacher Assistance and Assessment Program makes use of specific terminology related to the practices and procedures of the assessment process. In order for consistency to be maintained on a statewide basis, the following list of terms is provided so that all parties involved with the process have a clear and common understanding of assessment terminology most frequently used.

**Assessment** Cthe process by which the state determines whether a new teacher who is seeking to retain or to acquire a regular teaching certificate can sufficiently demonstrate the Louisiana Components of Effective Teaching to qualify for the teaching credential being sought.

**Assessment Standards for Certification** Clevels of competence in the Louisiana Components of Effective Teaching to be demonstrated by a participant in the Louisiana Teacher Assistance and Assessment Program as prerequisites to obtaining the regular/permanent teaching credential being sought.

**Assessment Team** C a team of two highly qualified, experienced educators assigned to the new teacher for assessment purposes. One member is the new teacher's immediate supervisor; and the other is an external assessor. (See other definitions.) The new teachers mentor cannot also serve as his/her assessor.

**Assessor** C a trained supervisor, experienced teacher, or external assessor who gathers data on the performance of a new teacher. Performance is measured by the Louisiana Components of Effective Teaching.

**Assistance and Assessment Period** C the time frame established for new teacher participation in the Louisiana Teacher Assistance and Assessment Program. The assistance period in which the new teacher is assigned a mentor or mentor support team covers two years (four semesters). The assessment period covers the third and possibly the fourth semester(s) of teaching.

**Experienced Teacher** C a qualified educator who holds a permanent teaching certificate and is nominated by his/her school faculty to serve as a member of the assessment team in another school. It is suggested that the experienced teacher have five years of teaching experience.

**External Assessor** C an active faculty member of a college or university, a central office administrator, retired educator, experienced teacher, or other educators as deemed appropriate.

**Immediate Supervisor** C the new teacher's principal (or designee), or a special education or vocational supervisor to whom the new teacher directly reports.

**Mentor Teacher** C an experienced teacher assigned to a new teacher to provide assistance as a coach, model, and professional development specialist. To be eligible for assignment as a mentor, the teacher must have a permanent teaching certificate and a minimum of three years of teaching experience, a minimum of one complete year of experience in the school system, and training as both an assessor and a mentor.

**Mentor Support Team**—A group of educators led by a teacher of record who has completed the Louisiana Teacher Assistance and Assessment Program (i.e., assessor and mentor training). A mentor support team may support no more than five new teachers at the district or building level.

**New Teacher**—Any full-time employee of a local board who is engaged to directly and regularly provide instruction to students in any elementary, secondary, or special education school setting, one who is not an administrator and who is employed for the first time in a public school in this state after August 1, 1994; and one who holds a regular teaching certificate which when issued was valid for three years, or who is authorized under law or board regulation to teach temporarily while seeking a regular teaching certificate.

**Observation**—The process of collecting information about teaching performance through watching and listening in the classroom; the data collected during the observation process.

**Post-observation Conference**—A discussion between the new teacher and the assessor or mentor for the purpose of reviewing the Observation, discussing congruency with the Pre-observation Interview, and sharing commendations, insights, and ratings.

**Pre-observation Interview**—A discussion between the assessor or mentor and the new teacher which occurs prior to the classroom observation; the purposes are to share information about the lesson/classroom to be observed and to conduct a planning and student assessment interview; the interview is structured so that all new teachers are asked the same basic questions in the same order.

**Professional Development Plan**—A written plan for improvement, based on the new teacher's self-assessment of areas for refinement and the mentors' and/or assessors' identification of areas for growth during the assistance and assessment cycles.

**Summary Conference**—A summary session in which ratings and information from the assessment instruments are provided to the new teacher by the assessors.

**Summary Report**—The report used to record final Attribute and Component scores and documentation summarizing the results of the assessment. The report is completed by all assessors at the end of the assessment cycle. The report is also used to record the status of the teacher with regard to accomplishment of the assessment standards for certification.

**AUTHORITY NOTE:** Promulgated in accordance with RS. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 28:

## **Chapter 9. Responsibilities**

### **§901. Duties and Responsibilities of Each Party**

A. An important factor in the success of any process depends largely on making certain that all involved parties have a clear understanding of the duties and responsibilities of each party. The Louisiana Teacher Assistance and Assessment Program divides responsibility among seven groups. These seven groups are the State Board of Elementary and Secondary Education (SBESE); the Louisiana Department of Education (LDE); the Local Education Agency (LEA); mentor teachers or mentor

support teams; principals; assessor teams; and the new teachers.

1. Responsibilities of the State Board of Elementary and Secondary Education:

a. establish the Louisiana Components of Effective Teaching which shall be periodically reviewed and revised as becomes appropriate with increased experience and knowledge;

b. establish high and rigorous standards which assessors will meet;

c. set assessment standards for certification based upon the recommendations of a standards setting panel, reputable technical consultants, and available assessment data;

d. approve all assistance/mentor program procedures and all changes in those procedures;

e. approve all assessment program procedures and all changes in those procedures;

f. provide for the training of all trainers for the teacher assistance and assessment program as well as provide for the training of mentors or mentor support teams and assessors who implement the Louisiana Teacher Assistance and Assessment Program.;

g. require the LDE to monitor the assistance and assessment program. The method used in monitoring the program shall be established by the Department with the approval of the Board and shall be sufficient to determine whether such program has been implemented, to what extent it has been implemented, and whether such program complies with the provisions of the legislation;

h. approve panels and consultants to be engaged in formulating recommendations to the Board;

i. receive and approve recommendations for regular/permanent certification and denial of regular/permanent certification.

2. Responsibilities of the Louisiana Department of Education:

a. oversee implementation of the assistance and assessment program;

b. prepare training and orientation materials;

c. train trainers and oversee training of mentors and assessors to ensure that all meet high and rigorous standards so that there will be fairness and consistency of assessment statewide;

d. train local education agency personnel to conduct new teacher orientation;

e. assist local education agencies in developing assessment teams in accordance with procedures outlined in this bulletin;

f. monitor the state assistance and assessment process at the local level to ensure validity, consistency, fairness, and credibility;

g. Recommend modifications of the Assistance and Assessment Program to the Board, as needed, based on analysis of assessment data and input from persons conducting the Program and subject to it;

h. recommend assessment standards for certification to the Board.

3. Responsibilities of Local Education Agencies:

a. identify and report to the LDE the names and positions (content areas and grade levels) of all new teachers subject to the Louisiana Teacher Assistance and Assessment

Program no later than the deadline dates established by the LDE (New teachers employed after the established dates will begin the Assistance and Assessment Program in the following semester.);

b. inform teachers experienced in other states, but newly employed in Louisiana of the conditions and procedures for exclusion from the Assistance and Assessment Program;

c. identify and report to the LDE the names and positions of all persons to be trained as mentors and/or assessors for the coming year no later than the deadline dates established by the LDE;

d. establish mentors or mentor support teams and assessor teams in accordance with guidelines, and report the names and positions of all persons in those capacities for the current year by the deadline dates established by the LDE;

e. conduct the assessment process in accordance with the policies and procedures set forth in this bulletin and report to the LDE the names of those persons recommended for regular/permanent certification and the names of those denied regular/permanent certification together with appropriate documentation for the recommendations by a mid-January date established by the LDE, if the assistance and assessment process is completed within a regular school year (August-May schedule), or by a mid-May date established by the LDE, if the assistance and assessment process is completed during a January-December schedule;

f. provide whatever released time from classroom or other duties as necessary for mentors, mentor support team members, assessors, and new teachers to be trained and to perform their respective duties and activities;

g. inform each teacher of the assistance/assessment provisions such as the assignment of a mentor teacher or mentor support team and conditions/procedures for deferring assessment when reassigned (see Sections XII and XIII);

h. implement a process for the nomination of persons to serve on assessment teams.

#### 4. Responsibilities of Mentor Teachers or Mentor Support Teams:

##### a. coach:

i. coach the new teacher in analysis of the instructional process and in determining how well students are learning;

ii. coach the new teacher in expanding effective teaching strategies;

iii. conduct advisory interviews and observations with feedback using Louisiana Components of Effective Teaching;

iv. conduct advisory observations with feedback using the observation instrument used in the assessment program;

##### b. model:

i. demonstrate effective planning, instruction, and adjustment of instruction based on content knowledge.

ii. guide management of professional responsibilities;

iii. provide encouragement and support;

##### c. Professional Development Specialist:

i. assist the new teacher in analyzing and resolving problems;

ii. direct the new teacher to needed assistance and resources;

iii. confer with the new teacher and principal to formulate a formal Professional Development Plan (PDP) for the new teacher and to revise it as needed;

iv. assist the new teacher in the analysis of student performance data and student records to plan instruction consistent with student needs and the school improvement plan.;

v. assist the new teacher in exploring a variety of methods to obtain representative samples of student work.

#### 5. Responsibilities of Principals or Principal Designees:

a. introduce the new teacher to school and system policies and procedures, to faculty and staff, to teaching responsibilities, the school improvement plan, the school accountability program, to the availability of district resources, and the Teacher Assistance and Assessment Program;

b. assist the new teacher and mentor or mentor support team in arranging necessary coverage of his or her class for classroom observation purposes;

c. ensure that new teachers and their mentors or mentor support team members meet weekly and observe each other's classroom on at least eight occasions during the first year of the Assistance Program;

d. conduct at least one structured interview and an observation during the teacher's second semester of assistance and give feedback on his/her performance;

e. work with the new teacher and mentor or mentor support team members to create and revise, as needed, a formal Professional Development Plan (PDP);

f. serve as the leader of the assessor team which will visit the new teacher during his/her third semester;

g. assist the mentor and new teacher in securing necessary resources for the completion of professional development activities;

h. assign mentors or mentor support teams, monitor their activities and evaluate mentor performance (if required by LEA policy);

i. assign mentors from the available, trained pool of teachers unless the LEA has another established procedure.

#### 6. Responsibilities of Assessors:

a. meet high and rigorous performance standards established by the LDE;

Note: No person shall be allowed to function as an assessor who does not meet the established performance standards for assessors.

b. perform assessor responsibilities in a timely manner and in accordance with the Code of Ethics appearing in the appendices of this bulletin;

c. develop a comprehensive Professional Development Plan for and with each teacher assessed at the conclusion of the assessment semester.

#### 7. Responsibilities of New Teachers:

a. perform new teacher responsibilities in accordance with the Code of Ethics for new teachers appearing in the appendices of this bulletin;

b. meet regularly with his/her mentor at agreed upon times.

c. take responsibility for his/her own professional growth.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

## **Chapter 11. Procedures for Selection of Mentor Teachers and Mentor Support Teams**

### **§1101. Qualifications for Selection as a Mentor**

A. The building principal shall assign a mentor teacher to each new teacher (teachers entering Louisiana public schools for the first time who do not meet the conditions for exclusion from the Louisiana Teacher Assistance and Assessment Program described in §503.B of this Bulletin). To qualify as a mentor teacher, an experienced teacher must have:

1. a permanent teaching certificate and a minimum of three years of teaching experience (five years preferred);
2. a minimum of two years of experience in the school system where he/she will serve as a mentor (preferably in the building in which the new teacher is located);
3. evidence of excellence in teaching (type of evidence left to the LEA and building principal);
4. evidence of continuing professional development (type of evidence left to the LEA and building principal);
5. successful completion of the Louisiana teacher assessor and mentor training programs. (Teacher met standards for knowledge and performance in these training programs.)
6. ability to model effective instruction and to communicate effectively.

B. To qualify as a mentor support team member, a candidate may be:

1. a trained mentor, including full or part-time teachers, resource teachers, subject area coordinators, teachers on special assignment, teachers on leave or sabbatical, Regional Service Center coordinators with appropriate experiences, and retired teachers who have been retired no more than five years prior to becoming a member of the mentor support team;
2. a principal or other administrator;
3. one or more members who may not have attended Mentor training, but who can offer special expertise such as subject area specialists or key resource teachers (team members need not be in the same building as the new teacher);
4. a new teacher who has successfully completed the Louisiana Teacher Assistance and Assessment Program.

C. The mentor team leader is the teacher of record responsible for reporting placement information and for planning mentor team activities. At minimum, the mentor team leader must have completed the Louisiana Teacher Assistance and Assessment Training Programs (i.e., Assessor and Mentor Training).

Note: A new teacher being mentored shall not be assigned a department supervisor or administrator who will participate in his/her evaluation or assessment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

### **§1103. Guidelines for the Assignment of Mentor Teachers and Mentor Support Teams**

A. Local school systems and building principals should adhere as closely as possible to the following guidelines in assigning mentors or mentor support teams to new teachers.

1. Mentors and new teachers should be matched by grade level and subject areas, if at all possible; at minimum, regular education teachers should be paired, and special education teachers should be paired.

2. The building principal will make the mentor assignment for the new teachers, unless the school system has another procedure in place.

3. A mentor teacher who is teaching full-time should be assigned no more than one new teacher to mentor, unless he/she willingly accepts a second mentee. Maximum assignment of new teachers to a full-time teacher is two. However, this does not preclude a teacher serving as a mentor also serving on an assessor team for a different new teacher than the one(s) he/she mentors, if he/she is willing to do so.

4. A teacher can be assigned as a mentor to several new teachers as a full-time or part-time responsibility. Or, as indicated in item 3, a teacher can remain in the classroom, serving as a mentor to one or two new teachers as an additional responsibility.

5. A teacher who is employed as a full-time mentor may serve in that position for no more than three years consecutively. A full-time teacher who mentors one or two new teachers as an additional responsibility is not subject to this provision.

6. A mentor support team shall be assigned no more than five new teachers to mentor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

## **Chapter 13. Procedures for Selection of Assessment Teams**

### **§1301. Qualifications for Assessment Team Member**

A. The new teacher shall be assessed by a team of two highly qualified, experienced educators who have completed their assessor training and have met all requirements thereof. This team shall consist of the immediate supervisor (principal or designee) and an assessor external to the building who meets the qualifications defined in the following paragraphs. Each team member will each conduct one visit to the new teacher's classroom during the assessment semester. The requirements for selection as a team member are outlined below.

#### **1. Immediate Supervisor**

a. Usually the new teacher's principal or principal's designee. In some unique situations, the immediate supervisor may be a director of vocational education, special education supervisor, or person in another position to whom the new teacher directly reports.

#### **2. External Assessor**

a. The external assessor can be appointed from the ranks of five specific groups of educators who are qualified to serve as an assessor by virtue of completing the assessor training program and meeting all requirements thereof.

i. Faculty members in colleges/departments of education and other colleges/departments who have training, experience, and teaching assignments in pedagogy and teacher education.

ii. Experienced teachers currently employed within the LEA but outside the new teachers' school who:

(a). have a minimum of three years of experience (five years suggested);

(b). ideally, possess training and experience in the content fields/grade levels taught by the new teacher;

Note: It will not always be possible to obtain a teacher for the team who is currently serving at exactly the same grade level. Therefore, this requirement is interpreted to mean that a teacher assigned to a new kindergarten teacher shall have training or experience at this level and be teaching currently in grades Pre-K through 2. Teachers in grades 3 through 5 shall be eligible to serve as assessors for new teachers in those grades. Teachers representing appropriate content areas in grades 5 through 8 can be assigned to teams for new teachers serving at any of those grade levels. Teachers in grades 9 through 12 can be assigned to teams in their content field(s) at any of those grade levels. Teachers who serve as assessors of new special education teachers should have experience within the special education area.

(c). ideally, possess a master's degree;

(d). qualified to serve as an assessor by virtue of exemplary teaching practice;

(e). nominated to serve as an assessor by the faculty of the school in which he/she teaches;

(f). qualified to serve as an assessor by virtue of completing the assessor training program and meeting all requirements thereof;

(g). selected by agreement of the principals of the two schools (assessors' school, new teachers' school) from the pool of nominees presented and trained;

(h). an experienced teacher should not be asked to serve as an assessor for more than two new teachers in a given year, unless the LEA makes provisions for that teacher to be released from an appropriate portion of his/her other responsibilities or unless extenuating circumstances prevail. The teacher has the option of refusing to take on the additional responsibilities.

Note: A full-time experienced teacher who is also serving as a mentor to two new teachers cannot serve on more than one assessor team.

iii. Central office administrators (e.g., supervisors, directors of curriculum) with appropriate educational background and experience who are employed by the new teacher's LEA.

iv.. Retired teachers, administrators, or higher education faculty members nominated by teachers and administrators within the LEA. It is suggested that these individuals be retired no more than five years prior to becoming an assessor.

v. Other educators as deemed appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

## **Chapter 15. Compensation**

### **§1501. Persons Eligible for Compensation**

A. Only retired educators, college faculty, other educators as deemed appropriate, and experienced teacher assessors and mentors shall receive compensation for their assistance/assessment activities. When and if the State makes additional funding for this program available, the Board and LDE shall determine, with input from LEAs, how to best utilize those resources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

## **Chapter 17. Assessment Criteria**

### **§1701. Louisiana Components of Effective Teaching**

A. The criteria for the assessment of new teachers are the Louisiana Components of Effective Teaching.

#### 1. Definitions

a. In the Louisiana Components of Effective Teaching:

*Domain* is defined as a major area of teaching responsibilities;

*Component* is a critical function within a Domain;

*Attribute* is a behavior that relates to and helps to define a Component.

b. The Domains, Components, and Attributes form a hierarchy that represents skills and knowledge of effective teaching.

B. The Components of Effective Teaching shall be reviewed annually by the LDE, educators administering the assessment program, and appropriate consultants to determine need for modifications and their continuing utility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

## **Chapter 19. Assessment Standards for Certification**

### **§1901. Standards for Certification**

A. The assessment standards for certification recommended by a Standards Setting Panel convened by the State Superintendent of Education in June, 1994, and adopted by the SBESE in the same month are:

1. achievement of a "competent", "2" rating on each of the eight components of the Louisiana Components of Effective Teaching.

B. A teacher who does not meet this standard during semester three of employment in Louisiana public schools may be re-employed by the local school system for a fourth semester, during which time the teacher shall again participate in the Louisiana Teacher Assistance and Assessment Program. This second assessment period shall be treated as a second opportunity to meet the assessment standards for certification. No data or ratings from the first assessment period shall be used in determination of the teacher's ratings during this second year. Only the information from the Professional Development Plan will be used during the second assessment period to assist the teacher.

C. Failure of the teacher to meet the assessment standards for certification during the fourth semester of assistance and assessment shall result in a prohibition to teach in Louisiana Public Schools for a period of at least two years. During this period, the individual should complete the Professional Development Plan formulated with the assessment team at the conclusion of the second assessment period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

### **§1903. Reapplication for Entry into the Program**

A. To reapply for entry into the assistance and assessment program after absence from teaching due to failure to meet the assessment standards for certification, a teacher must document to the employing school system and the Louisiana Department of Education that the last Professional Development Plan outlined by/with the previous support/assessment team has been completed to the extent possible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

### **§1905. Loss of State Funding**

A. Local school systems which continue to employ teachers who have been denied regular certificates or other authority to teach, due to failure to meet the assessment standards for certification, shall be subject to loss of State funding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

### **§1907. Previous Requirements**

A. Nothing in this bulletin supersedes or changes additional, previously established requirements for certification (e.g., passing scores on the PRAXIS/National Teacher Examination, completion of required college/university course work, and degrees).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

## **Chapter 21. Grievance Procedures for the Louisiana Teacher Assistance and Assessment Program**

### **§2101. Due Process**

A. Teachers will be afforded due process in all aspects of the Louisiana Teacher Assistance and Assessment Program. The due process rights include the following.

1. The assessed teacher shall receive copies of all teacher-signed documents: the Post-observation Conference Record, the Teacher Summary Report, and the Professional Development Plan.

2. The assessed teacher may request, in writing, copies of any additional records used during the assessment process at the conclusion of the Professional Development Conference, within 20 working days.

3. A Post-observation Conference must be held within two working days of the completion of the observation.

4. The assessed teacher may, in either semester, file a written response (that may or may not lead to a formal grievance process) to the assessment as represented in the Teacher Summary Report and supporting assessment records. This response may be filed at the end of the Post-observation Conference or the Teacher Summary Conference, but no later than 10 working days after the receipt of the Professional Development Plan during the Professional Development Conference. This response shall be permanently attached to the Teacher Summary Report.

5. The assessed new teacher has the right to receive proof, by documentation, of any item contained in the assessment documents that the teacher believes to be inaccurate, invalid, or misrepresented. If documentation does not exist, the item in question must be amended or removed from the Teacher Summary Report.

6. Confidentiality of assessment results must be maintained as prescribed by law.

7. A grievance procedure and an appeals procedure that follow the proper lines of authority have been established and must be followed.

8. The assessed teacher shall be assured of due process in all aspects of the assessment grievance procedures. The hearing officer required to conduct a hearing on a grievance shall be an employee of or contracted by the Office of the Attorney General. The assessed new teacher may retain representation of his/her choice and at his/her own expense.

9. The assessment team shall initially assume the burden of proof at Steps 1 and 2 of the grievance procedures. Upon appeal at Step 3, the burden of proof shifts to the assessed new teacher.

10. At any point in the grievance procedures when either party fails to appear for a properly scheduled grievance hearing, a remedy may be fashioned within the discretion of the hearing officer.

11. Grievance hearings shall be conducted during the working day with the assessed teacher suffering no loss of pay or benefits for attending grievance hearings. However, in the event the hearing officer determines that the grievance is frivolous, or if the appeal is unsuccessful, the assessed teacher shall be reimbursed for no more than two days pay. Should the assessed teacher's appeal be successful, then he/she shall be paid for the full length of the hearing. Grievance hearings may be conducted during the summer.

12. The aggrieved teacher may choose to retain representation at any and all stages in the grievance procedure. The assessment team leader shall be notified of this decision by the aggrieved teacher five days prior to the scheduled hearing or prehearing. The assessment team shall be provided with a legal representative, upon request, at all stages of the grievance procedure, at no charge to the assessor(s). If any or all assessors choose to retain their own attorneys rather than the state appointed attorney, then the assessor(s) will be responsible for all legal fees.

13. In the event a lawsuit is filed against the assessment team or any individual assessor in his/her official capacity in a court of competent jurisdiction, the assessor shall be represented by the Louisiana Department of Education (LDE) at no charge to the individual assessor or the assessment team. The assessors shall be indemnified both as individuals and as assessment team members should there be judgment for any cost incurred. Indemnification may be denied if the court finds the assessor's actions were willful, intentional, or malicious.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

### §2103. Grievance

*Grievance*Ca claim by an assessed teacher that the assessment is inaccurate, invalid, or misrepresented. The grievance shall be based upon assessor bias, omission, or error. Any other issues are to be handled as administrative complaints (i.e., receipt of implementation guide, teacher orientation, teacher notification, etc.).

#### 1. Step 1

a. Any assessed teacher who believes that he/she has a grievance may file the grievance at any time during the assessment process but not later than 20 working days after the Professional Development Conference. The grievance must be in writing and shall state:

i. the precise factual basis on which it is based; and  
ii. the specific relief requested by the teacher. The grievance shall be presented to the principal or the immediate supervisor who served on the assessment team. That principal, or the immediate supervisor, shall acknowledge receipt of the grievance in writing and keep a record of its filing. That principal or that immediate supervisor shall forward a copy of the grievance to all assessment team members.

b. Within 10 working days of receipt of the written grievance, the assessment team shall schedule a conference with the assessed teacher and/or the teacher's representative to discuss the specific terms of the grievance. If the conference must be delayed (i.e., illness, prior scheduling, holidays, etc.), the conference shall be mutually rescheduled within 20 working days. Any other extensions would be considered only in the case of documented illness or severe emergency.

c. Within 10 working days of the conference, the assessment team must confer concerning the specifics of the grievance, arrive at a mutually agreeable decision, and render a signed written response specifically addressing each area in which relief has been requested. If no mutually agreeable decision can be reached by the assessment team, the grievance shall be handled as prescribed in Step 2. Within the above stated 10-day limit, the principal or immediate supervisor from the assessment team shall hand deliver or send by certified mail, the assessment team's written response to the assessed teacher.

#### 2. Step 2

a. If an assessed teacher is not satisfied with the decision rendered at Step 1, he/she shall institute a written request for a formal hearing within 10 working days of receipt of the response from the assessment team. The assessed teacher must complete an official form to request a formal hearing and submit it to the Louisiana Teacher Assistance and Assessment Program Contact Person at the appropriate Local Education Agency (LEA). The official request must be hand delivered or mailed by certified mail. If mailed, the official request must be postmarked on or before the tenth day after receipt of the response from the assessment team.

i. The Request for Formal Hearing shall contain the following:

(a) the name of the assessed teacher and the LEA in which the teacher is employed;

(b) the name and position of each member of the assessment team;<sup>1</sup>

(c) the name, address and telephone number of the teacher's representative, if designated;

(d) the date the Post-observation Conference was conducted;

(e) the date on which the grievance was filed;

(f) the date on which the assessed teacher and the assessment team met to discuss the grievance (see Step 1B);

(g) the date on which the assessed teacher received the assessment team's response.

ii. Attached to the Request for Formal Hearing shall also be:

(a) a copy of the original assessment team's report on the assessed teacher's classroom performance (the Teacher Summary Report);

(b) a copy of the original grievance;

(c) a copy of the Assessment Team's response to the specific grievance(s);

(d) any other pertinent documents or relevant information.

b.i. The Louisiana Teacher Assistance and Assessment Program Contact Person shall notify within 5 days a Regional Hearing Officer, appointed by the Attorney General, of the assessed teacher's appeal. The Regional Hearing Officer shall review the allegation(s) of the appeal, compile all evidence relevant to the allegation(s) and :

(a) dismiss the appeal for failing to have the official Request for Formal Hearing and/or the attachments required above<sup>1</sup>;

(b) notify, by certified mail, all persons directly involved, as to the date, time, and place of the formal hearing and of the prehearing conference, if any.

ii. The hearing must be conducted within 35 working days of the filing of the appeal. The Regional Hearing Officer may grant an extension upon appropriate written request of the assessed teacher or assessor(s) for good cause shown, or upon his own motion to grant an extension.

c. The assessed teacher or his/her representative, or the assessment team, may add to the grievance any additional evidence relevant to the hearing. The Regional Hearing Officer shall decide if the evidence is relevant and material.

d. The Regional Hearing Officer may schedule any prehearing conferences as he/she feels may be necessary for the exchange of evidence, or for any other purposes set forth in these rules.

i. The prehearing conference must be held not less than 5 working days prior to the formal hearing.

ii. At least 10 working days prior to the prehearing conference, all parties shall exchange and deliver copies of exhibits, documentary evidence, offerings, and a list of proposed witnesses. Failure to exchange documentary evidence and/or witness lists will result in those witnesses and evidence being excluded from the hearing.

iii. The Regional Hearing Officer, at the prehearing conferences or otherwise, may determine what material or relevant facts or issues exist without substantial controversy, and which should be deemed stipulated or proven and what material facts and issues actually, and in good faith, are contested.

iv. The Regional Hearing Officer may, prior to the hearing, issue an order which specifies the action(s) taken at the prehearing conference, and the agreements made by the parties as to any of the matters considered and/or which limit the issues to be considered at the hearing to those which are actually, and in good faith, contested. This order shall control the subsequent course of the proceedings, unless modified during the formal hearing to prevent manifest injustice.

v. All parties to the proceedings shall be given notice of any prehearing conference, and any party who fails to attend or participate in such a conference may be found to be in default. If a party is found to be in default, the Regional Hearing Officer may limit the party's participation in the hearing or evidence sought to be introduced, dismiss the proceeding, continue the hearing at a later date, proceed with the hearing and render a decision, or order appropriate action based on the evidence submitted at the hearing.

vi. The Regional Hearing Officer may issue subpoenas upon the request of the assessed teacher, his/her representative, or the assessment team. The request for subpoenas must be in writing and shall be submitted to the Hearing Officer 15 days prior to the scheduled formal hearing. Further discovery will not be required nor shall subpoenas be issued for public records within the Louisiana Department (LDE) of Education which are available under the Public Records Law (R.S. 44:1).

e. Failure by the assessed teacher to submit relevant evidence and failure to attend the hearing may result in a dismissal of the hearing with prejudice at the discretion of the Regional Hearing Officer. (In the event persons directly involved in the assessment process fail to submit evidence, then the teacher shall be granted the specific relief he/she has requested.)

f. The Regional Hearing Officer may affirm, reverse, modify or set aside the decision of the assessment team. The Regional Hearing Officer shall render a decision in writing within 15 working days of the date of the hearing.

### 3. Step 3

a. If the assessed teacher is not satisfied with the Regional Hearing Officer's decision, he/she may appeal to the Attorney General's Office within 10 working days of the receipt of the Regional Hearing Officer's decision. The appeal is deemed timely if it is postmarked within the 10 working day period. The State Hearing Officer appointed by the Attorney General shall review the allegation(s) of the appeal, compile all evidence relevant to the allegation(s), and:

i. dismiss the appeal for failing to have an official Request for Formal Hearing and/or the attachments required above; or

ii. notify, by certified mail, all persons directly involved, as to the date, time, and place of the formal appeal hearing and of the prehearing conference, if any. The formal appeal hearing must be conducted within 35 working days of the filing of the appeal. Additional evidence may be introduced by the involved parties.

b. The State Hearing Officer at his discretion may:

i. grant a limited hearing/argument of the issue with no oral testimony;

ii. require an appeal through briefs;

iii. grant a new formal hearing;

iv. allow the introduction of new evidence that was not available and/or accessible at Step 2.

c. The State Hearing Officer may affirm, reverse, modify, or set aside the decision of the Regional Hearing Officer.

d. If the State Hearing Officer affirms the Regional Hearing Officer's decision and also determines the assessed teacher's appeal to be based upon a personal grudge, harassment, frivolous complaint, or made solely for the purpose of delay, he shall dismiss the appeal with prejudice. If the State Hearing Officer determines that an assessment team member has committed a procedural violation during the assessment of the teacher, or it is determined that it is in the best interest of the assessment process and procedures, then the State Hearing Officer shall notify the LED and make recommendations for that assessor to:

i. be reprised of the assessment process and procedures;

ii. be retrained;

iii. have his assessment certification revoke;

iv. be reassigned to another assessment team.

e. The State Hearing Officer shall render a decision in writing within 25 working days of the date of the hearing.

<sup>1</sup> The principal or the teacher's immediate supervisor shall supply the teacher with all pertinent names and addresses, upon request by the teacher, within 2 working days.

<sup>2</sup> If a Professional Development Plan is in progress for the teacher, the Regional Hearing Officer may suspend the Plan, based on relevant evidence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

### §2105. Glossary of Terminology

A. In order that consistency in terminology be maintained on a statewide basis, a list of terms and definitions is being established to provide the reader with a clear and common understanding of the due process components and grievance procedures.

**Appeal** A challenge of a decision rendered by an Regional Hearing Officer appointed by the Attorney General.

**Assessment Program Contact Person** A person employed by the local education agency to provide/facilitate Louisiana Teacher Assistance and Assessment Program activities. These persons are also involved in the grievance procedures at Step 2.

**Assessor Bias** A preference or inclination that inhibits impartial assessment by an assessor.

**Assessor Error** Intentional or unintentional deviation(s) by an assessor from the prescribed procedures set by the Policies and Procedures for Louisiana Teacher Assistance and Assessment, Bulletin 1943, June 1994, Revised April 1998, 2001.

**Assessor Omission** To fail to include or to leave out those steps necessary by an assessor for a procedurally accurate assessment of a teacher.

**Day(s)** Shall be the assessed teacher's working days during the school calendar year adopted by the local school board except during the summer months when days shall be working days as observed by the LDE.

Note: If the hearing decision is rendered during a period of a school holiday, and the teacher does not have direct access to his/her mail because he/she is away from his/her residence, out of the city, or state, then the period of appeal shall be extended upon verified affidavit for an additional 5 working days upon his/her return to the residence. The affidavit shall be attached to the appeal. It is the obligation of the assessed teacher or his/her representative to inform the Hearing Officer that he/she will be away from his/her residence during said holiday period. Should the teacher commute daily to and from the place of residence during the holiday season, then the 5-day extension does not apply.

**Documentation** Copies of the official and signed forms related to the assessment process

**Due Process** Fair and impartial treatment as guaranteed under the law including, but not limited to, the 1st, 5th, and 14th amendments to the Constitution of the United States, Section 1983 of the Civil Rights Act of 1971, Title VII of the Civil Rights Act of 1964, and Title IX of the Educational Amendment of 1972, relative to procedural requirements.

**Formal Hearing** A meeting wherein arguments, proofs, and evidence are presented and testimony is heard.

**Grievance** A claim by an assessed teacher that the assessment is inaccurate, invalid or misrepresented. The grievance shall be based upon assessor bias, omission or error. Any other issues are to be handled as administrative complaints (i.e., receipt of implementation guide, teacher orientation, teacher notification, etc.).

**Hearing Officer** A legally trained person specifically contracted and trained by the attorney general's office to conduct a formal investigation or hearing at either the regional or state level and to report his findings of fact and render decisions based on those facts. No person who has a personal or professional interest which conflicts with his/her objectivity may be contracted to serve as a Hearing Officer.

**Indemnification** To provide to assessor(s) legal exemption from liability during the assessment process.

**Teacher's Representative** Any person selected by the aggrieved teacher to represent him/her during the course of the grievance procedures.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 28:

## **Chapter 23. Assistance Program Procedures**

### **§2301. Period of Mentor Assignment**

A. Mentors or mentor support teams will be assigned to new teachers for the duration of two years. During these two years of assistance and support, the mentor or mentor support team and new teacher should meet both frequently and regularly to carry out the activities outlined below. Building principals will need to facilitate these meetings and the activities described below by scheduling common free time for the two parties, supplying substitute teachers on occasion, and otherwise promoting the giving and receiving of support wherever and whenever possible.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 28:

### **§2303. Mentor/New Teacher Activities**

A. There is sometimes a tendency to "load" new teachers with extra-curricular duties and responsibilities. A concerted effort should be made to minimize these responsibilities during a teacher's first two years in the classroom. It is to the benefit of students, learning, and the new teacher to focus the new teacher's attention primarily and specifically on the delivery of quality instruction.

B. During the new teacher's first year, it is expected that mentor or mentor support team/new teacher activities will include:

1. familiarization of the new teacher with school routines, procedures, and resources;
2. discussions around new teacher questions and needs;
3. mentor or mentor support team observations of the new teacher with appropriate feedback, including one or more observations that parallel those which will be conducted by assessors during the third (assessment) semester;
4. new teacher observations of the mentor or mentor support team and other teachers as appropriate;
5. one or more interviews conducted by the mentor or mentor support team that parallel those which will be conducted by assessors during the third (assessment) semester;
6. at least one visit to the new teacher by the building principal like that which will be conducted by assessors during the third assessment semester; i.e., observation, interview, feedback;
7. collaborative formulation by the mentor or mentor support team, principal, and new teacher of a formal professional development plan for the new teacher. Said plan should be formulated after both mentor and principal have conducted classroom observations and interviews;
8. provision of assistance to the new teacher by the mentor or mentor support team and others in understanding the characteristics of students, school, and community that can/will influence teaching and learning;
9. provision of assistance to the new teacher by the mentor or mentor support team and others in interpretation and use of student assessment data in improving instruction;
10. provision of assistance to the new teacher by the mentor or mentor support team and others in forming meaningful collaborative relationships with colleagues, parents, and the community.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 28:

### **§2305. Second Semester Mentor/New Teacher Activities**

A. During the new teacher's second year, it is expected that mentor or mentor support team and new teacher activities will include:

1. additional observations and interviews;
2. additional new teacher observations of the mentor or mentor support team and other teachers, as appropriate;
3. additional mentor assistance in resolving problems and issues confronting the new teacher;

4. mentor or mentor support team assistance in expanding the new teacher's repertoire of effective teaching practices and student assessment techniques;

5. continuing mentor or mentor support team assistance in gathering, analyzing, and using information that will increase student learning and effective instruction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

## **Chapter 25. Assessment Procedures**

### **§2501. Semester of Assessment**

A. During the assessment semester, the two person assessment teams will carry out the following processes.

1. Each assessor shall visit the new teacher and conduct a pre-observation interview, observation, and post-observation conference, in that order.

2. The pre-observation interview may be conducted one day prior to the scheduled observation, if that procedure is agreeable to both the assessor and the new teacher.

3. The post-observation conference shall be held within 48 hours following the completion of the observation. However, it can be held on the same day that the observation is conducted, if that procedure is agreeable to both the assessor and the new teacher.

4. An assessor should complete all responsibilities (pre-observation interview, observation, post-observation conference) with one teacher before beginning assessment of another.

5. During each post-observation conference, the assessor and the new teacher will formulate improvement plans in accordance with the assessment data available. Professional development is a continuous process which should not wait until all visits for assessment are completed.

6. At the conclusion of each post-observation conference, the new teacher shall be provided a copy of the post-observation conference record. Copies of the observation and pre-observation interview records shall also be provided, if the teacher requests them.

7. At the end of the semester, when both members of the assessment team have completed their visits, they shall compare and combine their findings, share their consensus findings with the teacher being assessed, and prepare a comprehensive professional development plan. Both members of the assessment team shall be present for this conference with the new teacher.

8. The assessment team will combine attribute ratings into component ratings in order to determine if the teacher being assessed has met the assessment standards for certification. In the event the two members of the assessment team are in disagreement over the certification recommendation and the disagreement cannot be resolved, the principal/designee shall notify the LEA contact person of the impasse within two working days after the assessor team consensus meeting. Within five working days of this notification, the LEA contact person shall appoint a third assessor external to the school, who will conduct a third visit and participate in the certification decision. The assessment ratings, the resultant recommendations pertaining to the assessment standards for certification, and identified instructional strengths and needs of the teacher, will be shared at the Summary Conference and used to develop with

the new teacher a new or modified professional development plan.

9. At the conclusion of the summary conference, the new teacher shall be provided copies of the teacher summary report and the professional development plan. If the teacher desires copies of observation and pre-observation interview records not previously received, these records can also be requested in writing at this time.

10. The rating scale to be used in the Louisiana Teacher Assistance and Assessment Program shall be a 2-point scale where a rating of "2" is defined as "Competent" and a rating of "1" is defined as "Needs Improvement." However, the utility of this rating scale shall be reviewed annually by the LDE with input from educators using the scale to complete new teacher assessments. (Assessment standards for certification based on this 2point scale are explicated in Section X of this bulletin.)

11. At the conclusion of the assessment process, assessment teams shall provide all completed assessment forms and instruments required by the LDE together with appropriate recommendations to the LEA assessment contact person, who in turn will forward these forms, instruments, and recommendations to the LDE.

12. The new teacher may file a response to the assessment as represented in the Teacher Summary Report and supporting assessment records. This response shall be permanently attached to the Teacher Summary Report.

13. Confidentiality of assessment results must be maintained as prescribed by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

### **§2503. Extenuating Circumstances in the Assessment Process**

A. When extenuating circumstances in the assessment process occur, the procedures outlined below shall be followed.

1. New teachers employed or unreported to the LDE by the LDE established dates shall not enter the first phase (initial support semester) of the assistance and assessment program until the following semester.

2. If a new teacher is employed and reported by the dates specified above, but is reassigned to a new school or a new subject/grade assignment after October 1 or February 1, the teacher shall not enter the first phase (initial support semester) of the assistance and assessment program until the following semester.

3. If a new teacher who has completed the first year of teaching is reassigned to a new school or a grade/subject greatly different from the previous assignment, the teacher may request in writing that the LEA and LDE defer assessment for one semester. A written response to the request must be delivered to the teacher within 10 working days from the date that the LEA and LDE receive the request. If the assessment is deferred, the new teacher shall be assessed the following semester.

4. If a new teacher does not complete either the initial support year or the assessment semester, the new teacher shall reenter that phase of the assessment program, i.e., either support or assessment, that was incomplete.

5. If a new teacher does not meet the assessment standards for certification at the end of the first assessment period, the teacher may request changes in the mentor and/or the assessment team for the second assessment period. The written request shall be submitted to both the principal and the LEA contact person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

## **Chapter 27. Relations to Other Existing Policies and Laws**

### **§2701. Right to Evaluate Employees or Make Employment Decisions**

A. It is important to note that nothing contained in the Louisiana Teacher Assistance and Assessment Program shall diminish the right of the local board, or of principals, or of other employees with supervisory responsibilities, to evaluate employees or to make employment decisions. The services of a teacher shall be considered the services of a fully certified teacher for all purposes of the local school system related to funding, calculation of minimum foundation funds, accreditation, or for any other purpose, administrative, substantive, or otherwise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

### **§2703. Program Relationship to Entitlement to All Benefits**

A. Participation in the Assistance and Assessment Program shall have no effect on the service of the teacher as it relates to entitlement to all benefits including retirement, accrual of leave time, progress on the salary schedule, and any other benefit calculation or consideration to which the teacher would otherwise be entitled.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

## **Chapter 29. Monitoring Guidelines**

### **§2901. Monitoring Procedures**

A. The LDE shall annually monitor the conduct of the assistance and assessment procedures within the LEAs. The purpose of the monitoring process shall be to determine whether this program is being carried out in compliance with the provisions set forth by legislation and this bulletin. The LDE, each year, shall schedule visits to selected LEAs for the purpose of monitoring the implementation of the process of state assessment. LEAs will be selected for visits based on a three-year rotation cycle. During the monitoring process the LDE team shall perform the following tasks:

1. notify the LEA superintendent and assistance and assessment contact person of the impending visit and establish dates of the visit;

2. review a premonitoring report prepared by the LDE;

3. visit the LEA (length of time spent in the LEA will be determined by size of the LEA) to determine compliance or failure to comply. During each visit, the monitoring team will:

a. meet with the superintendent or LEA designee to explain the nature and duration of the visit;

b. meet with the assistance and assessment contact person and/or other appropriate personnel to discuss the schedule;

c. review the premonitoring report with the assistance and assessment contact person and/or other appropriate personnel;

d. conduct a summary session with the LEA superintendent, contact person, LEA Core Team and/or other appropriate personnel;

4. inform the LEA in writing of compliance, the areas of noncompliance, and of recommendations;

5. notify the SBESE of system(s) that are in compliance and those that failed to comply;

6. make recommendations to the SBESE regarding action to be taken in situations of noncompliance;

7. Failure of local school systems to implement the procedures outlined in the bulletin according to R.S. 17:3883, can result in the Department recommending to the Board whatever sanctions against such school system the Department deems appropriate which may include withholding funds distributed pursuant to the minimum foundation program formula until the corrections are made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

## **Chapter 31. Revisions; Policy Manuals**

### **§3101. Review and Revisions**

A. The SBESE shall establish the Louisiana Components of Effective Teaching. These Components and the Louisiana Teacher Assistance and Assessment Program results shall be regularly reviewed by the LDE with involvement of all segments of the education community and appropriate consultants. Necessary revisions shall be recommended to the SBESE by June of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

### **§3103. Additional Materials for Educators**

A. The Louisiana Department of Education shall produce for trainers, mentors, assessors, and new teachers subject to assistance and assessment definitive manuals which convey SBESE's policies as set forth in this bulletin and further explain each process and procedure of the assistance and assessment program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

## **Chapter 33. Appendix A**

### **§3301. Assessor and Mentor Code of Ethics**

A. Assessors and mentors shall conduct themselves in a professional manner at all times during the assistance and assessment processes.

B. Assessors shall not communicate, either directly or indirectly, regarding any issue concerning the assessment process or the new teacher's personal qualifications, with any person except the new teacher's assessment team members,

appropriate administrators of the LEA, and/or State Department of Education representatives to whom assessment results are reported.

C. The mentor shall maintain confidentiality regarding contacts and communications with new teachers unless such confidentiality will bring into question the safety and well-being of students. It is unlawful for any employee to withhold any information/knowledge regarding unlawful, unethical, and/or immoral activities involving students.

D. Assessors and mentors shall not knowingly misrepresent the qualifications or performance of a new teacher.

E. Assessors and mentors shall not knowingly make false statements about a new teacher.

F. Assessors and mentors shall not make malicious statements about a new teacher.

G. Assessors and mentors shall not accept any gratuity, gift, or favor that might impair or influence the assistance and assessment processes.

H. Mentors shall not act as mentors for their own immediate families, including aunts, uncles, nieces, nephews, and in-laws.

I. Assessors shall not participate in assessment teams for their own immediate families, including aunts, uncles, nieces, nephews, and in-laws.

J. Assessors shall try to optimize the assessment process and develop appropriate rapport with the new teachers to whom they are assigned.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

### **Chapter 35. Appendix B**

#### **§3501. New Teacher Code of Ethics**

A. New teachers shall conduct themselves in a professional manner at all times during the assistance and assessment processes.

B. New teachers shall not knowingly misrepresent the qualifications or performance of a mentor or assessor.

C. New teachers shall not knowingly make false statements about a mentor or assessor.

D. New teachers shall not make malicious statements about a mentor or assessor.

E. New teachers shall try to optimize the assistance and assessment processes and develop appropriate rapport with the mentors or assessors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:

Interested persons may submit comments until 4:30 p.m., December 10, 2001, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody  
Executive Director

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

### **RULE TITLE: Bulletin 1943C Policies and Procedures for Louisiana Teacher Assistance and Assessment**

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

The adoption of this policy will cost the Department of Education approximately \$730 (printing and Postage) to disseminate this policy.

Copies will be mailed to each superintendent, to the Louisiana Teacher Assistance and Assessment Program Contact Persons, and to all assessor trainers

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

There is no effect on revenue collections of state or local governmental units.

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

Experienced Teachers from out of state will not be required to participate in the Louisiana Teacher Assistance and Assessment Program with the appropriate previous evaluation results from their immediate previous teaching assignments.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The printing of the Bulletin 1943: Policies and Procedures for Louisiana Teacher Assistance and Assessment has no effect on competition or employment.

Marlyn Langley  
Deputy Superintendent  
Management and Finance  
0110#046

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Department of Environmental Quality Office of Environmental Assessment**

Incorporation by Reference (LAC 33:I.3931; 33:III.507, 1432, 3003, 5116, 5122, and 5311; 33:V.Chapter 30.Appendices A-M; 33:IX.2301, 2531, 2533, and 2709; 33:XI.1111; and 33:XV.1517)(OS040\*)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Environmental Quality regulations, LAC 33:I.3931; 33:III.507, 1432, 3003, 5116, 5122, and 5311; 33:V.Chapter 30.Appendices A-M; 33:IX.2301, 2531, 2533, and 2709; 33:XI.1111; and 33:XV.1517 (Log #OS040\*).

This proposed Rule is identical to federal regulations found in 10 CFR 71, 7/1/2000; 40 CFR 60, 61, 63, 70.6, 93, 117.3, 122.29, 136, 144.63, 266.appendices A - M, 268.40, 302.4, 401, and 405-471, 7/1/2000, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 765-0399 or Box 82178, Baton Rouge, LA 70884-2178. No fiscal or economic impact will result from the

proposed Rule; therefore, the Rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This proposed Rule incorporates by reference into LAC 33:I, III, V, IX, XI, and XV the corresponding regulations in 10 CFR 71 and 40 CFR parts 60, 61, 63, 70.6, 93, 117.3, 122.29, 136, 144.63, 266, 302.4, 401, and 405-471. In order for Louisiana to maintain equivalency with federal regulations, the most current *Code of Federal Regulations* must be adopted into the LAC. This rulemaking is necessary to maintain delegation, authorization, etc., granted to Louisiana by EPA. This incorporation by reference package is being proposed to keep Louisiana's regulations current with their federal counterparts. The basis and rationale for this proposed Rule are to mirror the federal regulations in order to maintain equivalency.

This proposed Rule meets an exception listed in R.S. 30:2019 (D) (2) and R.S.49:953 (G) (3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Title 33  
ENVIRONMENTAL QUALITY**

**Part I. Office of the Secretary  
Subpart 2. Notification**

**Chapter 39. Notification Regulations and Procedures for Unauthorized Discharges**

**Subchapter E. Reportable Quantities for Notification of Unauthorized Discharges**

**§3931. Reportable Quantity List for Pollutants**

\* \* \*

[See Prior Text in A]

1. 40 CFR 117.3 (7-1-00 Edition) Table 117.3—Reportable Quantities of Hazardous Substances Designated Pursuant to Section 311 of the Clean Water Act; and

2. 40 CFR 302.4 (7-1-00 Edition) Table 302.4—List of Hazardous Substances and Reportable Quantities; Appendix A to §302.4—Sequential CAS Registry Number List of CERCLA Hazardous Substances.

\* \* \*

[See Prior Text in B-Note @]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), R.S. 30:2060(H), R.S. 30:2076(D), R.S. 30:2183(I), R.S. 30:2194(C), R.S. 30:2204(A), and R.S. 30:2373(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:183 (February 1994), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:944 (September 1995), LR 22:341 (May 1996), amended by the Office of the Secretary, LR 24:1288 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:

**Title 33  
ENVIRONMENTAL QUALITY**

**Part III. Air**

**Chapter 5. Permit Procedures**

**§507. Part 70 Operating Permits Program**

\* \* \*

[See Prior Text in A-B.1]

2. No Part 70 source may operate after the time that the owner or operator of such source is required to submit a permit application under Subsection C of this Section, unless an application has been submitted by the submittal deadline and such application provides information addressing all

applicable sections of the application form and has been certified as complete in accordance with LAC 33:III.517.B.1. No Part 70 source may operate after the deadline provided for supplying additional information requested by the permitting authority under LAC 33:III.519, unless such additional information has been submitted within the time specified by the permitting authority. Permits issued to the Part 70 source under this Section shall include the elements required by 40 CFR 70.6. The Louisiana Department of Environmental Quality hereby adopts and incorporates by reference the provisions of 40 CFR 70.6(a), as in effect on October 22, 1997. Upon issuance of the permit, the Part 70 source shall be operated in compliance with all terms and conditions of the permit. Noncompliance with any federally applicable term or condition of the permit shall constitute a violation of the Clean Air Act and shall be grounds for enforcement action; for permit termination, revocation and reissuance, or revision; or for denial of a permit renewal application.

\* \* \*

[See Prior Text in C-J.5]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011, 2023, 2024 and 2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), LR 20:1375 (December 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:

**Chapter 14. Confor mity**

**Subchapter B. Conformity to State or Federal**

**Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded, or Approved Under Title 23**

**U.S.C. or the Federal Transit Act**

**§1432. Incorporation by Reference**

A. 40 CFR part 93, subpart A, July 1, 2000, is hereby incorporated by reference with the exclusion of section 105.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 24:1280 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:

**Chapter 30. Standards of Performance for New Stationary Sources (NSPS)**

**Subchapter A. Incorporation by Reference (IBR)**

**§3003. IBR 40 Code of Federal Regulations (CFR) Part 60**

A. Except as modified in this Section, regulations at 40 CFR part 60, as revised July 1, 2000, and specified below in Tables 1 and 1.A are hereby incorporated by reference as they apply to the state of Louisiana.

Table 1 40 CFR Part 60	
40 CFR Part 60 Subpart	Subpart Headings
* * *	
[See Prior Text in A – Cb]	
Cc	Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills
See Prior Text in Cd - WWW	

\* \* \*

[See Prior Text in Table 1.A]

B. Reserved.

\* \* \*

[See Prior Text in C – D]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 22:1212 (December 1996), amended LR 23:1681 (December 1997), LR 24:1287 (July 1998), LR 24:2238 (December 1998), LR 25:1239 (July 1999), LR 25:1797 (October 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1607 (August 2000), LR 26:2460 (November 2000), LR 26:2608 (November 2000), LR 27:

**Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program**

**Subchapter B. Incorporation by Reference of 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants)**

**§5116. Incorporation by Reference of 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants)**

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants published in the *Code of Federal Regulations* at 40 CFR part 61, revised as of July 1, 2000, and specifically listed in the following table are hereby incorporated by reference as they apply to sources in the State of Louisiana.

40 CFR 61	Subpart/Appendix Heading
Subpart A	General Provisions
Subpart C	National Emission Standard for Beryllium
Subpart D	National Emission Standard for Beryllium Rocket Motor Firing
Subpart E	National Emission Standard for Mercury
Subpart F	National Emission Standard for Vinyl Chloride
Subpart J	National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene
Subpart L	National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants
Subpart N	National Emission Standard for Inorganic Arsenic Emissions from Glass Manufacturing Plants
Subpart O	National Emission Standard for Inorganic Arsenic Emissions for Primary Copper Smelters
Subpart P	National Emission Standard for Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities
Subpart V	National Emission Standard for Equipment Leaks (Fugitive Emission Sources)
Subpart Y	National Emission Standard for Benzene Emissions from Benzene Storage Vessels
Subpart BB	National Emission Standard for Benzene Emissions from Benzene Transfer Operations
Subpart FF	National Emission Standard for Benzene Waste Operations
Appendix A	National Emission Standards for Hazardous Air Pollutants, Compliance Status Information
Appendix B	Test Methods
Appendix C	Quality Assurance Procedures

\* \* \*

[See Prior Text in B - C]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:61 (January 1997), LR 23:1658 (December 1997), amended LR 24:1278 (July 1998), LR 25:1464 (August 1999), LR 25:1797 (October 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2271 (October 2000), LR 27:

**Subchapter C. Incorporation by Reference of 40 CFR Part 63 (National Standards for Hazardous Air Pollutants for Source Categories) as it Applies to Major Sources**

**§5122. Incorporation by Reference of 40 CFR Part 63 (National Standards for Hazardous Air Pollutants for Source Categories) as it Applies to Major Sources**

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants for Source Categories published in the *Code of Federal Regulations* at 40 CFR part 63, revised as of July 1, 2000, and specifically listed in the following table are hereby incorporated by reference as they apply to major sources in the state of Louisiana.

40 CFR 63	Subpart/Appendix Heading
* * *	
[See Prior Text in Subpart A – Subpart NNN]	
Subpart OOO	National Emission Standards for Hazardous Air Pollutant Emission: Manufacture of Amino/Phenolic Resins
* * *	
[See Prior Text in Subpart PPP]	
Subpart RRR	National Emission Standard for Hazardous Air Pollutants for Secondary Aluminum Production
* * *	
[See Prior Text in Subpart TTT]	
Subpart VVV	National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works
* * *	
[See Prior Text in Subpart XXX – Appendix D]	

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:61 (January 1997), amended LR 23:1659 (December 1997), LR 24:1278 (July 1998), LR 24:2240 (December 1998), LR 25:1464 (August 1999) LR 25:1798 (October 1999), LR 26:690 (April 2000), LR 26:2271 (October 2000), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:

**Chapter 53. Area Sources of Toxic Air Pollutants**  
**Subchapter B. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as it Applies to Area Sources**

**§5311. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as it Applies to Area Sources**

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants for Source Categories published in the *Code of Federal Regulations* at 40 CFR part 63, revised as of July 1, 2000, and specifically listed in the following table are hereby incorporated by reference as they apply to area sources in the State of Louisiana.

40 CFR 63	Subpart/Appendix Heading
Subpart A	General Provisions
Subpart M	National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities
Subpart X	National Emission Standards for Hazardous Air Pollutants From Secondary Lead Smelting

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:63 (January 1997), amended LR 23:1660 (December 1997), LR 24:1279 (July 1998), LR 25:1464 (August 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:

### Title 33

## ENVIRONMENTAL QUALITY

### Part V. Hazardous Waste and Hazardous Materials

#### Subpart 1. Department of Environmental Quality Hazardous Waste

#### Chapter 30. Hazardous Waste Burned in Boilers and Industrial Furnaces

##### Appendices

##### Appendix A. Tier I and Tier II Feed Rate and Emissions Screening Limits For Metals

40 CFR 266, appendix I, July 1, 2000, is hereby incorporated by reference.

##### Appendix B. Tier I Feed Rate Screening Limits for Total Chlorine

40 CFR 266, appendix II, July 1, 2000, is hereby incorporated by reference.

##### Appendix C. Tier II Emission Rate Screening Limits for Free Chlorine and Hydrogen Chloride

40 CFR 266, appendix III, July 1, 2000, is hereby incorporated by reference.

##### Appendix D. Reference Air Concentrations

40 CFR 266, appendix IV, July 1, 2000, is hereby incorporated by reference, except that in regulations incorporated thereby, references to 40 CFR 261, appendix VIII and 266, appendix V shall mean LAC 33:V.3105.Table 1 and Appendix E of this Chapter, respectively.

##### Appendix E. Risk Specific Doses (10<sup>-5</sup>)

40 CFR 266, appendix V, July 1, 2000, is hereby incorporated by reference.

##### Appendix F. Stack Plume Rise [Estimated Plume Rise (in Meters) Based on Stack Exit Flow Rate and Gas Temperature]

40 CFR 266, appendix VI, July 1, 2000, is hereby incorporated by reference.

##### Appendix G. Health-Based Limits for Exclusion of Waste-Derived Residues

40 CFR 266, appendix VII, July 1, 2000, is hereby incorporated by reference, except that in regulations incorporated thereby, 40 CFR 261, appendix VIII, 266.112(b)(1) and (b)(2)(i), and 268.43 shall mean LAC 33:V.3105.Table 1, 3025.B.1 and B.2.a, and Chapter 22.Table 2, respectively.

##### Appendix H. Organic Compounds for Which Residues Must be Analyzed

40 CFR 266, appendix VIII, July 1, 2000, is hereby incorporated by reference.

## Appendix I. Methods Manual for Compliance with the BIF Regulations

A. 40 CFR 266, appendix IX, July 1, 2000, is hereby incorporated by reference, except as follows:

1. 40 CFR 261, appendix VIII, 266.103, 266.103(b), 266.103(b)(3), 266.103(c), 266.103(c)(1), 266.103(c)(3)(ii), 266.103(c)(7), 266.103(d), 266.106, 266.112, 266.112(b)(1) and (b)(2)(i), 268.43, and 266.subpart H shall mean LAC 33:V.3105.Table 1, 3007, 3007.B, 3007.B.3, 3007.C, 3007.C.1, 3007.C.3.b, 3007.C.7, 3007.D, 3013, 3025, 3025.B.1 and B.2.a, Chapter 22.Table 2, and Chapter 30, respectively.

2. Terms within the incorporated Appendix shall be the terms adopted by reference except that "director," "administrator," "EPA regional office," and "EPA regional office or the appropriate enforcement agency" shall mean "administrative authority."

3. "Environmental Protection Agency" and "EPA" shall mean "administrative authority," except when referring to an EPA method, protocol, file, performance audit sample, handbook, manual, document, program, default value, or default assumption.

4. Equation (7) of appendix A to 40 CFR 266, appendix IX shall be corrected to read:

$$s_p = \left( \frac{(n_1 - 1)s_1^2 + (n_2 - 1)s_2^2}{n_1 + n_2 - 2} \right)^{1/2}$$

B. Federal statutes and regulations that are cited in 40 CFR 266, appendix IX that are not specifically adopted by reference shall be used as guidance in interpreting the federal regulations in 40 CFR 266, appendix IX.

##### Appendix J. Reserved

##### Appendix K. Lead-bearing Materials That May Be Processed in Exempt Lead Smelters

40 CFR 266, appendix XI, July 1, 2000, is hereby incorporated by reference.

##### Appendix L. Nickel or Chromium-Bearing Materials That May Be Processed in Exempt Nickel-Chromium Recovery Furnaces

40 CFR 266, appendix XII, July 1, 2000, is hereby incorporated by reference, except that the footnote should be deleted.

##### Appendix M. Mercury-Bearing Wastes That May Be Processed in Exempt Mercury Recovery Units

40 CFR 266, appendix XIII, July 1, 2000, is hereby incorporated by reference, except that in regulations incorporated thereby, 40 CFR 261, appendix VIII shall mean LAC 33:V.3105.Table 1.

### Title 33

## ENVIRONMENTAL QUALITY

### Part IX. Water Quality

#### Chapter 23. The LPDES Program

##### Subchapter A. Definitions and General Program Requirements

##### §2301. General Conditions

\*\*\*

[See Prior Text in A-E]

F. All references to the *Code of Federal Regulations* (CFR) contained in this Chapter (e.g., 40 CFR 122.29) shall refer to those regulations published in the July 2000 *Code of Federal Regulations*, unless otherwise noted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:199 (February 1997), LR 23:722 (June 1997), LR 25:1467 (August 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1609 (August 2000), LR 27:

**§2531. 40 CFR Part 136**

A. Title 40 (Protection of the Environment) *Code of Federal Regulations* (CFR) part 136, Guidelines Establishing Test Procedures for the Analysis of Pollutants, revised July 1, 2000, in its entirety.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:958 (August 1997), LR 25:1467 (August 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1609 (August 2000), LR 27:

**§2533. 40 CFR Chapter I, Subchapter N**

A. Title 40 (Protection of the Environment) CFR, chapter I, subchapter N (Effluent Guidelines and Standards), revised July 1, 2000, parts 401 and parts 405 - 471 in their entirety. (Note: General Pretreatment Regulations for Existing and New Sources of Pollution found in part 403 of subchapter N have been included in these regulations as Subchapter T.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:958 (August 1997), LR 25:1467 (August 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1609 (August 2000), LR 27:

**Subchapter T. General Pretreatment Regulations for Existing and New Sources of Pollution**

**§2709. National Pretreatment Standards: Prohibited Discharges**

\* \* \*

[See Prior Text in A.1-C]

1. Each POTW developing a POTW pretreatment program pursuant to LAC 33:IX.2715 shall develop and enforce specific limits to implement the prohibitions listed in Subsections A.1 and B of this Section. Each POTW with an approved pretreatment program shall continue to develop these limits as necessary and effectively enforce such limits. In addition, the POTW may establish such limits as necessary to address the land disposal restrictions at 40 CFR 268.40.

\* \* \*

[See Prior Text in C.2-3]

D. Local Limits. Where specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with Subsection C of this Section, including those standards established to address land disposal restrictions at 40 CFR 268.40, such limits shall be deemed pretreatment standards for the purposes of Section 307(d) of the Act.

\* \* \*

[See Prior Text in E]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945

(September 1995), amended LR 23:958 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:

**Title 33**

**Environmental Quality**

**Part XI. Underground Storage Tanks**

**Chapter 11. Financial Responsibility**

**§1111. Financial Test of Self-Insurance**

\* \* \*

[See Prior Text in A-B.2.a.ii]

iii. the sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR 144.63;

\* \* \*

[See Prior Text in B.2.b-G]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2560 (November 2000), amended, LR 27:

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part XV. Radiation Protection**

**Chapter 15. Transportation of Radioactive Material**

**§1517. Incorporation by Reference**

A. The department incorporates by reference 10 CFR part 71, appendix A (July 1, 2000).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 and 2113

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:1270 (June 2000), LR 27:

A public hearing will be held on November 26, 2001, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Persons commenting should reference this proposed regulation by OS040\*. Such comments must be received no later than November 26, 2001, at 4:30 p.m., and should be sent to Patsy Deville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0389. The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of OS040\*.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123;

James H. Brent, Ph.D.  
Assistant Secretary

0110#088

**NOTICE OF INTENT**

**Board of Examiners of Bar Pilots  
for the Port of New Orleans**

Bar Pilot Regulations  
(LAC 46:LXXVI.Chapters 11-16)

The Louisiana Legislature formed the Board of Examiners of Bar Pilots for the Port of New Orleans for the purpose of establishing rules, regulations and requirements for holding examinations for all applicants who have registered with them for the posts of bar pilots; to establish standards for recommendation by the Board of Examiners of bar pilots for the Port of New Orleans to the Governor of the state of Louisiana for appointment as bar pilots who, pursuant to R.S. 34:941 et seq., have the duty to pilot sea-going vessels into and out of the entrances of the Mississippi River and into and out of the entrances of all other waterways connecting the Port of New Orleans with the outside waterways of the Gulf of Mexico; to establish procedures in conformity with the requirements of the Administrative Procedure Act for investigating and conducting hearings relative to incidents and/or complaints of pilot misconduct; to establish certain minimum standards of conduct, including conduct relative to neglect of duty, drunkenness, carelessness, habitual intemperance, substance abuse, incompetency, unreasonable absence from duty, and general bad conduct of bar pilots; to provide a uniform set of rules and regulations for the proper and safe pilotage of sea-going vessels upon the waterways under the jurisdiction of the Associated Branch Pilots for the Port of New Orleans; and to insure compliance by the Board of Examiners with the Public Meetings Law. These Rules and Regulations are enacted to accomplish those purposes required by the Legislature and to protect the public by ensuring available, safe and competent pilotage of vessels on the waterways under the jurisdiction of this board of examiners.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LXXVI. Steamship Pilots**

**Subpart 3. Bar Pilots of the Port of New Orleans**

**Chapter 11. General Provisions**

**§1101. Authority**

A. As mandated by R.S. 34:945.C.1, these rules and regulations are issued by the Board of Examiners of bar pilots for the Port of New Orleans in accordance with the Administrative Procedure Act under R.S. 49:950, et seq. for the purpose of adopting rules, regulations and requirements for holding examinations for all applicants who have registered with them for the posts of bar pilots.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

**§1102. Purpose**

A. The purposes of these rules and regulations are as follows:

1. to establish standards for recommendation by the Board of Examiners of Bar Pilots for the Port of New Orleans to the Governor of the State of Louisiana for appointment as bar pilots who, pursuant to R.S. 34:941 et seq., have the duty to pilot sea-going vessels into and out of the entrances of the Mississippi River and into and out of the entrances of all other waterways connecting the Port of New Orleans with the outside waterways of the Gulf of Mexico.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

**§1103. Definitions**

A. The following terms as used in these rules and regulations, unless the context otherwise requires or unless redefined by a particular part hereof, shall have the following meanings.

*Administrative Procedure Act* the Louisiana Administrative Procedure Act under R.S. 49:950 et seq.

*Application* the written application supplied by the Board of Examiners to an applicant who desires to become a bar pilot for the Port of New Orleans.

*Board of Examiners* or *Board* the Board of Examiners of Bar Pilots for the Port of New Orleans, established in R.S. 34:942.

*Bar Pilot* or *Pilot* a bar Pilot for the Port of New Orleans, as designated in R.S. 34:943.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

**§1104. Severability**

A. If any provision of these rules and regulations is held to be invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to this end, provisions of these rules and regulations are declared to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

**§1105. Effective Date**

A. These rules and regulations shall be in full force and effective 90 days after final publication in the *Louisiana Register*. All bar pilots and bar pilot candidates shall be provided with a copy of these rules and regulations as well as any amendments, after the rules and regulations are adopted by the Board of Examiners.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

**§1106. Qualifications of Pilots**

A. No person shall be recommended to the governor for appointment as a Bar Pilot unless the applicant:

1. is a qualified elector of the State of Louisiana;
2. has served at least 12 months next preceding the date of his application in a pilot boat at the mouth of the

Mississippi River or other entrances into the Gulf of Mexico or other outside waters from the Port of New Orleans;

3. has successfully passed the examination given by the board of examiners, as required by R.S. 34:948;

4. owns or has made a binding legal agreement to acquired as owner or part owner of at least one decked pilot boat of not less than 50 tons burden, which is used and employed exclusively as a pilot boat, as required by L.R.S. 34:930;

5. is a high school graduate or, in lieu thereof, holds a third mate's license;

6. has served at least 1 year at sea on a sea-going vessel of not less than 1600 gross tons in the deck department;

7. has successfully passed a physical examination which in the judgment of the Board of Examiners includes those standards, such as vision, color perception and hearing tests, to perform duties as a bar pilot;

8. is of good moral character; and

9. shall have completed satisfactorily an apprenticeship program which culminates in a cubbing period of not less than 9 months duration handling vessels over the routes of the bar pilots under the supervision of not less than 25 licensed state bar pilots.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

#### **§1107. Minimum Requirements**

A. The Board of Examiners shall review, and if found satisfactory, approve the apprenticeship program of the applicant, the minimum requirements of which shall be as follows: the applicant must set forth in detail the names of the vessels handled, dates handled, the direction of travel, size, draft, and type of vessel, and the name of the supervising bar pilot. During the period of apprenticeship the applicant shall handle vessels on not less than 650 occasions, two-thirds of which shall be at night.

B. The board of examiners will review the number and times of vessels handled, the size, draft, and type of vessels and the conditions under which the applicant has performed the apprenticeship in order to determine if the applicant has had sufficient exposure as to enable the board of examiners to make a determination of the applicant's competence and ability to perform the duties of a bar pilot.

C. The Board of Examiners shall prescribe the form of the application and required documentary proof of the applicant's eligibility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

#### **§1108. Bond**

A. No person shall assume the position of bar pilot until he shall have first taken the oath prescribed by law and has furnished a bond in favor of the Governor in the amount of Two Thousand \$2,000.00 conditioned on the faithful performance of his duties imposed upon him as a bar pilot. This bond shall be approved by the Board of Commissioners of the Port of New Orleans.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

### **Chapter 13. Pilots**

#### **Subchapter A. General Provisions**

##### **§1301. Authority**

A. As mandated by R.S. 34:945.c.1, these rules and regulations are issued in accordance with the Administrative Procedure Act under R.S. 49:950 et seq. for the purpose of establishing minimum standards of conduct for bar pilots and for the proper and safe pilotage of sea-going vessels into and out of the entrance of the Mississippi River and into and out of the entrances of all other waterways connecting the Port of New Orleans with outside waters of the Gulf of Mexico, including the entrance of the New Orleans Tidewater Channel at the western shore of the Chandeleur Sound off Point Chicot.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

##### **§1302. Purpose**

A. The purposes of these rules and regulations are as follows:

1. to establish certain minimum standards of conduct, including conduct relative to neglect of duty, drunkenness, carelessness, habitual intemperance, substance abuse, incompetency, unreasonable absence from duty, and general bad conduct of bar pilots;

2. to provide a uniform set of rules and regulations for the proper and safe pilotage of sea-going vessels upon the waterways referred to in §1101.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

##### **§1303. Definitions**

A. The following terms as used in these rules and regulations, unless the context otherwise requires or unless redefined by a particular part hereof, shall have the following meanings.

*Administrative Procedure Act* The Louisiana Administrative Procedure Act under R.S. 49:950 et seq.

*Board of Examiners* or *Board* The Board of Examiners of Bar Pilots for the Port of New Orleans, established in R.S. 34:942.

*Bar Pilot* or *Pilot* A bar pilot for the Port of New Orleans, as designated in R.S. 34:943.

*Services of a Bar Pilot* Any advice or assistance with respect to pilotage by the commissioned bar pilot or by his authorized representative, including but not limited to advice concerning weather, channel conditions, or other navigational conditions.

*Waterways* The entrance into and out of the Mississippi River and into and out of the entrances of all other waterways connecting the Port of New Orleans with the outside waters of the Gulf of Mexico, including the entrance of the New Orleans Tidewater Channel at the western shore of the Chandeleur sound off Point Chicot.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

### **§1304. Investigations And Enforcement**

A. All complaints reported to the board shall be considered for investigation. A complaint under the provisions of §1304.A through §1304.F is defined as:

1. any written complaint involving a bar pilot commissioned for the Port of New Orleans;

2. any reported incident involving a bar pilot commissioned for the Port of New Orleans while piloting a vessel; or

3. any other event involving a bar pilot commissioned for the Port of New Orleans that, in the discretion of any member of the board, justifies further investigation.

B. The board may appoint an investigating officer to investigate the complaint and report to the board.

C. If the board, or its designated investigating officer, is of the opinion that the complaint, if true, is sufficient to justify a further investigation, it shall appoint an investigating officer, or authorize its designated investigating officer to conduct a full investigation of the complaint.

D. Once authorized under §1304.C, the investigating officer, who may be an active or retired member of the Associated Branch Pilots of the Port of New Orleans, Louisiana, and who may be a member of the Board, shall make a full and complete investigation of the complaint. He shall be assisted by an attorney, named as independent prosecutor by the board. In the event that the Investigating Officer, as contemplated by either §1304.B or §1304.C, is an active member of the board, he shall be recused from any participation in the decision of the case.

E. If the investigating officer is of the opinion that the conduct in question is not sufficient to justify further proceedings, he shall make a reasoned report to the board, which may accept or reject his recommendation.

F. If the investigating officer is of the opinion that the conduct complained of is sufficient to justify further proceedings and the board has accepted his recommendations, or if the board has rejected his recommendation to dismiss the complaint, he shall give notice to the respondent, by registered mail, of the facts or conduct on which the complaint is based, and offer the respondent an opportunity to show compliance with the laws or regulations allegedly violated. If, in the opinion of the investigating officer, the respondent is able to demonstrate such compliance, then the investigating officer shall make a report to the board, recommending to the board that the complaint be dismissed. The board may accept or reject the recommendation of the investigating officer.

G. If the respondent is unable to demonstrate such compliance, or if the board rejects the recommendation of the investigating officer to dismiss the complaint, the investigating officer shall initiate proceedings by filing a written administrative complaint with the board, which shall be signed by the investigating officer.

H. The administrative complaint shall name the accused bar pilot as respondent in the proceedings. It shall also set forth, in separately numbered paragraphs, the following:

1. a concise statement of material facts and matters alleged and to be proven by the investigating officer, including the facts giving rise to the board's jurisdiction over the respondent;

2. the facts constituting legal cause under law for administrative action against the respondent;

3. the statutory or regulatory provisions alleged to have been violated by respondent.

I. The administrative complaint shall conclude with a request for the administrative sanction sought by the investigating officer, and shall state the name, address, and telephone number of administrative complaint counsel engaged by the board to present the case at the evidentiary hearing before the board.

J. The board may either accept or reject the administrative complaint.

K. If it rejects the administrative complaint, the case may be either dismissed or referred back to the investigating officer for further investigation.

L. If the board accepts the administrative complaint, the board shall docket the administrative complaint and schedule the administrative complaint for hearing before the board not less than 45 days nor more than 180 days thereafter; provided, however, that such time may be lengthened or shortened as the board determines may be necessary or appropriate to protect the public interest or upon motion of the investigating officer or respondent pursuant to a showing of proper grounds. In the event the respondent's commission as a bar pilot for the port of New Orleans has been suspended by the board pending hearing, the evidentiary hearing on the administrative complaint shall be noticed and scheduled not more than 45 days after the filing of the administrative complaint.

M. A written notice of the administrative complaint and the time, date and place of the scheduled hearing thereon shall be served upon the respondent by registered, return receipt requested mail, as well as by regular first class mail, at the most current address for the respondent reflected in the official records of the board, or by personal delivery of the administrative complaint to the respondent. The notice shall include a statement of the legal authority and jurisdiction under which the hearing is to be held, and shall be accompanied by a certified copy of the administrative complaint.

N. The case shall be prosecuted by the independent prosecutor, also referred to administrative complaint counsel, who shall handle the case to its conclusion. He shall be entirely independent of the authority of the board in going forward with the matter, and may conduct such further investigation, and prepare and try the case in such manner as he may deem appropriate.

O. Within 15 days of service of the administrative complaint, or such longer time as the board, on motion of the respondent, may permit, the respondent may answer the administrative complaint, admitting or denying each of the separate allegations of fact and law set forth therein. Any matters admitted by respondent shall be deemed proven and established for purposes of adjudication. In the event that the respondent does not file a response to the administrative complaint, all matters asserted therein shall be deemed denied.

P. Any respondent may be represented in an adjudication proceeding before the board by an attorney at law duly admitted to practice in the state of Louisiana. Upon receipt of service of an administrative complaint pursuant to these rules, or thereafter, a respondent who is represented by legal counsel with respect to the proceeding shall, personally or through such counsel, give written notice to the board of

the name, address, and telephone number of such counsel. Following receipt of proper notice of such representation, all further notices, administrative complaints, subpoenas or other process related to the proceeding shall be served on respondent through his or her designated counsel of record.

Q. All pleadings, motions or other papers permitted or required to be filed with the board in connection with a pending adjudication proceeding shall be filed by personal delivery at or by mail to the office of the board and shall by the same method of delivery be concurrently served upon administrative complaint counsel designated by the administrative complaint, if filed by or on behalf of the respondent, or upon respondent, through counsel of record, if any, if filed by administrative complaint counsel.

2. All such pleadings, motions or other papers shall be submitted on plain white letter-size (8 1/2 x 11") bond, with margins of at least one inch on all sides, and double spaced except as to quotations and other matters customarily single spaced, shall bear the caption and docket number of the case as it appears on the administrative complaint, and shall include the certificate of the attorney or person making the filing that service of a copy of the same has been effected in the manner prescribed by Subsection A of this Section.

3. The Board may refuse to accept for filing any pleading, motion or other paper not conforming to the requirements of this section.

R. Motions for continuance of hearing, for dismissal of the proceeding and all other prehearing motions shall be filed not later than 30 days following service of the Administrative Complaint on the respondent or 15 days prior to the hearing, whichever is earlier. Each prehearing motion shall be accompanied by a memorandum which shall set forth a concise statement of the grounds upon which the relief sought is based and the legal authority therefor. A motion may be accompanied by an affidavit as necessary to establish facts alleged in support of the motion. Within 10 days of the filing of any such motion and memorandum or such shorter time as the board may order, the investigating officer, through administrative complaint counsel, may file a memorandum in opposition to or otherwise setting forth the investigating officer's position with respect to the motion.

S.1. A motion for continuance of hearing shall be filed within the delay prescribed by ' 1304.R of these rules, provided that the Board may accept the filing of a motion for continuance at any time prior to hearing upon a showing of good cause not discoverable within the time otherwise provided for the filing of prehearing motions.

2. A scheduled hearing may be continued by the board only upon a showing by respondent or administrative complaint counsel that there are substantial legitimate grounds that the hearing should be continued, balancing the right of the respondent to a reasonable opportunity to prepare and present a defense to the complaint and the board's responsibility to protect the public health, welfare and safety. Except in extraordinary circumstances evidenced by verified motion or accompanying affidavit, the board will not ordinarily grant a motion to continue a hearing that has been previously continued upon motion of the same party.

3. If an initial motion for continuance is not opposed, it may be granted by the presiding officer.

T.1. Any prehearing motion, other than an unopposed initial motion for continuance of hearing which may be

granted by the chairman of the board, shall be referred for decision to the board member designated by the board as the presiding officer of the board designated with respect to the proceeding for ruling. The presiding officer, who shall be a member of the board designated as presiding officer by the board in each matter before the board, in his discretion, may refer any prehearing motion to the board for disposition, and any party aggrieved by the decision of a presiding officer on a prehearing motion may request that the motion be reconsidered by the entire panel.

2. Prehearing motions shall ordinarily be ruled upon by the presiding officer or the board, as the case may be, on the papers filed, without hearing. On the written request of respondent or of administrative complaint counsel, however, and on demonstration that there are good grounds therefor, the presiding officer may grant opportunity for hearing by oral argument, on any prehearing motion.

U.1. Upon request of the respondent or administrative complaint counsel and compliance with the requirements of this Section, any board member shall sign and issue subpoenas in the name of the board requiring the attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence at an adjudication hearing.

2. No subpoena shall be issued unless and until the party who wishes to subpoena the witness first deposits with the board a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to R.S. 13:3661 and R.S. 13:3671. Witnesses subpoenaed to testify before the board only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examination, and to state the results thereof, shall receive such additional compensation from the party who wishes to subpoena such witnesses as may be fixed by the board with reference to the value of time employed and the degree of learning or skill required.

V.1. In any case of adjudication noticed and docketed for hearing, counsel for respondent and administrative complaint counsel may agree, or the presiding officer may require, that a prehearing conference be held among such counsel, or together with the board's independent counsel appointed pursuant to ' 1304.W hereof, for the purpose of simplifying the issues for hearing and promoting stipulations as to facts and proposed evidentiary offerings which will not be disputed at hearing.

2. Following such prehearing conference the parties shall, and without such conference the parties may by agreement, agree in writing on a prehearing stipulation which should include:

a. a brief statement by administrative complaint counsel as to what such counsel expects the evidence to be presented against respondent to show;

b. a brief statement by respondent as to what the evidence and arguments in defense are expected to show;

c. a list of the witnesses to be called by administrative complaint counsel and by respondent, together with a brief general statement of the nature of the testimony each such witness is expected to give;

d. any stipulations which the parties may be able to agree upon concerning undisputed claims, facts, testimony, documents or issues; and

e. an estimate of the time required for the hearing.

W.1. Unless otherwise requested by the respondent, adjudication hearings, being the hearing conducted on the merits of the administrative complaint, shall be conducted in closed session.

2. At an adjudication hearing, opportunity shall be afforded to administrative complaint counsel and respondent to present evidence on all issues of fact and argument on all issues of law and policy involved, to call, examine and cross-examine witnesses, and to offer and introduce documentary evidence and exhibits as may be required for full and true disclosure of the facts and disposition of the administrative complaint.

3. Unless stipulation is made between the parties and approved by the board, providing for other means of recordation, all testimony and other proceedings of an adjudication shall be recorded by a certified stenographer who shall be retained by the board to prepare a written transcript of such proceedings.

4. During evidentiary hearing, the presiding officer shall rule upon all evidentiary objections and other procedural questions, but in his discretion may consult with the entire panel in executive session. At any such hearing, the board may be assisted by legal counsel retained by the board for such purpose, who is independent of administrative complaint counsel and who has not participated in the investigation or prosecution of the case. If the board or panel is attended by such counsel, the presiding officer may delegate to such counsel ruling on evidentiary objections and other procedural issues raised during the hearing.

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

a. the administrative complaint and notice of hearing, respondent's response to the complaint, if any, subpoenas issued in connection with discovery, and all pleadings, motions, and intermediate rulings;

b. evidence received or considered at the hearing;

c. a statement of matters officially noticed except matter so obvious that statement of them would serve no useful purpose;

d. offers of proof, objections, and rulings thereon;

e. proposed findings and exceptions, if any;

f. the decision, opinion, report or other disposition of the case made by the board.

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

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

2. All evidence, including records and documents in the possession of the board which administrative complaint counsel desires the board to consider, shall be offered and made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts,

or by incorporation by reference, the materials so incorporated shall be available for examination by the respondent before being received in evidence.

3. Notice may be taken of judicially cognizable facts and generally recognized technical or scientific facts within the board's knowledge. Parties shall be notified either before or during the hearing of the material noticed or sought by a party to be noticed, and they shall be afforded an opportunity to contest the material so noticed. The board's experience, technical competence and knowledge may be utilized in the evaluation of the evidence.

4. Any member of the board serving as presiding officer in an adjudication hearing shall have the power to and shall administer oaths or affirmations to all witnesses appearing to give testimony, shall regulate the course of the hearing, set the time and place of continued hearings, fix the time for the filing of briefs and other documents, if they are required or requested, and may direct the parties to appear and confer to consider simplification of the issues.

5. Except as otherwise governed by the provision of these rules, adjudication hearings before the board shall be governed by the Louisiana Code of Evidence, insofar as the same may be applied.

Y. The board may make informal disposition, by default, consent order, agreement, settlement or otherwise of any adjudication pending before it. A consent order shall be considered by the board only upon the recommendation of the investigating officer.

Z.1. The final decision of the board in an adjudication proceeding shall, if adverse to the respondent, and otherwise may be, in writing, shall include findings of fact and conclusions of law, and shall be signed by the presiding officer of the hearing panel on behalf and in the name of the board.

2. Upon issuance of a final decision, a certified copy thereof shall promptly be served upon respondent's counsel of record, or upon respondent personally in the absence of counsel, in the same manner of service prescribed with respect to service of administrative complaints.

AA.1. A decision by the board in a case of adjudication shall be subject to rehearing, reopening, or reconsideration by the board pursuant to written motion filed with the board within ten days from service of the decision on respondent or on its own motion. A motion for rehearing, reopening, or reconsideration shall be made and served in the form and manner prescribed by §1304.Q and shall set forth the grounds upon which such motion is based, as provided by Subsection B of this Section.

2. The board may grant rehearing, reopening, or reconsideration if it is shown that:

a. the decision is clearly contrary to the law and the evidence;

b. the respondent has discovered since the hearing evidence important to the issues which he or she could not have with due diligence obtained before or during the hearing;

c. other issues not previously considered ought to be examined in order to properly dispose of the matter; or

d. there exists other good grounds for further consideration of the issues and the evidence in the public interest.

BB. Pursuant to R.S. 34:945(C)(3), the board of Examiners shall have the authority to impose a fine of not more than \$500 on any bar pilot, to reprimand or remove from a vessel any bar pilot, or to recommend to the Governor that the commission of any bar pilot be suspended or revoked, if after a hearing conducted in accordance with these rules and regulations and the administrative procedure act a bar pilot is found in violation of any rule or regulation adopted by the board of examiners.

CC. The authority established in these rules is in addition to and in no way limits the authority of the board to seek to remove or to remove a pilot from a vessel pursuant to the provisions of R.S. 34: 947 and R.S. 49:961(C).

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

#### **§1305. Severability**

A. If any provision of these rules and regulations is held to be invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to this end, provisions of these rules and regulations are declared to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

#### **§1306. Effective Date**

A. These rules and regulations shall be in full force and effective 90 days after final publication in the *Louisiana Register*. All bar pilots and bar pilot candidates shall be provided with a copy of these rules and regulations, as well as any amendments, after the rules and regulations are adopted by the board of examiners.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

### **Chapter 14. Standards of Conduct: Proper and Safe Pilotage**

#### **§1401. Adoption of Inland Navigational Rules**

A. For those waters on which the Inland Rules apply within the jurisdiction of the bar pilots, the board of Examiners hereby adopts, by reference and in its entirety, the Inland Navigational Rules at 33 U.S.C. Section 2001, et seq. The Board of Examiners also adopts the navigation safety standards set forth in Title 33 CFR part 164 (p). All bar pilots and bar pilot applicants shall be subject to these Inland Navigational Rules and safety standards as adopted herein by reference.

#### **Title 33 CFR Part 164 (P)**

- (p) The person directing the movement of the vessel sets the vessel's speed with consideration for
- (1) The prevailing visibility and weather conditions;
  - (2) The proximity of the vessel to fixed shore and marine structures;
  - (3) The tendency of the vessel underway to squat and suffer impairment of maneuverability when there is small underkeel clearance;
  - (4) The comparative proportions of the vessel and the channel;
  - (5) The density of marine traffic;
  - (6) The damage that might be caused by the vessel's wake;
  - (7) The strength and direction of the current; and
  - (8) Any local vessel speed limit;

NOTE: These rules CFR 110.195 and 161.402 have not been adopted but should be reviewed by all pilots and applicants.

#### **Title 33 CFR 110.195**

- (a) The Anchorage Grounds. Unless otherwise specified, all anchorage widths are measured from the average low water plane (ALWP).
- (1) Pilottown Anchorage. An area 5.2 miles in length along the right descending bank of the river from mile 1.5 to mile 6.7 above Head of Passes, extending in width to 1600 feet from the left descending bank of the river.

#### **Title 33 CFR 161.402**

- (c) Navigation of South and Southwest Passes.
- (1) No vessel, except small craft and towboats and tugs without tows, shall enter either South Pass or southwest Pass from the Gulf until after any descending vessel which has approached within two and one-half (2 ½) miles of the outer end of the jettles and visible to the ascending vessel shall have passed to sea.
  - (2) No vessel having a speed of less than ten mph shall enter South Pass from the Gulf when the state of the Mississippi Rive exceeds 15 feet on the Carrollton Gage at New Orleans. This paragraph does not apply when Southwest Pass is closed to navigation.
  - (3) No vessel, except small craft and towboats and tugs without tows, ascending South Pass shall pass Franks Crossing Light until after a descending vessel shall have passed Depot Point Light.
  - (4) No vessel, except small craft and towboats and tugs without tows, shall enter the channel at the head of South Pass until after an ascending vessel which has reached Franks Crossing Light shall have passed through into the river.
  - (5) When navigating South Pass during periods of darkness no tow shall consist of more than one towed vessel other than small craft, and during daylight hours no tow shall consist of more than two towed vessels other than small craft. Tows may be in any formation, When towing on a hawser, the hawser shall be as short as practicable to provide full control at all times.
  - (6) When towing in Southwest Pass during periods of darkness no tow shall consist of more than two towed vessels other than small craft, and during daylight hours no tow shall consist of more than three towed vessels other than small craft.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

#### **§1402. Ships Required To Take Pilots**

A. All ships and vessels inward or outward bound throughout the entrances of the Mississippi River or other inland waterway connecting the Port of New Orleans with the Gulf of Mexico, or other outside waters, except those of 100 tons or less lawfully engaged in the coasting trade of the United States, shall take a bar pilot when one is offered; and any ship or vessel refusing or failing to take a pilot shall be liable to the pilot thus offering for pilotage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

#### **§1403. Pilots' Duty of Remain on Board Ship until Crossing Bar**

A. When boarding an outward bound ship or vessel at the boarding stations bar pilots shall remain on board the ship until she crosses the bar, unless permission is given by the master for the pilot to absent himself from the ship or vessel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

**§1404. Acting as Pilot without License; Penalty**

A. No person who is not commissioned a bar pilot shall board any ship or vessel required to take a bar pilot, for the purpose of piloting, or to pilot or attempt to pilot the same; and no person or pilot shall board any such ship or vessel for the purpose of piloting, except from the pilot boats on the bar pilot stations. Whoever violates the provisions of this Section shall be fined not less than \$1,500 nor more than \$5,000, or may be imprisoned for not more than six months, or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

**§1405. Pilot's Duty to Exhibit License**

A. Whoever offers to pilot a ship or other vessel shall, if required, exhibit to the commander thereof this identification card as a bar pilot, attested to by the chairman of the board of examiners; and if he refuses or neglects to do so, he shall not be entitled to any remuneration for any service he may render as pilot.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

**§1406. Employing Pilot without Licenses; Liability of Vessel, Master or Owner**

A. When a vessel, inward or outward bound to or from the Port of New Orleans employs as a pilot a person who is not a state commissioned bar pilot, when a bar pilot offers his services, the vessel, her captain and owners, shall be liable for a civil penalty of and shall forfeit to the state of Louisiana the sum of \$15,000 with privilege on the vessel, to be recovered before any court of competent jurisdiction. An action for forfeiture under this Section may be brought by the attorney general of Louisiana or by the Associated Branch Pilots of the Port of New Orleans. If the Associated Branch Pilots of the Port of New Orleans obtains a judgement hereunder, the court shall include in its judgement a reasonable attorney's fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

**§1407. Employing Pilot without a State Commission; Penalties**

A. No master, owner, or agent of a vessel required under R.S. 34:953 to take a state commissioned bar pilot shall, when a state commissioned bar pilot offers his services, employ as a pilot a person who is not a state commissioned bar pilot.

B. Whoever violated this Section shall be subject to a fine of not less than \$1,500 nor more than \$5,000, or imprisoned for not more than 6 months, or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

**§1408. Offering of Services**

A. As used in this Subpart, reference to the offering of a bar pilot or the offering of services by a bar pilot shall mean any offering of any advice or assistance with respect to

pilotage by the commissioned bar pilot or by his authorized representative, including but not limited to advice concerning weather, channel conditions, and other navigational conditions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

**§1409. Prohibition of Interest of Members of Board of Commissioners of Port of New Orleans, in Pilot Boat or Pilotage**

A. The members of the Board of Commissioners of the Port of New Orleans shall not be interested, directly or indirectly, in any bar pilot boat or pilotage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

**§1410. Report by Pilot**

A. In any case where a vessel being piloted by a bar pilot shall go aground, or shall collide with any object, or shall meet with any casualty, which causes injury to persons or damage to property, the pilot shall, as soon as possible report such incident to the Board.

B. The board, with or without complaint made against said pilot, shall investigate the incident.

C. The pilot shall make a complete report to the board within 10 days after the incident. This report may either be an oral or a written report as the board deems necessary.

D. These rules shall apply to any bar pilot engaged in piloting within the operating territory as defined by R.S. 34:941 et seq., whether the vessel be subject to compulsory pilotage or elective pilotage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

**§1411. Pilots Duty to Report**

A. Pilots, when notified, shall report in person to the board at the time and place so designated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

**§1412. Pilots Summoned to Testify**

A. Any bar pilot summoned to testify before the board shall appear in accordance with such summons and shall make answer under oath to any question put to him, touching any matter connected with the pilot's service or of the pilot grounds over which he is commissioned to pilot.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

**Chapter 15. Drug And Alcohol Policy**

**§1501. Application**

A. The board of examiners hereby adopts the following rules and regulations relating to a drug and alcohol abuse policy applicable to all State licensed bar pilots pursuant to the provisions of R.S. 34:941 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

### §1502. Statement of Findings and Purposes

A. The Board of Examiners of Bar Pilots for the Port of New Orleans, Louisiana, (hereinafter "board") has always had a strong commitment to the pilot members of the Associated Branch Pilots for the Port of New Orleans to provide a safe work place and to establish programs promoting high standards of bar pilot health. Consistent with the spirit and intent of this commitment, the board has established this policy regarding drug and alcohol abuse. Its goal will continue to be one of establishing and maintaining a work environment that is free from the effects of alcohol and drug abuse.

B. While the board has no intention of intruding into the private lives of bar pilots, the board does expect bar pilots to report for work in a condition to perform their duties. The board recognizes that off-the-job, as well as on-the-job, involvement with alcohol and drugs can have an impact on the work place and on a bar pilot's ability to accomplish our goal of an alcohol and drug-free work environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

### §1503. Bar Pilots' Assistance Program

A. Establishment. The board has designed a Bar Pilots' Assistance Program (BPAP) to provide help for any bar pilot whose personal alcohol or drug abuse problems may seriously affect his or her ability to function on the job, at home and in society.

B. Eligibility. The BPAP is available to all bar pilots and their spouses because an alcohol or drug abuse problem of a spouse may also affect a bar pilot's work and general well-being.

#### C. Procedure

1. At times, people find the solution to their own problems. When this cannot be accomplished, a BPAP staff person will discuss the bar pilot's problem with him and put him in touch with appropriate professional sources.

2. The bar pilot or spouse will then be advised of available alternatives for treatment, counseling or help, and assisted in arranging an appointment. When an eligible person requests assistance, that person decides whether or not he or she wants to pursue the recommendation.

3. The BPAP will either provide assistance by telephone or will arrange for a confidential consultation in their private offices.

D. Costs. If the counseled person needs to be referred to resources outside the BPAP, then he or she is responsible for all fees.

E. Confidentiality. A bar pilot's right to confidentiality and privacy in the BPAP is recognized. All information regarding referral, evaluation, and treatment will be maintained in a confidential manner and no BPAP matters will be entered in a bar pilot's personal file except as is mandated by law. A request for evaluation, diagnosis, information, or treatment will not affect this board's actions or recommendations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

### §1504. Definitions

A. As used in this Chapter:

*Alcoholic Beverage* Any fluid, or solid capable of being converted into fluid, suitable for human consumption, which contains ethanol.

*Drug* All controlled dangerous substances as defined in R.S. 40:961.7. Some of the drugs which are illegal under Federal, State, or local laws include, among others, marijuana, heroin, hashish, cocaine, hallucinogens, and depressants and stimulants not prescribed for current personal treatment by an accredited physician.

*Prescription Medication* Any medication distributed by the authorization of a licensed physician as defined in R.S. 40:961.30.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

### §1505. Prohibitions and Requirements of the Policy

A. A bar pilot who is under the influence of alcohol or drugs, or who possesses or uses alcohol or drugs on the job, has the potential for interfering with his own safety as well as that of the ship he is piloting and other vessels in the area, property, and personnel. Consistent with existing board practices, such conditions shall be proper cause for disciplinary action up to and including loss of state license as a bar pilot.

B.1. Off-the-job drug or alcohol abuse use that could adversely affect a bar pilot's job performance or could jeopardize the safety of others shall be proper cause for administrative or disciplinary action up to and including recommendation for revocation of a bar pilot's license.

2. Bar pilots who are arrested for off-the-job drug or alcohol activity may be considered to be in violation of this policy. In deciding what action to take, the board will take into consideration the nature of the charges, the bar pilot's overall job performance as a pilot, and other factors relative to the impact of the bar pilot's arrest upon the conduct of bar pilotage and the safety threat posed to the public by the specific activity.

C.1. A pilot shall be free of use of any drug as defined in '1504.A. *Drug*, but excluding prescription medication as defined in §1504.A. *Prescription Medication*, so long as such use of prescription medication does not impair the competence of the pilot to discharge his duties.

2. Bar pilots undergoing prescribed medical treatment with a controlled substance should report this treatment to the president of the board and to the Associated Branch Pilots doctor. The use of controlled substances as part of a prescribed medical treatment program is naturally not grounds for disciplinary action, although it is important for the board to know such use is occurring.

D. A bar pilot who voluntarily requests assistance in dealing with a personal drug or alcohol abuse problem may participate in the BPAP without the board taking action to fine or recommend action against a bar pilot, provided he stops any and all involvement with alcohol or drugs. Volunteering to participate in the BPAP will not prevent disciplinary action for a violation of this policy which has already occurred.

E.1. Narcotics or any other controlled dangerous substance made illegal by the laws of the United States or the state of Louisiana shall not be brought aboard or caused to be brought aboard any vessel no matter by whom owned, or property owned or leased by the Associated Branch Pilots.

2. Persons, or property, coming aboard any such vessel or property will be subject to inspection.

3. The board will cooperate fully with appropriate law enforcement agencies by reporting information with respect to the violation of laws regarding illegal substances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

#### **§1506. Drug Testing**

A. Drug Investigated. All bar pilots shall be subject to testing for the presence of marijuana, opiates, cocaine, amphetamines, and phencyclidine.

##### **B. Types of Testing**

1. All bar pilots shall submit to reasonable scientific testing for drugs when directed by the board. All procedures and activities conducted in connection with such testing shall comply with R.S. 49:1001 - 1015, as those provisions may be amended from time to time.

2. A bar pilot shall be required to submit a urine specimen to be tested for the presence of drugs under the following circumstances:

a. prior to recommendation for appointment, as a part of the physical exam required in §1106.A.7 of these Rules and Regulations;

b. after recommendation, whenever the pilot is required by the board to undergo a physical examination;

c. upon written complaint signed by the complainant in accordance with Chapter 16 of the Board of Review of Bar Pilots for the Port of New Orleans;

d. when the pilot is reasonably suspected of using drugs in violation of this policy;

e. at random at the discretion of the board; and

f. when the pilot is determined to be directly involved in a marine casualty or accident during the course of his activities as a pilot that results in:

i. one or more deaths;

ii. injury to any person which requires professional medical treatment beyond first aid;

iii. damage to property in excess of \$100,000; or

iv. actual or constructive loss of any vessel.

C. The board may designate a testing agency to perform any scientific test(s) necessary to detect the presence of drugs or their metabolites in a pilot's system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

#### **§1507. Alcohol Testing**

A. The board of examiners may require a pilot to submit to a blood alcohol test under the following circumstances:

1. upon written complaint signed by the complainant in accordance with Chapter 16 of the rules and regulations of the Board of Review of Bar Pilots of the Port of New Orleans;

2. when there exists reasonable suspicion that a pilot is performing his duties while under the influence of alcohol; or

3. when the pilot is determined to be directly involved in a marine casualty or accident of the type described in Section 806(B)(2)(d).

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

#### **§1508. Violations of the Policy**

A. Any Pilot found to be in violation of this policy may be reprimanded, fined, evaluated, and treated for drug use and have his commission suspended or revoked as provided by R.S. 34:945 and 962.

B. Any bar pilot reasonably suspected of bringing on board any vessel, no matter by whom owned, or property owned or leased by the Association, or causing to bring on board a vessel or property owned or leased by the Association, any narcotic or any other controlled dangerous substance made illegal by the laws of the United States of the State of Louisiana will be subject to disciplinary action either by the board or, upon recommendation of the board, by the Governor of the Louisiana.

C. A pilot shall be suspended from performing the duties of a pilot pending a hearing pursuant to R.S. 34:945 and 962 if:

1. he tests positive for any drug listed in §1506.A;

2. he uses any drug in violation of §1505.C;

3. he refuses to submit to reasonable scientific testing for drugs, fails to cooperate fully with the testing procedures, or in any way tries to alter the test results;

4. tests positive for alcohol; or

5. refuses to submit to a blood alcohol test, fails to cooperate fully with the testing procedure, or in any way tries to alter the test results.

D. Any pilot who is required to undergo evaluation or treatment for alcoholism or drug abuse shall do so at his own personal expense and responsibility; the physician, as well as the evaluation and treatment facility, must be approved by the board.

E. Any pilot who believes he would be in violation of these Rules if he were to perform his duties as a bar pilot is obligated to remove himself from duty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

#### **§1509. Test Results**

A. All drug test results shall be reviewed by a medical review officer in accordance with R.S. 49:1007.

B. Any pilot, confirmed positive, upon his written request, shall have the right of access, within seven working days of actual notice to him of his test results, to records relating to his drug tests and any records relating to the results of any relevant certification, review, or suspension/revocation-of-certification proceedings.

C. The results of the drug testing conducted pursuant to this policy and all information, interviews, reports, statements and memoranda relating to the drug testing shall, in accordance with R.S. 49:1012, be confidential and disclosed only to the board of examiners and the pilot tested, except that:

1. the board of examiners may report the results to the governor; and

2. in the event that the board of examiners determines that a hearing is required pursuant to R.S. 34:991 or 1001, there shall be no requirement of confidentiality in connection with such hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

## **Chapter 16. Administrative Policy**

### **§1601. Application**

A. The purpose of this section is to ensure compliance by the Board of Examiners of Bar Pilots for the Port of New Orleans with the provisions of the Louisiana Public Meeting Law and the records maintenance requirements of the provisions of R.S. 49:950, et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

### **§1602. Meetings of Examiners**

A. All meetings and notices thereof of the board of examiners shall be conducted in accordance with the Open Meetings Law (R.S. 42.4 et seq.). The board shall meet at least once each quarter and meetings shall be called in accordance with R.S. 42:7.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

### **§1603. Record Keeping**

A. The board of examiners shall maintain records and conduct its hearings in accordance with R.S. 49:950, et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

### **Family Impact Statement**

Although the family of a pilot subject to the disciplinary process set forth in the proposed Rules and Regulations for the Board of Examiners of Bar Pilots for the Port of New Orleans could potentially be impacted by the process and the possible discipline against the pilot, the proposed rules and regulations should not have any known or foreseeable impact on the family as defined by R.S. 49:972.D in terms of the general public, or on family formation, stability and autonomy.

1. What effect will this rule have on the stability of the family? The proposed rule will not affect the stability of the family.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? The proposed rule will not affect the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This rule will not affect the functioning of the family.

4. What effect will this have on family earnings and family budget? This rule will not affect the family earnings or family budget, unless a disciplined pilot is fined or has his license suspended after going through the disciplinary process, or is removed from a vessel.

5. What effect will this have on the behavior and personal responsibility of children? This rule will not affect the behavior or personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed rule? No, the action proposed is strictly a state enforcement function.

All interested persons are invited to submit written comments on the proposed rules and regulations for the Board of Examiners of Bar Pilots for the Port of New Orleans. Persons commenting should reference this proposed regulation by "Rules and Regulations of the Board of Examiners." Such comments must be received no later than November 20, 2001, at 4:30 p.m., and should be sent to Captain Thomas L. Ittmann, Board of Examiners of Bar Pilots for the Port of New Orleans, 3813 North Causeway Boulevard, Suite 100, Metairie, LA 70002 or to fax (504) 831-4536. Copies of this proposed regulation can be purchased at the above referenced address. Contact the board office at (504) 831-6615 for pricing information. Check or money order is required in advance for each copy.

Captain Thomas L. Ittmann  
Chairman

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Bar Pilot Regulations**

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

The Board of Examiners of Bar Pilots for the Port of New Orleans anticipates that the additional costs associated with the implementation of the proposed rules will be \$1,500.00 for the fiscal year 2001-2002, and \$5,000.00 for the fiscal years 2002-2003 and 2003-2004. The board will formalize the procedures involved in investigating and prosecuting disciplinary complaints against Bar Pilots, thus better insuring the protection of the public, the rights of the accused Bar Pilot, and compliance with the requirements of the Louisiana Administrative Procedure Act. It is anticipated that a thorough investigation and prosecution of complaints against Bar Pilots will result in an increase in public safety.

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

The board is funded by billing all expenses, including the expenses of disciplinary procedures, to the Associated Branch Pilots of the Port of New Orleans, for whom the board serves as the examining and supervising authority. Funding will be derived from billings to the Associated Branch Pilots. Further, costs of a disciplinary proceeding may be assessed against the Bar Pilot who is the subject of the proceeding.

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

The proposed rules changes provide for legal representation for the board, together with the requirement that the legal counsel prosecuting the action be independent of the board or its counsel. Thus the current cost of the disciplinary process will increase by the cost of the legal fees. The costs of the disciplinary procedures, exclusive of attorney's fees, may be assessed against the pilot in accordance with the Administrative Procedure Act and a fine imposed according to the enabling statute for the Board of Review of Bar Pilots for the Port of New Orleans. Those costs not paid by a disciplined pilot will be billed to and paid by the Associated Branch Pilots for the Port of New Orleans.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is not anticipated that the rules changes will have any effect on competition and employment in either the public or private sector.

Thomas L. Ittmann  
Chairman  
0110#004

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of Financial Institutions**

Collection Agency Examination  
(LAC 10:XV.505)

Under the authority of the Administrative Procedure Act, R.S. 49:950 et seq., and in accordance with R.S. 9:3576.4 and Senate Concurrent Resolution 65 of the 2001 Regular Session of the Louisiana Legislature, the Commissioner of the Office of Financial Institutions gives Notice of Intent to adopt a rule which establishes the parameters of collection agency examinations by the Office of Financial Institutions.

If any provision or item of this regulation, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of the regulation which can be given effect without the invalid provisions, item, or application.

The proposed rule will have no adverse fiscal or economic impact, nor will it adversely impact family formation, stability, and autonomy.

**Title 10**

**FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES, AND UCC**

**Part XV. Other Regulated Entities**

**Chapter 5. Debt Collection Agencies**

**Subchapter A. Examinations**

**§505. Parameters**

A. Section 3576.2 of the Collection Agency Regulation Act, ("CARA"), R.S. 9:3576.1 et seq., empowers the Commissioner of Financial Institutions ("Commissioner") to regulate the licensing, operations, and practices of collection agencies and debt collectors to protect the welfare of the citizens of the State of Louisiana. R.S. 9:3576.5.D authorizes the Commissioner to examine the books, records, and accounts of all persons regulated by CARA. The Commissioner possesses the power to clarify, by rule, the parameters of the examinations performed by the Office of Financial Institutions. Those parameters include the examination of any and all of the records required to determine compliance with the CARA. Licensees are to maintain records in compliance with rules promulgated by the Commissioner. The Commissioner is further authorized to establish policies and procedures for the examination of in-state and out-of-state collection agencies and debt collectors; such policies and procedures may be modified from time to time to assure compliance with CARA.

AUTHORITY NOTE: Promulgated in accordance with R. S. 9:3576.4 and Senate Concurrent Resolution 65 of the 2001 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Office of Financial Institutions, LR 28:

All interested persons are invited to submit written comments on this proposed Rule no later than 4:30 p.m., November 21, 2001 to Gary L Newport, Chief Attorney, Office of Financial Institutions, P.O. Box 94095, Baton Rouge, LA 70804-9095, or by hand delivery to the Office of Financial Institutions, 8660 United Plaza Boulevard, Second Floor, Baton Rouge, LA 70809-7024.

John D. Travis  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**  
**RULE TITLE: Collection Agency Examination**

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

There will be no additional cost associated with the implementation of this rule.

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

There will be no effect on the revenue collections of state or local governmental units.

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

The proposed Rule will not cost or have any economic benefits to licensees or any other non-government units.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

John D. Travis  
Commissioner  
0110#047

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor**  
**Division of Administration**  
**Racing Commission**

Pick Four (LAC 35:XIII.Chapter 116)

The Louisiana State Racing Commission hereby gives notice that it intends to adopt LAC 35:XIII.Chapter 116 APick Four,@ in order to attract more bettors by offering a new form of wagering. This Chapter is modeled after the APick Four@ rules of Pennsylvania, and is consistent with other major racing jurisdictions.

**Title 35**

**HORSE RACING**

**Part XIII. Wagering**

**Chapter 116. Pick Four**

**§11601. Description; Selection; Principle**

A. The pick four is a form of pari-mutuel wagering. Bettors select the first horse in each of four consecutive races designated as the pick four by the permit holder. The principle of a pick four is in effect a contract by the purchaser of a pick four ticket to select the winners of each of the four races designated as the pick four. The sale of pick four tickets other than from pari-mutuel machines shall be deemed illegal and is prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Division of Administration, Racing Commission LR 28:

#### **§11603. Wagering Pool**

A. The pick four pool shall be held entirely separate from all other pools and is no part of a daily double, exacta, trifecta, quinella or any other wagering pool. The pick four pool is a pool wherein the bettor is required to select four consecutive winning horses and is not a parlay.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Division of Administration, Racing Commission LR 28:

#### **§11605. Denominations**

A. Pick four tickets shall be sold in not less than \$1 denominations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Division of Administration, Racing Commission LR 28:

#### **§11607. Approval; Notation**

A. Races in which pick four pools are conducted shall be approved by the Commission and clearly designated in the program, and pick four tickets will be clearly marked as pick four tickets.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Division of Administration, Racing Commission LR 28:

#### **§11609. Procedure**

A. After the wagering closes for the first race of the four designated pick four races, the commission will be deducted from the pari-mutuel pool in accordance with Louisiana law. The remaining net pool, subject to distribution among winning ticket holders shall be distributed among the holders of tickets which correctly designate the winner in all four races comprising the pick four and the aggregate number of winning tickets shall be divided into the net pool and be paid the same payoff price.

1. In the event no ticket is sold combining winners of the four races comprising the pick four, the holders of tickets which include the winners of any three of the four races shall be deemed winning ticket holders, and the aggregate number of winning tickets shall be divided into the net pool and be paid the same payoff price.

2. In the event no ticket is sold combining the winners of three of the four races comprising the pick four, the holders of tickets which include the winners of any two of the four races shall be deemed winning ticket holders, and the aggregate number of winning tickets shall be divided into the net pool and be paid the same payoff price.

3. In the event no ticket is sold combining the winners of two of the four races comprising the pick four, the holders of tickets which include the winner(s) of any one of the four races shall be deemed winning ticket holders, and the aggregate number of winning tickets shall be divided into the net pool and be paid the same payoff price.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Division of Administration, Racing Commission LR 28:

#### **§11611. No Winning Ticket**

A. In the event no winning ticket is sold that would require the distribution of the pick four pool as mentioned in §11609, the association shall make a complete refund of the pick four pool.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Division of Administration, Racing Commission LR 28:

#### **§11613. Cancelled Races**

A. If for any reason one or more of the races comprising the pick four is/are cancelled or declared "no race," the net pool shall be distributed as provided in §11609.

B. In the event the pick four pool is opened and wagers accepted, and all four races comprising the pick four are cancelled for any reason, the association shall make a complete refund of the pick four pool.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Division of Administration, Racing Commission LR 28:

#### **§11615. Dead Heats**

A. In the event of a dead heat for win between two or more horses in any pick four race, all such horses in the dead heat for win shall be considered as winning horses in the race for the purpose of calculating the pool.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Division of Administration, Racing Commission LR 28:

#### **§11617. Closing Time; Disclosure**

A. No pari-mutuel ticket for the pick four pool shall be sold, exchanged or cancelled after the time of the closing of wagering in the first of the four races comprising the pick four except for such refunds on pick four tickets as required by this regulation, and no person shall disclose the number of tickets sold in the pick four pool or the number or amount of tickets selecting winners of pick four races until such time as the stewards have determined the last race comprising the pick four to be official. At the conclusion of the third of the four races comprising the pick four, the association may display potential distributions to ticket holders depending upon the outcome of the fourth race of the pick four.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Division of Administration, Racing Commission LR 28:

#### **§11619. Entry or Field**

A. Those horses constituting an entry or a field as defined within the rules of racing shall race in any pick four race as a single wagering interest for the purpose of the pick four pari-mutuel pool calculations and payouts to the public. A scratch after wagering has begun of any part of an entry or field selection in such race shall have no effect with respect to the status of such entry and/or field as a viable wagering interest.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Division of Administration, Racing Commission LR 28:

**§11621. Scratches and Non-Starters**

A. At anytime after wagering begins on the pick four pool should a horse, entire betting entry or field be scratched, excused or declared a non-starter in any pick four race, no further tickets selecting such horse, betting entry or field shall be issued, and wagers upon such horse, betting entry or field, for purposes of the pick four pool shall be deemed wagers upon the horse, betting entry or field upon which the most money has been wagered in the win pool at the close of win pool betting for such race. In the event of a money tie in the win pool, the tied horse, betting entry or field with the lowest running number, as designated by the official racing program, shall be designated as the favorite for substitution purposes. For the purpose of this Section, when horses are prevented from starting by any malfunction of the starting gate itself they shall be considered as having been excused by the stewards. After close of betting, there shall be no refund, except as provided in §11611 or §11613.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Division of Administration, Racing Commission LR 28:

**§11623. Display**

A. These rules shall be prominently displayed in the betting area of the association conducting the pick four.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Division of Administration, Racing Commission LR 28:

**§11625. Unforeseen Circumstances**

A. Should circumstances occur which are not foreseen in these rules, questions arising thereby shall be resolved by the association and/or commission in accordance with general pari-mutuel practices. Decisions regarding distribution of the pick four pools shall be final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Division of Administration, Racing Commission LR 28:

This proposed rule has no known impact on family formation, stability, and/or autonomy as described in R.S. 49:972.

The domicile office of the Louisiana State Racing Commission is open from 8:30 a.m. to 5 p.m., and interested parties may contact Charles A. Gardiner III, executive director, or C. A. Rieger, assistant director, at (504) 483-4000 (holidays and weekends excluded), or by fax (504) 483-4898, for more information. All interested persons may submit written comments relative to this proposed rule through November 12, 2001, to 320 North Carrollton Avenue, Suite 2-B, New Orleans, LA 70119-5100.

Charles A. Gardiner III  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Pick Four**

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

There are no anticipated costs or savings to state or local governmental units associated with these rules, other than those

one-time costs directly associated with the publication of these rules.

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

The effect on revenue collections is anticipated to be positive (however not measurable at this time) due to the potential of increased handle, which in turn could generate additional revenue collections for state and local governmental units.

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

This action primarily benefits race track patrons, racing associations and horsemen by generating an added interest in betting due to a new form of exotic wagering.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no estimated effect on competition and employment as a result of the proposed rule.

Charles A. Gardiner III  
Executive Director  
0109#013

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Nursing**

Authorized Practice  
(LAC 46:XLVII.4513)

Notice is hereby given, in accordance with the provisions of the Administrative Procedure Act, R.S.49:950 et seq., that the Board of Nursing (board) pursuant to the authority vested in the board by R.S.37:918, R.S.37:919 intends to adopt rules amending the Professional and Occupational Standards pertaining to the authorized practice of Advanced Practice Registered Nurses. The proposed amendments of the rules are set forth below.

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XLVII. Nurses**

**Subpart 2. Registered Nurses**

**Chapter 45. Advanced Practice Registered Nurses**

**§4513. Authorized Practice**

**A. - C.2 y**

**3. Definitions as used in this Part:**

\* \* \*

*Collaborating Physician*Ca physician in active practice with whom the APRN has developed and signed a collaborative practice agreement for limited prescriptive and distributing authority and who holds a current, unencumbered, unrestricted and valid medical license issued or recognized by the Louisiana State Board of Medical Examiners and is in good standing with no pending disciplinary proceedings, and practices in accordance with rules of the Louisiana State Board of Medical Examiners. A collaborating physician shall have current hospital privileges prior to an APRN seeking hospital privileges at the same institution.

\* \* \*

*Joint Administration Committee or Committee*Cthe joint committee comprised of five members designated by

the board and five members designated by the Louisiana State Board of Medical Examiners as follows:

- i. one APRN practicing in a rural area, appointed by the board from a list submitted by the Louisiana Association of Nurse Practitioners;
- ii. one APRN practicing in an urban area appointed by the board from a list submitted by Louisiana State Nurses Association;
- iii. three registered nurses on the board appointed by the board;
- iv. two physicians on the Louisiana State Board of Medical Examiners appointed by the Louisiana State Board of Medical Examiners;
- v. one physician that collaborates with an APRN practicing in a rural area appointed by the Louisiana State Board of Medical Examiners from a list submitted by the Louisiana State Medical Society;
- vi. one physician that collaborates with an APRN practicing in an urban area appointed by the Louisiana State Board of Medical Examiners from a list submitted by the Louisiana State Medical Society;
- vii. one physician that collaborates with an APRN appointed by the Louisiana State Board of Medical Examiners from a list submitted by the Louisiana Medical Association.

\* \* \*

*Under Physician Direction* the limited prescriptive authority as approved by the Joint Administration Committee and demonstrated in the collaborative practice agreement as provided for in R.S. 37:913(9). Physician direction of the APRN is essential and implies that there is informed concurrence of the limited prescriptive authority actions of the APRN, in accordance with written clinical practice guidelines in existence between the collaborating physician and the APRN. Although physician direction shall not be construed in every case to require the physical presence of the collaborating physician, he shall be within a reasonable distance to provide timely response to medical emergencies and he and the APRN must have the capability to be in contact with each other by telephone or other telecommunications devices. Reasonable distance implies that the collaborating physician is within the local area of the APRN's practice site or sites and is not attending an educational program or on vacation in another state or country.

\* \* \*

4.a. - d. ¶

- i. 500 hours of clinical practice as a licensed APRN within the last 6 months in the clinical specialty for which the applicant was educationally prepared as an APRN immediately prior to applying for limited prescriptive and distributing authority; practice in another state as a licensed APRN may be accepted to meet this requirement;
- ii. successful completion of a minimum of 36 contact hours of education in advanced pharmacotherapeutics obtained as a component of a formal educational program preparing registered nurses for advanced practice or continuing education programs for advanced practice, approved by the board, within the 4-year time period immediately prior to the date of initial application for prescriptive and distributing authority with at least 12 hours having been obtained within two years prior

to application. The APRN shall submit the continuing education advanced pharmacotherapeutics curriculum to the board for review and approval. The APRN shall obtain at least 2/3 of the required pharmacotherapeutic hours by attending continuing education programs and may obtain 1/3 of the required pharmacotherapeutic hours by non-lecture programs, such as computer assisted instruction and/or self-study accredited by a national professional accrediting organization approved by the board. Continuing Medical Units may be used as continuing education provided that the offering documents the number of advanced pharmacotherapeutic hours in the educational offering. In order for the continuing education course to be approved by the board, the course shall include:

4.d.i.(a). - v.(c). ¶

(i). is available by telephone or direct telecommunications for consultation, assistance with medical emergencies, or patient referral; in the absence of the collaborating physician the following shall apply:

[a]. the back-up physician or physicians shall be in good standing and approved by the medical board and review and sign the collaborative practice agreement;

[b]. in the event that the collaborating physician fails to name a back-up physician, the collaborative practice agreement shall clearly state that the APRN will not prescribe in the absence of the collaborating physician;

4.d.v.(c).(ii). - (e). ¶

vi. the committee shall develop guidelines extending or modifying the requirements of "under physician direction", as defined in LAC 46: XLVII.4513.C.3, as well as the requirements of LAC 46:XLVII.4513.C.4.d.v. (c), for an APRN who is employed by or who contracts with the Louisiana Department of Health and Hospitals' Office of Public Health to specifically provide family planning, Human Immunodeficiency Virus ("HIV") infection or sexually transmitted disease treatment or services and Rural Health Clinics.

4.d.vii. - b. ¶

c. An APRN who is granted limited prescriptive authority shall not prescribe or distribute any controlled substance as defined, enumerated or included in federal or state statutes or regulations, 21 CFR 1308.11-15., R.S. 40:964, or any substance which may hereafter be designated a controlled substance by amendment or supplementation of the cited regulations and statute. The committee may authorize an APRN with limited prescriptive authority to prescribe or distribute controlled substances on an individual practice basis. An APRN who is so authorized shall provide their Drug Enforcement Administration registration number on all written prescriptions and be furnished on all oral prescriptions and shall comply with all scheduled drug prescription requirements in accordance with LAC 46:LIII.3531, Schedule Drug Prescription Requirements.

i. An APRN who is granted limited prescriptive authority may request approval of the Joint Administration Committee to prescribe and distribute controlled substances to the extent expressly authorized by the APRN's collaborating physician provided that:

(a). the APRN has been approved by the Joint Administration Committee to prescribe and distribute noncontrolled substances;

(b). the APRN has been approved by the board to prescribe and distribute noncontrolled substances;

(c). the APRN has practiced with limited prescriptive and distributing authority with the same collaborating physician in the APRN's licensed category and area of specialization for 500 hours immediately preceding the initial request and 160 hours of collaborative practice for each additional request;

(d). the APRN's application, provides to the satisfaction of the Joint Administration Committee, an identified need for controlled substances within the patient population served by the collaborative practice;

(e). controlled substances utilization is expressly contained in the collaborative practice agreement, which specifies the circumstances, limitations and extent to which such substances may be prescribed or distributed; and

(f). the collaborative practice agreement contains acknowledgment of responsibility by the collaborating physician to ensure that the controlled substance authority of an APRN is utilized in a manner that is consistent with any rule or regulation imposed upon his practice.

ii. Controlled substances which may be prescribed or distributed by an APRN shall be limited to Schedule III, IV and V and shall be limited to, consistent with, and exclusively within the parameters of the practice specialty of the collaborating physician and the APRN's licensed category and area of specialization. The committee may approve an APRN to prescribe certain drugs to treat Attention Deficit Disorder (ADD).

iii. An APRN granted authority to prescribe or distribute controlled substances shall not utilize such substances in connection with the treatment of:

(a). chronic or intractable pain, as defined in LAC 46:XLV.6515 - 6923;

(b). obesity, as defined in LAC 46:XLV.6901 - 6913; or

(c). oneself, a spouse, child or any other family member.

iv. Any APRN authorized to prescribe controlled substances shall provide to the Board a copy of his or her Louisiana Controlled Dangerous Substance permit and Drug Enforcement Administration registration number prior to prescribing or distributing controlled substances. A place for an APRN to write their DEA number, as well as the name, address and telephone number of the collaborating physician, shall be pre-printed on the prescription pad and a sample of the prescription shall be submitted to the board for approval prior to prescribing or distributing controlled substances.

d. ÿ

e. Each year an APRN with limited prescriptive authority shall obtain six contact hours of continuing education in pharmacotherapeutics in their category and area of specialization. Documentation of completion of the continuing education contact hours required for prescriptive authority shall be submitted at the time of the APRN's license renewal. The APRN shall obtain at least 2/3 of the required advanced pharmacotherapeutic hours by attending continuing education and may obtain 1/3 of the required advanced pharmacotherapeutic hours by non-lecture offerings or Continuing Medical Education Units (CMEs) provided that the offering documents the number of

advanced pharmacotherapeutic hours in the educational offering. In order for the continuing education program to be approved by the board, the program shall:

i. be provided by a board approved national certifying organization or provider approved by the board;

5.e.ii. - f. ÿ

g. Prior to changes with the collaborating physician, or physicians or coverage physician, when applicable, the APRN shall notify the board in writing requesting approval of such changes. The board may approve changes in the practice site or sites when both the collaborating physician(s) and APRN has been previously approved by the Committee and all other requirements are met as set forth in these rules. The APRN shall notify the board in writing within thirty days of all changes regarding practice sites.

5.h. - 6. ÿ

a. Receive and distribute free drug samples and other gratuitous medications supplied by drug manufacturers, other than controlled substances, that shall:

6.a.i. - 10. ÿ

11. Reinstatement. AN APRN who has been approved by the Joint Administration Committee for limited prescriptive and distributive authority and who has ceased practicing limited prescriptive authority for more than 12 months may apply for reinstatement of such authority.

a. In the event that the time period is greater than 12 months but less than 4 years the APRN shall:

i. meet the requirements as set forth in LAC 46:XLVII.4513.4.a, b, and c.

ii. provide evidence of 6 contact hours of continuing education in pharmacotherapeutics for each 12-month period of non-prescribing in their category and area of specialization. The APRN shall obtain at least 2/3 of the required advanced pharmacotherapeutic hours by attending continuing education and may obtain 1/3 of the required advanced pharmacotherapeutic hours by non-lecture offerings or Continuing Medical Education Units (CMEs) provided that the offering documents the number of advanced pharmacotherapeutic hours in the educational offering. In order for the continuing education program to be approved by the Board, the program shall:

(a). be provided by a board approved national certifying organization or provider approved by the board;

(b). include content relevant to advanced practice nursing and the use of pharmacological agents in the prevention of illness, and the restoration and maintenance of health.

b. In the event that the time period is greater than four years the APRN shall meet the requirements as set forth in LAC 46:XLVII.4513.4.a., b., c., and d.ii.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.K, and R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 22:981 (October, 1996), amended by the Board of Nursing and Board of Medical Examiners, LR 23:1245 (June 1999), amended by the Board of Nursing, LR 27:727 (May 2001), LR 28:

#### Family Impact Statement

The Louisiana State Board of Nursing hereby issues this Family Impact Statement: the proposed rule related to the Board's appointing authority will have no known impact on family formation, stability, and autonomy, as set forth in R.S.49:972.

Interested persons may submit written comments on the proposed rules to Barbara L. Morvant, Executive Director, Louisiana State Board of Nursing, 3510 North Causeway Boulevard, Suite 501, Metairie, LA, 70002. The deadline for receipt of all written comments is 4:30 p.m. on November 9, 2001.

Barbara L. Morvant  
Executive Director

However, it is anticipated that 50 percent of the 327 APRNs who have Limited Prescriptive and Distributing Authority will apply for the privileges. It is assumed that the expanded scope of practice for these persons will result in an increase in the numbers and medical conditions of clients they can treat; thereby resulting in increased employment and job security for those persons with Controlled Substance privileges.

Barbara L. Morvant  
Executive Director  
0110#096

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Authorized Practice**

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

It is anticipated that no additional staff will be needed to implement these rule changes, although the changes will increase the current staff workload. Additional operating expenses including printing and postage will be required, as well as the addition of two members to the Joint Administration Committee.

The anticipated costs for the FY 2001/2002 will be \$4,992 (\$600 for postage and printing and estimated travel for flight costing \$250 x 6 approximate meetings per year x 2 additional members of JAC = \$3,000 + meals @ \$36/day x 6 meetings per year x 2 additional members = \$432 + lodging @ \$80/day x 6 meetings per year x 2 additional JAC members = \$960/year, with a total of \$4,992 for FY 2001/2002). At an estimated addition of \$100/year for inflation of travel costs, the estimated total cost for FY 2002/2003 is \$5,092 and \$5,192 for FY 2003/2004.

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

The number of advance practice registered nurses who requested a change in practice site average six each meeting. With six meetings per year, this equals to 36 APRNs who request a change in practice site. With the deletion of the \$25 Change of Site fee for APRNs who have collaborating physicians who are previously approved, this would equal to \$900 the first year. Taking into account the increasing numbers of APRNs who request Limited Prescribing and Distributing Authority, the amount was increased by \$100 per year.

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

Those individuals with limited prescriptive and distributive authority who request and are granted privileges to prescribe controlled substances within their collaborative practice agreement with their physician will expand their scope of practice, thus benefiting these individuals. Furthermore, the deletion of the \$25 fee for a change in practice site will decrease these individuals operating costs.

The public will also benefit from the increased scope of the advanced practice registered nurse with prescriptive privileges who can prescribe controlled substances within their collaborative practice agreement with their physician by decreased wait time for the physician and availability of the advanced practice registered nurse.

These applicants will be required to demonstrate meeting the same educational requirements and certification requirements as accepted by the Board for limited prescribing and distributing authority and will have to be approved by the Joint Administrative Committee on an individual basis.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

An estimate of the impact of the proposed action on competition and employment is unknown at this time.

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Office of Public Health**

**Emergency Medical Technician Training  
Fee Schedule (LAC 48:XI.3501)**

The Department of Health and Hospitals, Office of Public Health, in accordance with R.S. 40:1232.1, R.S. 40:5 and the Administrative Procedure Act, R.S. 49:950 et seq., proposes to amend LAC 48 XI.3501, Fee Schedule. This text is being amended to establish a fee schedule for emergency medical services personnel, to provide exceptions, and to provide for related matters. These fees were legislated to offset the operating costs as incurred in the required examination, certification or recertification of emergency medical services personnel.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed rule on the family has been considered. The proposed rule does not appear to have any significant impact on the family functioning, stability or autonomy as described in R.S. 49:972.

**Title 48**

**PUBLIC HEALTH GENERAL**

**Part XI. Hospitals**

**Chapter 35. Emergency Medical Technician Training  
§3501. Fee Schedule**

A. - B. ...

C. The Bureau of Emergency Medical Services shall set fees for emergency medical personnel under the following conditions.

1. Volunteers. The bureau shall not require or collect any fee or charges for certification or recertification of emergency medical personnel who:

- a. serve as such on a voluntary basis; and
- b. receive no compensation of any kind for such services.

2. Public Exceptions. The bureau shall not set the fee for certification of an emergency medical technician basic to exceed \$15 for any individual who:

- a. is an employee of a municipal law enforcement agency; or
- b. fire service; or
- c. fire protection district, who does not perform emergency medical services outside of the individual's official governmental responsibilities for any form of compensation.

3. The bureau shall not set the fee for recertification of an emergency medical technician-basic to exceed \$10 for any individual who:

- a. is an employee of a municipal law enforcement agency; or
- b. fire service; or
- c. fire protection district, who does not perform emergency medical services outside of the individual's official governmental responsibilities for any form of compensation.

4. The bureau shall assess fees for testing and certification based on the following schedule:

- a. test fees:
  - i. first responderCwritten only: \$15;
  - ii. first responderCwritten only (out-of-state): \$15;
  - iii. basic initial written and practical: \$60;
  - iv. basic entire practical exam: \$30;
  - v. basic partial practical: \$15;
  - vi. basic testing/retestingCwritten only: \$15;
  - vii. basic testing/retestingCwritten only (out-of-state): \$15;
  - viii. intermediate initial written and practical: \$75;
  - ix. intermediate initial written and practical (out-of-state): \$100;
  - x. intermediate retest entire practical: \$50;
  - xi. intermediate retest entire practical (out-of-state): \$65;
  - xii. intermediate retest partial practical: \$30;
  - xiii. intermediate retest partial practical (out-of-state): \$30;
  - xiv. intermediate testing/retestingCwritten exam only: \$15;
  - xv. intermediate testing/retestingCwritten exam only (out-of-state): \$15;
  - xvi. paramedic initial written and practical: \$90;
  - xvii. paramedic initial written and practical (out-of-state): \$125;
  - xviii. paramedic retesting entire practical: \$60;
  - xix. paramedic retesting entire practical (out-of-state): \$75;
  - xx. paramedic retesting partial practical: \$35;
  - xxi. paramedic retesting partial practical (out-of-state): \$40;
  - xxii. paramedic testing/retesting written: \$15;
  - xxiii. paramedic testing/retesting written (out-of-state): \$15.
- b. Certification fees are charged as follows:
  - i. first responder initial certification: \$10;
  - ii. basic emergency medical technician initial certification: \$30;
  - iii. intermediate initial certification: \$40;
  - iv. paramedic initial certification: \$50;
  - v. first responder recertification: \$5;
  - vi. basic emergency medical technician recertification: \$25;
  - vii. intermediate recertification: \$35;
  - viii. paramedic recertification: \$45;
  - ix. basic EMT reciprocity: \$60;
  - x. intermediate reciprocity: \$80;
  - xi. paramedic reciprocity: \$100.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1232.1 (Act 515 of the 2001 Louisiana Legislature).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Hospitals, LR 13:246

(April 1987), amended by the Department of Health and Hospitals, Office of Public Health, LR 15:478, 512 (June 1989), LR 28:

Interested persons may submit written comments to Nancy Bourgeois, Bureau of EMS, at 161 Third Street, Baton Rouge, LA 70801. She is responsible for responding to inquiries regarding this proposed rule. A public hearing on this proposed rule is scheduled for November 27, 2001, 1 p.m. at the Bureau of Emergency Medical Services Office, 161 Third Street, Baton Rouge, LA. At that time, all interested persons will be afforded an opportunity to submit verbal and written comments or any other information pertinent to this proposed rule. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**  
**RULE TITLE: Emergency Medical Technician Training  
Fee Schedule**

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

It is anticipated that the agency will incur a one-time implementation cost of approximately \$160 during FY 01-02 for publication of the required notices in the *Louisiana Register*.

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

Based upon the legislatively authorized revised fee structure as contained in the proposed rule, the agency could increase self-generated fees by approximately \$180,000 annually beginning FY 01-02. These projected self generated fees will offset federal funding for the emergency medical services program beginning FY 01-02

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

Emergency medical services personnel working for fire, rescue, ambulance, industrial, casinos settings, etc. would be directly affected by the proposed fee schedule. The proposed rule exempts volunteer emergency medical services personnel from the proposed fees if they meet criteria as listed in the proposed rule.

In the proposed rule, non-exempt individuals seeking the required testing prior to their emergency medical services certification would incur a testing cost ranging from \$15 for the first responder written examination up to a cost of \$125 for the paramedic initial written and practical examination (out of state). Required individual emergency medical services certification cost could range from \$5 for the first responder recertification up to a cost of \$100 for a paramedic reciprocity certification. However, if an emergency medical service agency/employer from the private or public sector chooses to pay the proposed fees for staff, then the amount paid by that agency/employer will increase commensurate with the number of staff examinations required and the desired certification levels being requested.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This rule should not have a significant impact on competition or employment.

Madeline W. McAndrew  
Assistant Secretary  
0110#052

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Health and Hospitals Office of the Secretary Bureau of Community Supports and Services

#### Home and Community Based Services Waiver Program Mentally Retarded/Developmentally Disabled Waiver Allocation of Waiver Slots

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services proposes to adopt the following rule under the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This proposed rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the allocation of slots in the Mentally Retarded/Developmentally Disabled (MR/DD) Waiver in a rule published June 20, 1997 (*Louisiana Register*, Volume 23, Number 6). The June 20, 1997 rule was subsequently amended to include Hammond Developmental Center residents or their alternates in the allocation of waiver slots previously reserved for residents of the Pinecrest Developmental Center (*Louisiana Register*, Volume 24, Number 3). The March 20, 1998 rule was later amended to increase the waiver slots allocated for foster children in the custody of the Office of Community Services and residents of public developmental centers and private ICF-MR facilities (*Louisiana Register*, Volume 25, Number 9). The Bureau of Community Supports and Services amended the September 20, 1999 rule to update the methodology of slot allocation to better meet the needs of citizens with disabilities in the state of Louisiana (*Louisiana Register*, Volume 27, Number 9). The bureau now proposes to adopt a rule to continue the provisions contained in the October 1, 2001 emergency rule.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed rule on the family has been considered. This proposed rule has no known impact on family functioning, stability, and autonomy as described in R.S. 49:972.

#### **Proposed Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services amends the provisions contained in the September 20, 1999 rule governing the programmatic allocation of waiver slots for the Mentally Retarded/Developmentally Disabled (MR/DD) Waiver as follows.

#### **Programmatic Allocation of Slots for MR/DD Waiver**

The Bureau of Community Supports and Services (BCSS) request for services registry, formerly the MR/DD waiver waiting list, shall be used to evaluate individuals for waiver eligibility. This request for services registry will be used to fill all waiver slots administered by the BCSS for persons with mental retardation or developmental disabilities. BCSS shall notify the next individual on the request for services registry, in writing, that a slot is available and that he/she is next in line to be evaluated for possible waiver slot assignment. The individual then chooses a case manager who will assist in the gathering of the documents needed for

both the financial and medical certification eligibility process. If the individual is determined to be ineligible, either financially or medically, that individual is notified in writing. The next person on the request for services registry is notified as stated above and the process continues until an eligible person accepts a waiver slot. A waiver slot is assigned to an individual when eligibility is established and the individual is certified. Before placing a person in an appropriate slot, the person must consent to the removal of their name from the request for services registry. Utilizing these procedures, waiver slots shall be allocated to the targeted groups cited as follows:

1. A minimum of 90 slots shall be available for allocation to foster children in the custody of the Office of Community Services (OCS), who successfully complete the financial and medical certification eligibility process and are certified for the waiver. OCS is the guardian for children who have been placed in their custody by court order. OCS shall be responsible for assisting the individual in gathering the documents needed in the eligibility determination process, preparing the comprehensive plan of care, and submitting the plan of care document to Medicaid.

2. A minimum of 160 slots shall be available for residents of Pinecrest and Hammond Developmental Centers, or their alternates, who have chosen to be deinstitutionalized, who successfully complete the financial and medical certification eligibility process, and are certified for the waiver. In situations where alternates are used, an alternate shall be defined as a resident of an ICF/MR facility who chooses to apply for waiver participation, is eligible for the waiver, and vacates a bed in the ICF/MR facility for an individual being discharged from a publicly operated ICF/MR developmental center. A Pinecrest or Hammond Developmental Center resident must be given freedom of choice in selecting a private ICF-MR facility placement in the area of the resident's choice in order to designate the resident being discharged from the ICF-MR facility as an alternate. The bed being vacated in the ICF/MR facility is reserved for placement of a resident of a publicly operated ICF/MR developmental center for 120 days.

3. Any slots vacated during the waiver year shall be available to residents leaving any publicly operated ICF/MR or their alternates. In situations where alternates are used, an alternate shall be defined as a resident of an ICF/MR facility who chooses to apply for waiver participation, is eligible for the waiver, and vacates a bed in the ICF/MR facility for an individual being discharged from a publicly operated ICF/MR developmental center. The bed being vacated in the ICF/MR is reserved for placement of a resident of a publicly operated ICF/MR developmental center for 120 days.

4. For those individuals who do not complete the transition process and move from either a publicly operated developmental center or an ICF/MR facility during the 120-day reservation period, the waiver slot will be converted to a community slot for processing. Justification to exceed the 120-day reservation period may be granted by the BCSS as needed.

5. Ten waiver slots shall be used for qualifying persons with developmental disabilities who are clients of the Developmental Neuropsychiatric Program (DNP) administered by Southeast Louisiana State Hospital, for a pilot project between the BCSS, the Office for Citizens with

Developmental Disabilities (OCDD), and the Office of Mental Health (OMH) in the development of coordinated wrap around services for individuals choosing to participate in the waiver and who meet the financial and medical eligibility requirements for the waiver.

6. Funded slots, not addressed above, shall be available for allocation to the next individual on the BCSS request for services registry who successfully completes the financial and medical certification eligibility process and is certified for the waiver.

The Bureau of Community Supports and Services has the responsibility to monitor the utilization of waiver slots. At the discretion of the BCSS, specifically allocated slots may be reallocated to better meet the needs of citizens with disabilities in the state of Louisiana.

Interested persons may submit written comments to Barbara Dodge, Bureau of Community Supports and Services, 446 North Twelfth Street, Baton Rouge, LA 70802-4613. She is responsible for responding to inquiries regarding this proposed rule. A public hearing on this proposed rule is scheduled for Tuesday, November 27, 2001 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, 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. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood  
Secretary

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Home and Community Based Services Waiver ProgramC Mently Retarded/Developmentally Disabled WaiverC Allocation of Waiver Slots**

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

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact for SFY 2001-02, 2002-03, and 2003-04. It is anticipated that \$240 (\$120 SGF and \$120 FED) will be expended in SFY 2001-2002 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will not impact federal revenue collections.

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

Implementation of this proposed rule should allow additional individuals to be served in the MR/DD Waiver, specifically the dually diagnosed and individuals in the custody of Department of Social Services, Office of Community Support, as there will be an increase in the number of slots allocated to these individuals.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no known effect on competition and employment.

Ben A. Bearden  
Agency Head or Designee  
0110#061

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## **NOTICE OF INTENT**

### **Department of Health and Hospitals Office of the Secretary Bureau of Community Supports and Services**

#### **Home and Community Based Services Waiver Program Mentally Retarded/Developmentally Disabled Waiver Service Definitions**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services proposes to adopt the following rule under the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This proposed rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule implementing a Home and Community Based Services waiver designed as an alternative to institutionalization for Medicaid eligible individuals who would otherwise require an ICF-MR level of care (*Louisiana Register*, Volume 16, Number 7). The Mentally Retarded/Developmental Disabled (MR/DD) Waiver was designed to meet the needs of these individuals by providing an array of community and family support services. The July 1990 rule contained service definitions and provisions governing provider qualifications, service delivery and extent of services. The Bureau of Community Supports and Services (BCSS) now proposes to adopt a rule to amend the service definitions contained in the July 20, 1990 rule and to clarify service restrictions and documentation requirements. In addition, BCSS proposes to establish policy clarifying the provision of transportation by waiver service providers.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed rule on the family has been considered. This proposed rule has no known impact on family functioning, stability, and autonomy as described in R.S. 49:972.

#### **Proposed Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services (BCSS) amends the definitions for the Mentally Retarded/Developmental Disabled (MR/DD) Waiver services contained in July 20, 1990 rule and clarifies service restrictions, documentation requirements and the provision of transportation by waiver service providers.

#### **I. General Provisions**

A. Licensure. All providers of MR/DD waiver services shall meet the applicable State and local licensing standards for these services.

B. Documentation. The following documentation requirements apply to all MR/DD waiver services. The necessity for all services must be documented on the approved comprehensive plan of care (CPOC). It is the responsibility of the service provider to provide detailed documentation of services offered to waiver recipients for the purposes of continuity of care/support for the individual and the need for effective monitoring of progress toward outcomes and services received. This documentation is an on-going chronology of the activities undertaken on behalf of the recipient. Progress notes must be of sufficient content

to accurately describe activities and cannot be so general that a complete picture of the services and progress cannot be drawn from the content of the note. General terms (i.e. "called the recipient," "supported recipient," or "assisted recipient") are not sufficient and do not reflect adequate content. Check lists alone are not adequate documentation.

#### C. Transportation

Emergency and non-emergency medical transportation is available to all waiver recipients as a Medicaid State Plan service. Non-medical transportation is not a component of personal care attendant, respite or substitute family care services. However, waiver providers may opt to furnish transportation for recipients during the course of providing these waiver services. Medicaid will not provide additional reimbursement for transportation to access services which are documented on the approved CPOC.

In the case of habilitation services, transportation is considered to be a component of the service and shall be provided between the recipient's residence and the service site or between sites (in cases where the recipient receives services in more than one place). The components of habilitation services include supervised independent living (SIL), supported employment, pre-vocational habilitation, and day habilitation services. The cost of transportation is included in the reimbursement rate.

The provider agency must be aware that this service is being provided and accepts any liability for their employee transporting a recipient. The provider agency must also ensure that the employee has a current driver's license and automobile liability insurance.

D. Staffing Requirements. Individual workers providing personal care attendant, respite or supervised independent living companion services to MR/DD waiver recipients shall not work more than 12 hours in a 24-hour period. Workers employed by multiple waiver service agencies shall not work more than a total of 12 hours in a 24-hour period.

## II. Service Definitions And Restrictions

Services must be needed on a regular basis and, with few exceptions, must be received at least once every 30 days in order for the recipient to remain eligible for the waiver program. Exceptions to the 30-day rule may be granted on a case by case basis for such things as extended hospitalizations. However, if the recipient is hospitalized or placed in an ICF-MR facility, the provider shall not bill for services during this time period.

#### A. Personal Care Attendant Services

Personal care attendant (PCA) services are services provided through performing, assisting or prompting waiver recipients who require assistance with eating, bathing, dressing, personal hygiene, and activities of daily living. Recipients must receive services in the most appropriate setting relative to the individual's needs and the services must be consistent with waiver requirements and licensing standards. Personal care services do not replace or supplant the recipient's natural supports. For those recipients living with their families, PCA services can be provided in the presence or absence of the family member or caregivers. The PCA worker may be a member of the recipient's family, but must meet the same standards as PCAs who are unrelated to the recipient. Supervision of PCA workers shall be furnished by the licensed personal care provider agency as required by licensing standards. The provider agency is responsible for

informing the case manager of any changes in the recipient's condition.

Restrictions. The following restrictions are applicable to all PCA services.

1. A PCA worker shall not provide care for other individuals living in the home, e.g. siblings, while caring for the waiver recipient.

2. A PCA worker shall not provide care for his/her own minor children or other non-waiver individuals while caring for the waiver recipient.

3. A PCA worker cannot be the recipient's legal guardian.

4. PCA services cannot be provided by the recipient's landlord. The landlord is defined as the person owning/leasing/renting a residence to the recipient, whether or not that person actually receives payment from the recipient, or on the recipient's behalf.

5. The recipient cannot reside in the PCA worker's home, nor can PCA services be delivered in the PCA worker's home.

6. Payment shall not be made for services furnished to a minor by the child's parent (through blood, adoption or marriage) or step-parent, or to an individual by that person's spouse.

7. PCA services are not to be used for child care purposes.

#### B. Respite Care Services

Respite care services are provided to recipients who are unable to care for themselves and are furnished on a short-term basis because of the absence or need of relief for the unpaid primary care giver who normally provides the care. Respite care may be provided in either the recipient's home or in a licensed respite facility. The respite care worker may be a member of the recipient's family, but must meet the same standards as respite care workers who are unrelated to the recipient. Supervision of the respite workers shall be furnished by the licensed respite care provider agency as required by licensing standards.

Restrictions. The following restrictions are applicable to respite services.

1. Respite services are not for the relief of another paid worker.

2. Payment will not be made for services furnished to a minor by the child's parent (through blood, adoption or marriage) or step-parent, or to an individual by that person's spouse.

#### C. Residential Habilitation/Supervised Independent Living (SIL)

Residential habilitation services include assisting the recipient in locating and equipping his/her home, implementing safeguards, and providing training in areas appropriate to the recipient's needs. This service also includes SIL training, SIL consultation, and SIL companion, which includes the following: day companion, behavior modification companion, and night companion. Residential habilitation is designed to assist individuals with acquisition, retention, or improvement of skills related to activities of daily living such as personal grooming and cleanliness, bed making and household chores, eating and the preparation of food, and the social and adaptive skills necessary to enable the individual to reside and participate in the community. Residential habilitation is available only to recipients age 18

and older who need support to live independently. The residential setting may be cluster housing, an apartment, a rented house or the recipient's own home, provided that the recipient does not reside with members of his/her immediate family. The only exception allowed is for recipients living with a disabled spouse, elderly or disabled parent(s), or siblings who receive waiver services. SIL service is comprised of no more than four people living together who are either unrelated or recipients of waiver services.

Restrictions. The following restrictions are applicable to all residential habilitation/supervised independent living services (SIL).

1. The SIL provider or their employees shall not be the landlord. The landlord is defined as the person owning/leasing/renting a residence to the recipient, whether or not that person actually receives payment from the recipient, or on the recipient's behalf. (Exceptions may be granted by the Director of BCSS prior to the services being implemented.)

2. SIL services cannot be performed by the recipient's immediate family.

3. Residential habilitation reimburses the provider for services. Payments are not made for room and board, the cost of facility maintenance, or upkeep and improvements.

4. Payment for residential habilitation does not include payments made, directly or indirectly, to members of the recipient's immediate family.

#### D. Substitute Family Care

Substitute family care (SFC) provides care in a family setting for children and adults who may or may not be related. Substitute families are responsible for providing guidance and training, transportation, routine activities of daily life, and community participation based in a family setting and included in an approved CPOC.

Restrictions. The following restrictions are applicable to all substitute family care services.

1. The maximum capacity for any SFC home is four recipients.

2. The cost of room and board for the recipients of SFC is not included in the waiver. Payment for room and board is met by the recipient's resources (SSI or earnings, for example), or through other arrangements outside of the waiver.

#### E. Habilitation/Supported Employment

Habilitative services are designed to assist individuals age 18 and older in acquiring, retaining, and improving the skills necessary to successfully acquire and retain employment in their community. Supported employment services consist of paid employment for persons for whom competitive employment at or above the minimum wage is unlikely and who need intensive ongoing support to perform in a work setting. Supported employment is conducted in a variety of settings, particularly work sites in which persons without disabilities are employed.

Restriction. The following restriction is applicable to all habilitation/supported employment services.

1. These services are not available to recipients who are eligible for other employment or training programs, including Vocational Rehabilitation.

#### F. Pre-Vocational Habilitation

Services are aimed at preparing an individual for paid or unpaid employment, but are not job-task oriented. Services

include teaching such concepts as compliance, attendance, task completion, problem solving and safety. Pre-vocational services are provided to persons not expected to be able to join the general work force or participate in a transitional sheltered workshop within one year (excluding supported employment programs). Activities included in this service are not primarily directed at teaching specific job skills, but at underlying habilitative goals, such as attention span and motor skills as reflected in the individual's approved CPOC. Services are directed to habilitative, rather than explicit employment objectives.

Restriction. The following restriction is applicable to all pre-vocational habilitation services.

1. These services are not available to those recipients age 18 or older who are eligible under a program funded under Section 110 of the Rehabilitation Act of 1973 or Section 602(16) and (17) of the Individuals with Disabilities Education Act.

#### G. Day Habilitation

Day habilitation provides regularly scheduled activities in non-residential, integrated settings to enhance community participation, relationship building, routine activities of daily life, and other activities to assist recipients who are age 18 or older to make more informed choices regarding their lives. Services for adults are typically provided four or more hours per day, five days per week.

#### H. Environmental Modifications

Home modification services are modifications and adaptations to a recipient's living quarters to enable them to live safely in his/her community. Necessary physical adaptations to the home are those required by the recipient's approved CPOC.

#### I. Personal Emergency Response Systems

A personal emergency response system (PERS) provides immediate assistance in the event of a physical, emotional, or environmental emergency through a community-based electronic communications device. The unit is connected to the telephone line and is programmed to send an electronic message to a community-based 24-hour emergency response center once a "help" button is activated. This unit may be either worn by the recipient or installed in his/her home.

#### J. Assistive Devices

Assistive devices are specialized medical equipment and supplies, such as adaptive and communication aids, that assist the recipient in performing activities of daily living and controlling his/her environment. Items reimbursed with waiver funds must be specified in the CPOC and be in addition to any medical equipment and supplies furnished under the State Plan. Items that do not provide direct medical or remedial benefits to the recipient shall be excluded.

Interested persons may submit written comments to Barbara Dodge, Bureau of Community Supports and Services, 446 North Twelfth Street, Baton Rouge, LA 70802-4613. She is responsible for responding to inquiries regarding this proposed rule. A public hearing on this proposed rule is scheduled for Tuesday, November 27, 2001 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, 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. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Home and Community Based Services  
Waiver ProgramC Mentally Retarded/Developmentally  
Disabled WaiverC Service Definitions**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact for SFY 2001-02, 2002-03, and 2003-04. It is anticipated that \$560 (\$280 SGF and \$280 FED) will be expended in SFY 2001-2002 for the state's administrative expense for promulgation of this proposed rule and the final rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
It is anticipated that the implementation of this proposed rule will not impact federal revenue collections.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
Implementation of this proposed rule will not have estimable costs and/or economic benefits for directly affected persons or nongovernmental groups.  
There should be no effect on families, as these MR/DD Waiver service definitions are only clarifications and not policy changes.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There is no known effect on competition and employment.

Ben A. Bearden  
Director  
0110#062

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Office of the Secretary**

Repeal of Professional and Occupational Standards,  
AIDS Trust Fund (LAC 46:C.101-107)

The Department of Health and Hospitals, Office of the Secretary, proposes to repeal the following rule in its entirety, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 46:2531. This rule is being repealed because the AIDS Trust Fund Board no longer exists. The HIV Trust Fund Board was originally established in 1987, to review the eligibility of programs to receive funding for research and educating the public regarding Acquired Immune Deficiency Syndrome. Later, the HIV Commission was established by law and assumed the powers, duties, and responsibility for all HIV related issues, however, the published rule was not repealed when the commission was established. Therefore, this rule is strictly a housekeeping measure.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed rule on the family has been considered. This proposed rule has no known impact on family formation, stability, or autonomy as described in R.S. 49:972.

**Title 46  
Professional and Occupational Standards  
Part C. AIDS Trust Fund Board**

**Chapter 1. General Provisions**

**§101. Purpose**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2531.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, AIDS Trust Fund Board, LR 13:239 (April 1987), repealed by the Department of Health and Hospitals, Office of the Secretary, LR 28:

**§103. Powers and Duties**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2531.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, AIDS Trust Fund Board, LR 13:239 (April 1987), repealed by the Department of Health and Hospitals, Office of the Secretary, LR 28:

**§105. Memberships**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2531.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, AIDS Trust Fund Board, LR 13:239 (April 1987), repealed by the Department of Health and Hospitals, Office of the Secretary, LR 28:

**§107. Officers**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2531.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, AIDS Trust Fund Board, LR 13:239 (April 1987), repealed by the Department of Health and Hospitals, Office of the Secretary, LR 28:

Interested persons may submit written comments for 30 days from the date of this publication to Patricia A. Faxon, Program Manager, P.O. Box 629, Baton Rouge, LA 70821. She is the person responsible for responding to inquiries.

**Family Impact Statement**

1. The effect on the stability of the family. This proposed rule should have no effect on the stability of the family.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. This proposed rule should have no effect on the authority of parents regarding the education and supervision of their children.

3. The effect on the functioning of the family. This proposed rule should have no effect on the functioning of the family.

4. The effect on family earnings and family budget. This proposed rule should have no effect on family earnings and family budget.

5. The effect on the behavior and personal responsibility of children. This proposed rule should have no effect on the behavior and personal responsibility of children.

6. The ability of the family or a local government to perform the function as contained in the proposed rule. This proposed rule does not relate to any function of the family or of local government.

David W. Hood  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**  
**RULE TITLE: Repeal of Professional and Occupational  
Standards, AIDS Trust Fund**

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

There are no estimated implementation costs to state or local governmental units, beyond the initial publication costs, which are anticipated to be \$80 in FY 01-02. There should be no implementation costs in later years.

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

Implementation of this proposed rule should have no effect on revenue collections of state or local governmental units.

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

There are no estimated costs and/or economic benefits to directly affected persons or nongovernmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

There is no estimated effect on competition and employment from implementation of this proposed rule.

David W. Hood  
Secretary  
0110#051

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Insurance  
Office of the Commissioner**

Rule 10C Continuing Education  
(LAC 37:XI.717 and 723)

Under the authority of the Louisiana Insurance Code, R.S. 22.1 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the commissioner hereby gives notice that the Department's Rule Number 10, Continuing Education Programs, will be amended as required to bring it into compliance with R.S. 22:1193.J, which was enacted by Act 290 during the 2001 Regular Session of the Louisiana Legislature and made effective August 15, 2001. The amendments will affect Rule 10, Sections 10.G and 13.B, deleting those provisions that allowed granting of partial continuing education credits to those "self-study" participants who failed an examination required to obtain a national designation such as CPCU, CLU, CIC, etc.

**Title 37  
INSURANCE  
Part XI. Rules**

**Chapter 7. Rule Number 10—Continuing Education  
§1717. Rule 10.10. Measurement of Credit**

A. – F. ...

G. Qualified continuing education programs earning a graduate level professional designation such as CPCU, CLU, ChFC, etc., will be subject to special rules as contained in this paragraph. Licensees which successfully pass a qualified graduate level national designation program examination shall earn 24 continuing education credit hours for property-casualty courses and 16 continuing education credit hours for life-health courses.

**AUTHORITY NOTE:** Promulgated in accordance with Act 428 of the 1989 Louisiana Regular Legislative Session, R.S. 22:1193, and the Louisiana Administrative Procedure Act, R.S. 49:950 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of Licensing and Compliance, LR 16:855 (October 1990), amended LR 28:

**§723. Rule 10.13. Credit for Individual Study  
Programs**

A. ...

B. Insurance companies admitted to do business in the state of Louisiana, insurance trade associations as recognized by the commissioner, and accredited public or private colleges or universities may be recognized as providers of independent study courses. Other organizations recommended by the council and authorized by the commissioner may be approved as providers of independent study courses if they meet one of the following qualifications:

1. five years or more experience as a recognized insurance education provider of independent study courses;

2. accreditation by a national education organization. All individual study programs must be submitted for approval by the organization which complies or publishes the course materials. All individual study courses must be approved prior to being offered to licensees for continuing education credit. Any such course approval is not transferable to any other entity.

C. Continuing education credit for individual study programs must be applied to the current license renewal and may not be carried over to subsequent license renewals. No individual study program will be certified for more than 24 continuing education credit hours for property-casualty courses or 16 continuing credit hours for life-health courses.

D. Qualified individual study program providers (example: national publishing companies) may not contract their provider status to other CE providers. The integrity of materials and testing are the responsibility of the approved provider and must be maintained under their direct control. Local CE providers may act as vendors or marketing agents of approved individual study program providers as long as the provider controls the materials and testing.

AUTHORITY NOTE: Promulgated in accordance with Act 428 of the 1989 Louisiana Regular Legislative Session, R.S. 22:1193, and the Louisiana Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of Licensing and Compliance, LR 16:855 (October 1990), amended LR 28:

On November 28, 2001, beginning at 10 a.m., the Department of Insurance will hold a public hearing in the Insurance Building Plaza Hearing Room located at 950 North Fifth Street, Baton Rouge, Louisiana, 70804 to allow for public commentary concerning the proposed amendments to its existing Rule 10 as set forth below. It should be noted that this hearing is a mere formality since the governing statute has already been enacted by the legislature.

Persons interested in obtaining copies of the Rule or in making comments relative to these proposals may do so at the public hearing or by writing to Barry E. Ward, Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214. Comments will be accepted through the close of business at 4:30 p.m. November 29, 2001.

J. Robert Wooley  
Acting Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Rule 10C Continuing Education**

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

It is not anticipated that the amendments to Rule 10 would result in any implementation costs or savings to local or state governmental units.

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

The proposed amendments to Rule 10 should have no effect on revenue collections of local or state governmental units.

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

There may be some additional costs to persons participating in self-study programs who fail the required examinations; they may be required to pay an examination fee to retake the examinations in order to obtain credit for the courses. It is impossible for the department to know or to estimate the number of persons who may incur these costs or what the costs would be, per person. Course providers and national organizations testing for the titles CPCU, CLU, CIC, etc., set their own examination rates.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed amendments to Rule 10 should have no impact on competition and employment.

Chad Brown  
Deputy Commissioner  
0110#049

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Natural Resources  
Office of Coastal Restoration and Management**

**Coastal Use Permit Fee Schedule  
(LAC 43:I.Chapter 7)**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Natural Resources, Office of Coastal Restoration and Management, hereby proposes to amend regulations regarding Coastal Use Permit fees.

The Department of Natural Resources, Office of Coastal Restoration and Management, intends to amend the fee schedule for Coastal Use Permits by establishing different fee rates for residential and non-residential coastal uses. The proposed amended regulations will define the term "residential coastal use," establish that the fees for residential uses will not change, and establish that the fees for non-residential uses will increase. The changes in the regulations will allow the Louisiana Coastal Resources Program to modify its fee schedule for the first time since the original fee regulations were established in 1982.

**Title 43**

**NATURAL RESOURCES**

**Part I. Office of the Secretary**

**Chapter 7. Coastal Management**

**Subchapter A. Definitions**

**§700. Definitions**

\* \* \*

*Residential Coastal Use* Any coastal use associated with the construction or modification of one single-family, duplex, or triplex residence or camp. It shall also include the construction or modification to any outbuilding, bulkhead, pier, or appurtenance on a lot on which there exists a single-family, duplex, or triplex residence or camp or on a water body which is immediately adjacent to such lot.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.21 - 49:214.41.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 21:835 (August 1995), amended by the Office of Coastal Restoration and Management, LR 28:

**Subchapter C. Coastal Use Permits and Mitigation**

**§723. Rules and Procedures for Coastal Use Permits**

**A. - C.2 ...**

**3. Fee Schedule**

a. Effective May 1, 2002, the fee schedule of Coastal Use Permits of state concern will be divided into the two categories of residential uses and nonresidential uses.

b. The following schedule of fees will be charged for the processing and evaluation of Coastal Use Permits of state concern in the residential coastal use category.

i. A non-refundable fee shall accompany each application or request for determination submitted to the Coastal Management Division. The fee shall be \$20 for each application and \$20 for each request for determination.

ii. In addition to the non-refundable application fee, the following fees will be assessed according to the total volume of material disturbed for each permit issued.

(a). Proposed projects which involve fewer than 125 cubic yards of dredging or fill volume shall not be assessed additional fees.

(b). Proposed projects which involve 125 cubic yards of dredging and/or filling but less than 50,000 cubic yards shall be assessed at the rate of \$0.04 per cubic yard.

(c). Proposed projects which involve 50,000 cubic yards or more of dredging and/or filling shall be assessed the maximum volume disturbed fee of \$2,000.

c. The following schedule of fees will be charged for the processing and evaluation of Coastal Use Permits of state concern in the non-residential coastal use category.

i. A non-refundable fee shall accompany each application or request for determination submitted to the Coastal Management Division. The fee shall be \$100 for each application and \$100 for each request for determination.

ii. In addition to the non-refundable application fee, the following fees will be assessed according to the total volume of material disturbed for each permit issued.

(a). Proposed projects which involve more than 0 and fewer than 500 cubic yards of dredging or fill volume shall be assessed a fee of \$25.

(b). Proposed projects which involve 501 cubic yards of dredging and/or filling but less than 100,001 cubic yards shall be assessed at the rate of \$0.05 per cubic yard.

(c). Proposed projects which involve 100,001 cubic yards or more of dredging and/or filling shall be assessed the maximum volume disturbed fee of \$5,000.

d. If the appropriate fees are not included along with the coastal use permit application, the application will be considered incomplete, and returned to the applicant. The application fee and additional fees, if any, should be paid separately.

e. A coastal use permit application which has been returned to the applicant by the Coastal Management Division or withdrawn by the applicant and is subsequently resubmitted shall be subject to an additional processing fee which will consist of an application fee and a permit fee if the application has undergone substantial revisions, pursuant to Subsection D.1.a of this Section.

f. Nothing contained in Paragraph 3.a-e shall affect the right of local government and parishes with approved programs to assess fees for processing and evaluating coastal use permit applications.

g. In addition to the fees identified at §723.C.3.a, the following fees related to compensatory mitigation shall be charged when appropriate pursuant to §724:

i. compensatory mitigation processing fee (§724.D);

ii. mitigation bank initial evaluation fee, mitigation bank habitat evaluation fee, mitigation bank establishment fee, and mitigation bank periodic review fee (§724.F.3);

iii. advanced mitigation project initial evaluation fee, advanced mitigation project establishment fee, advanced mitigation post-implementation habitat evaluation fee, advanced mitigation periodic review fee (§724.G.5);

iv. compensatory mitigation variance request fee (§724.K.2.h).

C.4. - G.4.b ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.21 - 49:214.41.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980), amended LR 8:519 (October 1982), amended by the Office of Coastal Restoration and Management, LR 16:625 (July 1990), amended by the Office of the Secretary, LR 21:835 (August 1995), amended by the Office of Coastal Restoration and Management, LR 28:

#### Family Impact Statement

The proposed amendments to LAC 43:I.Chapter 7 regarding Coastal Use Permit fees should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on:

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

Interested persons should submit written comments on this proposed rule through the close of business on November 28, 2001 to Jim Rives, Coastal Management Division, P.O. Box 44487, Baton Rouge, LA 70804. A public hearing on this proposed rule change is scheduled for Wednesday, November 28, 2001 at 10 a.m., in the Mineral Board Hearing Room located on the first floor, State Lands and Natural Resources Building, 625 North Fourth Street, Baton Rouge, LA.

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. The following summary statements, based on the attached worksheets, will be published in the *Louisiana Register* with the proposed agency rule.

James R. Hanchey  
Assistant Secretary

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

##### RULE TITLE: Coastal Use Permit Fee Schedule

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

There are no implementation costs (savings) to the Department of Natural Resources, because the existing fee processing system will implement this proposed change. There may be additional costs to state or local governmental units which perform uses subject to coastal use permitting in the form of increased fees (an estimated 52 coastal use permit applications from public bodies per year would be subject to the fee increase).

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

State and/or local governmental units will not be affected, except that it is estimated that Coastal Use Permit fees revenues of the Coastal Resources Trust Fund will increase by \$37,522 in FY 01 - 02 and \$225,137 in FY 02 - 03.

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

Coastal Use Permit fees will increase by an average of \$223 per non-residential permit application.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition and employment.

Robert D. Harper  
Undersecretary  
0110#067

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Natural Resources  
Office of Conservation  
Injection and Mining Division**

**Amendment to Statewide Order No. 29-B  
(LAC 43:XIX.315)**

In accordance with the provisions of R.S. 49:950 et seq. and R.S. 30:4, notice is hereby given that the Commissioner of Conservation intends to again consider promulgation of an amendment to Statewide Order No. 29-B, LAC 43:XIX.315 concerning disposal of reserve pit fluids and other exploration and production (E&P) waste by subsurface injection. A notice of intent, a copy of the initially proposed regulations, and a fiscal impact statement were published in the *Louisiana Register* on January 20, 2001. In the February 20, 2001 edition of the *Louisiana Register* a notice was published for a scheduled hearing on March 28, 2001. The hearing was cancelled.

Subsequent to the cancelled hearing, changes were made to the proposed regulations and a second notice of intent to conduct a public hearing on the amended rule was published in the *Louisiana Register*, on May 20, 2001. Although the Office of Conservation had placed a copy of the proposed regulation on the Department of Natural Resources web site and mailed or e-mailed copies of the proposed rule to oil and gas trade organizations and other interested parties, the amended rule was not published in the *Louisiana Register*. Several comments were received at the hearing conducted on June 28, 2001.

Accordingly, in this third Notice of Intent, the Office of Conservation is hereby informing interested parties that another public hearing will be conducted at 10 am, Thursday, November 15, 2001 in the Conservation Auditorium located on the First Floor, State Land and Natural Resources Building, 625 North Fourth Street, Baton Rouge, Louisiana. At such hearing, the Commissioner of Conservation will again provide interested parties the opportunity to provide comments on the proposed regulations for LAC 43:XIX.315. Such draft regulations will provide for the onsite disposal of exploration and production

waste into newly drilled wells which are to be plugged and abandoned or into the casing annulus of a well being drilled, a recently completed well, or a well which has been worked over.

**Title 43**

**NATURAL RESOURCES**

**Part XIX. Office of Conservation**

**Subpart 1. Statewide Order No. 29-B**

**Chapter 3. Pollution Control**  
**Onsite Storage,  
Treatment and Disposal of Nonhazardous  
Oilfield Waste (NOW) Generated from  
the Drilling and Production of Oil and  
Gas Wells (Oilfield Pit Regulations)**

**§315. Disposal of Drilling and Workover Waste Fluids  
by Subsurface Injection**

**A. General Provisions**

1. The onsite disposal (subsurface injection) of drilling and workover waste fluids (including reserve pit fluids) into a newly drilled well which is to be plugged and abandoned or into the casing annulus of a well being drilled, a recently completed well, or a well which has been worked over is prohibited, except when such injection is conducted in accordance with the requirements of this Section.

2. Injection of drilling and workover waste fluids shall not commence until an approved disposal permit has been granted by the Office of Conservation, Injection and Mining Division. Operators may apply for approval when applying for a drilling permit. Approval for injection of fluids generated through subsequent workovers will require the submission of a new application.

3. Injection of drilling and workover waste fluids (including reserve pit fluids) shall be limited to injection of only those fluids generated in the drilling, stimulation or workover of the specific well for which authorization is requested. Reserve pit fluids may not be transported from one well location to another for injection purposes.

4. The disposal zone shall be defined as that interval extending from the top of the first sand zone open to the annulus immediately below the shoe of the surface casing to the cement top of the next cemented casing string or cement plug.

5. Injection of drilling and workover waste pit fluids into zones that have produced hydrocarbons or are capable of hydrocarbon production is prohibited, except as otherwise provided by the commissioner.

6. The disposal zone shall not include any zone that has produced or is capable of hydrocarbon production from an offset well located within a one-quarter mile Area of Review (AOR).

7. Approval for disposal of drilling and workover wastes shall not be granted for any well for which there is an offset well located within a one-quarter-mile Area of Review (AOR) that lacks cement isolation of the top of the equivalent injection zone from the base of the underground source of drinking water (USDW).

8. Pump pressure and injection rate shall be limited so that vertical fractures will not extend into the confining layer beneath the base of the USDW and/or groundwater aquifer.

9. A drilling and workover waste fluids injection site may be inspected by a duly authorized representative of the commissioner prior to approval.

10. Drilling and workover waste fluids to be injected pursuant to the provisions of this Section are not exempt from the testing requirements of §311.C.

11. Approval of an application for annular disposal shall be limited to the specific disposal operation indicated (permitted waste batch). Approval shall be valid for a period not to exceed 180 days from the approval date. Subsurface disposal beyond the expiration date shall be a violation of the permit and regulations. Any subsequent injection after the expiration date of an approved application will require submission and review of a new application.

#### B. Application Requirements

1. Prior to the onsite injection of drilling and workover waste fluids, an application shall be filed by the well operator on the Form UIC-14 (Application for Annular Disposal of Reserve Pit Fluids) or the latest revision. The original application (with attachments) shall be submitted to the Office of Conservation for review and approval. If the application is submitted when applying for the permit to drill, an AOR and production review specified in §315.A.6 and 7 will be conducted and the applicant notified of the findings.

2. An application for approval of drilling and workover waste fluid injection shall include, but not be limited to, the following:

- a. schematic diagram of well showing:
  - i. total depth of well;
  - ii. drilled hole diameters, depths of top and bottom of all casing strings, and the calculated top of cement on each;
  - iii. size of casing;
  - iv. depth of the base of the lowermost USDW;
  - v. interval targeted for injection; and
  - vi. a certified well location plat;
- b. operating data:
  - i. maximum anticipated injection rate;
  - ii. maximum anticipated injection pressure; and
  - iii. estimated volume of fluids to be injected;
- c. an induction/spontaneous potential log of the surface section of hole showing the base of the lowermost USDW. A log of an offset well, which is located within one mile (5,280 feet) of the well for which the permit is requested, may be substituted provided the top of the disposal zone and base of the lowermost USDW were logged;
- d. a copy of the electric log run on the lower section of the well which must demonstrate that a confining layer isolates the lowermost USDW from the disposal zone;
- e. a list of all wells within the AOR (one-quarter mile) which penetrate the disposal zone that includes a description of the casing and cementing program for each well;
- f. a cement bond log or a cement evaluation log if the injection will be conducted at pressures in excess of that which will induce fracturing of the disposal zone as specified in §315.C.2 below. The log must indicate the presence of adequate bonding to prevent fluid movement between the shoe of the surface casing and the base of the lowermost USDW;
- g. documentation of the results of an initial pressure test after setting the surface casing and a second pressure test of the surface casing after drilling has been completed, but

before the production or intermediate string is run. Both tests must indicate that the casing has mechanical integrity. A radioactive tracer survey (RTS) with a time-drive supplement run at the same pressure as the second pressure test that proves well mechanical integrity may be run instead of the second pressure test; and

h. Any additional information as the commissioner may require.

#### C. Criteria for Approval

1. Wells injecting at pressures below fracture pressure. Wells permitted under the provisions of this section shall be limited to a bottomhole injection pressure measured at the top of the injection zone which does not exceed a pressure gradient of 0.75 psi/ft, with the exception of wells located in the parishes of Bienville, Bossier, Caddo, Claiborne, Desoto, Jackson, Lincoln, Ouachita, Red River, Union, Webster, and Winn, which are to be limited to a gradient not to exceed 0.9 psi/ft.

a. Casing string injection may be authorized if the following conditions are met and injection will not endanger underground sources of drinking water:

i. surface casing annular injection may be authorized provided the surface casing is set at least 200 feet below the base of the lowermost USDW and cemented to surface, except as otherwise provided by the commissioner; or

ii. injection through perforations in the intermediate or production casing may be authorized provided that surface casing is set at least 200 feet below the base of the lowermost USDW and cemented to surface. The top of the perforated interval shall be located a minimum of 200 feet below the base of the lowermost USDW, with perforations through the surface casing being strictly prohibited.

b. Surface casing open hole injection may be approved provided the surface casing is set at least 200 feet below the lowermost USDW and cemented to the surface and a cement plug of at least 100 feet has been placed across the uppermost potential hydrocarbon bearing zone.

c. Surface casing annular injection/surface casing open hole injection shall not be permitted through any string of surface casing which has failed a pressure test. An exception may be granted for surface casing open hole injection in which disposal is through drill pipe or injection tubing and a mud packer set within 50 feet of the casing shoe.

d. At no time shall injection be permitted at a pressure in excess of the pressure at which the second surface casing test is performed.

#### e. Operational Requirements

i. The disposal pump discharge line shall at all times be equipped with instruments to continuously record the surface pressure.

ii. A pressure release or pop-off valve shall be installed in the injection line between the injection pump discharge valve and the wellhead which is set to release at a pressure below the maximum surface pressure permitted.

iii. If the surface pressure increases to more than the maximum allowed surface injection pressure, the operator must cease injection and immediately notify Office of Conservation of this situation. If the surface pressure decreases substantially while injecting at a constant rate, the

operator is to cease injection and notify the Office of Conservation.

iv. If, at any time during the disposal operation, there is any indication that the injected waste is not being confined in the approved disposal zone, the disposal operation is to be immediately discontinued and the Office of Conservation notified.

v. All documentation of the disposal operation, including the print-outs of the injection pressures, are to be maintained in the operator's files for a minimum of three years. Copies of the documentation are to be submitted to Office of Conservation only upon request.

2. Wells injecting above the fracture pressure of the disposal zone. Wells permitted under the provisions of this section are those in which the bottom hole pressures measured at the top of the injection zone during disposal operations will be in excess of a gradient of 0.75 psi/ft., with the exception of the parishes of Bossier, Caddo, Claiborne, DeSoto, Jackson, Lincoln, Ouachita, Red River, Union, Webster, and Winn, for which a 0.9 psi/ft gradient will apply.

a. Casing string injection may be authorized if the following conditions are met and injection will not endanger underground sources of drinking water:

i. Surface casing annular injection may be authorized provided the surface casing is set at least 500 feet below the base of the lowermost USDW and cemented to surface, except as otherwise provided by the Commissioner; or

ii. Injection through perforations in the intermediate or production casing may be authorized provided that surface casing is set at least 200 feet below the base of the lowermost USDW and cemented to surface. The top of the perforated interval shall be located a minimum of 500 feet below the base of the lowermost USDW, with perforations through the surface casing being strictly prohibited. In the event the base of the lowermost USDW is not protected by at least 500 feet of surface casing, sufficient cement above the perforations is required to isolate the top of the disposal zone.

b. Surface casing open hole injection may be approved provided the surface casing is set at least 500 feet below the lowermost USDW and cemented to the surface and a cement plug of at least 100 feet has been placed across the uppermost potential hydrocarbon bearing zone.

c. Surface casing annular injection/surface casing open hole injection shall not be permitted through any string of surface casing which has failed a pressure test. An exception may be granted for surface casing open hole injection in which disposal is through drill pipe or injection tubing and a mud packer set within 50 feet of the casing shoe.

d. At no time shall injection be permitted at a pressure in excess of the pressure at which the second surface casing test is performed.

e. Operational Requirements

i. The disposal pump discharge line shall at all times be equipped with instruments to continuously record the surface pressure, injection rate of the pump, and cumulative volume pumped. Readings are to be recorded to a hard copy print-out and are to be synchronized in time so that the actual pressure, rate, and volume pumped at a given instant can be determined from the print-outs.

ii. Upon approval of the application, the operator shall conduct a pump-in test to determine the injection rate and corresponding surface pressure at such rate. Duration and volume injected during such test shall be limited to the time and volume needed to obtain stabilized results. These results shall be reported to the Office of Conservation and operations shall be suspended until final permit approval. The permit shall specify a maximum allowed surface injection pressure and a minimum allowed surface injection pressure at a permitted injection rate.

iii. Density measurements are to be gathered throughout the disposal operation in order to adjust the maximum and minimum surface injection pressures for changes in fluid properties. These measurements are to be recorded on Form UIC-14-A, Waste Disposal Operations Log, or the latest revision. Adjustments to the maximum and minimum surface injection pressures are to be made by the procedure prescribed on Form UIC-14-A.

iv. Injection may be performed provided the stabilized pressure (at rates not exceeding the maximum allowed rate) stays at a value between the maximum and minimum allowed surface injection pressures ( $P_{\text{max}}$  and  $P_{\text{min}}$ ). During fracture initiation or fracture re-opening after shut-in, the injection pressure is temporarily allowed to exceed the maximum allowed surface injection pressures ( $P_{\text{max}}$ ) while pumping the first 100 barrels of the current batch, provided that this pressure does not exceed the second casing test pressure.

v. If the surface pressure increases to more than the maximum allowed surface injection pressure ( $P_{\text{max}}$ ) the operator must cease injection and immediately notify Office of Conservation of this situation. If the surface injection pressure decreases to less than the minimum allowed surface injection pressure ( $P_{\text{min}}$ ) the operator is to immediately cease injection and notify Office of Conservation. Do not resume disposal until authorization has been granted by Office of Conservation.

vi. If, at any time during the disposal operation, there is any indication that the injected waste is not being confined in the approved disposal zone, the disposal operation is to be immediately discontinued and the Office of Conservation notified.

vii. The injection data gathered during the first 48 hours of operations must be forwarded to the Office of Conservation for review immediately upon acquisition (e.g; fax, overnight mail, etc.).

viii. Within 20 days of completion of disposal operations, return to Office of Conservation the completed Form UIC-14-A. All other documentation of the disposal operation, including the print-outs of the injection pressures, pump rates and total volumes pumped, are to be maintained in the operator's files for a minimum of three years. Copies of the documentation are to be submitted to Office of Conservation only upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Adopted by the Department of Conservation (August 1943), promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986), amended LR 16:855 (October 1990), LR 27:141 (January 2001), LR 28:

### Family Impact Statement

In accordance with RS. 49:972, the following statements are submitted after consideration of the impact of the proposed rule on family as defined therein.

1. The proposed rules will have no effect on the stability of the family.

2. The proposed rules will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The proposed rules will have no effect on the functioning of the family.

4. The proposed rules will have no effect on family earnings and family budget.

5. The proposed rules will have no effect on the behavior and personal responsibility of children.

6. Family or local government are not required to perform any function contained in the proposed rules.

A copy of the proposed amendments to Statewide Order No. 29-B may be obtained by writing Carroll Wascom, Office of Conservation, Injection and Mining Division, P. O. Box 94275, Baton Rouge, Louisiana 70804-9275, by accessing the Office of Conservation website at [www.dnr.state.la.us](http://www.dnr.state.la.us), by contacting the Injection and Mining Division by phone at 225/342-5515, or in person at the Injection and Mining Division, Room 253, on the second floor of the State Land and Natural Resources Building, 625 North Fourth Street, Baton Rouge, Louisiana.

All interested parties will be afforded the opportunity to submit data, views, or arguments, orally or in writing at said public hearing in accordance with R.S. 49:953. Written comments will be accepted until 4:30 pm, Monday, November 26, 2001, at the Office of Conservation, Injection and Mining Division, P.O. Box 94275, Baton Rouge, Louisiana, 70804-9275, Re: Docket No. IMD 01-15.

Philip N. Asprodites  
Commissioner of Conservation

0110#095

### NOTICE OF INTENT

#### Department of Natural Resources Office of Conservation Pipeline Division

Amendments to Pipeline Safety Regulations  
(LAC 33:V.30105, 30112, 30129, 30135,  
30149, 30292 - 30296, 30298, and 30351)

The Louisiana Office of Conservation proposes to amend LAC 33:V.30101 et seq. in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to power delegated under the laws of the state of Louisiana and particularly Title 30 of the Louisiana Revised Statutes of 1950, Section 30:501 et seq. These proposed rules amend the minimum pipeline safety requirements for hazardous liquids pipelines and add new requirements for pipeline integrity management in high consequence areas and areas unusually sensitive to environmental damage.

### Title 33

### ENVIRONMENTAL QUALITY

#### Part V. Hazardous Waste and Hazardous Materials Subpart 3. Natural Resources

#### Chapter 301. Transportation of Hazardous Liquids by Pipeline

#### Subchapter A. General

#### §30105. Definitions

\* \* \*

*Unusually Sensitive Area (USA)* Ca drinking water or ecological resource area that is unusually sensitive to environmental damage from a hazardous liquid pipeline release, as identified under §30112.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 18:861 (August 1992), LR 21:815 (August 1995), LR 28:

#### §30112. Unusually Sensitive Areas (USAs)

A. As used in this part, a USA means a drinking water or ecological resource area that is unusually sensitive to environmental damage from a hazardous liquid pipeline release.

1. A USA drinking water resource is:

a. the water intake for a Community Water System (CWS) or a Non-Transient Non-Community Water System (NTNCWS) that obtains its water supply primarily from a surface water source and does not have an adequate alternative drinking water source;

b. the Source Water Protection Area (SWPA) for a CWS or a NTNCWS that obtains its water supply from a Class I or Class IIA aquifer and does not have an adequate alternative drinking water source. Where a state has not yet identified the SWPA, the Wellhead Protection Area (WHPA) will be used until the state has identified the SWPA; or

c. the sole source aquifer recharge area where the sole source aquifer is a karst aquifer in nature.

2. An USA ecological resource is:

a. an area containing a critically imperiled species or ecological community;

b. a multi-species assemblage area;

c. a migratory waterbird concentration area;

d. an area containing an imperiled species, threatened or endangered species, depleted marine mammal species, or an imperiled ecological community where the species or community is aquatic, aquatic dependent, or terrestrial with a limited range; or

e. an area containing an imperiled species, threatened or endangered species, depleted marine mammal species, or an imperiled ecological community where the species or community occurrence is considered to be one of the most viable, highest quality, or in the best condition as identified by an element occurrence ranking (EORANK) of A (excellent quality) or B (good quality).

3. As used in this part:

*Adequate Alternative Drinking Water Source* Ca source of water that currently exists, can be used almost immediately with a minimal amount of effort and cost,

involves no decline in water quality, and will meet the consumptive, hygiene, and fire fighting requirements of the existing population of impacted customers for at least one month for a surface water source of water and at least six months for a groundwater source.

**Aquatic or Aquatic Dependent Species or Community**Ca species or community that primarily occurs in aquatic, marine, or wetland habitats, as well as species that may use terrestrial habitats during all or some portion of their life cycle, but that are still closely associated with or dependent upon aquatic, marine, or wetland habitats for some critical component or portion of their life-history (i.e., reproduction, rearing and development, feeding, etc).

**Class I Aquifer**Can aquifer that is surficial or shallow, permeable, and is highly vulnerable to contamination. Class I aquifers include:

i. **Unconsolidated Aquifers (Class Ia)**Cthat consist of surficial, unconsolidated, and permeable alluvial, terrace, outwash, beach, dune and other similar deposits. These aquifers generally contain layers of sand and gravel that, commonly, are interbedded to some degree with silt and clay. Not all Class Ia aquifers are important water-bearing units, but they are likely to be both permeable and vulnerable. The only natural protection of these aquifers is the thickness of the unsaturated zone and the presence of fine-grained material;

ii. **Soluble and Fractured Bedrock Aquifers (Class Ib)**CLithologies in this class include limestone, dolomite, and, locally, evaporitic units that contain documented karst features or solution channels, regardless of size. Generally these aquifers have a wide range of permeability. Also included in this class are sedimentary strata, and metamorphic and igneous (intrusive and extrusive) rocks that are significantly faulted, fractured, or jointed. In all cases groundwater movement is largely controlled by secondary openings. Well yields range widely, but the important feature is the potential for rapid vertical and lateral ground water movement along preferred pathways, which result in a high degree of vulnerability;

iii. **Semiconsolidated Aquifers (Class Ic)**Cthat generally contain poorly to moderately indurated sand and gravel that is interbedded with clay and silt. This group is intermediate to the unconsolidated and consolidated end members. These systems are common in the Tertiary age rocks that are exposed throughout the Gulf and Atlantic coastal states. Semiconsolidated conditions also arise from the presence of intercalated clay and caliche within primarily unconsolidated to poorly consolidated units, such as occurs in parts of the High Plains Aquifer; or

iv. **Covered Aquifers (Class Id)**Cthat are any Class I aquifer overlain by less than 50 feet of low permeability, unconsolidated material, such as glacial till, lacustrine, and loess deposits.

**Class IIa Aquifer**Ca Higher Yield Bedrock Aquifer that is consolidated and is moderately vulnerable to contamination. These aquifers generally consist of fairly permeable sandstone or conglomerate that contain lesser amounts of interbedded fine grained clastics (shale, siltstone, mudstone) and occasionally carbonate units. In general, well yields must exceed 50 gallons per minute to be included in this class. Local fracturing may contribute to the dominant primary porosity and permeability of these systems.

**Community Water System (CWS)**Ca public water system that serves at least 15 service connections used by year-round residents of the area or regularly serves at least 25 year-round residents.

**Critically Imperiled Species or Ecological Community (Habitat)**Can animal or plant species or an ecological community of extreme rarity, based on The Nature Conservancy's Global Conservation Status Rank. There are generally five or fewer occurrences, or very few remaining individuals (less than 1,000) or acres (less than 2,000). These species and ecological communities are extremely vulnerable to extinction due to some natural or man-made factor.

**Depleted Marine Mammal Species**Ca species that has been identified and is protected under the Marine Mammal Protection Act of 1972, as amended (MMPA) (16 U.S.C. 1361 et seq.). The term "depleted" refers to marine mammal species that are listed as threatened or endangered, or are below their optimum sustainable populations (16 U.S.C. 1362). The term "marine mammal" means "any mammal which is morphologically adapted to the marine environment (including sea otters and members of the orders Sirenia, Pinnipedia, and Cetacea), or primarily inhabits the marine environment (such as the polar bear)" (16 U.S.C. 1362). The order Sirenia includes manatees, the order Pinnipedia includes seals, sea lions, and walruses, and the order Cetacea includes dolphins, porpoises, and whales.

**Ecological Community**Cmeans an interacting assemblage of plants and animals that recur under similar environmental conditions across the landscape.

**Element Occurrence Rank (EORANK)**Cmeans the condition or viability of a species or ecological community occurrence, based on a population's size, condition, and landscape context. EORANKs are assigned by the Natural Heritage Programs. An EORANK of A means an excellent quality and an EORANK of B means good quality.

**Imperiled Species or Ecological Community (Habitat)**Cmeans a rare species or ecological community, based on The Nature Conservancy's Global Conservation Status Rank. There are generally six to 20 occurrences, or few remaining individuals (1,000 to 3,000) or acres (2,000 to 10,000). These species and ecological communities are vulnerable to extinction due to some natural or man-made factor.

**Karst Aquifer**Cmeans an aquifer that is composed of limestone or dolomite where the porosity is derived from connected solution cavities. Karst aquifers are often cavernous with high rates of flow.

**Migratory Waterbird Concentration Area**Ca designated Ramsar site or a Western Hemisphere Shorebird Reserve Network site.

**Multi Species Assemblage Area**Can area where three or more different critically imperiled or imperiled species or ecological communities, threatened or endangered species, depleted marine mammals, or migratory waterbird concentrations co-occur.

**Non-transient Non-community Water System (NTNCWS)**Cmeans a public water system that regularly serves at least 25 of the same persons over six months per year. Examples of these systems include schools, factories, and hospitals that have their own water supplies.

*Public Water System (PWS)* Ca system that provides the public water for human consumption through pipes or other constructed conveyances, if such systems has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. These systems include the sources of the water supplies, i.e., surface or ground. PWS can be community, non-transient non-community, or transient non-community systems.

*Ramsar Site* Ca site that has been designated under The Convention on Wetlands of International Importance Especially as Waterfowl Habitat program. Ramsar sites are globally critical wetland areas that support migratory waterfowl. These include wetland areas that regularly support 20,000 waterfowl; wetland areas that regularly support substantial numbers of individuals from particular groups of waterfowl, indicative of wetland values, productivity, or diversity; and wetland areas that regularly support 1 percent of the individuals in a population of one species or subspecies of waterfowl.

*Sole Source Aquifer (SSA)* Can area designated by the U.S. Environmental Protection Agency under the Sole Source Aquifer program as the "sole or principal" source of drinking water for an area. Such designations are made if the aquifer's ground water supplies 50 percent or more of the drinking water for an area, and if that aquifer were to become contaminated, it would pose a public health hazard. A sole source aquifer that is karst in nature is one composed of limestone where the porosity is derived from connected solution cavities. They are often cavernous, with high rates of flow.

*Source Water Protection Area (SWPA)* Cthat the area delineated by the state for a public water supply system (PWS) or including numerous PWSs, whether the source is ground water or surface water or both, as part of the state source water assessment program (SWAP) approved by EPA under §1453 of the Safe Drinking Water Act.

*Species* Cspecies, subspecies, population stocks, or distinct vertebrate populations.

*Terrestrial Ecological Community with a Limited Range* Ca non-aquatic or non-aquatic dependent ecological community that covers less than five acres.

*Terrestrial Species with a Limited Range* Ca non-aquatic dependent animal or plant species that has a range of no more than five acres.

*Threatened and Endangered Species (T&E)* Can animal or plant species that has been listed and is protected under the Endangered Species Act of 1973, as amended (ESA73) (16 U.S.C. 1531 et seq.).

i. *Endangered Species* Cany species which is in danger of extinction throughout all or a significant portion of its range (16 U.S.C. 1532).

ii. *Threatened Species* Cany species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532).

*Transient Non-community Water System (TNCW)* Cmeans a public water system that does not regularly serve at least 25 of the same persons over six months per year. This type of water system serves a transient population found at rest stops, campgrounds, restaurants, and parks with their own source of water.

*Wellhead Protection Area (WHPA)* Cthe surface and subsurface area surrounding a well or well field that supplies a public water system through which contaminants are likely to pass and eventually reach the water well or well field.

*Western Hemisphere Shorebird Reserve Network (WHSRN) Site* Can area that contains migratory shorebirds concentrations and has been designated as a hemispheric reserve, international reserve, regional reserve, or endangered species reserve. Hemispheric reserves host at least 500,000 shorebirds annually or 30 percent of a species flyway population. International reserves host 100,000 shorebirds annually or 15 percent of a species flyway population. Regional reserves host 20,000 shorebirds annually or 5 percent of a species flyway population. Endangered species reserves are critical to the survival of endangered species and no minimum number of birds is required.

AUTHORITY NOTE: Promulgated in accordance with R.S.30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 28:

## **Subchapter B. Reporting Accidents and Safety-Related Conditions**

### **§30129. Addressee for Written Reports**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), repealed LR 28:

### **§30135. Filing Safety-Related Condition Report**

A. Each report of a safety-related condition under §30133.A must be filed (received by the commissioner) in writing within five working days (not including Saturday, Sunday, or state holidays) after the day a representative of the operator first determines that the condition exists, but not later than 10 working days after the day a representative of the operator discovers the condition. Separate conditions may be described in a single report if they are closely related. To file a report by telefacsimile (FAX), dial (202) 366-7128 and for Louisiana (225) 342-5529.

AUTHORITY NOTE: Promulgated in accordance with R.S.30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 28:

### **§30149. Address for Written Reports**

A. Each written report required by this subchapter must be made to the Information Resources Manager, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 2335, 400 Seventh Street SW, Washington, DC 20590 and concurrently to Office of Conservation, Pipeline Safety, P.O. Box 94275, Baton Rouge, LA 70804-9275. However, accident reports for intrastate pipelines subject to the jurisdiction of a state agency pursuant to a certification under the pipeline safety laws (49 U.S.C. 60101 et seq.) may be submitted in duplicate to that state agency if the regulations of that agency require submission of these reports and provide for further transmittal of one copy within 10 days of receipt to the Information Resource Manager. Safety-related condition reports required by §30133 for

intrastate pipelines must be submitted concurrently to the state agency, and if that agency acts as an agent of the secretary with respect to interstate pipelines, safety related condition reports for these pipelines must be submitted concurrently to that agency.

AUTHORITY NOTE: Promulgated in accordance with R.S.30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 28:

## **Subchapter F. Operation and Maintenance**

### **§30292. Smoking or Open Flames**

A. Each operator shall prohibit smoking and open flames in each pump station area and each breakout tank area where there is a possibility of the leakage of a flammable hazardous liquid or of the presence of flammable vapors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629(August 1989), amended LR 28:

### **§30293. Public Education**

A. Each operator shall establish a continuing educational program to enable the public, appropriate government organizations and persons engaged in excavation-related activities to recognize a hazardous liquid or a carbon dioxide pipeline emergency and to report it to the operator or the fire, police, or other appropriate public officials. The program must be conducted in English or in other languages commonly understood by a significant number and concentration of non-English speaking population in the operator's operating areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 18:866 (August 1992), LR 28:

### **§30294. Damage Prevention Program**

A. Except as provided in Subsection C of this Section, each operator of a buried pipeline must carry out, in accordance with this section, a written program to prevent damage to that pipeline from excavation activities. For the purpose of this section, the term *excavation activities* includes excavation, blasting, boring, tunneling, backfilling, the removal of aboveground structures by either explosive or mechanical means, and other earthmoving operations.

B. An operator may comply with any of the requirements of Subsection C of this Section through participation in a public service program, such as a one-call system, but such participation does not relieve the operator of the responsibility for compliance with this section. However, an operator must perform the duties of Paragraph C.3 of this Section through participation in a one-call system, if that one-call system is a qualified one-call-system. In areas that are covered by more than one qualified one-call system, an operator need only join one of the qualified one-call systems if there is a central telephone number for excavators to call for excavation activities, or if the one-call systems in those areas communicate with one another. An operator's pipeline system must be covered by a qualified one-call system where there is one in place. For the purpose of the Section, a one-call system is considered a "qualified one-call system" if it meets the requirements of Paragraphs B.1 or B.2 of this Section:

1. the state has adopted a one-call damage prevention program under 49 CFR 198.37; or

2. the one-call system:

i. is operated in accordance with 49 CFR 198.39;

ii. provides a pipeline operator an opportunity similar to a voluntary participant to have a part in management responsibilities; and

iii. assesses a participating pipeline operator a fee that is proportionate to the costs of the one-call system's coverage of the operator's pipeline.

C. The damage prevention program required by Subsection A of this Section must, at a minimum:

1. include the identity, on a current basis, of persons who normally engage in excavation activities in the area in which the pipeline is located;

2. provides for notification of the public in the vicinity of the pipeline and actual notification of persons identified in Paragraph C.1. of this Section of the following as often as needed to make them aware of the damage prevention program:

i. the program's existence and purpose; and

ii. how to learn the location of underground pipelines before excavation activities are begun;

3. provide a means of receiving and recording notification of planned excavation activities;

4. if the operator has buried pipelines in the area of excavation activity, provide for actual notification of persons who give notice of their intent to excavate of the type of temporary marking to be provided and how to identify the markings;

5. provide for temporary marking of buried pipelines in the area of excavation activity before, as far as practical, the activity begins;

6. provide as follows for inspection of pipelines that an operator has reason to believe could be damaged by excavation activities:

i. the inspection must be done as frequently as necessary during and after the activities to verify the integrity of the pipeline; and

ii. in the case of blasting, any inspection must include leakage surveys.

D. A damage prevention program under this section is not required for the following pipelines:

1. pipelines located offshore;

2. pipelines to which access is physically controlled by the operator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 24:1315 (July 1998), amended LR 28:

### **§30295. CPM Leak Detection**

A. Each computational pipeline monitoring (CPM) leak detection system installed on a hazardous liquid pipeline transporting liquid in single phase (without gas in the liquid) must comply with API 1130 in operating, maintaining, testing, record keeping, and dispatcher training of the system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 28:

### §30296. High Consequence Areas Definitions

A. The following definitions apply to this section and §30297.

*Emergency Flow Restricting Device or EFRDC* a check valve or remote control valve as follows.

a. *Check valve* a valve that permits fluid to flow freely in one direction and contains a mechanism to automatically prevent flow in the other direction.

b. *Remote Control Valve or RCV* any valve that is operated from a location remote from where the valve is installed. The RCV is usually operated by the supervisory control and data acquisition (SCADA) system. The linkage between the pipeline control center and the RCV may be by fiber optics, microwave, telephone lines, or satellite.

#### *High Consequence Area*

a. *Commercially Navigable Waterway* a waterway where a substantial likelihood of commercial navigation exists;

b. *High Population Area* an urbanized area, as defined and delineated by the Census Bureau, that contains 50,000 or more people and has a population density of at least 1,000 people per square mile;

c. *Other Populated Area* a place, as defined and delineated by the Census Bureau, that contains a concentrated population, such as an incorporated or unincorporated city, town, village, or other designated residential or commercial area;

d. *Unusually Sensitive Area*, as defined in §30112.

AUTHORITY NOTE: Promulgated in accordance with R.S.30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 28:

### §30298. Pipeline Integrity Management in High Consequence Areas

A. Which operators must comply? This Section applies to each operator who owns or operates a total of 500 or more miles of hazardous liquid pipeline subject to this Part.

B. What must an operator do?

1. No later than March 31, 2002, an operator must develop a written integrity management program that addresses the risks on each pipeline segment that could affect a high consequence area. An operator must include in the program:

a. an identification of all pipeline segments that could affect a high consequence area. A pipeline segment in a high consequence area is presumed to affect that area unless the operator's risk assessment effectively demonstrates otherwise. (See Appendix C of this Part for guidance on identifying pipeline segments.) An operator must complete this identification no later than December 31, 2001;

b. a plan for baseline assessment of the line pipe (see Subsection C of this Section);

c. a framework addressing each element of the integrity management program, including continual integrity assessment and evaluation (see Subsections F and J of this Section). The framework must initially indicate how decisions will be made to implement each element.

2. An operator must implement and follow the program it develops.

3. In carrying out this Section, an operator must follow recognized industry practices unless the section specifies otherwise or the operator demonstrates that an alternative practice is supported by a reliable engineering evaluation and provides an equivalent level of public safety and environmental protection.

C. What must be in the baseline assessment plan?

1. An operator must include each of the following elements in its written baseline assessment plan:

a. the methods selected to assess the integrity of the line pipe. For low frequency electric resistance welded pipe or lap welded pipe susceptible to longitudinal seam failure, an operator must select integrity assessment methods capable of assessing seam integrity and of detecting corrosion and deformation anomalies. An operator must assess the integrity of the line pipe by:

i. internal inspection tool or tools capable of detecting corrosion and deformation anomalies including dents, gouges and grooves;

ii. pressure test conducted in accordance with Subchapter E of this Chapter; or

iii. other technology that the operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator choosing this option must notify the Office of Pipeline Safety (OPS) 90 days before conducting the assessment, by sending a notice to the address specified in §30147;

b. a schedule for completing the integrity assessment;

c. an explanation of the assessment methods selected and evaluation of risk factors considered in establishing the assessment schedule.

2. An operator must document, prior to implementing any changes to the plan, any modification to the plan, and reasons for the modification.

D. When must the baseline assessment be completed?

1. Time Period. An operator must establish a baseline assessment schedule to determine the priority for assessing the pipeline segments. An operator must complete the baseline assessment by March 31, 2008. An operator must assess at least 50 percent of the pipe subject to the requirements of this section, beginning with the highest risk pipe, by September 30, 2004.

2. Prior assessment. To satisfy the requirements of Subparagraph C.1.a of this Section, an operator may use an integrity assessment conducted after January 1, 1996, if the integrity assessment method meets the requirements of this section. However, if an operator uses this prior assessment as its baseline assessment, the operator must re-assess the line pipe according to the requirements of Paragraph J.3 of this Section.

3. Newly-Identified Areas

a. When information is available from the information analysis (See Subsection G of this Section), or from Census Bureau maps, that the population density around a pipeline segment has changed so as to fall within the definition in §30296 of a high population area or other populated area, the operator must incorporate the area into its baseline assessment plan as a high consequence area within one year from the date the area is identified. An operator must complete the baseline assessment of any line

pipe that could affect the newly-identified high consequence area within five years from the date the area is identified.

b. An operator must incorporate a new unusually sensitive area into its baseline assessment plan within one year from the date the area is identified. An operator must complete the baseline assessment of any line pipe that could affect the newly-identified high consequence area within five years from the date the area is identified.

E. What are the risk factors for establishing an assessment schedule (for both the baseline and continual integrity assessments)?

1. An operator must establish an integrity assessment schedule that prioritizes pipeline segments for assessment (see Paragraphs D.1 and J.3 of this Section). An operator must base the assessment schedule on all risk factors that reflect the risk conditions on the pipeline segment. The factors an operator must consider include, but are not limited to:

- a. results of the previous integrity assessment, defect type and size that the assessment method can detect, and defect growth rate;
- b. pipe size, material, manufacturing information, coating type and condition, and seam type;
- c. leak history, repair history and cathodic protection history;
- d. product transported;
- e. operating stress level;
- f. existing or projected activities in the area;
- g. local environmental factors that could affect the pipeline (e.g., corrosivity of soil, subsidence, climatic);
- h. geo-technical hazards; and
- i. physical support of the segment such as by a cable suspension bridge.

2. Appendix C of this Part provides further guidance on risk factors.

F. What are the elements of an integrity management program? An integrity management program begins with the initial framework. An operator must continually change the program to reflect operating experience, conclusions drawn from results of the integrity assessments, and other maintenance and surveillance data, and evaluation of consequences of a failure on the high consequence area. An operator must include, at a minimum, each of the following elements in its written integrity management program:

1. a process for identifying which pipeline segments could affect a high consequence area;
2. a baseline assessment plan meeting the requirements of Subsection C of this Section;
3. an analysis that integrates all available information about the integrity of the entire pipeline and the consequences of a failure (See Subsection G of this Section);
4. criteria for repair actions to address integrity issues raised by the assessment methods and information analysis (See Subsection H of this Section);
5. a continual process of assessment and evaluation to maintain a pipeline's integrity (See Subsection J of this Section);
6. identification of preventive and mitigative measures to protect the high consequence area (See Subsection I of this Section);
7. methods to measure the program's effectiveness (See Subsection K of this Section);

8. a process for review of integrity assessment results and information analysis by a person qualified to evaluate the results and information (see Paragraph H.2 of this Section).

G. What is an information analysis? In periodically evaluating the integrity of each pipeline segment (Subsection J of this Section), an operator must analyze all available information about the integrity of the entire pipeline and the consequences of a failure. This information includes:

1. information critical to determining the potential for, and preventing, damage due to excavation, including current and planned damage prevention activities, and development or planned development along the pipeline segment;
2. data gathered through the integrity assessment required under this section;
3. data gathered in conjunction with other inspections, tests, surveillance and patrols required by this Part, including, corrosion control monitoring and cathodic protection surveys; and
4. information about how a failure would affect the high consequence area, such as location of the water intake.

H. What actions must be taken to address integrity issues?

1. General Requirements. An operator must take prompt action to address all pipeline integrity issues raised by the assessment and information analysis. An operator must evaluate all anomalies and repair those anomalies that could reduce a pipeline's integrity. An operator must comply with §30281 in making a repair.

2. Discovery of a Condition. Discovery of a condition occurs when an operator has adequate information about the condition to determine the need for repair. Depending on circumstances, an operator may have adequate information when the operator receives the preliminary internal inspection report, gathers and integrates information from the other inspections or the periodic evaluation, excavates the anomaly, or when an operator receives the final internal inspection report. The date of discovery can be no later than the date of the integrity assessment results or the final report.

3. Review of Integrity Assessment. An operator must include in its schedule for evaluation and repair (as required by Paragraph H.4 of this Section), a schedule for promptly reviewing and analyzing the integrity assessment results. After March 31, 2004, an operator's schedule must provide for review of the integrity assessment results within 120 days of conducting each assessment. The operator must obtain and assess a final report within an additional 90 days.

4. Schedule for Repairs. An operator must complete repairs according to a schedule that prioritizes the conditions for evaluation and repair. An operator must base the schedule on the risk factors listed in Paragraph E.1 of this Section and any pipeline-specific risk factors the operator develops. If an operator cannot meet the schedule for any of the conditions addressed in Subparagraphs H.5.a through d of this Section, the operator must justify the reasons why the schedule cannot be met and that the changed schedule will not jeopardize public safety or environmental protection. An operator must notify OPS if the operator cannot meet the schedule and cannot provide safely though a temporary reduction in operating pressure until a permanent repair is made. An operator must send a notice to the address

specified in §30147 or to the facsimile number specified in §30135.

5. Special Requirements for Scheduling Repairs

a. Immediate Repair Conditions. An operator's evaluation and repair schedule must provide for immediate repair conditions. To maintain safety, an operator will need to temporarily reduce operating pressure or shut down the pipeline until the operator can complete the repair of these conditions. An operator must base the temporary operating pressure reduction on remaining wall thickness. An operator must treat the following conditions as immediate repair conditions:

- i. metal loss greater than 80 percent of nominal wall regardless of dimensions;
- ii. predicted burst pressure less than the maximum operating pressure at the location of the anomaly. Burst pressure has been calculated from the remaining strength of the pipe, using a suitable metal loss strength calculation, e.g., ASME/ANSI B31G ("Manual for Determining the Remaining Strength of Corroded Pipelines" (1991)) or AGA Pipeline Research Committee Project PR-3-805 ("A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe" (December 1989)). These documents are available at the addresses listed at §30107;
- iii. dents on the top of the pipeline (above 4 and 8 o'clock position) with any indicated metal loss;
- iv. significant anomaly that in the judgment of the person evaluating the assessment results requires immediate action.

b. Sixty-Day Conditions. Except for conditions listed in Subparagraph H.5.a of this Section, an operator must schedule for evaluation and repair all dents, regardless of size, located on the top of the pipeline (above the 4 and 8 o'clock position) within 60 days of discovery of the condition:

c. Six-Month Conditions. Except for conditions listed in Subparagraphs H.5.a or b of this Section, an operator must schedule evaluation and repair of the following within six months of discovery of the condition:

- i. dents with metal loss or dents that affect pipe curvature at the girth or seam weld;
- ii. dents with reported depths greater than 6 percent of the pipe diameter;
- iii. remaining strength of the pipe results in a safe operating pressure that is less than the current established MOP at the location of the anomaly using a suitable safe operating pressure calculation method (e.g., ASME/ANSI B31G ("Manual for Determining the Remaining Strength of Corroded Pipelines" (1991)) or AGA Pipeline Research Committee Project PR-3-805 ("A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe" (December 1989)). These documents are available at the addresses listed at §30107;
- iv. areas of general corrosion with a predicted metal loss of >50 percent of nominal wall;
- v. predicted metal loss of >50 percent of nominal wall at crossings of another pipeline;
- vi. weld anomalies with a predicted metal loss >50 percent of nominal wall;
- vii. potential crack indications that when excavated are determined to be cracks;
- viii. corrosion of or along seam welds;

ix. gouges or grooves greater than 12.5 percent of nominal wall.

d. Other Conditions. An operator must schedule evaluation and repair of the following conditions:

- i. data that reflect a change since last assessed;
- ii. data that indicates mechanical damage that is located on the top half of the pipe;
- iii. data that indicate anomalies abrupt in nature;
- iv. data that indicate anomalies longitudinal in orientation;
- v. data that indicate anomalies over a large area;
- vi. anomalies located in or near casings, crossings of another pipeline, and areas with suspect cathodic protection.

I. What preventive and mitigative measure must an operator take to protect the high consequence area?

1. General Requirements. An operator must take measures to prevent and mitigate the consequences of a pipeline failure that could affect a high consequence area. Those measures include conducting a risk analysis of the pipeline segment to identify additional actions to enhance public safety or environmental protection. Such actions may include, but are not limited to, implementing damage prevention best practices, better monitoring of cathodic protection where corrosion is a concern, establishing shorter inspection intervals, installing EFRDs on the pipeline segment, modifying the systems that monitor pressure and detect leaks, providing additional training to personnel on response procedures, conducting drills with local emergency responders and adopting other management controls.

2. Risk Analysis Criteria. In identifying the need for additional preventive and mitigative measures, an operator must evaluate the likelihood of a pipeline release occurring and how a release could affect the high consequence area. This determination must consider all relevant risk factors, including, but not limited to:

- a. terrain surrounding the pipeline segment, including drainage systems such as small streams and other smaller waterways that could act as a conduit to the high consequence area;
- b. elevation profile;
- c. characteristics of the product transported;
- d. amount of product that could be released;
- e. possibility of a spillage in a farm field following the drain tile into a waterway;
- f. ditches along side a roadway the pipeline crosses;
- g. physical support of the pipeline segment such as by a cable suspension bridge;
- h. exposure of the pipeline to operating pressure exceeding established maximum operating pressure.

3. Leak Detection. An operator must have a means to detect leaks on its pipeline system. An operator must evaluate the capability of its leak detection means and modify, as necessary, to protect the high consequence area. An operator's evaluation must, at least, consider, the following factors-length and size of the pipeline, type of product carried, the pipeline's proximity to the high consequence area, the swiftness of leak detection, location of nearest response personnel, leak history, and risk assessment results.

4. Emergency Flow Restricting Devices (EFRD). If an operator determines that an EFRD is needed on a pipeline

segment to protect a high consequence area in the event of a hazardous liquid pipeline release, an operator must install the EFRD. In making this determination, an operator must, at least, consider the following factors: the swiftness of leak detection and pipeline shutdown capabilities, the type of commodity carried, the rate of potential leakage, the volume that can be released, topography or pipeline profile, the potential for ignition, proximity to power sources, location of nearest response personnel, specific terrain between the pipeline segment and the high consequence area, and benefits expected by reducing the spill size.

J. What is a continual process of evaluation and assessment to maintain a pipeline's integrity?

1. General. After completing the baseline integrity assessment, an operator must continue to assess the line pipe at specified intervals and periodically evaluate the integrity of each pipeline segment that could affect a high consequence area.

2. Evaluation. An operator must conduct a periodic evaluation as frequently as needed to assure pipeline integrity. An operator must base the frequency of evaluation on risk factors specific to its pipeline, including the factors specified in Subsection E of this Section. The evaluation must consider the past and present integrity assessment results, information analysis (Subsection G of this Section), and decisions about repair, and preventive and mitigative actions (Subsections H and I of this Section).

3. Assessment Intervals. An operator must establish intervals not to exceed five years for continually assessing the line pipe's integrity. An operator must base the assessment intervals on the risk the line pipe poses to the high consequence area to determine the priority for assessing the pipeline segments. An operator must establish the assessment intervals based on the factors specified in Subsection E of this Section, the analysis of the results from the last integrity assessment, and the information analysis required by Subsection G of this Section.

4. Variance from the Five-Year Intervals in Limited Situations

a. Engineering Basis. An operator may be able to justify an engineering basis for a longer assessment interval on a segment of line pipe. The justification must be supported by a reliable engineering evaluation combined with the use of other technology, such as external monitoring technology, that provides an understanding of the condition of the line pipe equivalent to that which is obtainable under Paragraph J.2 of this Section. An operator must notify OPS nine months before the end of the intervals of five years or less of the reason why the operator intends to justify a longer interval. An operator must send a notice to the address specified in §30147 or to the facsimile number specified in §30135. The notice must state a proposed alternative interval.

b. Unavailable Technology. An operator may require a longer assessment period for a segment of line pipe (for example, because sophisticated internal inspection technology is not available). An operator must justify the reasons why it cannot comply with the required assessment period and must also demonstrate the actions it is taking to evaluate the integrity of the pipeline segment in the interim. An operator must notify OPS 180 days before the end of the intervals of the five years or less that the operator may

requires a longer assessment interval. An operator must send a notice to the address specified in §30147 or to the facsimile number specified in §30135. The operator may have up to an additional 180 days to complete the assessment.

5. Assessment Methods. An operator must assess the integrity of the line pipe by:

a. internal inspection tool or tools capable of detecting corrosion and deformation anomalies including dents, gouges and grooves;

b. pressure test conducted in accordance with Subchapter E of this Chapter; or

c. other technology that the operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator choosing this option must notify OPS 60 days before conducting the assessment, by sending a notice to the address specified in §30147 or to the facsimile number specified in §30135.

6. However, for low frequency electric resistance welded pipe or lap welded pipe susceptible to longitudinal seam failure, an operator must select integrity assessment methods capable of assessing seam integrity and of detecting corrosion and deformation anomalies.

K. What methods to measure program effectiveness must be used? An operator's program must include methods to measure whether the program is effective in assessing and evaluating the integrity of each pipeline segment and in protecting the high consequence areas. See Appendix C of this Part for guidance on methods that can be used to evaluate a program's effectiveness.

1. What records must be kept? An operator must maintain for review during an inspection:

a. a written integrity management program in accordance with Subsection B of this Section;

b. documents to support the decisions and analyses, including any modifications, justifications, variances, deviations, and determinations made, and actions taken, to implement and evaluate each element of the integrity management program listed in Subsection F of this Section.

2. See Appendix C of this Part for examples of records an operator would be required to keep.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 28:

### **§30351. Appendix C to Part VC Guidance for Implementation of Integrity Management Program**

A. This Appendix gives guidance to help an operator implement the requirements of the integrity management program rule in §§30296 and 30298. Guidance is provided on:

1. information on operator may use to identify a high consequence area and factors an operator can use to consider the potential impacts of a release on an area;

2. risk factors an operator can use to determine an integrity assessment schedule;

3. safety risk indicator tables for leak history, volume or line size, age of pipeline, and product transported, an operator may use to determine if a pipeline segment falls into a high, medium or low risk category;

4. types of internal inspection tools an operator could use to find pipeline anomalies;

5. measure an operator could use to measure an integrity management program's performance; and

6. types of records an operator will have to maintain.

B. Identifying a high consequence area and factors for considering a pipeline segment's potential impact on a high consequence area.

1. The rule defines High Consequence Area as a high population area, an other populated area, an unusually sensitive area, or a commercially navigable waterway. The Office of Pipeline Safety (OPS) will map these areas on the National Pipeline Mapping Service (NPMS). An operator, member of the public, or other government agency may view and download the data from the NPMS home page <http://www.npms.rspa.dot.gov>. OPS will maintain the NPMS and update it periodically. However, it is an operator's responsibility to ensure that it has identified all high consequence areas that could be affected by a pipeline segment. An operator is also responsible for periodically evaluating its pipeline segments to look for population or environmental changes that may have occurred around the pipeline and to keep its program current with this information. (Refer to §30298.D.3) For more information to help in identifying high consequence areas, an operator may refer to:

a. Digital Data on populated areas available on U.S. Census Bureau maps;

b. Geographic Database on the commercial navigable waterways available on <http://www.bts.gov/gis/ntatlas/networks.html> ;

c. the Bureau of Transportation Statistics database that includes commercially navigable waterways and non-commercially navigable waterways. The database can be downloaded from the BTS website at <http://www.bts.gov/gis/ntatlas/networks/html>.

d. the Rule requires an operator to include a process in its program for identifying which pipeline segments could affect a high consequence area and to take measures to prevent and mitigate the consequences of a pipeline failure that could affect a high consequence area. (See §30298.F and I) Thus, an operator will need to consider how each pipeline segment could affect a high consequence area. The primary source for the listed risk factors is a US DOT study on instrumental Internal Inspection devices (November 1992). Other sources include the National Transportation Safety Board, the Environmental Protection Agency and the Technical Hazardous Liquid Pipeline Safety Standards, Committee. The following list provides guidance to an operator on both the mandatory and additional factor:

1. terrain surrounding the pipeline. An operator should consider the contour of the land profile and if it could allow the liquid from a release to enter a high consequence area. An operator can get this information from topographical maps such as U.S. Geological Survey quadrangle maps;

2. drainage systems such as small streams and other smaller waterways that could serve as a conduit to a high consequence area;

3. crossing of farm tile fields. An operator should consider the possibility of a spillage in the field following the drain tile into a waterway;

4. crossing of roadways with ditches along the side. The ditches could carry a spillage to a waterway;

5. the nature and characteristics of the product the pipeline is transporting (refined products, crude oils, highly volatile liquids, etc.) Highly volatile liquids becomes gaseous when exposed to the atmosphere. A spillage could create a vapor cloud that could settle into the lower elevation of the ground profile;

6. physical support of the pipeline segment such as by a cable suspension bridge. An operator should look for stress indicators on the pipeline (strained supports, inadequate support at towers), atmospheric corrosion, vandalism, and other obvious signs of improper maintenance;

7. operating condition of pipeline (pressure, flow rate, etc.) Exposure of the pipeline to operating pressure exceeding established maximum operating pressure;

8. the hydraulic gradient of pipeline;

9. the diameter of pipeline, the potential release volume, and the distance between the isolation points;

10. potential physical pathways between the pipeline and the high consequence area;

11. response capability (time to respond, nature of response);

12. potential natural forces inherent in the area (flood zones, earthquakes, subsidence areas, etc.).

C. Risk factors for Establishing Frequency of Assessment

1. By assigning weights or values to the risk factors, and using the risk indicator tables, an operator can determine the priority for assessing pipeline segments, beginning with those segments that are of highest risk, that have not previously been assessed. This list provides some guidance on some of the risk factors to consider (See §30298.E). An operator should also develop factors specific to each pipeline segment it is assessing, including:

a. populated areas, unusually sensitive environmental areas, National Fish Hatcheries, commercially navigable waters, areas where people congregate;

b. results from previous testing/inspection. (See §30298.H);

c. leak history. (See leak history risk table.)

d. known corrosion or condition of pipeline. (See §30298.G)

e. cathodic protection history;

f. type and quality of pipe coating (disbonded coating results in corrosion);

g. age of pipe (older pipe shows more corrosion-may be uncoated or have an ineffective coating) and type of pipe seam (See Age of Pipe risk table);

h. product transported (highly volatile, highly flammable and toxic liquids present a greater threat for both people and the environment) (See Product Transported risk table);

i. pipe wall thickness (thicker walls give a better safety margin);

j. size of pipe (higher volume release if the pipe ruptures);

k. location related to potential ground movement (e.g., seismic faults, rock quarries, and coal mines); climatic (permafrost causes settlement-Alaska); geologic (landslides or subsidence);

- l. security of throughput (effects on customers if there is failure requiring shutdown);
- m. time since the last internal inspection/pressure testing;
- n. with respect to previously discovered defects/anomalies, the type, growth rate, and size;
- o. operating stress levels in the pipeline;
- p. location of the pipeline segment as it relates to the ability of the operator to detect and respond to a leak. (e.g., pipelines deep underground, or in locations that make leak detection difficult without specific sectional monitoring and/or significantly impede access for spill response or any other purpose);
- q. physical support of the segment such as by a cable suspension bridge;
- r. non-standard or other than recognized industry practice on pipeline installation (e.g., horizontal directional drilling).

2. Example. This example illustrates a hypothetical model used to establish an integrity assessment schedule for a hypothetical pipeline segment. After we determine the risk factors applicable to the pipeline segment, we then assign values or numbers to each factor, such as, high (5), moderate (3), or low (1). We can determine an overall risk classification (A, B, C) for the segment using the risk tables and a sliding scale (values 5 to 1) for risk factors for which tables are not provided. We could classify a segment as C if it fell above 2/3 of maximum value (highest overall risk value for any one segment when compared with other segments of a pipeline), a segment B if it fell between 1/3 to 2/3 of maximum value, and the remaining segments as A.

a. For the baseline assessment schedule, we would plan to assess 50 percent of all pipeline segments covered by the rule, beginning with the highest risk segments, within the first 3 1/2 years and the remaining segments within the seven-year period. For the continuing integrity assessments, we could plan to assess the C segments within the first two years of the schedule, the segments classified as moderate risk no later than year three or four and the remaining lowest risk segments no later than year five.

b. For our hypothetical pipeline segment, we have chosen the following risk factors and obtained risk factor values from the appropriate table. The values assigned to the risk factors are for illustration only.

Age of Pipeline:	Assume 30 years old (refer to AAge of Pipeline@risk table)	Risk Value = 5
Pressure Tested:	Tested once during construction	Risk Value = 5
Coated:	(yes/no) - yes	
Coating Condition:	Recent excavation of suspected areas showed holidays in coating (potential corrosion risk)	Risk Value = 5
Cathodically Protected:	(yes/no) - yes	Risk Value = 1
Date Cathodic Protection Installed:	Five years after pipeline was constructed (Cathodic protection installed within one year of the pipeline's construction is generally considered low risk.)	Risk Value = 3
Close Interval Survey:	(yes/no) - no	Risk Value = 5
Interval Inspection	(yes/no) - yes	

Tool Used:		
Date of Pig Run?	In last five years	Risk Value = 1
Anomalies Found:	(yes/no) - yes, but do not pose an immediate safety risk or environment hazard	Risk Value = 3
Leak History:	yes, one spill in last 10 years. (refer to ALeak History@risk table)	Risk Value = 2
Product Transported:	Diesel fuel. Product low risk. (refer to AProduct@risk table)	Risk Value = 1
Pipe Size:	16 inches. Size presents moderate risk (refer to ALine Size@risk table)	Risk Value = 3

c. Overall risk value for this hypothetical segment of pipe is 34. Assume we have two other pipeline segments for which we conduct similar risk rankings. The second pipeline segment has an overall risk value of 20, and the third segment, 11. For the baseline assessment we would establish a schedule where we assess the first segment (highest risk segment) within two years, the second segment within five years and the third segment within seven years. Similarly, for the continuing integrity assessment, we could establish an assessment schedule where we assess the highest risk segment no later than the second year, the second segment no later than the third year, and the third segment no later than the fifth year.

D. Safety risk indicator tables for leak history, volume or line size, age of pipeline, and product transported.

Leak History	
Safety Risk Indicator Leak History (Time-dependent defects)	
High	>3 Spills in last 10 years
Low	<3 Spills in last 10 years
0Time-dependent defects are those that result in spills due to corrosion, gouges, or problems developed during manufacture, construction or operation, etc.	

Line Size Or Volume Transported	
Safety Risk Indicator	Line Size
High	18"
Moderate	10" -16" nominal diameters
Low	8" nominal diameter

Age Of Pipeline	
Safety Risk Indicator	Age Pipeline Condition Dependent
High	25 years
Low	25 years
0Depends on pipeline's coating and corrosion condition, and steel quality, toughness, welding.	

Product Transported		
Safety Risk Indicator	Considerations	Product Examples
High	(Highly volatile and flammable)	(Propane, butane, Natural Gas Liquid [NGL], ammonia)
	Highly toxic	(Benzene, high Hydrogen Sulfide content crude oils).
Medium	Flammable-flashpoint <100F	(Gasoline, JP4, low flashpointcrude oils.
Low	Non-flammable-flashpoint 100+ F	(Diesel, fuel oil, kerosene, JP5, most crude oils.

The degree of acute and chronic toxicity to humans, wildlife and aquatic life; reactivity; and, volatility, flammability, and water solubility determine the Product Indicator. Comprehensive Environmental Response, Compensation and Liability Act Reportable Quantity values may be used as an indication of chronic toxicity. National Fire Protection Association health factors may be used for rating acute hazards.

E. Types of Internal Inspection Tools to Use. An operator should consider at least two types of internal inspection tools for the integrity assessment from the following list. The type of tool or tools an operator selects will depend on the results from previous internal inspection runs, information analysis and risk factors specific to pipeline segment:

1. geometry internal inspection tools for detecting changes to ovality, e.g., bends, dents, buckles or wrinkles, due to construction flaws or soil movement, or other outside force damage;

2. metal loss tools (ultrasonic and magnetic flux leakage) for determining pipe wall anomalies, e.g., wall loss due to corrosion;

3. crack detection tools for detecting cracks and crack-like features, e.g., stress corrosion cracking (SCC), fatigue cracks, narrow axial corrosion, toe cracks, hook cracks, etc.

#### F. Methods to Measure Performance

##### 1. General

a. This guidance is to help an operator establish measures to evaluate the effectiveness of its integrity management program. The performance measures required will depend on the details of each integrity management program and will be based on an understanding and analysis of the failure mechanisms or threats to integrity of each pipeline segment.

b. An operator should select a set of measurements to judge how well its program is performing. An operator's objectives for its program to ensure public safety, prevent or minimize leaks and spills and prevent property and environmental damage. A typical integrity management program will be an ongoing program and it may contain many elements. Therefore, several performance measures are likely to be needed to measure the effectiveness of an ongoing program.

2. Performance Measures. These measures show how a program to control risk on pipeline segments that could affect a high consequence area is progressing under the integrity management requirements. Performance measures generally fall into three categories.

a. Selected Activity Measures. Measures that monitor the surveillance and preventive activities the operator has implemented. These measures indicate how well an operator is implementing the various elements of its integrity management program.

b. Deterioration Measures. Operation and maintenance trends that indicate when the integrity of the system is weakening despite preventive measures. This category of performance measure may indicate that the system condition is deteriorating despite well executed preventive activities.

c. Failure Measures. Leak History, incident response, product loss, etc. These measures will indicate progress towards fewer spills and less damage.

3. Internal vs. External comparisons. These comparisons show how a pipeline segment that could affect a high consequence area is progressing in comparison to the

operator's other pipeline segment that are not covered by the integrity management requirements and how that pipeline segment compares to other operator's pipeline segments.

a. Internal. Comparing data from the pipeline segment that could affect the high consequence area with data from pipeline in other areas of the system may indicate the effects from the attention given to the high consequence area.

b. External. Comparing data external to the pipeline segment (e.g., OPS incident data) may provide measures on the frequency and size of leaks in relation to other companies.

4. Examples. Some examples of performance measures an operator could use include:

a. a performance measurement goal to reduce the total volume from unintended releases by \_\_\_% (percent to be determined by operator) with an ultimate goal of zero;

b. a performance measurement goal to reduce the total number of unintended releases (based on a threshold of five gallons) by \_\_\_% (percent to be determined by operator) with an ultimate goal of zero;

c. a performance measurement goal to document the percentage of integrity management activities completed during the calendar year;

d. a performance measurement goal to track and evaluate the effectiveness of the operator's community outreach activities;

e. a narrative description of pipeline system integrity, including a summary of performance improvements, both qualitative and quantitative, to an operator's integrity management program prepared periodically;

f. a performance measure based on internal audits of the operator's pipeline system per LAC 33:V;

g. a performance measure based on external audits of the operator's pipeline system per LAC 33:V;

h. a performance measure based on operational events (for example: relief occurrences, unplanned valve closure, SCADA outages, etc.) that have the potential to adversely affect pipeline integrity;

i. a performance measure to demonstrate that the operator's integrity management program reduces risk over time with a focus on high risk items;

j. a performance measure to demonstrate that the operator's integrity management program for pipeline stations and terminals reduces risk over time with a focus on high risk items.

G Examples of Types of Records an Operator Must Maintain. The rules requires an operator to maintain certain records. (See §30298.L) This Section provides examples of some records that an operator would have to maintain for inspection to comply with the requirement. This is not an exhaustive list:

1. a process for identifying which pipeline segments that could affect a high consequence area and a document identifying all pipeline segments that could affect a high consequence area;

2. a plan for baseline assessment of the line pipe that includes each required plan element;

3. modifications to the baseline plan and reasons for the modification;

4. use of and support for an alternative practice;

5. a framework addressing each required element of the integrity management program, updates and changes to the initial framework and eventual program;

6. a process for identifying a new high consequence area and incorporating it into the baseline plan, particularly, a process for identifying population changes around a pipeline segment;

7. an explanation of methods selected to assess the integrity of line pipe;

8. a process for review of integrity assessment results and data analysis by a person qualified to evaluate the results and data;

9. the process and risk factors for determining the baseline assessment interval;

10. the results of the baseline integrity assessment;

11. the process used for continual evaluation, and risk factors used for determining the frequency of evaluation.

12. process for integrating and analyzing information about the integrity of a pipeline, information and data used for the information analysis;

13. results of the information analyses and periodic evaluations;

14. the process and risk factors for establishing continual re-assessment intervals;

15. justification to support any variance from the required re-assessment intervals;

16. integrity assessment results and anomalies found, process for evaluating and repairing anomalies criteria for repair actions and actions taken to evaluate and repair the anomalies;

17. other remedial actions planned or taken;

18. schedule for reviewing and analyzing integrity assessment results;

19. schedule for evaluation and repair of anomalies, justification to support deviation from required repair times.

20. risk analysis used to identify additional preventive or mitigative measures, records of preventive and mitigative actions planned or taken.

21. criteria for determining EFRD installation;

22. criteria for evaluating and modifying leak detection capability;

23. methods used to measure the program's effectiveness.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 28:

#### **Family Impact Statement**

1. The Effect of These Rules on the Stability of the Family. These rules will have no effect on the stability of the family.

2. The Effect of These Rules on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. These rules will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect of These Rules on the Functioning of the Family. These rules will have no effect on the functioning of the family.

4. The Effect of These Rules on Family Earnings and Family Budget. These rules will have no effect on family earnings and family budget.

5. The Effect of These Rules on Family Earnings and Family Budget. These rules will have no effect on the functioning of the family.

6. The Effect of These Rules on the Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rules. These rules will have no effect on the ability of the family or local government to perform the function as contained in the proposed rules.

A public hearing will be held on this matter on November 29, 2001. Interested persons may contact Mariano Hinojosa, Director, Pipeline Division, Office of Conservation, P.O. Box 94275, Baton Rouge, LA 70804-9275 or by calling (225) 342-5505.

Philip N. Asproditos  
Commissioner of Conservation

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

##### **RULE TITLE: Amendments to Pipeline Safety Regulations**

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

There should be no additional costs or savings regarding the amendment of this rule. This action adopts federal amendments to pipeline safety regulations.

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

There should be no effect on revenue or costs as the Department was previously enforcing similar rules.

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

There should be no significant costs or economic benefits to any person or group.

All of the requirements of this rule have already been implemented by federal laws. Any costs associated with compliance with the safety regulations has long ago been absorbed by the regulated companies. Therefore, adoption of this rule will not affect costs.

##### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There should be no effect on competition or employment.

Philip N. Asproditos  
Commissioner  
0110#013

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

#### **NOTICE OF INTENT**

##### **Department of Public Safety and Corrections Corrections Services**

##### **Disciplinary Rules for Adult Offenders CPenalty Schedule C Disciplinary Report (LAC 22:I.359)**

In accordance with the Administrative Procedure Act, R.S. 49:953(A), the Department of Public Safety and Corrections, Corrections Services, hereby gives notice of its intent to amend regulations dealing with the Disciplinary Rules for Adult Offenders.

**Title 22**  
**CORRECTIONS, CRIMINAL JUSTICE AND LAW**  
**ENFORCEMENT**  
**Part I. Corrections**

**Chapter 3. Adult and Juvenile Services**  
**Subchapter B. Disciplinary Rules for Adult Offenders**  
**§ 359. Penalty ScheduleC Disciplinary Report (Heard by Disciplinary Board)**

A.1. - A.2.k. ...

1. loss of incentive wages for up to one year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823, Wolff v. McDonnell, 94 S.Ct. 2963 (1974), Ralph v. Dees, C.A. 71-94, USDC (Md. La.) and Sandin v. Conner, 115 S.Ct. 2293 (1995).

HISTORICAL NOTE: Promulgated by the Department of Corrections, Corrections Services, LR 7:6 (January 1981), repromulgated by Corrections Services, LR 17:605 (June 1991), LR 17:670 (July 1991), amended LR 19:653 (May 1993), LR 25:1876 (October 1999), LR 28:

**Family Impact Statement**

In accordance with the Administrative Procedure Act, R.S. 49:953(A)(1)(a)(viii) and R.S. 49:972, the Department of Public Safety and Corrections, Corrections Services, hereby provides the Family Impact Statement.

Adoption of these disciplinary rules and procedures for adult inmates will have no effect on the stability of the family, on the authority and rights of parents regarding the education and supervision of their children, on the functioning of the family, on family earnings and family budget, on the behavior and personal responsibility of children or on the ability of the family or a local government to perform the function as contained in the proposed rule amendment.

Interested persons may submit oral or written comments to Richard L. Stalder, Secretary, Department of Public Safety and Corrections, P.O. Box 94304, Capitol Station, Baton Rouge, LA 70804-9304, (225) 342-6741. Comments will be accepted through the close of business at 4:30 p.m., November 20, 2001.

Richard L. Stalder  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT**  
**FOR ADMINISTRATIVE RULES**  
**RULE TITLE: Disciplinary Rules for Adult**  
**OffendersC Penalty ScheduleC Disciplinary Report**

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

There will be no estimated costs associated with this amendment.

**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.

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

No reasonable estimate can be provided for the possible cost to affected inmates who lose incentive wages as the result of disciplinary rule infractions. The proposed penalty is only one of many that may be utilized. The total numbers are uncertain, but due to the extent that inmates do lose wages, the impact will be minimal.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no anticipated impact on competition and employment.

Robert B. Barbor  
Executive Counsel  
0110#099

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Public Safety and Corrections**  
**Corrections Services**

Louisiana Risk Review Panel (LAC 22:I.107)

In accordance with the Administrative Procedure Act, R.S. 49:953.A and B, and in order to comply with the legislative mandate of Act 403 of the 2001 Regular Session of the Louisiana Legislature, the Department of Public Safety and Corrections, Corrections Services, hereby gives notice of its intent to promulgate rules and regulations for the operation of the Louisiana Risk Review Panel. This Rule is also being promulgated as an Emergency Rule pursuant to the provisions of R.S. 49:953.B of the Administrative Procedure Act.

The text of this proposed Rule may be viewed in its entirety in the Emergency Rule section of this issue of the *Louisiana Register*.

Interested persons may submit oral or written comments to Richard L. Stalder, Secretary, Department of Public Safety and Corrections, P.O. Box 94304, Capitol Station, Baton Rouge, LA 70804-9304, (225) 342-6741. Comments will be accepted through the close of business at 4:30 p.m., November 20, 2001.

In accordance with the Administrative Procedure Act, R.S. 49:953.A(1)(a)(viii) and R.S. 49:972, the Department of Public Safety and Corrections, Corrections Services, hereby provides the Family Impact Statement.

**Family Impact Statement**

Adoption of these disciplinary rules and procedures for adult inmates will have no effect on the stability of the family, on the authority and rights of parents regarding the education and supervision of their children, on the functioning of the family, on family earnings and family budget, on the behavior and personal responsibility of children or on the ability of the family or a local government to perform the function as contained in the proposed rule amendment.

**FISCAL AND ECONOMIC IMPACT STATEMENT**  
**FOR ADMINISTRATIVE RULES**  
**RULE TITLE: Louisiana Risk Review Panel**

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

The total cost to the state for fiscal year 01-02 is \$330,764. Salaries, per diem and supply costs will be expended through the fiscal year. All costs for the fiscal year have been appropriated from the State General Fund per H.B. Number 1, 2001 Regular Session.

**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.

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

There are no additional costs or economic benefit directly affecting persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact on competition and employment, other than those hired or appointed to serve in conjunction with implementation of the program.

Robert B. Barbor  
Executive Counsel  
0110#100

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
Board of Private Security Examiners**

Company Licensure (LAC 46:LIX.201 and 203)

Under the authority of the Private Security Regulatory and Licensing Law, R.S. 37:3270 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the executive secretary gives notice that rulemaking procedures have been initiated to amend the Louisiana State Board of Private Security Examiners Regulations, LAC 46:LIX:201 and 203, as follows.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LIX. Private Security Examiners**

**Chapter 2. Company Licensure**

**§201. Qualifications and Requirements for Company Licensure**

A. - E.8. ...

F. It shall be unlawful for any individual to make an application to the board as qualifying agent unless that person intends to maintain and continues to maintain that supervisory position on a regular, full-time basis, or on a part-time basis if requested in writing by the applicant and approved by the board. A person may not be a qualifying agent for more than one licensee.

G. - L.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270 et seq.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:752 (December 1987), amended LR 15:847 (October 1989), LR 18:190 (February 1992), LR 23:588 (May 1997), LR 26:1068 (May 2000), LR 28:

**§203. Application Procedure**

A. - A.9. ...

10. general liability insurance:

a. the general liability policy as required by R.S. 37:3276 shall name the state of Louisiana as an additional insured and, at a minimum, shall contain coverage provisions for hiring, training and retention; errors and omissions; firearms; care, custody and control, with minimum limits equal to those set forth in R.S. 37:3276 for general liability coverage and with contractual liability

exclusive of sole negligence. The policy shall not void coverage for all insureds based upon the exclusion of one insured;

b. a copy of the entire policy shall be submitted to the board upon issuance or renewal of the policy;

c. investigators acting on behalf of the Louisiana State Board of Private Security Examiners shall be empowered to investigate and report on the financial health of insurance companies authorized to issue such policies in Louisiana;

d. all companies issuing policies as required by R.S. 37:3276 shall certify policy compliance with the provisions of this chapter;

A.11. - L. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270 et seq.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:752 (December 1987), amended LR 15:12 (January 1989), LR 15:847 (October 1989), LR 26:1070 (May 2000), LR 28:

These proposed regulations are to become effective upon publication in the *Louisiana Register*.

All interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than November 26, 2001, at 4:30 p.m. to Wayne R. Rogillio, Executive Secretary, Louisiana State Board of Private Security Examiners, 15703 Old Hammond Highway, Baton Rouge, LA 70816.

Wayne R. Rogillio  
Executive Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Company Licensure**

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

Neither costs nor savings to state or local governmental units are involved in these rule changes.

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

No effect on revenue collections of state or local governmental units is anticipated from these rule changes.

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

No significant costs or economic benefits to directly affected persons or governmental groups are expected from these rule changes. Only those persons in the private security industry would be directly affected by the amendment of the board's existing rule and regulations, and no additional costs, workload adjustments or paperwork will be incurred.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect on competition and employment is anticipated from these rule changes.

Wayne R. Rogillio  
Executive Secretary  
0110#042

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Revenue Policy Services Division

#### Composite Returns (LAC 61:I.1401)

Under the authority of R.S. 47:201.1 and R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:I.1401 relative to composite returns and composite payments of tax made by a partnership or limited liability company on behalf of nonresident partners or members.

Act 21 of the 2000 Second Extraordinary Session of the Louisiana Legislature enacted R.S. 47:201.1 to require certain partnerships and limited liability companies with nonresident partners or members to file composite returns and make composite payments of tax for nonresident partners or members who do not agree to file and pay Louisiana income tax on their own behalf. This Rule will provide guidance concerning which partnerships and limited liability companies must file composite returns and make composite payments; when composite returns and payments are due; which partners or members are to be included on the composite return; and how partners or members who do not wish to be included in a composite return can enter into an agreement with the Department of Revenue to file and pay on their own behalf.

#### Title 61

#### REVENUE AND TAXATION

#### Part I. Taxes Collected and Administered by the Secretary of Revenue

#### Chapter 14. Income: Partnerships

#### §1401. Partnership Composite Return Requirement, Composite Payment Requirement, Exceptions

A. Definitions. For the purpose of this rule, the following terms are defined.

*Corporation*—an entity that is treated as a corporation for state income tax purposes as set forth in R.S. 47:287.11.A.

*Engaging in Activities in this State*—having payroll, sales, or tangible property in this state, or intangible property with a Louisiana business situs.

*Individual Return*—a Louisiana personal income tax return or a Louisiana fiduciary income tax return.

*Nonresident*—any individual not domiciled, residing in, or having a permanent place of abode in Louisiana.

*Partner*—a member or partner of an association that is treated as a partnership for state income tax purposes, including but not limited to, a member in a limited liability company or a partner in a general partnership, a partnership in commendam, or a registered limited liability partnership. A partner is the ultimate owner of a partnership interest; therefore someone holding or managing a partnership interest on behalf of another, such as a broker, is not a partner for purposes of this rule.

*Partnership*—any association that is treated as a partnership for state income tax purposes including, but not limited to, a general partnership, partnership in commendam, a registered limited liability partnership, or a limited liability company. Because of R.S. 47:287.11.A, the above listed

business associations that do not elect to be taxed as corporations for federal income tax purposes are treated as partnerships for Louisiana income tax purposes.

#### B. Composite Return Requirement

1. Partnerships engaging in activities in this state that have nonresident partners are required to file a composite partnership return unless:

a. no partner is a nonresident individual; or

b. all individual nonresident partners have a valid agreement on file with the Department of Revenue in which the partner has agreed to file an individual return and pay income tax on all income derived from or attributable to sources in this state. Although the partnership does not have an obligation to file a composite return, the partnership must still file all agreements with the Department of Revenue by the composite return due date.

2. All nonresident partners, other than partners that are corporations, who were partners at any time during the taxable year and who do not have an agreement on file with the Department of Revenue must be included in the composite partnership return.

3. A schedule must be attached to the composite return that includes the following information for every nonresident partner in the partnership:

a. the name of the partner;

b. the address of the partner;

c. the taxpayer identification number of the partner;

d. the partner's distributive share; and

e. whether or not that partner has an agreement on file with the Department of Revenue to file an individual return on his or her own behalf.

4. The filing of a true, correct, and complete partnership composite return will relieve any nonresident partner included in the composite return from the duty to file an individual return, provided that the partner does not have any income from Louisiana sources other than that income reported in the composite return.

5. The due date of the composite return is the due date set forth for all income tax returns other than corporate returns.

6. Each partnership required to file a composite return will be issued an identification number by the department upon the filing of its first composite return. This identification number shall be used on all subsequent composite returns filed by that partnership.

C. Corporate partners cannot be included in composite returns filed by a partnership. Corporate partners must file all applicable Louisiana tax returns, and must report all Louisiana source income, including income from the partnership in those returns.

#### D. Composite Payment Requirement

1. All partnerships engaging in activities in this state that have nonresident partners that are not corporations shall make composite payments on behalf of all of their nonresident partners, other than corporate partners, who do not file an agreement to file an individual return and pay Louisiana income tax.

2. The composite payment is due on the earlier of the date of filing of the composite return or the due date of the composite return, without regard to extensions of time to file. An extension of time to file the composite return does not extend the time to pay the composite payment.

3. Each partner's share of the composite payment is the maximum tax rate for individuals multiplied by the nonresident partner's share of partnership income that was derived from or attributable to sources in this state. This computation applies whether or not the partnership income is distributed.

4. The composite payment to be made by the partnership is the sum of each nonresident partner's share of the composite payment for all nonresident partners included in the composite return.

5. For a nonresident partner whose only Louisiana income is from the partnership, amounts paid by the partnership on that partner's behalf will be treated as a payment of that partner's Louisiana individual income tax liability. If a nonresident partner has any Louisiana source income in addition to the income from the partnership, amounts paid by the partnership on that partner's behalf will be treated as a credit against the tax liability shown on that partner's individually filed return.

#### E. Partner's Agreement to File an Individual Return

1. No composite return or composite payment is required from a partnership on behalf of a partner who has a valid agreement on file with the Department of Revenue in which the partner has agreed to file an individual return and pay income tax on all income derived from or attributable to sources in this state.

2. The partner will execute the agreement and forward the agreement to the partnership, on or before the original due date of the composite return.

3. The partnership will file the original agreement with the composite return filed for that taxable year. The partnership must keep a copy of the agreement on file until the agreement is revoked or the partner is no longer a partner of the partnership.

4. The agreement must be in the form of an affidavit and must include all of the following:

- a. a statement that the taxpayer is a nonresident partner or member;
- b. the partner's name;
- c. the partner's address;
- d. the partner's social security number or taxpayer identification number;
- e. the name of the partnership;
- f. the address of the partnership;
- g. the partnership's taxpayer identification number;
- h. a statement that the taxpayer agrees to timely file a Louisiana individual income tax return and make payment of Louisiana individual income tax;
- i. a statement that the taxpayer understands that the Louisiana Department of Revenue is not bound by the agreement if the taxpayer fails to abide by the terms of the agreement;
- j. the statement that "under penalties of perjury, I declare that I have examined this affidavit and agreement and to the best of my knowledge, and belief, it is true correct and complete;" and
- k. the signature of the partner.

5. Once an agreement is signed by the partner, forwarded to the partnership, and the partnership has filed the agreement with the Department of Revenue, the agreement will continue in effect until the partner or the

Department of Revenue revokes the agreement, or the partner is no longer a partner in the partnership.

6. The agreement may be revoked by either the partner or the Department of Revenue as follows.

a. The partner may revoke the agreement at will. However, this revocation does not become effective until the first day of the subsequent tax year of the partnership. The partner must send notice of the revocation to the partnership. The partnership will forward the notice to the Department of Revenue. The partner may execute a new agreement, in the manner set forth in this Subsection, at any time.

b. The Department of Revenue may revoke the agreement only if the partner fails to comply with the terms of the agreement. This revocation is prospective only with respect to the partnership, and does not become effective until the first day of the subsequent tax year of the partnership. The Department of Revenue must send notice of the revocation to the partner and the partnership by certified mail, return receipt requested. If the Department of Revenue revokes an agreement, the department may refuse to accept a subsequent agreement by that partner, unless the partner can show that the revocation was in error.

F. A partnership making a composite return and payment must furnish the following information to all partners included in the composite return:

1. the partnership's taxpayer identification number;
2. the amount of the payment made on the partner's behalf;
3. a statement that the amount paid on the partner's behalf can be used as a credit against that partner's Louisiana individual income tax liability for the same tax period, if the partner files an individual income tax return with the Department of Revenue that declares the income from the partnership;
4. the mailing address of the Louisiana Department of Revenue; and
5. the internet address of the Louisiana Department of Revenue.

G. Nothing in this regulation shall restrict the Secretary's authority to otherwise provide for efficient administration of the composite return and composite payment requirements of R.S. 47:201.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:201.1 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, LR 28:

#### **Family Impact Statement**

The proposed adoption of LAC 61:I.1401, regarding partnership composite returns and composite payments of tax made by a partnership or limited liability company on behalf of nonresident partners or members should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically, the implementation of this proposed rule will have no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;

6. the ability of the family or a local government to perform this function.

Any interested person may submit written data, views, arguments or comments regarding this proposed rule to Michael D. Pearson, Senior Policy Consultant, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 15409, Baton Rouge, LA 70895-5409. All comments must be received no later than 4:30 p.m. November 27, 2001. A public hearing will be held on Wednesday, November 28, 2001, at 1:30 p.m. in the Legal Conference Room on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana.

Cynthia Bridges  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Composite Returns**

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

The implementation of this proposed regulation will have no impact upon any local governmental units.

The implementation of this proposed regulation, which requires certain entities taxed as partnerships to file composite returns, will have a minor impact on the agency's costs. The number of returns is expected to be small. The primary cost will be the cost of examining the returns for names of nonresident natural persons not filing individual income tax returns. There will be minimal costs associated with storing the returns and agreements signed by partners. In the future, there will be the cost of entering the information into the information data storage. These costs are expected to be minimal and will be absorbed utilizing existing resources.

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

There should be no effect on revenue collections of local governmental units as a result of this proposed regulation. There should be some increase in revenue collections for the state due to improved compliance of nonresident partners and members reporting income from Louisiana sources. The information provided from the composite returns will necessitate some audits that should generate additional revenue. The size of that increase cannot be determined.

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

Partnerships and limited liability companies with nonresident partners or members that have business activities within the state will have the cost of preparing the composite return or filing agreements from nonresident partners or members.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This proposed regulation should have no effect on competition or employment.

Cynthia Bridges  
Secretary  
0110#078

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Revenue  
Policy Services Division**

Corporation Franchise Tax Due Date  
(LAC 61:I.309)

Under the authority of R.S. 47:609 and R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend LAC 61:I.309 to conform the regulation to the current statute.

This regulation was last amended in February 1985. Two significant changes have been made to the statute since the regulation was last amended. The date upon which the corporation franchise tax is payable, which is set forth in R.S. 47:609, was changed by Acts 1986, No. 59, §1. The statute was further amended by Acts 1991, No. 368, §1 in which the term "accrual" or "accrues" was changed to "due date" or "is due." This proposed amendment will reflect the changes in the statute made in 1986 and 1991.

**Title 61**

**REVENUE AND TAXATION**

**Part I. Taxes Collected and Administered by the  
Secretary of Revenue**

**Chapter 3. Corporation Franchise Tax**

**§309. Due Date, Payment, and Reporting of Tax**

A. The corporation franchise tax becomes due on the first day of each calendar or fiscal year in which a corporation is subject to the tax, and is based on its entire issued and outstanding capital stock, surplus, and undivided profits, and borrowed capital determined as of the close of the previous calendar or fiscal year. There is no proration of the tax for a portion of the year in the case of dissolution of a domestic corporation, withdrawal from the state by a domestic corporation, or where a corporation otherwise ceases to be subject to the tax. The tax is payable to the secretary of Revenue on or before the fifteenth day of the third month following the month in which the tax becomes due; in the case of a calendar year taxpayer, the tax becomes due on January 1 and is payable to the secretary on or before April 15. If the day on which the tax is payable falls on a Saturday, Sunday, or legal holiday the tax is payable on the next business day. For purposes of this section, fiscal or calendar year shall be determined by reference to the annual accounting period regularly used by the corporation in keeping its books.

B. Payment of the tax shall be accompanied by a full, accurate, and complete report prepared on forms furnished by the secretary of Revenue, which shall be signed by a duly authorized official of the corporation.

C. Whenever the secretary has granted permission to a corporation to change its accounting period under the provisions of R.S. 47:613, the tax to be paid for the period from the end of the last period for which the tax had already become due until the end of the new accounting period shall be determined by multiplying the ratio that the number of

such months bears to 12, times the tax computed for an annual period based on the previous period's closing. All subsequent returns shall be prepared on the basis of the new accounting period.

D. - H. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 47:609 and R.S. 47:1511.

**HISTORICAL NOTE:** Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985), amended by the Department of Revenue, Policy Services Division, LR 28:

**Family Impact Statement**

The proposed amendment of LAC 61:I.309, regarding the due date, payment, and reporting of the corporation franchise tax, should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically, the implementation of this proposed rule will have no known or foreseeable effect on:

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

Any interested person may submit written data, views, arguments or comments regarding this proposed rule to Michael D. Pearson, Senior Policy Consultant, Policy Services Division, Office of Legal Affairs, P.O. Box 15409, Baton Rouge, LA 70895-5409. All comments must be received no later than 4:30 p.m. November 27, 2001. A public hearing will be held on Wednesday, November 28, 2001, at 9 a.m. in the Legal Conference Room, Seventh Floor, LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana.

Cynthia Bridges  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

**RULE TITLE: Corporation Franchise Tax Due Date**

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

The implementation of this proposed amendment will have no impact upon any local governmental units.

The implementation of this proposed amendment, which conforms the regulation to changes to the corporation franchise tax due date statute made in 1986 and 1991, will have no impact on the agency's costs.

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

There will be no effect on revenue collections for the state as a result of this proposed amendment.

There will be no effect on revenue collections of local governmental units as a result of this proposed amendment.

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

None.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This proposed regulation will have no effect on competition or employment.

Cynthia Bridges  
Secretary  
0110#081

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Revenue  
Policy Services Division**

**Income Tax Schedule Requirements for Certain Nonresident Professional Athletes and Professional Sports Franchises (LAC 61:I.1305)**

Under the authority of R.S. 39:99, R.S. 47:295, and R.S. 47:1511, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:I.1305 relative to the attribution of Louisiana individual income tax from nonresident professional athletes and professional sports franchises to the Sports Facility Assistance Fund.

Act 1203 of the 2001 Regular Session of the Louisiana Legislature enacted R.S. 39:99, which creates a fund in the state treasury called the Sports Facility Assistance Fund (the Fund). Each year, the treasurer must pay into the Fund an amount equal to the income tax collected by the state from nonresident professional athletes and professional sports franchises on income earned in Louisiana. The monies in the Fund are appropriated dollar-for-dollar to the owners of the facilities at which the money that generated the income tax was earned. The purpose of this regulation is to enable the Department of Revenue to accurately attribute the income tax collected from nonresident professional athletes and professional sports franchises to the Fund.

**Title 61**

**REVENUE AND TAXATION**

**Part I. Taxes Collected and Administered  
by the Secretary of Revenue**

**Chapter 13. Income: Individuals**

**§1305. Income Tax Schedule Requirement for Certain Nonresident Professional Athletes and Professional Sports Franchises**

A. If the Louisiana income tax of a nonresident professional athlete or professional sports franchise is attributable to the Sports Facility Assistance Fund, created by R.S. 39:99, the following schedule must be attached to any income tax return filed, including individual, corporate, fiduciary, trust, or composite income tax returns. Each nonresident professional athlete and professional sports franchise with Louisiana source income must attach a schedule to the required Louisiana income tax return that includes the following information:

1. the name of each facility, course, stadium, or arena at which they earned income in Louisiana;
2. the location of each facility, course, stadium, or arena at which they earned income in Louisiana; and
3. the number of duty days, as defined in LAC 61:I.1304.I, spent at each facility, course, stadium, or arena at which they earned income in Louisiana.

B. For purposes of this section only, these terms are defined as follows.

*Professional Athlete*—means an athlete that either plays for a professional sports franchise or who is a member of a professional sports association or league.

*Professional Sports Franchise*—means a member team of a professional sports association or league.

*Professional Sports Association or League*—means any of the following:

- a. Professional Golfers Association of America;
- b. National Football League;
- c. National Basketball Association;
- d. National Hockey League;
- e. East Coast Hockey League;
- f. Pacific Coast League.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:99, R.S. 47:295, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, LR 28:

### **Family Impact Statement**

Rule Title: LAC 61:I.1305. Income Tax Schedule Requirement for Certain Nonresident Professional Athletes and Professional Sports Franchises Included in the Sports Facility Assistance Fund

The proposed adoption of LAC 61:I.1305, regarding the attribution of Louisiana individual income tax from nonresident professional athletes and professional sports franchises to the Sports Facility Assistance Fund, should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically, the implementation of this proposed rule will have no known or foreseeable effect on:

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

Any interested person may submit written data, views, arguments or comments regarding this proposed rule to Michael D. Pearson, Senior Policy Consultant, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 15409, Baton Rouge, LA 70895-5409. All comments must be received no later than 4:30 p.m. November 26, 2001. A public hearing will be held on Tuesday, November 27, 2001, at 9 a.m. in the First Floor Auditorium (Room 153), United Plaza Twelve Building, 8549 United Plaza Boulevard, Baton Rouge, Louisiana.

Cynthia Bridges  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Income Tax Schedule Requirements for Certain Nonresident Professional Athletes and Professional Sports Franchises**

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

Implementation of this proposed regulation, which requires certain nonresident professional athletes and professional sports franchises to file an additional schedule with their Louisiana income tax return listing all Louisiana locations and facilities at which they earned income and the number of duty days spent at the facility, will result in additional administrative costs for the department. Additional costs will be incurred for printing and processing special nonresident professional athlete schedules and professional sports franchise composite tax returns. Costs will also be incurred to prepare and distribute information packets to all professional teams that might be affected by this proposed regulation. The total additional costs are not known, but will be absorbed by the department's existing budget allocation. There will be no impact on local government costs.

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

This proposed regulation should result in an indeterminable increase in individual income tax collections for taxes paid by nonresident professional athletes and professional sports franchises, which will be allocated to the Sports Facility Assistance Fund (the fund) to be appropriated to the owners of the facilities. The amount of income that had been reported by nonresident professional athletes is not known, but this income tax, which would have been paid, will now be allocated to the fund, resulting in a loss to the general fund for these income tax collections. There will be no effect on revenue collections of local governmental units.

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

Certain nonresident professional athletes and professional sports franchises that have earned income in Louisiana will be required to prepare a supplemental schedule for their Louisiana individual income tax return detailing the Louisiana facilities at which they earned income. The additional cost of preparing the schedule should be minimal.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This proposed regulation should have no effect on competition or employment.

Cynthia Bridges  
Secretary  
0110#077

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Department of Revenue Policy Services Division**

#### **Nonresident Apportionment of Compensation from Personal Services Rendered (LAC 61:I.1304)**

Under the authority of R.S. 47:290, R.S. 47:293, R.S. 47:295, and R.S. 47:1511, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:I.1304 relative to the collection of Louisiana individual income tax from nonresidents who perform personal services in Louisiana, including nonresident professional athletes and entertainers.

Under Subsection 47:290.B of the Louisiana Revised Statutes, nonresident individuals who have income earned within or derived from Louisiana sources are taxed on their Louisiana income. Compensation for personal services rendered within Louisiana is income earned within or derived from Louisiana sources. Nonresident professional

athletes and entertainers who perform in Louisiana are among the nonresident service providers who are taxed on their Louisiana income. House Concurrent Resolution 208 of the 2001 Regular Session of the Louisiana Legislature urged and requested the Department of Revenue to take all actions that are reasonable and necessary to collect all income taxes owed to the state by nonresident professional athletes.

The purpose of this proposed rule is to apportion to the state, in a fair and equitable manner, the income of certain nonresident personal service providers who render services in this state. This rule includes guidance that will enable nonresident professional athletes, who are members of a professional athletic team, to fairly apportion to Louisiana their compensation for services rendered as a member of a professional athletic team that was earned in this state. In addition, the rule will provide for an optional team composite return and composite payment to allow professional athletic teams to report Louisiana individual income tax on behalf of all nonresident team members.

#### **Title 61**

### **REVENUE AND TAXATION**

#### **Part I. Taxes Collected and Administered by the Secretary of Revenue**

#### **Chapter 13. Income: Individuals**

#### **§1304. Nonresident Apportionment of Compensation from Personal Services Rendered in Louisiana**

A. For purposes of this Section, nonresident means any individual not domiciled, residing in, or having a permanent place of abode in Louisiana.

B. Nonresidents are taxed on all income from sources within Louisiana. Income from sources within Louisiana includes compensation for personal services rendered within Louisiana.

C. The purpose of this rule is to apportion to Louisiana, in a fair and equitable manner, a nonresident's total compensation for personal services performed in the state. It is presumed that application of the provisions of this Rule will result in a fair and equitable apportionment of that compensation.

1. When the department demonstrates that the method provided under this Rule does not fairly and equitably apportion that compensation, the department may require the nonresident service provider to apportion that compensation under an alternative method the department prescribes, as long as the prescribed method results in a fair and equitable apportionment.

2. If a nonresident service provider demonstrates that the method provided under this rule does not fairly and equitably apportion compensation, the nonresident may submit a proposal for an alternative method to apportion compensation. If approved, the proposed method must be fully documented and explained in the nonresident service provider's nonresident personal income tax return for the state.

3. Nonresident service providers shall keep adequate records to substantiate their determination or to permit a determination by the department of the part of their adjusted gross income that was derived from or connected with sources in this state.

D. Compensation of Salaried Employees with a Constant Rate of Pay. The Louisiana income from personal services is the proportion of total compensation from services rendered,

which the total number of working days in the state bears to the total number of working days both within and without the state.

1. The total number of working days is determined by subtracting all nonworking days from the total number of days in the year or contract period, if the contract period is less than a year.

2. Nonworking days include, but are not limited to, Saturdays and Sundays not worked, holidays, days off for religious observance, days of absence due to illness or personal injury, vacation days, days of leave without pay, days off for any personal reason, and sabbatical days.

3. Days spent in travel, if the travel is at the direction of the employer, are considered working days even if the travel is on a day that would usually be considered a nonworking day.

E. Compensation Based on Volume of Business. The Louisiana income from commissions earned by a nonresident traveling salesman, agent or other employee for services performed or sales made, whose compensation depends directly on the volume of business transacted by him, includes that proportion of the compensation received which the volume of business transacted by such employee within Louisiana bears to the total volume of business transacted by him within and without the state.

F. Compensation from Continuous Employment in Louisiana for Part of the Year. If a nonresident employee (including officers of corporations, but excluding employees, mentioned in Subsection D above) is employed continuously in this state for a definite portion of any taxable year, that employee's Louisiana income includes the total compensation for the period employed in this state.

G. Compensation from Transportation Services. If a nonresident employee is employed in this state at intervals throughout the year, as would be the case if employed in operating trains, boats, planes, motor buses, trucks, etc., between this state and other states and foreign countries, and is paid on an hourly, daily, weekly or monthly basis, that employee's Louisiana income includes that portion of the total compensation for personal services which the total number of working days, as defined in Subsection C above, employed within the state bears to the total number of working days both within and without the state. If the employee is paid on a mileage basis, that employee's Louisiana income includes that portion of the total compensation for personal services which the number of miles traversed in Louisiana bears to the total number of miles traversed within and without the state. If the employee is paid on some other basis, the total compensation for personal services must be apportioned between this state and other states and foreign countries in such a manner as to allocate to Louisiana that portion of the total compensation which is reasonably attributable to personal services performed in this state. This subsection is not intended to attribute to Louisiana any income that is exempted from state taxation by federal law.

H. Compensation of Nonresident Entertainers and Athletes Who are not Members of a Professional Athletic Team. Compensation earned by a nonresident entertainer is considered earned where the services are performed, regardless of where the nonresident entertainer lives, enters into the contract, or receives payment. Entertainers include,

but are not limited to, actors, singers, musicians, performers, and professional athletes who are not members of a professional athletic team.

1. Entertainers must include the gross amount received for performances in this state in their Louisiana income.

2. Ordinary and necessary business expenses directly attributable to the income earned in Louisiana and a pro-rata share of indirect business expenses not directly attributable to income from any particular source are "adjustments to income." These "adjustments to income" are subtracted from Louisiana income to arrive at "total Louisiana income."

I. Nonresident Athletes who are Members of a Professional Athletic Team

1. The Louisiana income of a nonresident individual who is a member of a professional athletic team includes that portion of the individual's total compensation for services rendered as a member of a professional athletic team during the taxable year which, the number of duty days spent within the state rendering services for the team in any manner during the taxable year, bears to the total number of duty days spent both within and without the state during the taxable year.

2. Definitions. These terms are defined as follows. Unless otherwise indicated, these definitions apply only to this subsection.

*Duty Days* Call days during the taxable year from the beginning of the professional athletic team's official preseason training period through the last game in which the team competes or is scheduled to compete.

i. Duty days shall also include days on which a member of a professional athletic team renders a service for a team on a date that does not fall within the period described in the general definition of duty days above, for example, participation in instructional leagues, the Pro Bowl, or other promotional caravans. Rendering a service includes conducting training and rehabilitation activities, but only if conducted at the facilities of the team.

ii. Included within duty days shall be game days, practice days, days spent at team meetings, promotional caravans, and preseason training camps, and days served with the team through all postseason games in which the team competes or is scheduled to compete.

iii. Duty days for any person who joins a team during the season shall begin on the day that person joins the team, and for a person who leaves a team shall end on the day that person leaves the team. If a person switches teams during a taxable year, a separate duty day calculation shall be made for the period that person was with each team.

iv. Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when the member of a professional athletic team has been suspended without pay and prohibited from performing any services for the team, shall not be treated as duty days.

v. Days for which a member of a professional athletic team is on the disabled list shall be presumed not to be duty days spent in the state. They shall, however, be included in total duty days spent within and without the state.

vi. Travel days that do not involve either a game, practice, team meeting, promotional caravan or other similar

team event are not considered duty days spent in the state, but shall be considered duty days spent within and without the state.

*Member of a Professional Athletic Team* shall include those employees who are active players, players on the disabled list, and any other persons required to travel and who do travel with and perform services on behalf of a professional athletic team on a regular basis. This includes, but is not limited to, coaches, managers, and trainers.

*Professional Athletic Team* includes, but is not limited to, any professional baseball, basketball, football, soccer, or hockey team.

*Total Compensation* includes salaries, wages, bonuses, and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in that year.

i. Total compensation shall not include strike benefits, severance pay, termination pay, contract or option-year buyout payments, expansion or relocation payments, or any other payments not related to services rendered to the team.

ii. For purposes of this rule, "bonuses" subject to the allocation procedures described in this Subsection, are:

(a) bonuses earned as a result of play during the season, including performance bonuses, bonuses paid for championship, playoff or bowl games played by a team, or for selection to all-star league or other honorary positions; and

(b) bonuses paid for signing a contract, unless all of the following conditions are met:

(i) the payment of the signing bonus is not conditional upon the signee playing any games for the team, or performing any subsequent services for the team, or even making the team;

(ii) the signing bonus is payable separately from the salary and any other compensation; and

(iii) the signing bonus is nonrefundable.

*Total Compensation for Services Rendered as a Member of a Professional Athletic Team* the total compensation received during the taxable year for services rendered:

i. from the beginning of the official preseason training period through the last game in which the team competes or is scheduled to compete during that taxable year; and

ii. during the taxable year on a date that does not fall within the period in Clause i. above, for example, participation in instructional leagues, the Pro Bowl, or promotional caravans.

J. Optional team composite return for professional athletic teams. Professional athletic teams may file a composite return, on a form prescribed by the secretary, on behalf of its nonresident professional athletes.

1. Resident professional athletes may not be included on a composite return.

2. A schedule shall be included with the return, listing all nonresident professional athletes included in the composite filing. The schedule shall list all of the following information for each nonresident professional athlete:

- a. name;
- b. address;
- c. social security number;

d. Louisiana income attributable to that nonresident professional athlete.

3. Nonresidents who are members of a professional athletic team who have any other Louisiana source income may be included in the composite return, however, inclusion in the composite return does not relieve these team members of the responsibility of filing any other required Louisiana tax return. If the other Louisiana source income is properly reportable on a Louisiana income tax return, that return must include the income from compensation as a member of a professional athletic team. Any amount paid with the team composite return on a nonresident professional athlete's behalf may be used as a credit against that team member's Louisiana individual income tax liability for the same tax period.

4. Nonresidents who are included in a properly filed and accurate team composite return, and who have no Louisiana income other than compensation for services rendered as a member of a professional athletic team, will be deemed to have filed a Louisiana individual income tax return. Except that any underpayment by the team with the team composite return shall be the personal responsibility of the members of the professional athletic team included in the composite return.

5. The tax due on the composite return shall be computed using either of the following methods:

a. the sum of the actual tax liability from total compensation for services rendered as a member of a professional athletic team for each member of the team included in the composite return;

b. alternative method of computing the tax due on the composite return;

i. add the Louisiana income attributable to all nonresident professional athletes included in the composite return;

ii. subtract a deduction equal to 30 percent of the Louisiana income attributable to all nonresident professional athletes included in the composite return. This deduction is allowed in place of the combined standard deduction and personal exemption, excess itemized deductions, and federal tax deduction for the same period;

iii. the tax shall be computed using the maximum individual tax rate applied to Louisiana income after the 30-percent deduction.

6. Each professional athletic team will be issued an identification number by the department upon the filing of its first composite return. This identification number shall be used on all subsequent composite returns filed by that team.

7. A team making a composite return and payment must furnish the following information to all team members included in the composite return:

a. the team's taxpayer identification number;

b. the amount of the payment made on the team member's behalf;

c. a statement that the amount paid on the team member's behalf can be used as a credit against that team member's Louisiana individual income tax liability for the same tax period, if the team member files an individual return with the Department of Revenue that declares the income from compensation as a member of a professional athletic team;

d. the mailing address of the Louisiana Department of Revenue; and

e. the internet address of the Louisiana Department of Revenue.

K. Nothing in this regulation shall restrict the Secretary's authority to otherwise provide for efficient administration of the individual income tax.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:290, R.S. 47:293, R.S. 47:295, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Service Division LR 28:

#### **Family Impact Statement for Administrative Rules**

Rule Title: 61:I.1304. Nonresident Apportionment of Compensation from Personal Services Rendered in Louisiana

The proposed adoption of LAC 61:I.1304, regarding the collection of Louisiana individual income tax from nonresidents who perform personal services in Louisiana, should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically, the implementation of this proposed rule will have no known or foreseeable effect on:

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

Any interested person may submit written data, views, arguments or comments regarding this proposed rule to Michael D. Pearson, Senior Policy Consultant, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 15409, Baton Rouge, LA 70895-5409. All comments must be received no later than 4:30 p.m., November 26, 2001. A public hearing will be held on Tuesday, November 27, 2001, at 10:30 a.m. in the First Floor Auditorium (Room 153), United Plaza Twelve Building, 8549 United Plaza Boulevard, Baton Rouge, Louisiana.

Cynthia Bridges  
Secretary

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

##### **RULE TITLE: Nonresident Apportionment of Compensation from Personal Services Rendered**

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

This proposed regulation, which provides for a fair and equitable manner for nonresident personal service providers to apportion compensation for personal services rendered in the state, will have a minimal impact on the agency's costs. The department will incur additional costs for printing and processing special nonresident professional athlete and athletic team composite returns. Costs will also be incurred to prepare and distribute information packets to all professional teams and Louisiana venues that might be affected by this proposed regulation. The total additional costs are not known, but will be

absorbed by the department's existing budget allocation. There will be no impact on local government costs.

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

This proposed regulation should result in an indeterminable increase in individual income tax collections for taxes paid by nonresident personal service providers. However, all taxes paid by nonresident professional athletes and professional sports franchises will be allocated to the Sports Facility Assistance Fund to be appropriated to the owners of the facilities. The amount of income that had been reported by nonresident professional athletes and professional sports franchises is not known, but this income tax, will now be deposited into the fund, resulting in a loss to the general fund for these income tax collections. There will be no effect on revenue collections of local governmental units.

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

Nonresident personal service providers, which include nonresident professional athletes and entertainers, who have earned income in Louisiana are already required to pay income tax on their Louisiana income. Professional athletic teams have the option of filing a composite tax return for all of their nonresident team members. The additional costs should be minimal.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed regulation should have no effect on competition or employment.

Cynthia Bridges  
Secretary  
0110#079

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Revenue  
Policy Services Division**

**Nonresident Net Operating Losses  
(LAC 61:I.1302)**

Under the authority of R.S. 47:293, R.S. 47:295, and R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:I.1302 relative to nonresident individuals and Louisiana net operating losses.

The purpose of this regulation is to inform all taxpayers that nonresident individuals are allowed to carry back and carry over their Louisiana net operating losses. This regulation will also provide guidance to taxpayers about the procedures for carrying these losses.

**Title 61**

**REVENUE AND TAXATION**

**Part I. Taxes Collected and Administered by the  
Secretary of Revenue**

**Chapter 13. Income: Individuals**

**§1302. Nonresident Net Operating Losses**

A. Nonresident individuals may carry back or carry over Louisiana net operating losses. Louisiana net operating losses may be carried and used in the same manner that would be allowed for federal purposes if the nonresident individual's federal returns consisted of only the Louisiana items of income and loss.

**B. Application**

1. The years to which Louisiana net operating losses may be carried are the same as they are for federal personal income tax purposes.

2. Net operating loss carrybacks and carryovers are considered an adjustment to Louisiana income and must be applied against total Louisiana income before applying any deductions.

3. When a net operating loss carryback or carryover is used a schedule must be attached to the return in which it is used for each carryback or carryover showing:

a. the taxable year in which each loss that is being carried back or carried over occurred; and

b. the amount of each loss applied to each taxable year to which it was carried over or carried back.

4. A separate schedule showing how each Louisiana net operating loss was determined may also be required.

**C. Limitations**

1. A Louisiana net operating loss carryback or carryover cannot include any amount that has already been deducted for Louisiana purposes.

2. Nothing in this section authorizes a federal income tax deduction for income that did not bear Louisiana personal income tax.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:293, R.S. 47:295, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 28:

**Family Impact Statement**

The proposed adoption of LAC 61:I.1302, regarding nonresident individuals and Louisiana net operating losses should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically, the implementation of this proposed rule will have no known or foreseeable effect on:

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

Any interested person may submit written data, views, arguments or comments regarding this proposed rule to Michael D. Pearson, Senior Policy Consultant, Policy Services Division, Office of Legal Affairs, P.O. Box 15409, Baton Rouge, LA 70895-5409. All comments must be received no later than 4:30 p.m. November 27, 2001. A public hearing will be held on Wednesday, November 28, 2001, at 10:30 a.m. in the Legal Conference Room, Seventh Floor, LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana.

Cynthia Bridges  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Nonresident Net Operating Losses**

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

The implementation of this proposed regulation will have no impact upon any local governmental units.

The implementation of this proposed regulation, which clarifies how Louisiana net operating losses for nonresidents may be carried from one year to another, would have no impact on the agency's costs. The taxpayers who are affected by this regulation will show any effect as an adjustment to income on line 9 of the current Louisiana Nonresident and Part-year Resident form.

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

There may be a slight decrease in revenue collections for the state. The size of that decrease cannot be determined. However, it is expected to be small.

There will be no effect on revenue collections of local governmental units as a result of this proposed regulation.

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

Nonresident individuals who have Louisiana net operating losses who did not know that they were able to carry forward and carry back their losses will utilize these losses to reduce their Louisiana personal income tax liability.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This proposed regulation will have no effect on competition or employment.

Cynthia Bridges  
Secretary  
0110#080

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Social Services  
Office of Community Services**

**Percentage of Title IV-E Foster Children  
in Care over 24 Months  
(LAC 67:V.3510)**

The Department of Social Services, Office of Community Services, proposes a Rule entitled a "Percentage of Title IV-E Foster Children in Care over 24 Months" for implementation of the provisions required by 42 U.S.C. Sec. 671(A)(14) of the Social Security Act. The Emergency Rule was published in the *Louisiana Register*, Vol. 27 No. 7, July 20, 2001.

The Department of Social Services, Office of Community Services, is required by 42 U.S.C. Sec. 671(A)(14) of the Social Security Act to incorporate into the state administrative regulations a goal as to the maximum absolute number or percentage of children in foster care for over 24 continuous months. The department has selected a percentage of all children in foster care receiving assistance under a State Title IV-E program.

**Title 67**

**SOCIAL SERVICES**

**Part V. Office of Community Services**

**Subpart 5. Foster Care**

**Chapter 35. Payments, Reimbursables and Expenditures**

**§3510. Percentage of Title IV-E Children in Foster Care over 24 Months**

A. For the percentage of all children in foster care receiving assistance under the State Title IV-E program who at any given time during the fiscal year will have been in foster care over 24 months, the department will limit that percentage to 55 percent of the total foster care population.

**AUTHORITY NOTE:** Promulgated in accordance with 42 USC Sec. 671 (A) (14) of the Social Security Act.

**HISTORICAL NOTE:** Promulgated by the Department of Social Services, Office of Community Services, LR 28:

Interested persons may submit written comments for 40 days from the date of this publication to Joel McLain, Section Administrator, P.O. Box 3318, Baton Rouge, LA 70821. He is responsible for responding to inquiries.

**Family Impact Statement**

1. The effect on the stability of the family:

Keeping the number of children who have been in foster care over 24 months and who are receiving assistance under a state Title IV-E program at any given time during the fiscal year at no more than 55 percent will have no negative impact on the stability of the family. The impact will probably be neutral. However, it has the potential to have a positive effect in that it encourages employees to reunite families when appropriate but allows deviation when it is not in the best interest of the child, and it encourages permanency for all children.

2. The effect on the authority and rights of parents regarding education and supervision of their children:

Keeping the number of children who have been in foster care over 24 months and who are receiving assistance under a state Title IV-E program at any given time during the fiscal year at no more than 55 percent will not have a negative impact on the authority and rights of parents regarding education and supervision of their children. Maintaining the percentage rate at no more than 55 percent encourages placing children with safe and permanent families and transferring custody or guardianship to these parents.

3. The effect on the functioning of the family:

Keeping the number of children who have been in foster care over 24 months and who are receiving assistance under a state Title IV-E program at any given time during the fiscal year at no more than 55 percent will have no impact on the functioning of the family. In most cases, services are provided to families prior to returning children to the home of biological parents or placement in other permanent family homes.

4. The effect on family earnings and family budget:

Keeping the number of children who have been in foster care for over 24 months and who are receiving assistance under a state Title IV-E program at any given time during the fiscal year at no more than 55 percent has no direct impact on family earnings and family budget. Indirectly, the family's expenses will increase as the result of a child being

placed in the home. Money management skills and the family's ability to meet the basic needs of the child are assessed by employees prior to placement of a child in a home.

5. The effect on the behavior and personal responsibility of children:

Keeping the number of children who have been in foster care for over 24 months and who are receiving assistance under a state Title IV-E program at any given time during the fiscal year at no more than 55 percent will have no impact on the behavior and personal responsibility of children. When necessary, therapy with children and their families is provided prior to placement and in some situations post placement services are provided.

6. The ability of the family or a local government to perform the function as contained in the proposed Rule:

The Department of Social Services, Office of Community Services has the primary responsibility to meet the goal of keeping the number of children who have been in foster care for over 24 months and who are receiving assistance under a state Title IV-E program at any given time during the fiscal year at no more than 55 percent. The agency's philosophy, policies, and practices are focused on helping children live in safe and permanent homes. Utilizing federal and state financial resources, trained agency staff, local community resources, and service providers to aid, the agency has the ability to achieve this goal.

J. Renea Austin-Duffin  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Percentage of Title IV-E Foster Children  
in Care over 24 Months**

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

The proposed action will cause no additional cost to the state or local government units. No definitive savings can be defined at this time.

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

The proposed action will have no immediate impact on the revenue collections of state or local governmental units. An overall reduction in the number of children in the foster care system may lead to a reduction in the amount of federal benefits received to provide care to children in the system.

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

No known persons or nongovernmental group would be financially impacted by the proposed action. Children entering the foster care system and their families, as well as those in the system, would be afforded the same level of services as is now provided.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

The proposed action has no foreseeable impact.

Debbie Johnson  
Budget Manager  
0110#073

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Social Services  
Office of Family Support**

Family Independence Work Program (FIND  
Work)CSupport ServicesCTransportation  
(LAC 67:III.2913)

The Department of Social Services, Office of Family Support, proposes to amend LAC 67:III.2913.

Pursuant to Act 12 of the 2001 Regular Session of the Louisiana Legislature and in order to further the goals and intentions of the federal Temporary Assistance for Needy Families Block Grant to promote job preparation and to better facilitate entry into the workplace, the agency will increase the amount allowed for transportation services from \$60 to \$120 per month for participants who are or become ineligible for cash assistance due to earned income. This change was effected by Emergency Rule October 1, 2001.

**Title 67**

**SOCIAL SERVICES**

**Part III. Office of Family Support**

**Subpart 5. Family Independence Work Program (FIND  
Work)**

**Chapter 29. Organization**

**Subchapter C. Activities and Services**

**§2913. Support Services**

A.1. - 2.a. ...

b. Effective October 1, 2001, participants who are or become ineligible for cash assistance due to earned income shall be eligible for a transportation payment of \$120 per month beginning with the first month of FITAP ineligibility and continuing through the twelfth month of ineligibility or through the last month of employment, whichever comes first.

3.a. - c. ...

**AUTHORITY NOTE:** Promulgated in accordance with P.L. 104-193 and R.S. 46:231; Act 12, 2001 Reg. Session.

**HISTORICAL NOTE:** Promulgated by the Department of Social Services, Office of Family Support, LR 17:309 (March 1991), amended LR 17:388 (April 1991), LR 18:244 (March 1992), LR 18:687 (July 1992), LR 18:748 (July 1992), LR 18:1268 (November 1992), LR 19:504 (April 1993), LR 20:793 (July 1994), LR 23:451 (April 1997), LR 24:356 (February 1998), LR 24:1135 (June 1998), LR 25:526 (March 1999), LR 25:2456 (December 1999), LR 26:1343 (June 2000), LR 28:

**Family Impact Statement**

1. What effect will this rule have on the stability of the family? Implementation of this rule will have a positive impact on the stability of FIND Work families by aiding the participant in his move from welfare to financial independence.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? There will be no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This rule will have no effect on the functioning of the family.

4. What effect will this have on family earnings and family budget? There will be no effect on family earnings.

However, the increase in transportation payment will favorably impact the family budget.

5. What effect will this have on the behavior and personal responsibility of children? There will be no effect on the behavior and personal responsibility of the children.

6. Is the family or local government able to perform the function as contained in this proposed rule? No, this rule concerns an increase in the amounts allowed for certain other supportive services and a change to exemptions in participation.

Interested persons may submit written comments by November 27, 2001 to Ann S. Williamson, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton Rouge, Louisiana, 70804-9065. She is the person responsible for responding to inquiries regarding this proposed rule.

A public hearing on the proposed rule will be held on November 27, 2001 at the Department of Social Services, A.Z. Young Building, Second Floor Auditorium, 755 Third Street, Baton Rouge, Louisiana beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call 225-342-4120 (Voice and TDD).

J. Renea Austin-Duffin  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Family Independence Work Program  
(FIND Work)C Support Services C Transportation**

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

Implementation of this rule will increase state agency costs for a FIND Work participant's transportation services. This will result in increased costs estimated to be \$1,350,000 for fiscal year 01/02 and \$1,800,000 for subsequent years. These funds are available from Louisiana's Temporary Assistance for Needy Families (TANF) Block Grant. The cost of publishing the rule, printing policy, and forms revisions will also be required, and these costs will be within the normal budget constraints. There are no anticipated costs or savings to local governmental units.

**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.

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

FIND Work participants who become ineligible for FITAP benefits due to earned income will benefit from the monthly increase of \$60 to \$120 for transportation services. There are no costs to any persons or nongovernmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The increase in transportation payments may facilitate a participant's entry into employment and aid with the transition from welfare to independence.

Ann S. Williamson  
Assistant Secretary  
0110#074

H. Gordon Monk  
Staff Director  
Legislative Fiscal Officer

**NOTICE OF INTENT**

**Department of Social Services  
Office of Family Support**

FITAP/KCSP/TANF Initiatives C Energy Assistance  
(LAC 67:III.1290, 5390, and 5503)

The Department of Social Services, Office of Family Support, proposes to amend the *Louisiana Administrative Code*, Title 67, Part III, Subpart 2, Family Independence Temporary Assistance Program (FITAP), and Subpart 13, Kinship Care Subsidy Program (KCSP), and adopt Subpart 15, Temporary Assistance to Needy Families (TANF) Initiatives.

In order to offset the rising costs of home energy which may be excessive in relation to the income of FITAP and KCSP households, the agency made energy assistance available to these households in August 2001 through an Emergency Rule. Additional funding for energy assistance is also made possible by Act 12 of the 2001 Regular Session of the Louisiana Legislature. (A Declaration of Emergency amending the TANF provision effective September 28 also appears in this issue.)

**Title 67  
SOCIAL SERVICES**

**Part III. Office of Family Support**

**Subpart 2. Family Independence Temporary Assistance Program (FITAP)**

**Chapter 12. Application, Eligibility, and Furnishing Assistance**

**Subchapter D. Special Initiatives**

**§1290. Energy Assistance**

A. Based on the availability of funding and a determination of need by OFS, all households receiving a FITAP grant may also be eligible to receive an energy assistance grant effective August 20, 2001, to apply towards the cost of utility service. OFS will establish a specific date of eligibility in order to determine when households will receive a grant, and only those households certified as of that date will be eligible for energy assistance.

B. The payment process will be administered by an outside entity through a contractual agreement. Recipients will be required to provide verification of identity as well as proof of residency at the utility service address. The energy assistance payment will be paid directly to the recipient's utility company or provider.

**AUTHORITY NOTE:** Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; and Act 12, 2001 Reg. Session.

**HISTORICAL NOTE:** Promulgated by the Department of Social Services, Office of Family Support, LR 28:

**Subpart 13. Kinship Care Subsidy Program (KCSP)**

**Chapter 53. Application, Eligibility, and Furnishing Assistance**

**Subchapter D. Special Initiatives**

**§5390. Energy Assistance**

A. Based on the availability of funding and a determination of need by OFS, all households receiving a KCSP grant may also be eligible to receive an energy assistance grant effective August 2001 to apply towards the cost of utility service. OFS will establish a specific date of eligibility in order to determine when households will

receive a grant, and only those households certified as of that date will be eligible for energy assistance.

B. The payment process will be administered by an outside entity through a contractual agreement. Recipients will be required to provide verification of identity as well as proof of residency at the utility service address. The energy assistance payment will be paid directly to the recipient's utility company or provider.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; and Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

**Subpart 15. Temporary Assistance to Needy Families (TANF) Initiatives**

**Chapter 55. TANF Initiatives**

**§5503. Emergency Energy Assistance**

A. Effective September 28, 2001, in the event of an agency-declared energy emergency based on the availability of funding and a determination of need by OFS, needy families may receive a grant to apply toward the cost of utility service.

B. Services meet the TANF goal of providing assistance to needy families so that children may be properly cared for in their own homes or in the homes of relatives by providing funds to help pay the costs of cooling and heating the homes.

C. A needy family is defined as a family in which any member receives Food Stamp benefits, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance (LaCHIP), Supplemental Security Income (SSI), or Free or Reduced School Lunch. However, any of the preceding eligibles also receiving FITAP or KCSP grants are not eligible.

D. Services are considered by the agency as non-assistance.

E. The payment process will be administered by an outside entity through a contractual agreement. Recipients will be required to provide verification of identity and eligibility as defined for a @needy family@ as well as proof of residency at the utility service address. The energy assistance payment will be paid directly to the recipient's utility company or provider.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; and Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

**Family Impact Statement**

1. What effect will this rule have on the stability of the family? This rule should have no effect on family stability.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? This rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This rule will have no effect on the functioning of the family.

4. What effect will this have on family earnings and family budget? There may be a slight increase in the family budget as a result of the energy assistance grant, which may benefit families in financial distress.

5. What effect will this have on the behavior and personal responsibility of children? This rule should have no effect on the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed rule? No, this program is strictly an agency function.

All interested persons may submit written comments through November 27, 2001, to Ann S. Williamson, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton Rouge, Louisiana, 70804-9065.

A public hearing on the proposed rule will be held on November 27, 2001 at the Department of Social Services, A.Z. Young Building, Second Floor Auditorium, 755 Third Street, Baton Rouge, Louisiana beginning at 9:00 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call Area Code 225-342-4120 (Voice and TDD).

J. Renea Austin-Duffin  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: FITAP/KCSP/TANF Initiatives C Energy  
Assistance**

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

The Legislature appropriated a total of \$17,500,000 in FY 01/02 for energy assistance. Grants to Family Independence Temporary Assistance Program (FITAP) and Kinship Care Subsidy Program (KCSP) households in August 2001 are expected to cost \$7,604,700. Administrative costs, which are estimated at ten percent of these energy grants or \$760,470, will be paid to the Louisiana Housing Finance Agency (LHFA). The cost of programming and issuing the vouchers is estimated to be \$8,872. Funding is from the federal Temporary Assistance to Needy Families Block Grant to Louisiana.

Additional spending by the agency will be based upon energy costs and funding availability. Funds will be reserved for a possible agency-declared, energy emergency for certain recipients. The total amounts to be allotted are not determinable at this time. Costs for preparing, issuing and publishing rule changes are routinely included in the agency's annual budget. There will be no costs or savings to local governmental units.

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

The Louisiana Housing Finance Agency (LHFA), a state agency, will be paid administrative fees not to exceed ten percent of the utility grants or approximately \$760,470. LHFA will subcontract with local community agencies to administer the program, and a majority of the administrative fee will be disbursed to these local agencies. Additional grants may be issued based upon funding availability and agency-determined need which will increase administration costs not to exceed 10 percent of the grants.

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

Economic benefits totaling \$7,604,700 in the form of energy assistance grants will be distributed to FITAP- and KCSP-eligible households. If funding is available and the

agency determines a need, another grant may be provided later. Funds may also be made available for an agency-declared energy emergency to certain recipients. However, neither the grants nor emergency fund amounts can be determined at this time. There are no economic benefits to nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule will have no impact on competition and employment.

Cynthia H. Douglas  
Director, Special Project Division  
0110#076

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Social Services  
Office of Family Support**

**Food Stamp ProgramC Semi-Annual Reporting Household  
(LAC 67.III.2013 and 2015)**

The Department of Social Services, Office of Family Support, proposes to amend the *Louisiana Administrative Code*, Title 67, Part III, Subpart 3, Food Stamps.

At the agency's request, a waiver has been granted by the U.S. Department of Agriculture, Food and Nutrition Service, which allows the agency to process all interim changes reported by a semi-annual reporting household, including those that result in a decrease in food stamp benefits. The approved waiver eliminates inequities that exist in current policy and provides for a more consistent application of policy. The change was effected August 7, 2001, by a Declaration of Emergency.

In addition, the agency proposes to repeal §2015 as the transition from quarterly reporting to semi-annual reporting will be complete when this Rule becomes final.

**Title 67**

**SOCIAL SERVICES**

**Part III. Office of Family Support**

**Subpart 3. Food Stamps**

**Chapter 19. Certification of Eligible Households**

**Subchapter S. Semi-Annual Reporting**

**§2013. Semi-Annual Reporting**

A. - G ...

H. Effective August 7, 2001, other changes will be processed in accordance with §1999, Reduction or Termination of Benefits.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.12(a).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:1633 (August 2000), LR 27:867 (June 2001), LR 28:

**§2015. Quarterly Reporting**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.12(a) and 273.3(c)(1)(ii).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:1633 (August 2000), amended LR 27:868 (June 2001), repealed LR 28:

**Family Impact Statement**

1. What effect will this rule have on the stability of the family? This rule should have no effect on family stability.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? This rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This rule will have no effect on the functioning of the family.

4. What effect will this have on family earnings and family budget? In some circumstances, this rule could decrease the monthly food stamp benefits of a family/household when a change is reported that results in a decrease in the monthly benefit allotment.

5. What effect will this have on the behavior and personal responsibility of children? This rule should have no direct effect on the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed rule? No, the Food Stamp Program is strictly a state/federal function.

Interested persons may submit written comments on the proposed rule by November 27, 2001, to the following person: Ann S. Williamson, Assistant Secretary, Office of Family Support, Post Office Box 94065, Baton Rouge, Louisiana, 70804-9065.

A public hearing on the proposed Rule will be held on November 27, 2001, at the Department of Social Services, A.Z. Young Building, Second Floor Auditorium, 755 Third Street, Baton Rouge, Louisiana beginning at 9:00 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call Area Code 225-342-4120 (Voice and TDD).

J. Renea Austin-Duffin  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Food Stamp ProgramC Semi-Annual  
Reporting Households**

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

The estimated implementation cost to state government is the cost of publishing the rule and printing revisions to policy. This cost is minimal, and funds for such actions are included in the program's annual budget. There are no costs or savings to local governmental units.

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

The impact on revenue resulting from possible allotment reduction as a result of reported changes cannot be projected. This is a new procedure in a newly established reporting method; that is, semi-annual reporting, and the number of households reporting changes that will result in a decrease in Food Stamp benefits cannot be anticipated. In addition, Food Stamp benefits are 100 percent federally funded, and any savings would be realized by the federal government.

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

There may be an impact on a small number of Food Stamp semi-annual reporting households that report changes which would result in a decrease in their monthly allotment. The agency cannot anticipate the number of cases this may affect. There are no costs or savings to non-governmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule will have no impact on competition and employment.

Ann W. Williamson  
Assistant Secretary  
0110#075

H. Gordon Monk  
Staff Director  
Legislative Fiscal Officer

**NOTICE OF INTENT**

**Student Financial Assistance Commission  
Office of Student Financial Assistance**

Scholarship/Grant Programs  
(LAC 28:IV.301 and 2103)

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its Scholarship/Grant rules (R.S. 17:3021-3026, R.S. 3041.10-3041.15, and R.S. 17:3042.1, R.S. 17:3048.1).

The full text of these proposed rules may be viewed in the Emergency Rule section of this issue of the *Louisiana Register*.

The proposed rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

Interested persons may submit written comments on the proposed changes until 4:30 p.m., November 20, 2001, to Jack L. Guinn, Executive Director, Office of the Student Financial Assistance, Box 91202, Baton Rouge, LA 70821-9202.

Mark S. Riley  
Assistant Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Scholarship/Grant Programs**

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

No change in cost to the program is anticipated to result from these revisions.

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

No impact on revenue collections is anticipated to result from these rule changes.

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

These rule changes clarify the definition of a selective enrollment program and exceptional circumstances warranting exception to initial and continuous enrollment requirements. The clarifications are consistent with the agency's interpretation and enforcement of the TOPS rules since the inception of the program.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

No impact on competition and employment is anticipated to result from this rule.

Mark S. Riley  
Assistant Executive Director  
0110#043

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of Transportation and Development  
Office of the Secretary  
Crescent City Connection Division**

Bridge Tolls CFree Passage for  
Firemen and Law Enforcement  
(LAC 70:I.503, 507, and 513)

The Department of Transportation and Development, Crescent City Connection Division, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., gives notice that rulemaking procedures have been instituted to amend LAC 70:1.505 to delete obsolete provisions and to amend LAC 70:1.507 and LAC 70:1.513 to provide that the right of free passage for firemen and law enforcement personnel will be utilized using toll tags.

**Title 70**

**TRANSPORTATION**

**Part I. Office of the Secretary**

**Chapter 5. Tolls**

**§505. Repealed.**

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 48:25 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Transportation and Development, Crescent City Connection Division, LR 19:352 (March 1993), repealed LR 28:

**§507. Crescent City Connection Exemptions C Firemen**

A. Purpose. All firemen and volunteer fireman shall have free and unhampered passage on and over the Crescent City Connection bridges, the Gretna/Jackson Avenue ferry, the Algiers/Canal Street ferry and the Lower Algiers/Chalmette ferry.

B. Procedure for Firemen

1. Ferry Crossings

a. All firemen as defined in R.S. 39:191.A shall present an identification card containing a photographic picture of the fireman for inspection by the toll collector. The identification card must be issued by the municipality, parish or district as referred to in R.S. 39:191.A.

b. All firemen shall sign a register at the ferry station and provide the name of the agency, municipality, parish or district for which they are employed or engaged.

c. After compliance with §507.B.1.a and b, free unhampered passage will be granted to the fireman.

2. Bridge Crossings

a. The right of free passage on and over the Crescent City Connection Bridge at New Orleans for firemen shall be exercised only by means of automatic vehicular identification toll tags.

b. Upon the written request of the chief of a municipal or parish fire department or of a fire prevention district, and upon payment of the required deposit, the Crescent City Connection Division of the Department of Transportation and Development shall issue to such department or district the number of automatic vehicular identification toll tags requested for use in connection with the exemption from tolls.

c. A deposit of \$25 shall be charged for the issuance of each tag. The deposit shall be refunded upon the return of the tag to the Crescent City Connection Division.

d. The use of the automatic vehicular identification toll tags provided to a fire department or district shall be limited to bridge crossings made by firemen during the performance of fire fighting and related duties. The appropriate fire department or district shall be responsible for any crossing made using the automatic vehicular identification toll tag outside the scope of the exemption from tolls.

### C. Procedure for Volunteer Fireman

1. All volunteer fire organizations shall apply to the Crescent City Connection Division and shall certify to the following:

a. the address of the volunteer fire organization's domicile or headquarters;

b. the general location served by the volunteer fire organization;

c. that the members of the volunteer fire organization are required to travel across the facilities, stated in §507.A pertaining to "purpose," in the performance of official fire fighting or fire prevention services;

d. the number of crossings made in one year, on the facilities stated in §507.A pertaining to "purpose," by volunteer firemen members of the volunteer fire organization.

2. The application must be signed by the chief executive officer of the volunteer fire organization.

#### 3. Vehicle Passes

a. Upon approval of an application, the Crescent City Connection Division shall issue vehicle passes for use by the volunteer firemen members of the volunteer fire organization.

b. The vehicle passes shall be for the exclusive use of volunteer firemen members of the volunteer fire organization, while operating a motor vehicle, and are not transferable.

c. The vehicle passes shall not be used for any other purpose than crossing the bridges or ferries for the performance of official firefighting or fire prevention services by volunteer firemen.

d. Lost, stolen or damaged passes will not be replaced.

4. Loss of Privilege. Any prohibited use of vehicle passes issued to a volunteer fire organization will result in the loss of the privilege to obtain and use passes and/or action provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:1975.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Crescent City Connection Division, LR 19:1594 (December 1993), amended LR 28:

## §513. Crescent City Connection Exemptions Law Enforcement Personnel

A. Free passage across the Crescent City Connection, and the ferries known as Algiers/Canal Street, Gretna/Jackson Avenue, and Lower Algiers/Chalmette shall be granted to all law enforcement personnel who are employed on a full-time basis and have law enforcement agency equipment.

B. Law enforcement agency, for purposes of R.S. 40:1392 and LAC 70:I.513 shall mean any agency of the state or its political subdivisions and the federal government, who are responsible for the prevention and detection of crime and the enforcement of the criminal, traffic, or highway laws of this state or similar federal laws and who are employed in this state. Officers who serve in a voluntary capacity or as honorary officers are not included.

C. Agencies which meet the above criteria shall include the Louisiana State Police, enforcement division agents of the Louisiana Department of Wildlife and Fisheries, sheriffs' departments of the parishes of this state, municipal police departments, levee board police departments, port police departments and the Federal Bureau of Investigation exclusively.

D.1. The right of free passage on and over the Crescent City Connection Bridge at New Orleans for the state police and law enforcement personnel shall be exercised only by means of automatic vehicular identification toll tags.

2. Upon the written request of the superintendent of state police or the head of an eligible law enforcement agency and payment of the required deposit, the Crescent City Connection Division for the Department of Transportation and Development shall issue the number of automatic vehicular identification toll tags requested for use in connection with the exemption from tolls.

3. A deposit of \$25 shall be charged for the issuance of each tag. The deposit shall be refunded upon the return of the tag to the Crescent City Connection Division.

4. The use of the automatic vehicular identification toll tags provided shall be limited to bridge crossings made by state police with state police equipment and by designated law enforcement personnel with law enforcement agency equipment. The appropriate law enforcement agency shall be responsible for any crossing made using the automatic vehicular identification toll tag outside the scope of the exemption from tolls.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1392 and R.S. 48:26.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Crescent City Connection Division, LR 23:84 (January 1997), amended 28:

### Family Impact Statement

In connection with the Notice of Intent which is scheduled to appear in the October 20, 2001, *Louisiana Register*, relative to an amendment to Title 70, Chapter 5 of the *Louisiana Administrative Code*, under the Rule titles "Bridge Tolls-Sunshine Bridge Exemption," "Bridge Tolls-Crescent City Connection Exemptions-Firemen," and "Bridge Tolls-Law Crescent City Connection Exemptions-Law Enforcement Personnel" to delete obsolete provisions and to provide the right of free passage over the Crescent City Connection at New Orleans, Louisiana for firemen and law

enforcement personnel by toll tags. The Crescent City Connection Division hereby makes these written considerations, known as the Family Impact Statement, of the following factors regarding the proposed rule amendment as required by R.S. 49:972.

1. The Effect on the Stability of the Family. This proposed rule amendment has no known impact on family stability.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. This proposed rule amendment has no known effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect on the Functioning of the Family. This proposed rule amendment has no known effect on the functioning of the family.

4. The Effect on Family Earnings and Family Budget. This proposed rule amendment has no known effect on family earnings and family budget.

5. The Effect on the Behavior and Personal Responsibility of Children. This proposed rule amendment has no known effect on the behavior and personal responsibility of children.

6. The Ability of the Family or a Local Government to perform the Function as Contained in the Proposed Rule. This proposed rule amendment has no applicability to family or a local government function.

Interested persons may comment on this proposed Rule amendment through November 21, 2001, to Mr. Alan J. LeVasseur, P.O. Box 6297, New Orleans, LA 70174.

Alan J. LeVasseur  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Bridge Tolls Free Passage for  
Firemen and Law Enforcement**

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

Firemen and law enforcement personnel are currently granted a statutory right of free passage across the Crescent City Connection. New law requires that this right of free passage be exercised by means of toll tags.

Toll tags will be issued to eligible firemen and law enforcement personnel for free passage. Although the Crescent City Connection Division currently budgets the costs of toll tags from self-generated agency funds, it is anticipated that additional toll tags will be needed to implement the rule amendment. Less than 2,000 public safety personnel entitled to the right of free passage currently cross by means of toll tags and less than 2,000 currently cross by means of registry at toll booths. Based upon these numbers, it is anticipated that 2,000 new toll tags would need to be purchased, and at \$33 per toll tag the estimated implementation costs will be \$66,000. Additional expenditures could be required in subsequent years if the total number of public safety personnel entitled to free passage increases.

New law requires the chief of a municipal or parish fire department, or the superintendent of state police or the head of a law enforcement agency, as the case may be, to make a refundable deposit of \$25 for each toll tag requested.

Tolls on the Sunshine Bridge ceased at the end of fiscal year 2000-2001.

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

The Crescent City Connection currently provides for free passage by eligible firemen and law enforcement personnel, and the proposed Rule Amendment would impact with new law requiring free passage to be made by toll tag. Accordingly, there will be no effect on revenue collections.

Tolls on the Sunshine Bridge ceased at the end of fiscal year 2000-2001. Accordingly, there will be no effect on revenue collection.

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

New law requires the chief of a municipal or parish fire department, or the superintendent of state police or the head of a law enforcement agency, as the case may be, to make a refundable deposit of \$25 for each toll tag requested. The costs of such deposits to the effected fire departments and law enforcement agencies cannot be determined. However, it is not anticipated that the costs will be material.

Tolls on the Sunshine Bridge ceased at the end of the fiscal Year 2000-2001. Prior to the cessation, firemen and law enforcement personnel enjoyed a statutorily right of free passage. Accordingly, repeal of the obsolete rule governing tolls on the Sunshine Bridge will have neither costs nor benefits to affected persons.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

There will be no effect on competition or employment.

Kenneth E. Pickering  
General Counsel  
0110#044

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Wildlife and Fisheries  
Wildlife and Fisheries Commission**

Recreational Electronic Licensing  
Outdoor Press License (LAC 76:I.327)

The Wildlife and Fisheries Commission does hereby give notice of intent to promulgate a Rule, LAC 76:I.327.P, which provides a special outdoor press license for purchase by nonresident members of the outdoor press for a fee of \$20. The license shall be valid for four consecutive days. Authority for adoption of this Rule is included in R.S. 56:647.1. Said Rule is attached to and made part of this Notice of Intent.

**Title 76**

**WILDLIFE AND FISHERIES**

**Part I. Wildlife and Fisheries Commission and Agencies  
Thereunder**

**Chapter 3. Special Powers and Duties  
Subchapter H. Electronic Licenses Issuance  
§327. Recreational Electronic Licensing**

A. - O. ...

P. In lieu of recreational basic fishing and recreational saltwater fishing license the department may issue a special outdoor press license to nonresident members of the outdoor press which will include basic and saltwater fishing.

1. A fee of \$20 will be charged for each outdoor press license issued and the license shall be valid for four consecutive days.

2. All outdoor press licenses will be issued from the Baton Rouge headquarters location.

3. To qualify for certification an applicant must submit to the Department of Culture, Recreation and Tourism one or more of the following:

- a. recent tear sheets of published articles;
- b. letter of assignment from publication, television or radio company;
- c. a written recommendation from one of the Department of Culture, Recreation and Tourism's international offices;
- d. a written recommendation from Travel South USA, Louisiana Travel Promotion Association or similar organizations.

4. In no case will the Department of Culture, Recreational and Tourism forward an application from any individual or group not directly involved in producing stories or broadcast materials pertaining to Louisiana fishing and/or outdoor recreation opportunities.

5. Certified applications with all supporting documents and license fees shall be forwarded to the Department of Wildlife and Fisheries for approval. The license fee shall be returned to the applicant for any application not certified by the Department of Culture, Recreation and Tourism or approved by the secretary of the Department of Wildlife and Fisheries.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 56:6(21) and R.S. 56:641.1.

**HISTORICAL NOTE:** Promulgated by the Department of Wildlife and Fisheries, Office of Management and Finance, LR 24:505 (March 1998), amended by the Wildlife and Fisheries Commission, LR 26:1078 (May 2000), amended by the Office of Management and Finance, LR 27:1243 (August 2001), amended by the Wildlife and Fisheries Commission, LR 28:

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this Notice of Intent and the final rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the Notice of Intent and final rule and the preparation of reports and correspondence to other agencies in government.

Interested persons may submit comments relative to the proposed Rule to Marianne Burke, Public Information Section, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA, 70898-9000, prior to Thursday, December 6, 2001.

In accordance with Act 1183 of 1999, the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent: This Notice of Intent

will have no impact on the six criteria set out at R.S. 49:972(B).

Dr. H. Jerry Stone  
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Recreational Electronic  
Licensing C Outdoor Press License**

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

Implementation of the proposed rule with existing staff and funding levels. An implementation cost of \$667 will be incurred by the Department of Wildlife and Fisheries to reprogram the licensing system. Local governmental units will not be impacted.

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

The proposed rule is anticipated to reduce annual revenue collections of the Department of Wildlife and Fisheries by \$2,000. Long-term benefits through increased tourism activities from the creation of media products by members of the outdoor press could generate increased revenue collections of state and local governmental units. However, the impacts cannot be quantified at this time.

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

Nonresident members of the outdoor press that qualify for a four-day outdoor press license will benefit from the proposed rule change and realize a cost savings of \$40 to fish in saltwater. They will encounter additional paperwork and increased time requirements necessary to obtain a license through this licensing process. Applicants will have to apply with the Department of Culture, Recreation and Tourism to certify that they meet certain criteria and obtain approval by the Department of Wildlife and Fisheries before an outdoor press license can be issued.

Local businesses that provide services to recreational anglers could benefit in the future from the proposed rule through increased tourism activities resulting from articles and reports produced by members of the outdoor press.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There will be no effect on competition or employment in the public or private sector.

James L. Patton  
Undersecretary  
0110#048

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office