

# Notices of Intent

## NOTICE OF INTENT

### Department of Agriculture and Forestry Livestock Sanitary Board

#### Mycoplasma Mastitis in Dairy Cattle (LAC 7:XXI.333, 335 and 337)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Livestock Sanitary Board, proposes to enact regulations regarding Mycoplasma mastitis in dairy cattle.

Mastitis, particularly in dairy cattle, is a debilitating, occasionally fatal disease, which causes greatly decreased milk production in dairy cattle and may cause damage to the mammary tissue such that milk production in subsequent lactations is significantly decreased. Production loss caused by mastitis is the largest single economic loss to dairy farmers.

These rules comply with and are enabled by R.S. 3:2093, R.S. 3:2094, and R.S. 3:2095.

#### Title 7

### AGRICULTURE AND ANIMALS

#### Part XXI. Diseases of Animals

#### Chapter 3. Cattle

#### §333. Routine Testing of Dairy Herds

A. All dairy herds in Louisiana shall be tested for *Mycoplasma bovis*, ("Mycoplasma"), which causes an incurable form of mastitis in dairy cattle, in accordance with the following provisions.

1. The Louisiana Department of Agriculture and Forestry, ("Department"), shall collect milk samples from a bulk tank sample collected by the milk hauler.

2. The Department shall forward the samples to the Mastitis Lab at the Hill Farm Research Station ("HFRS") in Homer, Louisiana for testing.

3. HFRS shall forward the test report for each dairy herd to the Department and to the owner of the dairy herd.

B. If a sample from a dairy herd tests positive for Mycoplasma mastitis the Department shall collect a second sample directly from the bulk tank holding the dairy herd's milk and send the sample to HFRS for testing. HFRS will send the test result directly to the Department, who will then notify the dairy herd's owner of the test results.

C. All dairy herds shall be tested monthly for 12 months. Any dairy herd that tests negative each month for 12 months will then be tested quarterly so long as each test is negative for Mycoplasma mastitis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093 and R.S. 3:2224.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 30:

#### §335. Restrictions on Dairy Herds Testing Positive for Mycoplasma mastitis

A. If the second sample from a dairy herd tests positive for Mycoplasma mastitis then that dairy herd shall be placed on a "Mycoplasma Restricted List."

1. Individual members, male and female, of any dairy herd placed on the Mycoplasma Restricted List shall be tested to identify infected animals.

2. Any animal found to be infected with Mycoplasma shall be either immediately sold for slaughter or branded with a mark acceptable to the Department to show that the animal can only be sold for slaughter. If any such animal is sold at a livestock auction market it shall be kept in quarantine separate from any other cattle.

3. No animal from a dairy herd that is on the Mycoplasma Restricted List shall be sold or moved for any purpose other than slaughter unless accompanied by a health certificate showing that the animal has had a negative test for Mycoplasma within the 30 days prior to the date of sale or movement.

B. Any dairy herd found to be infected with Mycoplasma shall remain on the Mycoplasma Restricted List until all infected animals are removed and bulk tank samples test negative for six months.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093 and R.S. 3:2224.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 30:

#### §337. Fees

A. The department shall collect from each owner of a dairy herd a fee of no more than \$15 per milk sample to defray the cost of the testing and quarantine programs necessary to prevent, control or eradicate Mycoplasma in dairy cattle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093 and R.S. 3:2224.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 30:

#### Family Impact Statement

The proposed Rules in Part XXI.Chapter 3.*Mycoplasma mastitis* in dairy cattle 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 Dr. Maxwell Lea through the close of business on January 26, 2004 at 5825 Florida Blvd., Baton Rouge, LA 70806. No preamble regarding these rules is necessary.

Bob Odom  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: *Mycoplasma Mastitis in Dairy Cattle***

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

No implementation costs or savings to state or local governmental units are anticipated. The Louisiana Department of Agricultural and Forestry is proposing to establish and collect fees from each owner of a dairy herd of no more than fifteen (\$15.00) dollars per milk sample to defray the cost of the testing and quarantine programs necessary to prevent, control, or eradicate mastitis caused by *Mycoplasma bovis* in dairy cattle. All dairy herds in Louisiana shall be tested monthly for twelve months for mastitis caused by *Mycoplasma bovis*. Any dairy herd that test negative each month for twelve months will then be tested quarterly so long as each test is negative.

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

There is estimated to be a total increase in revenue collections of \$65,700.00 for the first year and \$22,500.00 for the second year and each year thereafter. A fee of no more than fifteen (\$15.00) dollars per milk sample will be collected to defray the cost of the testing and quarantine programs. Any dairy herd that tests negative each month for twelve months will then be tested quarterly so long as each test is negative.

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

There will be an increase in costs to the dairy industry of \$65, 700.00 for the first year and \$22,500.00 for the second year and each year thereafter for the testing of *Mycoplasma bovis* in dairy cattle.

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

The proposed amendments are not anticipated to have a net effect on competition and employment.

Skip Rhorer  
Assistant Commissioner  
0312#104

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 111? The Louisiana School, District, and State Accountability System  
(LAC 28:LXXXIII.303, 311, 1701, 2701, 2702, 2703, 2713, 2715, 2717, 2719, 2721, 3905, 4001, 4003, and 4005)

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 111? The Louisiana School, District, and State Accountability System* (LAC Part Number LXXXIII). Act 478 of the 1997 Regular Legislative

Session called for the development of an Accountability System for the purpose of implementing fundamental changes in classroom teaching by helping schools and communities focus on improved student achievement. The State's Accountability System is an evolving system with different components. The proposed changes more clearly explain and refine existing policy as follows:

- ?? Moves directions that apply to several calculations to the beginning of a section.
- ?? Deletes an unclear example of a calculation.
- ?? Sets a timeline for schools in School Improvement to submit School Improvement Plans.
- ?? Expands the details of the Supplemental Educational Services process.
- ?? Specifies how LEAP Alternate Assessment students are included in NRT calculations.
- ?? Creates required definitions for English language proficiency

**Title 28  
EDUCATION**

**Part LXXXIII. Bulletin 111? The Louisiana School, District, and State Accountability System  
Chapter 3. School Performance Score Component  
§303. Calculating the SPS Component**

All intermediate results and the final result shall be rounded to the nearest tenth.

A. ...

B. Formula for Calculating an SPS [K-6] The SPS for a K-6 school is calculated by multiplying the index values for each indicator by the weight given to that indicator and adding the total scores. In the example, [(66.0 * 60%) + (75.0 * 30%) + (50.0 * 10%)] = 67.1			
Indicator	Index Value	Weight	Indicator Score
CRT	66.0	60%	39.6
NRT	75.0	30%	22.5
Attendance	50.0	10%	5.0
			SPS = 67.1

C. Formula for Calculating an SPS [K-8] The SPS for a K8 school is calculated by multiplying the index values for each indicator by the weight given to that indicator and adding the total scores. In the example, [(71.2 * 60%) + (76.1 * 30%) + (87.7 * 5%) + (90.4 * 5%)] = 74.4			
Indicator	Index Value	Weight	Indicator Score
CRT	71.2	60%	42.7
NRT	76.1	30%	22.8
Attendance	87.7	5%	4.4
Dropout	90.4	5%	4.5
			SPS = 74.4

D. Formula for Calculating an SPS for 9-12 and Combination Schools. Combination schools are schools that contain a 10th and/or 11th grade and that also contain a 4th and/or 8th grade. The SPS for a 9-12 school shall be calculated by multiplying the index values for each indicator by the weight given to the indicator and adding the total scores. The formula is:  SPS = (.60 * CRT Adjusted Achievement Index) + (.30 * NRT Adjusted Achievement Index) + (.05 * Dropout Index)+ (.05 * Attendance Index)  The following is an example of how this calculation shall be made: [(.60 * 66.0) + (.30 * 75.0) + (.05 * 50.0) + (.05 * 87.5)] = 69.0.			
Indicator	Index Value	Weight	Indicator Score
CRT	66.0	60%	39.6

NRT	75.0	30%	22.5
Attendance Index	50.0	5%	2.5
Dropout Index	87.5	5%	4.4
			SPS = 69.0

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:1632 (August 2003), amended LR 30:

**§311. Calculating the CRT Index [9-12]**

A. Calculate the total number of points by multiplying the number of students at each performance level times the points for those respective performance levels, for all content areas tested and summing those products.

B. Divide the sum by the total number of students eligible to be tested times the number of content area tests to get the raw achievement index for the grade.

C. Multiply the raw index by the product of the non-dropout rates from the previous year for that grade and for all the previous grades (see formulas below). This operation means that the grade 10 CRT index shall be multiplied by the grade 9 and grade 10 non-dropout rates plus 0.07, and the grade 11 CRT index shall be multiplied by the grade 9, grade 10 and grade 11 non-dropout rates plus 0.07. This operation shall yield the adjusted achievement index.

D.1. The formula for calculating the CRT adjusted achievement index for a high school is:

$$\text{CRT Adjusted Achievement Index (Gr 10)} = \text{Raw Achievement Index} * (1 - \text{DO Gr 9} + .07) * (1 - \text{DO Gr 10} + .07)$$

$$\text{CRT Adjusted Achievement Index (Gr 11)} = \text{Raw Achievement Index} * (1 - \text{DO Gr 9} + .07) * (1 - \text{DO Gr 10} + .07) * (1 - \text{DO Gr 11} + .07)$$

2. Scores for students repeating the GEE 21 ELA, math, science, and/or social studies tests, shall not be included in SPS calculations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:1633 (August 2003), amended LR 30:

**Chapter 17. Requirements for Schools in School Improvement (SI)**

**§1701. School Improvement 1 Requirements**

- A. A school shall enter SI 1 if:
  - 1. it is not academically unacceptable; and
  - 2. it has met the requirements of the subgroup component;
  - 3. but;
    - a. it has an SPS below 79.9 and did not meet its growth target; or
    - b. it has an SPS of 80.0-99.9 and did not grow at least 0.1 points; or
    - c. beginning in 2004, it has an SPS of 100.0-119.9 and has an SPS decline of more than 2.5 points.
- B. A school shall remain in SI 1 if:
  - 1. it is not academically unacceptable;
  - 2. it has met the requirements of the subgroup component;
  - 3. it has not made its growth target; and

4. its new growth target is less than eight points.

NOTE: If the school meets the conditions of A, B, and C, but has a growth target > 8 points, it moves to SI 2.

**C. School Improvement 1 Requirements**

1. A Revised or New School Improvement Plan. All Louisiana schools were required to have a school improvement plan in place by May of 1998. Within 90 days of identification, those schools placed in School Improvement 1 (SI 1) shall be required to review and either revise or completely rewrite their plan, with the assistance of a district assistance team, according to the guidelines established by the Louisiana Department of Education, and submit it to the Division of School Standards, Accountability, and Assistance.

2. Assurance Pages. Each school in school improvement 1 shall be required to provide assurances that it worked with a District Assistance Team (DAT) to develop its school improvement plan and that the plan has the essential components required in the Louisiana School Improvement Plan Template. Signatures of the DAT team members shall also be required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:1640 (August 2003), amended LR 30:

**Chapter 27. Supplemental Educational Services**

**§2701. Definition of Supplemental Educational Services**

A. Supplemental educational services are defined by the United States Department of Education as "tutoring or extra help provided to students in reading, language arts/English, and math. This extra help can be provided before or after school, on weekends, or in the summer." The No Child Left Behind Act states that these services must be of high quality, research-based, and specifically designed to increase the academic achievement of eligible children.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:1644 (August 2003), LR 30:

**§2702. Supplemental Educational Service Models**

A. Louisiana's recommended model for the provision of effective supplemental educational services has three components:

- 1. Diagnostic Assessment, or an appropriate process, to identify student weaknesses and achievement gaps that will be used to design instruction as well as to measure gains in student achievement for the purposes of provider accountability;
- 2. Targeted Remediation/instruction aimed at addressing the individual skill gaps revealed during the assessment and based upon an individual learning plan; and
- 3. Post Assessment to see if student gains occurred and a plan for either re-teaching skills or identifying new skill sets for instruction.

B. Student instruction will be in the areas of reading, English/Language arts, and/or mathematics in order to help students achieve academic proficiency and should be based on Louisiana's academic content standards and the local district's instructional plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:1644 (August 2003), LR 30:

### **§2703. Supplemental Educational Service Providers**

A. Providers that meet the criteria specified by the Louisiana State Department of Education shall be included on the state-approved supplemental educational services provider list. The State Department of Education will post the list, beginning January 1, 2003. The provider list will be updated on a periodic basis, at least annually, as new providers are identified and meet the qualifications.

B. To be included on the approved list of supplemental educational service providers, applicants shall have met the following criteria:

1. be able to define a process for assessment that results in an individual instructional plan tied to content standards;
2. have a demonstrated level of effectiveness in increasing student academic achievement;
3. be capable of providing supplemental educational services that are of high-quality, research-based, and consistent with the instructional program of the local educational agency and the state's academic content standards;
4. provide instruction that is secular, neutral, and non-ideological;
5. be financially sound, use qualified staff, and possess the organizational capacity necessary to deliver the contracted services; and
6. meet all applicable federal, state, and local health, safety, and civil rights laws;
7. have a program accessible to students attending Title I schools in school improvement.

C. Two levels of service providers have been approved in Louisiana.

1. Full Approval is for those supplemental education service providers who have demonstrated a high level of effectiveness and the ability to provide services immediately.

2. New and Emerging Program Approval is for those supplemental education service providers who met the minimum requirements in each component of the application but lack evidence of successful practice and outcomes. Providers who are approved as a new and emerging program:

- a. can only request to serve a total of up to 200 children during the first year;
- b. would be categorized as a new and emerging provider in district correspondence to parents; and
- c. would be required to participate in specially designed technical assistance modules throughout the year.

D. Both categories of supplemental education service providers must have demonstrated that they have met the minimum requirements in each component of the application as judged by a Reviewers' Panel.

E. All Louisiana applicants will have provisional approval for one year, must be able to demonstrate the capacity for meeting the minimum requirements, and can be removed for cause.

F. Examples of reasons why a provider could be removed from the list within the first year are:

1. the delivery of an SES model that was not as related in the approved application, or

2. the absence of criminal background checks of all employees coming into contact with students, which is a State law.

G. Providers may be nonprofit entities, for-profit entities, and local education agencies, including public and private schools, after-school centers, cooperative educational service agencies, institutions of higher education, and faith-based organizations.

H. Entities that cannot serve as providers include public schools identified for school improvement, restructuring or corrective action; and Local Education Agencies identified for school improvement (although schools within such an LEA that are making adequate yearly progress can be providers).

I. All SES provider applicants must have a "service delivery system" in place at the time of application. In other words, applicants must have a physical location or service infrastructure through which SES services are provided to eligible students.

J. In an effort to make services the most accessible to eligible Title I students, local education agencies are strongly encouraged by the Board of Elementary and Secondary Education to allow SES providers the use of school facilities at no cost to the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:1644 (August 2003), amended LR 30:

### **§2713. SES Provider Responsibilities**

A. Entities that agree to become supplemental services providers must:

1. set specific achievement goals for the student, which must be developed in consultation with the student's parents;
2. provide a description of how the student's progress will be measured and how the student's parents and teachers will be regularly informed of that progress;
3. establish a timetable for improving the student's achievement;
4. agree to terminate services if student progress goals are not met;
5. agree not to disclose to the public the identity of any student eligible for or receiving supplemental educational services without the written permission of the student's parents; and
6. agree that services will be provided consistent with applicable civil rights laws.

B. Providers must also submit to the State Department of Education and the schools of all students served, a final written report that summarizes the progress of all students provided with supplemental services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

### **§2715. State Department of Education Approval and Monitoring of SES Providers**

A. Providers who wish to participate on the Louisiana Department of Education's state-approved SES Provider List must:

1. review and complete the Request for Application process;

2. review this Policies and Procedures document, which provides information about the state process;

3. review the Monitoring Section, which contains the criteria that the department will use to evaluate providers. It also contains information regarding complaint management and the evaluation of providers reported to be under performing or deficient in any way.

B. At least annually, a Reviewer's Panel will review applications received, score the applications and – for applications passing the scoring requirements – make recommendations of SES providers to the State Board of Elementary and Secondary Education.

C. The department reserves the right to approve all or specific subject areas and grades submitted by the provider.

D. The department will notify all applicants as to whether or not they have been approved to participate on the statewide SES Provider List.

E. All required documentation must be completed in order for provider to be added to the list.

F. Upon completion, the department will list the provider in its database of approved providers.

G. If selected for service by parents of eligible students, approved providers may be contacted by schools/districts to provide the approved services at the pricing terms approved at the State level, to the degree that they are within the per-pupil funding cap.

H. Providers wishing to alter the pricing terms to exceed the per-pupil funding cap must request approval from the appropriate State Department of Education staff person with the appropriate justification. The State Department of Education staff will render a decision regarding each request within 15 days.

I. Before providing services through this program, the provider must sign agreements with each student's LEA. Copies of this agreement must be available for inspection when providers are monitored by the department staff.

J. At the conclusion of the evaluation year as determined by the Department of Education, the provider is expected to submit to the Department and all schools of students served, a final written report that summarizes the progress of all students provided with supplemental services. The department will communicate the reporting format to each provider at least annually. This information will be used to help determine if a provider will remain on the state-approved list.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

### **§2717. Appealing State Department of Education SES Decisions**

A. If a provider disagrees and wishes to appeal a decision, a letter documenting the provider's concerns must be sent to the Department.

B. The appeal letter will be reviewed and a final determination will be issued within 15 days.

C. There will be two types of appeals that can be made:

1. Clarifications. If clarification of an application item is needed, department staff will provide a written response regarding the item to the Applicant.

2. Scoring Disputes. In cases where scoring is in dispute, the disputed section will be reviewed and a final determination will be issued by the Superintendent regarding the results of the section in question.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

### **§2719. Remaining an SES Provider**

A. The State Department of Education (SDE) is required to monitor the quality and effectiveness of the services offered by approved providers.

B. The SDE is required to withdraw approval from providers that fail, for two consecutive years, to contribute to increasing the academic proficiency of students to whom they provide services, and to remove providers that fail at any time to meet any of the other eligibility requirements or assurances.

C. A violation of any of the provider responsibilities may constitute grounds for immediate removal from the state-approved list.

D. During the first year of approval, a provider will be considered to have "probationary" status and may be removed for cause.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

### **§2721. Review of Provider Performance**

A. The State Department of Education shall conduct site visits of approved providers at scheduled intervals to determine if providers are in compliance with providing services that increase student achievement, are provided professionally, and in a safe and legally compliant atmosphere.

B. Parent/Guardian and student feedback will be solicited and reviewed to assess whether providers are accomplishing the goals and fulfilling the responsibilities in the manner described in the providers' applications and agreement forms signed with the LEAs and parents. The department will seek to confirm that providers are:

1. communicating with parents/guardians regarding their children's progress;
2. utilizing qualified staff;
3. holding scheduled classes/appointments;
4. following applicable safety, health, and civil rights standards;
5. demonstrating improvement in the students' achievement.

C. The Department will work with local schools/districts to confirm that providers are:

1. fulfilling requests for services to eligible students unless the provider's capacity is reached;
2. providing students with the agreed upon services;
3. completing all aspects noted in the agreement signed between the provider and the LEA;
4. communicating information to schools pertaining to their students' progress in the program;
5. demonstrating improvement in the students' achievement.

D. The department will work with providers to confirm that they are:

1. Providing students with the agreed upon services.
2. Completing all aspects noted in the agreement signed by the provider and the LEA.
3. Adhering to all agreements and responsibilities noted in all documents submitted as part of the RFA process.

E. Parent, student, and school feedback may necessitate the department to request written clarification from the provider. Should such a request of clarification be made, the provider is required to submit the requested information within 10 business days of the date the department made the request.

F. The LDOE *After School and Summer Information and Service Tracking (ASSIST)* System is designed to automate the tracking and reporting of after school and summer programs. The web-based system tracks students, site activities, site staff, student outcomes, student attendance and total contact hours for each program provider. SES Providers will be required to submit data to the LDOE through this mechanism.

G. If the Department of Education determines that one or more complaints about a provider have validity, the department may choose to commence a review of the provider. The complaints may arise from:

1. a school/school district;
2. a parent;
3. a student;
4. a representative of a governmental entity; or
5. a DOE annual review.

H. The department will acknowledge all reports received and will communicate the resolution to the source of the report. The department will require of any party bringing a complaint to explain and/or provide copies of all documents showing prior good-faith attempts to resolve the issue (except in cases of hazard, endangerment, etc.)

I. The department will, based on the nature of the complaint or deficient performance, first determine if a temporary suspension is appropriate. After review of the complaint, the department will then determine whether the state standards to participate on the List are being upheld. The provider shall be notified if it will continue to participate on the State-Approved List or be prohibited from continuing to provide services.

J. In the event that provider is suspended or terminated from the State-Approved List, the department will notify schools/districts in the provider's previously approved service area(s) of the provider's change in status.

K. Should a parent/guardian, student, or provider bring to the attention of the department an issue of complaint or deficient performance regarding a school or district in relation to SES implementation, the department will bring the issue to the attention of the appropriate personnel in the school/district.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

**Chapter 39. Inclusion of Students with Disabilities §3905. Inclusion of Alternate Assessment Results**

A. LAA and LAA-B test scores shall be included in the 2002-2003 Baseline SPS, and LAA test scores shall be included in Growth and Baseline SPS calculations for all subsequent years.

B. LAA scores shall be converted according to the following method.

1. The 4 State-Specified-Skills scores within each subject area shall be averaged and those subject area averages (ELA, math, science, and social studies) shall be converted to scores using the following table.

a. Students enrolled in the Student Information System (SIS) in CRT grades (4, 8 10, 11) shall receive the CRT Level labels and the corresponding Index Points.

b. For students enrolled in NRT grades (3, 5, 6, 7, 9), the 4 subject area averages shall be converted to the 4 corresponding Index Scores, and those Index Scores averaged to create student level NRT indices.

LAA Score	Level	Index Points
0.00-0.49	Unsatisfactory	0
0.50-2.49	Approaching Basic	50
2.50-3.49	Basic	100
3.50-4.49	Mastery	150
4.50-5.00	Advanced	200

2. Students taking LAA who do not meet the alternate assessment participation criteria shall receive a score of zero in SPS component calculations and a score of non-proficient in subgroup component calculations.

3. Students taking LAA-B shall receive a score of zero in the Baseline SPS and a score of non-proficient in subgroup component calculations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

**Chapter 40. Definitions Related to English Proficiency §4001. Proficient in English**

A. To be considered English proficient a student who is limited English proficient must score for:

1. Two Years

a. at either the proficient level according to the state's high stakes testing policy on LEAP 21 assessments, and/or

b. at or above the 40th percentile composite score on IOWA, and

2. One Year

a. at the Full English Proficiency Level V on the English Language Development Assessment in listening, speaking, reading, writing, and comprehension.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

**§4003. Making Progress in Learning English**

A. Making progress in learning English will be demonstrated by a student who moves to a higher level of English proficiency as indicated by the annual assessment of English language proficiency using the English Language Development Assessment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1644 (August 2003), LR 30:

**§4005. English Language Proficiency Descriptors**

- A. English Language Proficiency Labels are defined as:
  - 1. Level I-Beginning Proficiency indicates that the student who is limited English proficient is:
    - a. beginning to understand short utterances;
    - b. beginning to use gestures and simple words to communicate;
    - c. beginning to understand simple printed material
    - d. beginning to develop communicative writing skills.
  - 2. Level II-Lower Intermediate Proficiency indicates that the student who is limited English can:
    - a. understand simple statements, directions, and questions;
    - b. use appropriate strategies to initiate and respond to simple conversation;
    - c. understand the general message of basic reading passages;
    - d. compose short informative passages on familiar topics.
  - 3. Level III-Upper Intermediate Proficiency indicates that the student who is limited English proficient can:
    - a. Level III-Upper Intermediate Proficiency indicates that the student who is limited English proficient can:
      - a. understand standard speech delivered in most settings;
      - b. communicate orally with some hesitation;
      - c. understand descriptive material within familiar contexts and some complex narratives;
      - d. Write simple texts and short reports.
  - 4. Level IV-Advanced Proficiency indicates that the student who is limited English proficient can:
    - a. identify the main ideas and relevant details of discussions or presentations on a wide range of topics;
    - b. actively engage in most communicative situations familiar or unfamiliar;
    - c. understand the context of most text in academic areas with support;
    - d. write multi-paragraph essays, journal entries, personal/business, and creative texts in an organized fashion with some errors.
  - 5. Level V-Full English Proficiency indicates that the student who is limited English proficient can:
    - a. understand and identify the main ideas and relevant details of extended discussion or presentations on familiar and unfamiliar topics
    - b. Is fluent and accurate in language production
    - c. Use reading strategies the same as their native English-speaking peers to derive meaning from a wide range of both social and academic texts
    - d. Write fluently using language structures, technical vocabulary, and appropriate writing conventions with some circumlocutions

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

Interested persons may submit comments until 4:30 p.m., February 8, 2004, to Nina Ford, State Board of Elementary

and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Bulletin 111? The Louisiana School,  
District, and State Accountability System**

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

There are no estimated implementation costs (savings) to state governmental units. The proposed changes clarify existing language, include a timeframe for school improvement tasks, add details to the Supplemental Educational Services process, more precisely define the inclusion of LEAP Alternate Assessment scores in School Performance Score calculations, and define English proficiency.
- 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 will be no estimated costs and/or economic benefits to persons or non-governmental groups directly affected.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
 

There will be no effect on competition and employment.

Marlyn J. Langley  
Deputy Superintendent  
Management and Finance  
0312#023

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT  
Board of Elementary and Secondary Education**

Bulletin 112? Louisiana English Language  
Development Standards  
(LAC 28:Part LXXXV.Chapters 1-7)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the State Board of Elementary and Secondary Education approved for advertisement the adoption of *Bulletin 112? Louisiana English Language Development Standards*, which contains content standards in each of the four domains of language, listening, speaking, reading, and writing, and establishes five levels of English language proficiency within each domain. Implementation of these standards and benchmarks will be used to guide curriculum development for limited English proficient students. The *Louisiana English Language Development Standards* are aligned to the State's *English Language Arts Standards* and linked to the State's *Math, Social Studies, Science, and Foreign Language Standards* as required by Title III of the Elementary and Secondary Education Act, No Child Left Behind of 2001.

**Title 28**  
**EDUCATION**

**Part LXXXV. Louisiana English Language**  
**Development Standards**

**Chapter 1. Standard One**

**§101. General Provisions**

A. Standard One. Students demonstrate competence in listening as a tool for learning and comprehension.

B. Focus. As students who are limited English proficient move through the 5 levels of English listening proficiency from phonemic awareness to understanding short utterances and simple directions to understanding standard speech both in social and academic settings to understanding the main ideas and relevant details of extended discussions or presentations, these students will develop the English listening skills that will enable them to fully access the general education curriculum and achieve at the same academic levels as their native English-speaking peers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 30:

**§103. Listening Benchmarks and Proficiency Levels**

A. If cognitively appropriate, in grades K-12 what students who are limited English proficient should know and are able to do includes the following.

1. ELD-1-L1? Students demonstrate growth in comprehension of oral language and

begin to access the curriculum in core subject areas (ELA -4).

a. Listening Proficiency Level I. Beginner: Students at this level are beginning to understand short utterances. They occasionally understand isolated words, such as cognates, borrowed words, or high frequency social conventions. The student is able to do the following:

- i. detect non-verbal and verbal cues (L 1.1);
- ii. focus attention selectively (L 1.2);
- iii. demonstrate comprehension through non-verbal responses (L 1.3);

vi. respond correctly to high frequency social convention (L 1.4);

v. respond to simple directions or instructions (L 1.5);

vi. listen to and imitate others use of language (L 1.6);

vii. comprehend a few words, phrases with basic English grammatical forms (L 1.7).

2. ELD-1-L2? Students comprehend simple statements, directions, questions, and continue to access the curriculum in core subject areas (ELA -4).

a. Listening Proficiency Level II-Lower Intermediate. Students at this level understand simple statements, directions, and questions. They rely on a speaker's use of repetition, gestures, and other non-verbal cues to sustain communication. The student is able to do the following:

i. begin to discriminate the sounds and intonation patterns of the English language (L2.1);

ii. understand basic structures, expressions, and vocabulary such as school environment and basic personal information (L 2.2);

iii. comprehend key words, phrases and/or sentences with basic English grammatical forms (L2.3);

iv. follow multi-step oral directives to complete task (L 2.4);

v. interpret speaker's message, purpose, and perspectives (L 2.5);

vi. assess how language choice reflects the tone of the message (L 2.6).

3. ELD-1-L3? Students comprehend simple narratives and structures in short interactions with peers and adults, and continue to access the curriculum in core subject areas (ELA -5).

a. Proficiency Level III-Upper Intermediate. Students at this level understand standard speech delivered in most settings with some repetition and rephrasing. They understand the main idea(s) and relevant details of extended discussions or presentations. They draw on a wide range of language forms, vocabulary, idioms, and structures. Students at this level are beginning to detect affective undertones, and they understand inferences in spoken language. The student is able to do the following:

i. demonstrate proficiency of the listening process such as focusing attention, interpreting and responding to topics in everyday situations (L 3.1);

ii. listen attentively to stories/information and identify main idea, key details and concepts using both verbal and non-verbal cues of the speaker (L 3.2);

iii. identify a variety of media messages and give some supporting details (L 3.3).

4. ELD-1-L4? Students understand speech in most authentic situations with some repetition and rewording in both social and core academic setting approaching grade level listening comprehension (ELA 6).

a. Listening Proficiency Level IV-Advanced. Students at this level understand most standard speech. They identify main ideas and relevant details of discussions or presentations on a wide range of topics, including unfamiliar ones. Students infer meaning from stress, intonation, pace, and rhythm. The student is able to do the following:

i. listen to proficient, fluent models of oral reading, including selections from classic and contemporary works (L 4.1);

ii. use effective listening to provide appropriate feedback in variety of situations such as conversations, discussions, and informative, persuasive, or artistic presentations (L 4.2);

iii. demonstrate understanding of figurative language and idiomatic expressions by responding to and using such expressions appropriately (L 4.3).

5. ELD-1-L5. Students master comprehension of standard speech at grade level in both social and core academic settings (ELA 7).

a. Listening Proficiency Level V-Full English Proficiency. Students at this level understand and identify the main ideas and relevant details of extended discussions or presentations on a wide range of familiar and unfamiliar topics in a number of modalities. Students apply linguistic skills and knowledge, including vocabulary, idioms, and complex grammatical structures in the learning of academic content. They comprehend subtle and nuance details of meaning. The student is able to do the following:

- i. differentiate between the speaker's opinion and verifiable fact (L 5.1);
- ii. demonstrate comprehension of and give an appropriate listener response to ideas in a persuasive speech, oral interpretation of literary selections, interviews in a variety of real-life situations, and in educational and scientific presentations (L 5.2);
- iii. identify, analyze and imitate a speaker's persuasive techniques such as selling, convincing, and using propaganda (L 5.3).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 30:

### Chapter 3. Standard Two

#### §301. General Provisions

A. Standard Two. Students demonstrate competence in speaking for effective communication in social and academic contexts.

B. Focus. As students who are limited English proficient move through the 5 levels of English speaking proficiency from using simple words or phrases to initiating and responding to simple conversation to producing complex sentence structures to producing a high degree of fluency and accuracy when speaking to producing fluent and accurate language production in both social and academic situations, these students will develop English speaking skills that will enable them to fully access the general education curriculum and achieve at the same academic levels as their native English-speaking peers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 30:

#### §303. Speaking Benchmarks and Proficiency Levels

A. If cognitively appropriate, in grades K-12 what students who are limited English proficient should know and are able to do includes the following.

1. ELD-2-S1? Students will show growth in oral communication using high frequency words and phrases to begin to access the curriculum in core subject areas (ELA 4).

a. Speaking Proficiency Level I-Beginner. Students at this level use gestures, simple words or phrases when given sufficient context or visual cues to respond to or request information. The student is able to do the following:

- i. communicate with gestures and non-verbal modalities (S 1.1);
- ii. communicate using common social greetings and simple repetitive phrases (S 2.2);
- iii. answer simple questions with one and two-word responses (S 2.3);
- iv. communicate basic needs, wants, and feelings (S 2.4);
- v. generate a few words, phrases with basic English grammatical form and phonemic accuracy (S 2.5).

2. ELD-2-S2? Students use appropriate strategies to initiate and respond to simple statements and questions to continue to access the curriculum in core subject areas (ELA 4).

a. Speaking Proficiency Level II-Lower Intermediate. Students at this level use appropriate strategies to initiate and respond to simple conversation with hesitation, relying on known vocabulary, familiar structures

and utterances and may have to repeat themselves to be understood. The student is able to do the following:

- i. name people, places, objects, events and basic concepts such as days of the week, food, occupations and time (S 2.1);
- ii. restate oral directions or instructions (S 2.2);
- iii. ask and give information such as directions, address, name, and age (S 2.3);
- iv. ask and answer questions using simple phrases or sentences (S 2.4);
- v. respond to factual questions about texts read aloud (S 2.5);
- vi. narrate basic sequence of events (S 2.6).

3. ELD-2-S3? Students initiate and sustain a simple conversation in social and core academic settings (ELA 4,7).

a. Speaking Proficiency Level III-Upper Intermediate. Students at this level communicate orally, often with hesitation, when using low-frequency vocabulary. They begin to produce complex sentence structures, use verb tenses correctly, and discuss academic topics. The student is able to do the following;

- i. ask and answer questions to gather and provide information in English (S 3.1);
- ii. converse on simple topics begin to use most conventions of the oral English language including intonation, syntax, and grammar. (S 3.2);
- iii. narrate simple sequence of events (S 3.3);
- iv. retell and paraphrase familiar stories with simple sentences (S 3.4);
- v. ask and answer instructional questions about simple written texts with simple words and phrases (S 3.5);
- vi. give directions/procedures (S 3.6);
- vii. prepare and deliver short oral presentations (S 3.7).

4. ELD-2-S4? Students approaching grade level communication with confidence in most situations with support in academic areas (ELA 4,7).

a. Speaking Proficiency Level IV-Advanced. Students at this level engage in most communicative situations with some errors, demonstrating competence in oral language. They have a high degree of fluency and accuracy when speaking in social settings, although they may encounter difficulty in academic language production. The student is able to do the following:

- i. recognize appropriate ways of speaking that varies based on purpose, audience, and subject matter (S 4.1);
- ii. respond to factual questions about texts read aloud (S 4.2);
- iii. communicate effectively in conversations and group discussions while problem solving and planning (S 4.3);
- iv. use the conventions of oral language effectively including intonation, syntax, and grammar (S 4.6);
- v. narrate complex sequence of events (S 4.5);
- vi. use a variety of idiomatic expressions and figurative language appropriately (S 4.6);
- vii. persuade, argue or reason to support spoken ideas with evidence, elaborations, and examples (S 4.7).

5. ELD-2-S5? Students on grade level engage in social and academic communication with mastery of complex language structures in varied situations (ELA 4,7).

a. Speaking Proficiency Level V-Full English Proficiency. Students at this level are fluent and accurate in language production with some hesitation regarding technical content area vocabulary. The student is able to do the following:

- i. adapt spoken language such as word choice, diction, and usage to the audience, purpose, and occasion (S 5.1);
- ii. use effective, rate, volume, pitch, and tone for the audience and setting (S 5.2);
- iii. actively participate and initiate more extended social conversations or discussions with peers and adults on familiar or unfamiliar topics by making relevant contributions, asking and answering questions, restating and soliciting information (S 5.3);
- iv. demonstrate effective communication skills that reflect such demands as interviewing, reporting, requesting, and providing information (S 5.4);
- v. prepare and deliver extended oral presentations that follow a process of organization using a variety of sources for a research project (S 5.5);
- vi. explain abstract tasks an/or concepts with appropriate sequencing taking into account the listener's perspective (S 5.6);
- vii. negotiate with confidence using complex language structures for expression of personal view of abstract ideas (S 5.7).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 30:

### **Chapter 5. Standard Three**

#### **§501. General Provisions**

A. Standard Three. Students read, comprehend, analyze, and respond to a range of reading materials using various strategies for different purposes.

B. Focus. Students who are limited English proficient enter school with a wide range of literacy skills and abilities in their native language. As students move through the 5 levels of English reading proficiency from letter recognition to simple language structures and syntax to complex narratives to comprehending the context of most text to using the same reading strategies to derive meaning from a wide range of social and academic texts, these students will develop the English reading skills that will enable them to fully access the general education curriculum and achieve at the same academic levels as their native English-speaking peers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 30:

#### **§503. Reading Benchmarks and Proficiency Levels**

A. If cognitively appropriate, in grades K-12 what students who are limited English proficient should know and are able to do includes the following.

1. ELD-3-R1? Students develop initial print awareness and begin to access the curriculum in core subject areas (ELA 1, 5, 6, 7).

a. Reading Proficiency Level I-Beginner. Students at this level understand simple print material. Students identify high-frequency words and symbols when strongly supported by context. The student is able to do the following:

- i. hold print material in the correct position (R 1.1);
- ii. recognize common signs and logos (R 1.2);
- iii. distinguish individual printed letters from words and sentences (R 1.3);
- iv. identify words from left to right and top to bottom on the printed page (R 1.4);
- v. recognize the order of the alphabet and the form of the letters, and Arabic numbers (R.3.5);
- vi. know the difference between capital and lowercase letters (R 1.6);
- vii. recognize phonetic pronunciation of the letters of the alphabet (R 1.7);
- viii. match oral words to printed words or graphics (R. 1.8);
- ix. read simple one syllable and high frequency words when strongly supported by context (R 3.9);
- x. use emerging reading skills to make meaning from print (R 1.10).

2. ELD-3-R2. Students understand simple material form academic or social purposes to continue to access the curriculum in core subject areas (ELA 1, 5, 6, 7).

a. Reading Proficiency Level II-Lower Intermediate. Students at this level understand the general message of basic reading passages that contain simple language structures and syntax. Students begin to use reading strategies to guess the meaning of unfamiliar words through the use of pictures, diagrams, cognates, and context. The student should be able to do the following:

- i. use prior knowledge to interpret pictures (R 2.1);
- ii. use pictures to make predictions about the text (R 2.2);
- iii. recognize sound/symbol relationships (R 2.3);
- iv. read common word families and simple sentences (R 2.4);
- v. read compound words and contractions (R 2.5);
- vi. use cognates for academic or social comprehension (R 2.6);
- vii. recognize basic word order rules in phrases, simple sentences, or simple text (R 2.7).

3. ELD-3-R3? Students understand a more complex narrative and descriptive materials within a familiar context to continue to access the curriculum in core subject areas (ELA 1, 5, 6, 7).

a. Reading Proficiency Level III-Upper Intermediate. Students at this level understand descriptive materials within familiar contexts and some complex narratives. The student uses visual and contextual cues to derive meaning from text that contains unfamiliar words and expressions. There may be a disparity between reading fluency and comprehension. The student should be able to do the following:

- i. demonstrate knowledge of taught contractions (R 3.1);
- ii. recognize common abbreviations (R 3.2);
- iii. use capitalization and punctuation to comprehend (R 3.3);

iv. locate the meanings, pronunciations, and derivations of unfamiliar words using dictionaries, glossaries, and other sources (R. 3.4);

v. recognize and use knowledge of spelling patterns when reading (R 3.5);

vi. recognize the format of poetry versus prose (R 3.6);

vii. identify the main idea (R 3.7).

4. ELD-3-R4? Students, approaching grade level, understand the content of most text with support in academic content areas (ELA 1, 5, 6, 7).

a. Reading Proficiency Level IV-Advanced. Students at this level comprehend the context of most text in the academic areas with some degree of support. They read many literary genres for pleasure and have a high degree of success reading factual but non-technical prose. The student should be able to do the following:

i. interact independently with a variety of text (R 4.1);

ii. recognize most common English morphemes in phrases and sentences (R 4.2);

iii. apply knowledge of word relationships, such as root and affixes to derive meaning from literature and text in content area (R 4.3);

vi. rely on context clues to determine meaning (R 4.4);

v. use reference materials including the glossary, dictionary, index, thesaurus, almanac, atlas, and multi-media resources (R 4.5);

vi. distinguish between main idea and supporting details (R 4.6).

5. ELD-3-R5? Students understand a wide range of both social and academic texts available to native English speakers at grade level (ELA 1,5, 6, 7).

a. Reading Proficiency Level V-Full English Proficiency. Students at this level use the same reading strategies as their native English-speaking peers to derive meaning from a wide range of both social and academic texts. The student should be able to do the following:

i. create artwork or a written response that shows comprehension of a selection (R 5.1);

ii. comprehend material from a variety of genres (R 5.2);

iii. draw correlations from literature and links to real life situations (R 5.3);

iv. name and analyze story plot, setting, and conflict (R 5.4);

v. analyze, evaluate, and draw conclusions by providing evidence presented in the text (R 5.5);

vi. organize, evaluate, and condense information for use in a presentation or writing (R 5.6).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 30:

## Chapter 7. Standard Four

### §701. General Provisions

A. Standard Four. Students write proficiently in English for various purposes and audiences.

B. Focus. Students who are limited English proficient are expected to perform on an academic level commensurate with their English-speaking peers. As students move through

the five levels of English writing proficiency from letter formation to composing short informative passages to short reports to multi-paragraph essays to writing fluently using language structures and writing conventions, these students will develop the writing skills that will enable them to fully access the general education curriculum and achieve at the same academic levels as their native English speaking-speaking peers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 30:

### §703. Writing Benchmarks and Proficiency Levels

A. If cognitively appropriate, in grades K-12 what students who are limited English proficient should know and are able to do includes the following.

1. ELD-4-W1? Students demonstrate growth in communicative writing skills to begin to access the curriculum in core subject areas (ELA 2, 3).

a. Writing Proficiency Level I-Beginner. Students at this level are beginning to develop communicative writing skills including the formation of individual letters and transcription of familiar words or phrases. Instruction for these students will target alphabetic awareness and basic writing techniques relative to phonological and morphological areas. The student should be able to do the following:

i. draw or copy from a mode (W 1.1);

ii. print upper and lowercase letters of the alphabet (W 1.2);

iii. print legibly using left to right, top to bottom directionality (W 1.3);

iv. write his/her own name and other important words (W 1.4);

v. print legibly using correct spacing between letters and words and sentences (W 1.5);

vi. copy words posted and commonly used in the classroom (W 1.6);

vii. label key parts of common objects (W 1.7);

viii. capitalize first word of a sentence, proper nouns, and initials (W 1.8).

2. ELD-4-W2? Students compose short informative passages on familiar topics and continue to access the curriculum in core subject areas (ELA 2, 3).

a. Writing Proficiency Level II-Lower Intermediate. Students at this level describe basic personal needs and compose short informative passages on very familiar topics. Students use prior knowledge to build understanding of essential grammatical concepts and constructs such as syntax and semantics. The student should be able to do the following:

i. arrange words in alphabetical order (W 2.1);

ii. use phonetic spelling (W 2.2);

iii. produce several simple sentences on a topic (W 2.3);

iv. use correct punctuation at the end of a sentence (W 2.4);

v. write labels, notes, captions for illustrations, possessions, charts, and centers (W 2.5);

vi. fill out simple forms with personal information with support (W 2.6);

vii. begin to demonstrate knowledge of paragraph structure (W 2.7).

3. ELD-4-W3? Students write simple texts, correspondence, and short reports using high frequency language and continue to access the curriculum in core subject areas (ELA 2, 3).

a. Writing Proficiency Level III-Upper Intermediate. Students at this level write simple texts, personal/business letters, and short reports using high frequency language. Students recognize and correct obvious grammatical and syntactical errors. Students write various sentence patterns/structures. The student should be able to do the following:

- i. begin to demonstrate conventional spelling (W 3.1);
- ii. identify complete and incomplete sentences in written English (W 3.2);
- iii. use basic grammatical constructions in simple sentences (W 3.3);
- iv. write multiple sentences about a topic (W 3.4);
- v. write with more proficient spelling of inflectional endings, including plurals, past tense, and words that drop the final e when such endings as ing, ed, or able are added, correctly use apostrophes in contractions and possessives. (W 3.5);
- vi. write friendly notes and letters (W 3.6);
- vii. edit writing for punctuation, capitalization and spelling (W 3.7).

4. ELD-4-W4? Students, approaching grade level, write multi-paragraph essays, journal entries, personal and business letters, and creative texts in an organized fashion both in social and core academic subject areas (ELA 2, 3).

a. Writing Proficiency Level IV-Advanced. Students at this level write multi-paragraphs essays, journal entries, personal/business letters, and creative texts in an organized fashion with some errors. Students refine English writing skills leading into more mature, stylistic, and expressive formats. The student should be able to do the following:

- i. use planning strategies before writing ( e.g.: process writing, graphic organizers) (W 4.1);
- ii. use resources to find correct spellings, synonyms, and replacement words (W 4.2);
- iii. use correct spelling of frequently used words in writing and words that contain affixes, contractions, compounds, common homophones, and words appropriate to the topic (W 4.3);
- iv. write the accurate spelling of root words, affixes, and inflections (W 4.4);
- v. spell derivatives correctly by applying the spelling of bases and affixes (W 4.5);
- vi. write a three-paragraph essay about a topic (W 4.6);
- vii. edit and revise writing for grammar and content (W 4.7);
- viii. begin writing in a variety of genres (W 4.8).

5. ELD-4-R5? Students, at grade level, produce fluent academic writing using language structures, technical vocabulary, and appropriate writing conventions to access the curriculum in core subject areas (ELA 2, 3, 7).

a. Writing Proficiency Level V-Full English Proficiency. Students at this level write fluently using language structures, technical vocabulary, and appropriate writing conventions with some circumlocutions. Students continue to expand written vocabulary to express themselves in various genres. The student should be able to do the following:

- i. organize and record expository information on pictures, lists, charts, and tables for literature and content area (W 5.1);
- ii. write to inform such as to explain, describe, report, narrate and persuade (W 5.2);
- iii. use figurative language correctly (W 5.3);
- iv. use analogies, quotations and facts to support a thesis (W 5.4);
- v. proofread writing for appropriateness of organization, content, style, and conventions (W 5.5);
- vi. apply rubric criteria to evaluate writing (W 5.6).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 30:

Interested persons may submit comments until 4:30 p.m., February 8, 2004, to Nina Ford, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Bulletin 112? Louisiana English  
Language Development Standards**

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

Title III Section 3113(b)(2) of the Elementary and Secondary School Act, No Child Left Behind, 2001 requires that the state establish English language proficiency standards for students who are limited English proficient in grades K-12. It is estimated that approximately \$10,000 will be required to print and mail copies of the Bulletin to each school within the state as well as other interested groups.

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

There will be no effect on revenue collections by state or local governmental units.

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

There will be no estimated costs and/or economic benefits to directly affect persons or non-governmental groups.

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

There will be no effect on competition and employment.

Marlyn J. Langley  
Superintendent  
Management and Finance  
0312#016

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Board of Elementary and Secondary Education

Bulletin 741? Louisiana Handbook for School Administrators? Career and Technical Course Offerings  
(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 revisions to *Bulletin 741? The Louisiana Handbook for School Administrators*, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). The proposed changes of the Career and Technical course offerings will revise current course offerings, bringing them in-line with current industry standards. The action is being proposed to up-date Career and Technical course offerings. In updating these course offerings our Career and Technical program of studies will be more aligned with national standards.

### 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

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 in LR 28:269 (February 2002), LR 28:272 (February 2002), LR 28:991 (May 2002), LR 28:1187 (June 2002), LR 30:

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#### Agriculture Education

**2.105.25** Agriculture Education course offerings shall be as follows.

Course Title	Recommended Grade Level	Unit(s)
Exploratory Agriscience	7-8	--
Agribusiness	11-12	1/2
Agriculture Education Elective (1/2 Credit)	9-12	1/2
Agriculture Education Elective (1 Credit)	9-12	1
Agriscience I	9-12	1
Agriscience II	10-12	1
Agriscience III	11-12	1
Agriscience IV	12	1
Agriscience III Laboratory	11-12	1
Agriscience IV Laboratory	12	1
Agriscience-Construction	11-12	1/2
Agriscience Elective	9-12	1
Agriscience-Entrepreneurship	11-12	1/2
Agriscience Internship I	11-12	2
Agriscience Internship II	12	2
Agriscience-Leadership Development	11-12	1/2
Agriscience Welding Systems I	11-12	1/2
Agriscience Welding Systems II	11-12	1/2
Animal Systems	11-12	1/2
Aquaculture	11-12	1/2
Biotechnology	11-12	1
Care and Management of Small Animals I	11-12	1/2

Care and Management of Small Animals II	12	1/2
Cooperative Agriscience Education I	11-12	3
Cooperative Agriscience Education II	12	3
Crop Systems	11-12	1/2
Environmental Application	11-12	1/2
Equine Science	11-12	1/2
Food and Fiber	11-12	1/2
Forestry	11-12	1/2
Horticulture I	11-12	1/2
Horticulture II	12	1/2
Precision Agriculture	11-12	1
Small Engines (Applications)	11-12	1/2
Industry Based Certifications		
ABC Carpentry in Agriscience (1 Credit)	10-12	1
ABC Carpentry in Agriscience (2 Credits)	10-12	2
ABC Carpentry in Agriscience (3 Credits)	10-12	3
ABC Electricity in Agriscience (1 Credit)	10-12	1
ABC Electricity in Agriscience (2 Credits)	10-12	2
ABC Electricity in Agriscience (3 Credits)	10-12	3
ABC Pipefitting in Agriscience (1 Credit)	10-12	1
ABC Pipefitting in Agriscience (2 Credits)	10-12	2
ABC Pipefitting in Agriscience (3 Credits)	10-12	3
ABC Welding in Agriscience (1 Credit)	10-12	1
ABC Welding in Agriscience (2 Credits)	10-12	2
ABC Welding in Agriscience (3 Credits)	10-12	3

Agriscience III and IV Laboratory, Agriscience Internship I and II, and Cooperative Agriscience Education I and II are offered only to students who are also enrolled in Agriscience III or Agriscience IV for two consecutive semester courses during the year.

Required prerequisites are outlined in the Agriculture Education section of *Career and Technical Education Course Descriptions & Programs of Study*. All courses shall be taught in sequence. Level I courses are prerequisite to Level II courses. Agriscience I is prerequisite to Animal Systems, Aquaculture, Crop Systems, Equine Science, Food and Fiber, Forestry, and Agriscience-Welding Systems I. Agriscience I and Biology I are prerequisites to Biotechnology. Agriscience I and/or enrolled simultaneously in Biology I are prerequisites to Environmental Application. Agriscience I or Biology I is prerequisite to Horticulture I. Agriscience II is prerequisite to Agriscience-Construction and Precision Agriculture. Agribusiness is prerequisite to Agriscience-Entrepreneurship.

Semester courses are designed to be offered in the place of, or in addition to Agriscience III and/or IV.

Safety must be taught in all courses. Refer to *Bulletin 1674* for safety information.

#### Business Education

**2.105.26** Business Education course offerings shall be as follows.

Course Title	Recommended Grade Level	Unit(s)
Accounting I	10-12	1
Accounting II	11-12	1
Administrative Support Occupations	11-12	1
Business Communications	10-12	1
Business Computer Applications	10-12	1
Business Education Elective I (1/2 Credit)	9-12	1/2
Business Education Elective I (1 Credit)	9-12	1
Business Education Elective II (1/2 Credit)	9-12	1/2
Business Education Elective II (1 Credit)	9-12	1
Business English	12	1
Business Internship I	11-12	2
Business Internship II	12	2
Business Law	11-12	1/2
Computer Multimedia Presentations	11-12	1/2
Cooperative Office Education (COE)	12	3
Desktop Publishing	11-12	1

Computer Technology Literacy	9-12	1
Economics	11-12	1
Entrepreneurship	11-12	1
Financial Math	9-12	1
Introduction to Business Computer Applications	9-12	1
Keyboarding	9-12	1/2
Keyboarding Applications	9-12	1/2
Lodging Management I (1 Credit)	10-12	1
Lodging Management I (2 Credits)	10-12	2
Lodging Management I (3 Credits)	10-12	3
Lodging Management II (1 Credit)	11-12	1
Lodging Management II (2 Credits)	11-12	2
Lodging Management II (3 Credits)	11-12	3
Principles of Business	9-12	1
Web Design	10-12	1/2
Word Processing	11-12	1

Keyboarding and Keyboarding Applications or Introduction to Business Computer Applications shall be a prerequisite to Administrative Support Occupations, Business Computer Applications, Business Communications, Business English, Computer Multimedia Presentations, Telecommunications and Word Processing. Word Processing or Business Computer Applications is prerequisite to Desktop Publishing. Level I courses shall be prerequisite to Level II courses.

Cooperative Office Education shall be limited to seniors. The students shall have successfully completed Keyboarding/Keyboarding Applications or Introduction to Business Computer Applications and one of the following: ASO or Word Processing or BCA, and have maintained an overall "C" average. The students' attendance records should also be considered. Other prerequisites may be required by the individual school system.

English I, II, and III are prerequisites to Business English. BCA or Word Processing is prerequisite to Computer Multimedia Presentations. A basic computer course shall be prerequisite to Telecommunications. To enroll in Web Design, the student must have completed one or more of the following: Desktop Publishing, Business Computer Applications, Computer Science, Computer Multimedia or Telecommunications.

### General Career and Technical Education

**2.105.27** General Career and Technical Education course offerings shall be as follows.

Course Title	Recommended Grade Level	Unit(s)
Career and Technical Education Internship I	11-12	2
Career and Technical Education Internship II	12	2
General Cooperative Education I	11-12	3
General Cooperative Education II	12	3
Education for Careers	9-12	1/2
Education for Careers	9-12	1
Teacher Cadet I	11-12	1
Teacher Cadet II	12	1

General Cooperative Education courses shall be limited to students who meet the specific prerequisites and requirements of one of the specialized cooperative education programs.

\* \* \*

### Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted,

amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule effect the stability of the family? No.

2. Will the proposed Rule effect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule effect the functioning of the family? No.

4. Will the proposed Rule effect family earnings and family budget? No.

5. Will the proposed Rule effect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed rule? Yes.

Interested persons may submit comments until 4:30 p.m., February 8, 2004, to Nina Ford, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody  
Executive Director

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: **Bulletin 741? Louisiana Handbook for School Administrators? Career and Technical Course Offerings**

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

The proposed revision will change Career and Technical course offerings. It is estimated that there will be no additional costs to state governmental units. It is unknown at this time if there are any costs to local governmental units. The LEA may choose to offer new courses to students that may require purchasing items such as new textbooks, instructional materials or equipment. Each LEA will make their determination.

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

There will be no effect on revenue collections by state/local governmental units.

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

The proposed changes are being requested to bring current Career and Technical course offerings in-line with industry demands. In aligning our course offerings with national standards, it will strengthen the link between secondary and postsecondary institutions. It will assist Career and Technical students in attaining vocational skills for the workplace.

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

Employers could have a larger, trained qualified pool from which to select employees.

Marlyn Langley  
Deputy Superintendent  
Management and Finance  
0312#018

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Board of Elementary and Secondary Education

Bulletin 741? Louisiana Handbook for School Administrators? Curricular Design for Exceptional Students (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 revisions to *Bulletin 741? The Louisiana Handbook for School Administrators*, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). These revisions to Bulletin 741 repeal the Rules that address alternate assessment and curricular design for students with disabilities in special schools. The Rules are being repealed in order to be consistent with Rules governing students with disabilities not attending special schools.

#### 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

AUTHORITY NOTE: Promulgated in accordance with RS. 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 LR 28:269, 272, (February 2002), LR 28:991 (May 2002), LR 28:1187 (June 2002), LR 30:

\* \* \*

##### Assessment

3.087.11 Repealed.

##### Curricular Design for Exceptional Students

3.087.15 Repealed.

\* \* \*

##### Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule effect the stability of the family? No.
2. Will the proposed Rule effect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule effect the functioning of the family? No.
4. Will the proposed Rule effect family earnings and family budget? No.
5. Will the proposed Rule effect the behavior and personal responsibility of children? Lacks sufficient information to determine.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Interested persons may submit comments until 4:30 p.m., February 8, 2004, to Nina Ford, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody  
Executive Director

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Bulletin 741? Louisiana Handbook for School Administrators? Curricular Design for Exceptional Students

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

These revisions to Bulletin 741 repeal the rules that address alternate assessment and curricular design for students with disabilities in special schools. The rules are being repealed in order to be consistent with rules governing students with disabilities not attending special schools.

Approximately \$1,000.00 will be expended by the Department of Education to implement these changes. The costs are for preparation and advertising for the Notice of Intent in the *Louisiana Register*, and publication of the revised rule.

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

There will be no effect on revenue collections for state or local governments.

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

There will be no costs and/or economic benefits to non-governmental groups affected by these rule revisions.

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

There will be no effect on competition and employment

Marlyn Langley  
Deputy Superintendent  
0312#019

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Board of Elementary and Secondary Education

Bulletin 746? Louisiana Standards for State  
Certification of School Personnel? Deadline  
Date for Completing Endorsements  
(LAC 28:I.903)

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 746? Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. This policy extends the deadline date from July 1, 2004, to August 31, 2004, for

teachers to complete requirements for adding endorsements under the old regulations, prior to the new certification structure of July 1, 2002. The new deadline allows candidates an additional summer semester to complete the old requirements. This action extending the deadline date was requested by higher education institutional providers of certification coursework.

**Title 28  
EDUCATION**

**Part I. Board of Elementary and Secondary Education  
Chapter 9. Bulletins, Regulations, and State Plans  
Subchapter A. Bulletins and Regulations  
§903. Teacher Certification Standards and Regulations  
A. Bulletin 746**

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 28:2505 (December 2002), LR 29:117, 119, 121 (February 2003), LR 30:

\* \* \*

**Deadline Date for Completing Endorsement  
Requirements under Guidelines that Preceded the  
July 1, 2002, Certification Structure**

The new Louisiana certification structure became effective July 1, 2002, setting categories for certification levels as Early Childhood, Elementary, Middle School, and Secondary. Many of the old regulations for adding endorsement areas were superseded by regulations under the new certification structure.

Teachers who began requirements for adding endorsements under the old regulations are allowed until August 31, 2004, to complete endorsement requirements under the old regulations.

\* \* \*

**Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Interested persons may submit comments until 4:30 p.m., February 8, 2004, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Bulletin 746? Louisiana Standards  
for State Certification of School Personnel  
Deadline Date for Completing Endorsements**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
This policy extends the deadline date from July 1, 2004, to August 31, 2004, for teachers to complete requirements for adding endorsements under the old regulations, prior to the new certification structure of July 1, 2002. The new deadline allows candidates an additional summer semester to complete the old requirements. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
This policy will have no 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)  
This policy will have no effect on competition and employment.

Marlyn J. Langley  
Deputy Superintendent  
Management and Finance  
0312#020

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 746? Louisiana Standards for State  
Certification of School Personnel? PRAXIS Exams  
and Passing Scores for Louisiana Certification  
(LAC 28:I.903)

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 746? Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. This policy specifies the exam and passing score(s) for the following certification areas: Business Education; Middle School Science; and Middle School Social Studies. Relative to the two middle

school exams, this action continues the Board's alignment of PRAXIS testing policy with the No Child Left Behind Act of 2001. Additionally, the Board periodically revisits passing scores of previously adopted exams and adopts new passing scores, as is the case with the exam for Business Education.

**Title 28  
EDUCATION**

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

**Chapter 9. Bulletins, Regulations, and State Plans**

**Subchapter A. Bulletins and Regulations**

**§903. Teacher Certification Standards and Regulations**

**A. Bulletin 746**

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**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), LR 28:2505 (December 2002), LR 29:117, 119, 121 (February 2003), LR 30:

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**PRAXIS/NTE SCORES**

Minimum Score Requirements for Certification in Louisiana, Effective 6/1/04

(See next pages for NTE tests/scores required for certification in Louisiana prior to 9/1/99\* and as of 9/1/99)

Area Test	Area Score	Pre-Professional Skills Test			Principles of Learning & Teaching			
		**PPST:R	**PPST:W	**PPST:M	PLT K-6	PLT 5-9	OR	PLT 7-12
Administration and Supervision (0410)	620	---	---	---	---	---		---
Agriculture***	---	172	171	170	---	---		161
Art Education***	---	172	171	170	161	154	or	161
Biology & General Science (0030)	580	172	171	170	---	---		161
Business Education (0100)	570	172	171	170	---	---		161
Chemistry/Physics/General Science (0070)	530	172	171	170				161
Early Childhood PK-3: Elementary Education: Content Knowledge #0014	150	172	171	170	Pedagogy Requirement: Early Childhood Education (0020) 510			
Elementary Education: <b>Through 9/30/02:</b> Curriculum, Instruction, & Assessment (0011)	156							
Content Area Exercises (0012)	137	172	171	170	161	---		---
<b>Effective 10/1/02:</b> Content Knowledge (#0014)	147							
<b>Effective 6/1/04:</b> Content Knowledge (#0014)	150							
English Language, Literature, & Composition: Content Knowledge (0041)	160	172	171	170	---	---		161
Pedagogy (0043)	130							
French: Content Knowledge (0173)	156	172	171	170	---	---		161
German (0180)	500	172	171	170	---	---		161
Home Economics Education (0120)	510	172	171	170	---	---		161
Industrial Arts Education***	---	172	171	170	---	---		161
Mathematics: Content Knowledge (0061)	125	172	171	170	---	---		161
Effective 6/1/07	130							
Effective 6/1/10	135							
Middle School: Mathematics (0069)	148							
Middle School: Science (0439)	140							
Effective 6/1/06	145	172	171	170	---	154		---
Effective 6/1/09	150							
Middle School: Social Studies (0089)	149							
Music: Content Knowledge (0113)	151	172	171	170	161	154	or	161
ParaPro Assessment (0755)	450	---	---	---	---	---	---	---
Physical Education: Content Knowledge (0091)	146	172	171	170	161	154	or	161
Spanish: Content Knowledge (0191)	160	172	171	170	---	---		161
<b>Social Studies:</b> Content Knowledge (0081)	149	172	171	170	---	---		161
Interpretation of Materials (0083)	152							
Speech Communications***	---	172	171	170	---	---		161

\*Individuals who achieved the required NTE score(s) may use those in lieu of the replacement PRAXIS test.

\*\*Computerized PPST (C-PPST) available as an option.

\*\*\*Area test is not required for certification in Louisiana.

**Computer-Based Tests (prior to 1/16/02):**

CBT Reading (0711) 319

CBT Writing (0721) 316

CBT Mathematics (0731) 315

**Computerized PPST (after 1/16/02)--same passing scores as written**

**PPST: Reading (#5710), Writing (#5720), Mathematics, (#5730)**

PPST:R? Pre-Professional Skills Test: Reading (0710)  
 PPST:W? Pre-Professional Skills Test: Writing (0720)  
 PPST:M? Pre-Professional Skills Test: Mathematics (0730)  
 PLT K-6? Principles of Learning & Teaching K-6 (0522)  
 PLT 5-9? Principles of Learning & Teaching 5-9 (0523)  
 PLT 7-12? Principles of Learning & Teaching 7-12 (0524)

All Praxis scores used for certification must be sent directly from ETS to the State Department of Education electronically, or the original Praxis score report from ETS must be submitted with candidate's application.

**Special Education Areas**

Area Test	Area Score	Pre -Professional Skills Test			Pedagogy Requirement	
		**PPST:R	**PPST:W	**PPST:M		
Early Interventionist		172	171	170	Education of Exceptional Students: Core Content Knowledge (0353)	143
Hearing Impaired		172	171	170	Education of Exceptional Students: Core Content Knowledge (0353) Education of Deaf and Hard of Hearing Students (0271)	143 160
Mild to Moderate Disabilities		172	171	170	Education of Exceptional Students: Core Content Knowledge (0353) Education of Exceptional Students: Mild to Moderate Disabilities (0542)	143 141
Severe to Profound Disabilities		172	171	170	Education of Exceptional Students: Core Content Knowledge (0353) Education of Exceptional Students: Severe to Profound Disabilities (0544)	143 147

**Praxis/NTE Scores**

Minimum Score Requirements for Certification in Louisiana, Effective 9/1/99 (and later, as noted)

(See next page for NTE tests/scores required for certification in Louisiana prior to 9/1/99)\*

Area Test	Area Score	Pre-Professional Skills Test			Principles of Learning & Teaching			
		**PPST:R	**PPST:W	**PPST:M	PLT K-6	PLT 5-9	OR	PLT 7-12
Administration and Supervision (0410)	620	---	---	---	---	---		---
Agriculture***	---	172	171	170	---	---		161
Art Education***	---	172	171	170	161	154	or	161
Biology & General Science (0030)	580	172	171	170	---	---		161
Business Education (0100)	540	172	171	170	---	---		161
Chemistry/Physics/General Science (0070)	530	172	171	170				161
Early Childhood Education (0020)	510	172	171	170	161	---		---
Elementary Education: Through 9/30/02: Curriculum, Instruction, & Assessment (0011)	156							
Content Area Exercises (0012) Effective 10/1/02:	137	172	171	170	161	---		---
Content Knowledge (#0014)	147							
English Language, Literature, & Composition: Content Knowledge (0041)	160	172	171	170	---	---		161
Pedagogy (0043)	130							
French (0170)	520	172	171	170	---	---		161
German (0180)	500	172	171	170	---	---		161
Home Economics Education (0120)	510	172	171	170	---	---		161
Industrial Arts Education***	---	172	171	170	---	---		161
Mathematics (0060)	550	172	171	170	---	---		161
Middle School Effective 10/1/02: Content: Knowledge (0146)	150	172	171	170	---	154		---
Music Education (0110)	530	172	171	170	161	154	or	161
Physical Education (0090)	550	172	171	170	161	154	or	161
Social Studies: Content Knowledge (0081)	149	172	171	170	---	---		161
Interpretation of Materials (0083)	152							
Spanish (0190)	540	172	171	170	---	---		161
Special Education***	---	172	171	170	161	154	or	161
Speech Communications***	---	172	171	170	---	---		161

\*Individuals who achieved the required NTE score(s) may use those in lieu of the replacement PRAXIS test.

\*\*Computerized PPST (C-PPST) available as an option.

\*\*\*Area test is not required for certification in Louisiana.

PPST:R? Pre-Professional Skills Test: Reading (0710)
PPST:W? Pre-Professional Skills Test: Writing (0720)
PPST:M? Pre-Professional Skills Test: Mathematics (0730)
PLT K-6? Principles of Learning & Teaching K-6 (0522)
PLT 5-9? Principles of Learning & Teaching 5-9 (0523)
PLT 7-12? Principles of Learning & Teaching 7-12 (0524)

<b>Computer-Based Tests (prior to 1/16/02):</b>	
CBT Reading (0711)	319
CBT Writing (0721)	316
CBT Mathematics (0731)	315
<b>Computerized PPST (after 1/16/02)? same passing scores as written</b>	
<b>PPST: Reading (#5710), Writing (#5720), Mathematics, (#5730)</b>	

All Praxis scores used for certification must be sent directly from ETS to the State Department of Education electronically, or the original Praxis score report from ETS must be submitted with candidate's application.

### NTE Scores

NTE Minimum Score Requirements for Certification in Louisiana Prior to September 1, 1999

Area Test	Area Score	Core Battery Test		
		CS	GK	PK
Administration and Supervision (0410)	620	---	---	---
Agriculture*	---	645	644	645
Art Education*	---	645	644	645
Biology & General Science (0030)	580	645	644	645
Business Education (0100)	540	645	644	645
Chemistry/Physics/General Science (0070)	530	645	644	645
Early Childhood Education (0020)	510	645	644	645
Education in Elementary School (0010)	550	645	644	645
English Language/Literature (0040)	550	645	644	645
French (0170)	520	645	644	645
German (0180)	500	645	644	645
Home Economics Education (0120)	510	645	644	645
Industrial Arts Education*	---	645	644	645
Mathematics (0060)	550	645	644	645
Music Education (0110)	530	645	644	645
Physical Education (0090)	550	645	644	645
Social Studies (0080)	550	645	644	645
Spanish (0190)	540	645	644	645
Special Education *	---	645	644	645
Speech*	---	645	644	645

\*Area test is not required for certification in Louisiana.

CS = Core Battery: Communication Skills (0500)

GK = Core Battery: General Knowledge (0510)

PK = Core Battery: Professional Knowledge (0520)

See previous page for PRAXIS/NTE tests/scores required for certification in Louisiana, effective SEPTEMBER 1, 1999

\* \* \*

### Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Interested persons may submit comments until 4:30 p.m., February 8, 2004, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody  
Executive Director

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

**RULE TITLE: Bulletin 746? Louisiana Standards for State Certification of School Personnel? PRAXIS Exams and Passing Scores for Louisiana Certification**

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

This policy specifies the exam and passing score(s) for the following certification areas: Business Education; Middle School Science; and Middle School Social Studies. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

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

This policy will have no 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)

This policy will have no effect on competition and employment.

Marlyn J. Langley  
Deputy Superintendent  
Management and Finance  
0312#021

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Board of Elementary and Secondary Education

Bulletin 1706? Regulations for Implementation of the Children with Exceptionalities Act Students with Disabilities (LAC 28:XLIII.373, 449, 517, 519, and 904)

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 amendments to Bulletin 1706, *Regulations for Implementation of the Children with Exceptionalities Act*, R.S. 17:1941 et seq., (LAC 28:XLIII). The proposed Rule changes include the removal of the declassified Individualized Education Programs (IEP), technical amendments to reference other sections of the bulletin, add a definition of proposed provisional Certificate of Achievement, and definition of preschool intervention settings. The declassified IEP is removed to clarify the responsibilities of the local education agencies (LEAs) for students who are no longer eligible as students with disabilities. The Rule on provisional Certificate of Achievement is requested to comply with the policies of the State Board of Elementary and Secondary Education. Technical changes are made to comply with the Individuals with Disabilities Education Act (IDEA), and the definitions of preschool intervention settings are made to clarify what is meant by the terminology used in the Least Restrictive Environment section of the bulletin.

**Title 28**  
**EDUCATION**

**Part XLIII. Bulletin 1706? Regulations for Implementation of the Children with Exceptionalities Act (R.S. 17:1941, et seq.)**

**Subpart 1. Regulations for Students with Disabilities**

**Chapter 3. Responsibilities and Activities of the Division of Special Populations**

**§373. Administration of Funds**

A. - D. ...

E. Determination of eligibility of students shall be accomplished through the verification procedures of the department regarding the accuracy of the Child Count as detailed in §491. In order to verify the accuracy of each Count submitted, the department will conduct prescribed activities:

1. - 2. ...

3. An on-site Child Count review shall be conducted in accordance with the Compliance Monitoring Procedures. If necessary, each system may be monitored for previous years to verify the accuracy of the Child Count. During fiscal monitoring of each LEA, the monitors will randomly select at least 10, but not more than 20, names from the Child Count report. For each name, the LEA shall provide the student name, date of birth, evaluation report, IEP, class rolls, and any other information that may be necessary to verify the accuracy of the Count.

E.4. - G.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:647 (April 2000), amended LR 30:

**Chapter 4. Responsibilities of Local Educational Agencies**

**§449. IEP Declassification Placement**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:647 (April 2000), amended LR 29:870 (June 2003), repealed LR 30:

**Chapter 5. Procedural Safeguards**

**§517. Confidentiality of Information**

A. - L.1. ...

2. Any persons collecting or using personally identifiable information shall receive training or instruction regarding the state's policies and procedures under §355 of these regulations, 34 CFR Part 99, and Part B of IDEA.

L.3. - P.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:651 (April 2000), amended LR 29:873 (June 2003), LR 30:

**§519. Discipline Procedures for Students with Disabilities**

A. - M.4. ...

5. The hearing shall be conducted according to guidelines established in §508 of these Regulations, where appropriate, except for the timelines at §508.C.4., and according to guidelines established by the department.

M.6. - N.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:651 (April 2000), amended LR 29:873 (June 2003), LR 30:

**Chapter 9. Definitions**

**§904. Definitions**

\* \* \*

*Certificate of Achievement-Provisional Eligibility Criteria?* an exit document issued to a student with a disability after he or she has achieved certain competencies and has met specified conditions as listed below.

1. a.-d. ...

e. or

i. who participated in LAA in the Spring of 2002 or Spring 2003;

ii. who are disabled under the mandated criteria;

iii. who participated in LEAP Alternate Assessment in their first or third years of high school; and

iv. whose IEP team determined would not be eligible to participate in alternate assessment under the revised LEAP Alternate Assessment Participation Criteria.

2. - f. ...

\* \* \*

*Preschool-Aged Students with Disabilities Placement Options?* as defined below, do not reflect a continuum of least restrictive environment and may include a combination of any of these settings.

1. *Early Childhood Setting?* students receive all of their special education and related services in educational programs designed primarily for children without disabilities. No education or related services are provided in separate special education settings. This may include, but is not limited to:

a. regular kindergarten classes;

b. public or private preschools;

c. Head Start Centers;

d. child care facilities;

e. preschool classes offered to an eligible pre-kindergarten population by the public school system;

f. home/early childhood combinations;

- g. home/Head Start combinations; and
- h. other combinations of early childhood settings.

2. *Early Childhood Special Education Setting?* students receive all of their special education and related services in educational programs designed primarily for children with disabilities housed in regular school buildings or other community-based settings. No education or related services are provided in early childhood settings. This may include, but is not limited to:

- a. special education classrooms in regular school buildings;
- b. special education classrooms in child care facilities, hospital facilities on an outpatient basis, or other community-based settings; and
- c. special education classrooms in trailers or portables outside regular school buildings.

3. *Home?* students receive all of their special education and related services in the principal residence of the child's family or caregivers.

4. *Part-Time Early Childhood/Part-Time Early Childhood Special Education Setting?* students receive services in multiple settings, such that: (1) general and/or special education and related services are provided at home or in educational programs designed primarily for children without disabilities, and (2) special education and related services are provided in programs designed primarily for children with disabilities. This may include, but is not limited to:

- a. home/early childhood special education combinations;
- b. Head Start, child care, nursery school facilities, or other community-based settings with special education provided outside of the regular class;
- c. regular kindergarten classes with special education provided outside of the regular class;
- d. separate school/early childhood combinations.

5. *Residential Facility?* students receive all of their special education and related services in publicly or privately operated residential schools or residential medical facilities on an inpatient basis. This may include, but is not limited to:

- a. hospitals; and
- b. nursing homes.

6. *Separate School?* students receive all of their special education and related services in educational programs in public or private day schools designed specifically for children with disabilities.

7. *Itinerant Service outside the Home?* students receive all of their special education and related services at a school, hospital facility on an outpatient basis or other location for a short period of time (no more than three hours per week). (This does not include children who receive services at home for three hours or less per week. This would be included in the home setting.) These services may be provided individually or to a small group of children. This may include, but is not limited to: speech instruction, APE and assistive technology up to three hours per week in a school, hospital, or other community-based setting. (A combination of services may not exceed three hours per week). Children receiving all of their special education and related services at a school, hospital facility on an outpatient

basis, or other location for longer than three hours per week must be reported under early childhood special education setting or early childhood setting, depending on whether the program was designed primarily for students with or without disabilities.

8. *Reverse Mainstream Setting?* students receive all of their special education and related services in educational programs designed primarily for children with disabilities but that include 50 percent or more children without disabilities.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:651 (April 2000), amended LR 29:878 (June 2003), LR 30:

#### **Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Interested persons may submit comments until 4:30 p.m., February 8, 2004, to Nina Ford, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody  
Executive Director

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Bulletin 1706? Regulations for Implementation of the Children with Exceptionalities Act? Students with Disabilities**

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

The proposed rule changes include the removal of the declassified Individualized Education Program (IEP), technical amendments to reference other sections of the bulletin, addition of a definition of proposed provisional Certificate of Achievement, and definitions of preschool intervention settings.

The only costs associated with this rule change is the preparation and printing of the document and that is projected to be approximately \$1,000. Publication can be accomplished via the Department's web site.

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 costs or economic benefits to non-governmental groups affected by this rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated impact on competition and employment.

Marlyn Langley  
Deputy Superintendent  
Management and Finance  
0312#017

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 1794? State Textbook Adoption Policy and Procedure Manual? Home Study Program (LAC 28:XXXIII.517)

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 1794? State Textbook Adoption Policy and Procedure Manual*, referenced in LAC 28:XXXIII. Bulletin 1794 is being revised in order to allow local education agencies (LEAs) to secure a deposit, equal to the replacement cost(s), for textbooks provided to students in approved home study programs. The current deposit of 50 percent does not provide for the replacement of materials that are not returned to the LEA. This action is required by action of the State Board of Elementary and Secondary Education, in exercising its administrative and oversight authority for the state textbook adoption process.

**Title 28  
EDUCATION**

**Part XXXIII. Bulletin 1794? State Textbook Adoption Policy and Procedure Manual**

**Chapter 5. Local School System Responsibilities**

**§517. Textbooks for Home Study Program**

A. - A.3. ...

4. provide a deposit equal to 100 percent of the replacement cost. Such deposit will be returned when the books are returned. If books are not returned or paid for, the parent or legal guardian shall not be eligible to continue participation in the textbook rental program until all textbooks debts have been cleared.

NOTE: Only one grade level set of texts per child per subject is available at any single time.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4), 8-8.1; 172; 351-353; 361-365; 415.1; 463.46

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 25:1445, repromulgated LR 26:1001, amended LR 29:

**Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office that has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule effect the functioning of the family? No.

4. Will the proposed Rule effect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Interested persons may submit written comments until 4:30 p.m., January 9, 2004, 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 1794? State Textbook Adoption Policy and Procedure Manual? Home Study Program**

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

The estimated implementation cost for this rule change is \$135.00 (for printing and postage).

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

This rule change should have no significant effect on state or local revenue collections.

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

There is no significant cost or economic benefit to any person or non-governmental group. The policy change will require parents or guardians of students in approved home study programs to provide a deposit of 100% of the replacement cost of textbooks instead of a deposit of 50% of the replacement cost.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition or employment.

Marlyn Langley  
Deputy Superintendent  
Management and Finance  
0312#022

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Student Financial Assistance Commission Office of Student Financial Assistance

Scholarship/Grant Programs? Maintaining Eligibility  
(LAC 28:IV.705 and 805)

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its Scholarship/Grant Rules (R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1, and R.S. 17:3048.1).

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

The full text of this proposed Rule can be viewed in the Emergency Rule section of this *Louisiana Register*.

Interested persons may submit written comments on the proposed changes until 4:30 p.m., January 10, 2004, to Jack L. Guinn, Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge  
General Counsel

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Scholarship/Grant Programs Maintaining Eligibility

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

There are no implementation costs or savings to state or local governmental units as a result of these changes.

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

No impact on revenue collections to the Office of Student Financial Assistance is anticipated to result from these changes.

#### 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 on-governmental groups.

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

There are no estimated effects on competition and employment resulting from these measures.

George Badge Eldredge  
General Counsel  
0312#050

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Tuition Trust Authority Office of Student Financial Assistance

Student Tuition and Revenue  
Trust (START Saving) Program  
(LAC 28:VI.107, 301, 303, 305,  
307, 309, 311, 313, and 315)

The Louisiana Tuition Trust Authority (LATTA) has amended Rules of the Student Tuition Assistance and Revenue Trust (START Saving) Program (R.S. 17:3091 et seq.).

The proposed Rule has no known impact on family formation, stability or autonomy, as described in R.S. 49:972.

## Title 28 EDUCATION

### Part VI. Student Financial Assistance? Higher Education Savings? Tuition Trust Authority

#### Chapter 1. General Provisions

#### §107. Applicable Definitions

\* \* \*

*Beneficiary?* the person named in the education savings account owner's agreement or the person named by the Authority when authorized to make such a designation by an account owner as classified under §303.A.5, as the individual entitled to apply the account balance, or portions thereof, toward payment of their Qualified Higher Education Expenses.

*Beneficiary's Family?* for purposes of §303.A.5, the beneficiary's family must be one of the following persons:

a. the beneficiary's parent(s) or court ordered custodian; or

b. a person who claims the Beneficiary as a dependent on his or her federal income tax return for the previous year; or

c. a person who certifies that the beneficiary lives with him, that he provides more than 50 percent of the beneficiary's support for the previous year and that he was not required to file an income tax return for the previous year.

\* \* \*

*Trade Date?* the date that a deposit to an investment option that includes variable earnings is assigned a value in units or the date a disbursement or refund from an investment option that includes variable earnings is assigned a value.

\* \* \*

*Variable Earning?* that portion of funds in an education savings account invested in equities.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:712 (June 1997), amended LR 24:1268 (July 1998), LR 25:1794 (October 1999), LR 26:2260 (October 2000), LR 27:37 (January 2001), LR 27:1222 (August 2001), LR 27:1876 (November 2001), LR 28:450 (March 2002), LR 28:777 (April 2002), LR 28:2334 (November 2002), LR 29:566 (April 2003), LR 30:

#### Chapter 3. Education Savings Account

#### §301. Education Savings Accounts

A. An education savings account is established on behalf of a designated beneficiary to provide the funding necessary for the beneficiary to acquire an undergraduate certificate, associate degree, undergraduate degree, graduate degree or professional degree. Education savings accounts may offer investment options that provide either fixed earnings or variable earnings.

1. The account owner classified under §303.A.1, 2, 3 and 4 shall designate the beneficiary in the owner's agreement.

2. The account owner classified under §303.A.5 may designate the beneficiary in the owner's agreement, provided the beneficiary is not a member of the account owner's

family, or authorize the LATTA to select a beneficiary for the account.

3. A beneficiary selected by the LATTA must meet the following criteria:

- a. the beneficiary is a Louisiana resident;
- b. the federal adjusted income of the beneficiary's family is less than \$30,000 or the beneficiary is eligible for a free lunch under the Richard B. Russell National School Act (42 USC 1751 et seq.);
- c. the beneficiary is not a member of the account owner's family nor a member of the family of any member or employee of the authority or the Office of Student Financial Assistance;
- d. demonstrate superior early academic preparation in the third grade by achieving a score on the Iowa Tests of Basic Skills, Stanford 9 Test or TerraNova Test that is in the top two quartiles; and
- e. the guidelines provided by the account owner, if any; provided such guidelines are lawful.

4. Procedure for Selection (To be added at a later date.)

B. - C.1. ...

2. The account owner shall designate a beneficiary, except as provided in Paragraph A.2 above.

3. ...

4. Transfer of account ownership is not permitted, except in the case of accounts classified under §303.A.1-4 in the event of the death of an account owner, who is a natural person or the dissolution of the account owner, who is a legal entity.

a. The account owner who is a natural person, other than a natural person classified as an account owner under §303.A.5, may designate a person who will become the substitute account owner in the event of the original account owner's death.

b. Eligibility for earnings enhancements will be based on the substitute account owner's classification at the time of the original account owner's death.

c. In the event of the death of an account owner who is a natural person, other than a natural person classified as an account owner under §303.A.5, and who has not named a substitute account owner, the account shall be terminated and the account shall be refunded to the beneficiary, if designated to receive the refund by the account owner, or the account owner's estate.

d. In the event of the dissolution of an account owner who is a legal entity classified as an account owner under §303.A.3 or 4, the beneficiary shall become the substitute account owner. If the account owner, who is a legal entity classified as an account owner under §303.A.3 or 4, is dissolved, the beneficiary designated to receive the refund has died, and there is no substitute beneficiary named, the refund shall be made to the beneficiary's estate.

e. In the event of the death or dissolution of an other person classified as an account owner under §303.A.5, the beneficiary shall become the substitute account owner, provided that, in the case of an account classified under §303.A.5, all the rights and restrictions provided in law and these rules regarding account owners classified under §303.A.5, including, but not limited to, use of the funds, refunds, terminations, designation of beneficiary, etc., shall be applicable to the beneficiary that becomes the owner of

an account established under §303.A.5. If an account owner classified under §303.A.5 dies or is dissolved and the beneficiary has died or failed to enroll in an eligible educational institution by age 25, and no substitute beneficiary has been designated by the account owner, the Authority shall designate a new beneficiary who must meet the requirements of §301.A.3 and §303.A.5.

5. Only the account owner or the beneficiary may be designated to receive refunds from the account owned by an account owner who is a natural person other than a natural person classified as an account owner under §303.A.5. In the event of the death of the account owner when the account owner is designated to receive the refund and there is no substitute account owner named, the refund shall be made to the account owner's estate.

D. - D.6.c. ...

7. That an account whose owner is a legal entity or is classified under §303.A.5 cannot be terminated and the funds deposited in the account will not be refunded to the account owner.

8. That an account owner who is a legal entity or is classified under §303.A.5, can change the beneficiary of an account to one or more persons who are not members of the family of the beneficiary in accordance with §313.A.4.c, however, in such case:

a. ...

b. the earnings enhancements and interest thereon will not be transferred to the new beneficiary. (Note that the deposit(s) will be eligible for earnings enhancement for the year of the deposit.)

c. the provisions of §301.A.2 shall apply to account owners classified in accordance with §305.A.5.

9. That in the event an account owner who is a legal entity classified as an account owner under §303.A.3 or 4 is dissolved, the beneficiary will become the owner of the account.

10. That in the event an other person classified as an account owner under §303.A.5 dies or is dissolved, the beneficiary will become the account owner, provided that, all the restriction provided in law and these rules regarding account owners classified under §303.A.5, including, but not limited to, use of the funds, refunds, terminations, designation of beneficiary, etc. shall be applicable to the beneficiary that becomes the owner of an account established under §303.A.5. If an account owner classified under §303.A.5 dies or is dissolved and the beneficiary has died or failed to enroll in an eligible college or university by age 25, and no substitute beneficiary has been designated by the account owner, the Authority is authorized designate a new beneficiary who must meet the requirements of §301.A.3 and §303.A.5.

E. - G.2. ...

H. Providing Personal Information

1. The account owner is required to disclose personal information in the owner's agreement, including:

a. In the case of an account owner classified under §303.A.5:

i. the social security number of the beneficiary's family and authorization from that person for the LATTA to access his annual tax records through the Louisiana Department of Revenue, for the purpose of verifying federal adjusted gross income; and

ii. if applicable, proof that the beneficiary is a ward of the court; or

iii. if applicable, proof the beneficiary is eligible for a free lunch under the Richard B. Russell National School Act (42 USC 1751 et seq.).

2. By signing the owner's agreement, the account owner who is classified under §303.A.1 or 2 (does not include legal entities or other persons classified as account owners under §303.A.5) provides written authorization for the LATTA to access his annual tax records through the Louisiana Department of Revenue, for the purposes of verifying federal adjusted gross income.

3. By signing the owner's agreement:

a. the account owner who is a natural person, other than a natural person classified as an account owner under §303.A.5, certifies that:

a.i. - b.vi. ...

c. the natural person classified as an account owner under §303.A.5 certifies that:

i. the beneficiary is a Louisiana Resident;

ii. the federal adjusted income of the beneficiary's family is less than \$30,000 or the beneficiary is eligible for a free lunch under the Richard B. Russell National School Act (42 USC 1751 et seq.);

iii. the beneficiary is not a member of the account owner's family nor a member of the family of any member or employee of the Authority or the Office of Student Financial Assistance;

iv. the account owner acknowledges and agrees that once funds are deposited in a START account, neither the deposits nor the interest earned thereon can be refunded to the account owner; and

v. the information provided in the application is true and correct.

H.4 - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:713 (June 1997). Amended LR 24:436 (March 1998), LR 24:1269 (July 1998), LR 25:1794 (October 1999), LR 26:2262 (October 2000), LR 27:1878 (November 2001), LR 28:450 (March 2002), LR 28:778 (April 2002), LR 28:2334 (November 2002), LR 30:

### §303. Account Owner Classifications

A. - A.4. ...

5. any other person or any government entity, and at the time of the initiation of the agreement:

a. the beneficiary is a resident of the state;

b. the federal adjusted income of the beneficiary's family is less than \$30,000 or the beneficiary must be eligible for a free lunch under the Richard B. Russell National School Act (42 USC 1751 et seq.);

c. the beneficiary is not a member of the account owner's family nor a member of the family of any member or employee of the Authority or the Office of Student Financial Assistance;

d. the deposits to the account are an irrevocable donation by the owner.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 27:1879

(November 2001), amended LR 28:779 (April 2002), LR 28:2334 (November 2002), LR 30:

### §305. Deposits to Education Savings Accounts

A. - C.3. ...

D. Investment Options

1. The State Treasurer shall select fixed earnings and variable earnings investment options.

2. The Authority shall furnish each account owner with information that discloses each of the investment options offered by the program.

3. The account owner shall select one or more of the investment options in completing the owner's agreement. If more than one option is selected, the account owner shall indicate the percentage of each deposit for each investment option and the percentages must total 100 percent.

4. Investment options and the percentage of each deposit to an option can be changed no more than once in any 12 month period.

5. Once a selection is made, all deposits shall be directed to the investment options selected and in the percentages designated.

E. Deposits

1. Deposits for investment options that are limited to fixed earnings will be considered to have been deposited on the date of receipt

2. Deposits for investment options that include variable earnings will be assigned a trade date based on the method of deposit and the date of receipt.

a. Deposits by check will be assigned a trade date five days after the business day during which they were received.

b. Deposits made by electronic funds transfer will be assigned a trade date of one business day after the business day during which they were received.

3. Deposits received on weekends and holidays will be considered received on the next business day.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:715 (June 1997), amended LR 24:1270 (July 1998), LR 26:2263 (October 2000), LR 27:1880 (November 2001), LR 30:

### §307. Allocation of Earnings Enhancements

A. Earnings enhancements are state-appropriated funds allocated to an education savings account, on behalf of the beneficiary named in the account.

1.a. The earnings enhancements for account owners who are classified under §303.A.1 and 2 are calculated based upon the account owner's annual federal adjusted gross income for the year immediately preceding the year for which the beneficiary of the account is being considered for an earnings enhancement and the account owner's total annual deposits of principal.

b. The earnings enhancements for account owners who are classified under §303.A.5 are calculated based:

i. upon the beneficiary's family's annual federal adjusted gross income for the year immediately preceding the year for which the beneficiary of the account is being considered for an earnings enhancement and the account owner's total annual deposits of principal; or

ii. if the beneficiary is a ward of the court, using the highest earnings enhancement available and the account owner's total annual deposits of principal.

2. ...

B. Providing Proof of Annual Federal Adjusted Gross Income

1.a. For account owners who are classified under §303.A.1 or 2 (does not include Legal Entities nor other persons classified as account owners under §303.A.5), the account owner's annual federal adjusted gross income for the year immediately preceding the year for which the beneficiary of the account is being considered for an earnings enhancement is used in computing the annual earnings enhancement allocation.

b. For account owners who are classified under §303.A.5, the beneficiary's family's annual federal adjusted gross income for the year immediately preceding the year for which the beneficiary of the account is being considered for an earnings enhancement is used in computing the annual earnings enhancement or proof that the beneficiary is a ward of the court.

2.a. To be eligible in any given year for a Earnings Enhancement in accordance with §307.D., the account owner of an Education Savings Account classified under §303.A.1, 2 or 3 must:

i. authorize the LATTA to access the account owner's state tax return filed with the Louisiana Department of Revenue for the purpose of obtaining the account owner's federal adjusted gross income; or

ii provide the LATTA a copy of the account owner's federal or state income tax return filed for the year immediately preceding the year in which the beneficiary of the account is being considered for an earnings enhancement.

b. To be eligible in any given year for a earnings enhancement in accordance with §307.D., the account owner of an education savings account classified under §303.A.5 must:

i. provide authorization from the beneficiary's family for the LATTA to access the beneficiary's family's state tax return filed with the Louisiana Department of Revenue for the purpose of obtaining the federal adjusted gross income of the beneficiary's family; or

ii provide the LATTA a copy of the beneficiary's family's federal or state income tax return filed for the year immediately preceding the year in which the beneficiary of the account is being considered for an earnings enhancement; or

iii. provide documentation establishing that the beneficiary is a ward of the court.

3.a. In completing the owner's agreement, account owner's who are classified under §303.A.1 or 2 (does not include legal entities or other persons classified as account owners under §303.A.5), authorize the LATTA to access their records with the Louisiana Department of Revenue for the purpose of verifying the account owners' federal adjusted gross income. In the event the account owner does not file tax information with the Louisiana Department of Revenue, they must provide the LATTA with:

i a copy of the form filed with the Internal Revenue Service; or

ii a statement as to why no income tax filing was required of the account owner.

b. In completing the owner's agreement, account owners who are classified under §303.A.5, provide

authorization from the beneficiary's family for the LATTA to access their records with the Louisiana Department of Revenue for the purpose of verifying the beneficiary's family's federal adjusted gross income. In the event the beneficiary's family does not file tax information with the Louisiana Department of Revenue, the beneficiary's family must provide:

i a copy of the form filed with the Internal Revenue Service; or

ii a statement that the beneficiary lives with them, that they provide more than 50 percent of the beneficiary's support and an explanation as to the beneficiary's family was not required to file an income tax return; or

iii. provide documentation establishing that the beneficiary is a ward of the court.

B.4. - C.2. ...

D. Earnings Enhancement Rates. The earnings enhancement rates applicable to an education savings account under §303.A.1, 2 and 5 are determined by the federal adjusted gross income of the account owner or the beneficiary's family, as applicable, according to the following schedule.

Reported Federal Adjusted Gross Income	Earnings Enhancement Rate*
0 to \$29,999	14 percent
\$30,000 to \$44,999	12 percent
\$45,000 to \$59,999	9 percent
\$60,000 to \$74,999	6 percent
\$75,000 to \$99,999	4 percent
\$100,000 and above	2 percent

\*Rates may be reduced pro rata, to limit Earnings Enhancements to amounts appropriated by the Legislature.

E. - F. ...

G Restrictions on allocation of earnings enhancements to education savings accounts. The allocation of earnings enhancements is limited to education savings Accounts which:

1. are not fully funded accounts (See §107); and

2. have an account owner who falls under one of the classifications described in §303.A.1, 2, 3 or 5.

H. - J.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:715 (June 1997), amended LR 24:1271 (July 1998), LR 25:1794 (October 1999), LR 26:1263 (June 2000), LR 26:2263 (October 2000), LR 27:37 (January 2001) LR 27:1221 (August 2001), LR 27:1880 (November 2001), LR 28:779 (April 2002), LR 30:

**§309. Disbursement of Account Funds for Payment of Qualified Higher Education Expenses of a Beneficiary**

A. Request for Disbursement

1. For each term the account owner intends to fund the beneficiary's qualified higher education expenses, the account owner shall submit a request for disbursement.

2. The request for disbursement must include:

a. the START Account number;

b. the account owner's name, address, Social Security Number and signature (may be electronic);

- c. the beneficiary's name, address, and Social Security Number;
- d. the amount to be disbursed and to whom; and
- e. the name and address of the eligible education institution.

3. The account owner may select the investment options from which the disbursement shall be made; provided that if no selection is made, the disbursement shall be made proportionally from each investment option in the account.

4. If there is more than one account with the same beneficiary, each account owner requesting a disbursement must complete a request for disbursement and the disbursements shall be made from each account, in turn, in the order the disbursement requests were received.

5. Disbursements from all accounts with the same beneficiary shall not exceed the qualified higher education expenses of the beneficiary for the school attended.

6. Disbursements may be made to the eligible education institution, account owner and/or beneficiary; however, for each disbursement, as a minimum, that portion of the disbursement representing earning enhancements and the interest thereon must be sent to the eligible educational institution in which the student is enrolled or intends to enroll.

7. Disbursements from investment options with variable earnings will be assigned a trade date of one business day after the business day of receipt.

**B. Rate of Expenditure**

1. As authorized by the account owner, the amount to be disbursed from an account shall be drawn from deposits (including earnings on deposits) and earnings enhancements (including earnings on earnings enhancements) in the same ratio as these funds bear to the total value of the account as of the date of the disbursement.

2. For an educational term, the account owner may not withdraw an amount in excess of the beneficiary's qualified higher education expenses for that term or the value of the account, whichever is less.

**C. Payments to Eligible Educational Institutions**

1. Upon the beneficiary's enrollment and the institution's receipt of a START disbursement, the institution may credit the student's account. Should the amount received exceed the amount owed to the institution, the institution shall disburse the balance to the beneficiary, unless the beneficiary directs otherwise.

**C.2. - G ...**

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:716 (June 1997), amended LR 24:1272 (July 1998), LR 24:2238 (December 1998), LR 26:2265 (October 2000), LR 27:1881 (November 2001), LR 30:

**§311. Termination and Refund of an Education Savings Account**

**A. ...**

**B. Account Terminations**

1. The account owner who is a natural person, other than a natural person classified as an account owner under §303.A.5, may terminate an account at any time.

**2. - 5. ...**

6. The account owner who is a legal entity or is classified under §303.A.5, may not terminate an account, however, the account owner who is a legal entity or is classified under §303.A.5 may designate a substitute beneficiary in accordance with §313.A.4.b.

**C. Refunds**

1. A partial refund of an account may only be made as described in §311.F.3.

**2. ...**

3. No refunds shall be made to an account owner who is a legal entity classified under §303.A.3 or 4. If an account owned by a legal entity classified as an account owner under §303.A.3 or 4 is terminated by LATTA or by the account owner in accordance with §311.E or F, the refund will be made to the beneficiary or to the beneficiary's estate if no substitute beneficiary has been designated by the account owner.

4. No refunds shall be paid to account owner classified under §303.A.5. If such an account is terminated by LATTA in accordance with §311.E, the beneficiary shall become the owner of the account, provided that, all the rights and restrictions provided in law and these rules regarding account owners classified under §303.A.5, including, but not limited to, use of the funds, refunds, terminations, designation of beneficiary, etc. shall be applicable to the beneficiary that becomes the owner of such an account. If an account owner classified under §303.A.5 dies or is dissolved and the beneficiary has died or failed to enroll in an eligible college or university by age 25, and no substitute beneficiary has been designated by the account owner, the Authority shall designate a new beneficiary who must meet the requirements of §301.A.3 and §303.A.5.

5. Refunds from investment options with variable earnings will be assigned a trade date of one business day after the business day of receipt.

**D. Designation of a Refund Recipient**

1. In the owner's agreement, the account owner who is a natural person, except one who is classified under §303.A.5, may designate the beneficiary to receive refunds from the account.

2. Refunds of interest earnings will be reported as income to the individual receiving the refund for both federal and state tax purposes.

3. In the event the beneficiary receives any refund of principal and earnings from the account, the tax consequence must be determined by the recipient.

4. The beneficiary of an account owned by a legal entity classified as an account owner under §303.A.3 or 4 is automatically designated as the refund recipient.

5. Funds in an account classified under §303.A.5 shall not be refunded.

**E. Involuntary Termination of an Account with Penalty**

1. The LATTA may terminate an owner's agreement if it finds that the account owner or beneficiary provided False or Misleading Information (see §107).

2. If the LATTA terminates an owner's agreement under this Section, all interest earnings on principal deposits may be withheld and forfeited, with only principal being refunded.

3. An individual who obtains program benefits by providing false or misleading information will be prosecuted to the full extent of the law.

F. Voluntary Termination of an Account

1. Refunds shall be equal to the redemption value of the education savings account at the time of the refund, and shall be made to the person designated in the owner's agreement or by rule.

2. The person receiving the refund shall be responsible for any state or federal income tax that may be payable due to the refund.

3. Except for accounts classified in accordance with §305.A.5, accounts may be terminated and fully refunded or partially refunded at the request of the account owner for the following reasons.

a. the death of the beneficiary in which case the refund shall be equal to the redemption value of the account and shall be made to:

- i. the account owner, if the account owner is a natural person; or
- ii. the beneficiary's estate, if the account owner is a legal entity.

b. the disability of the beneficiary, in which case the refund shall be equal to the redemption value of the account and shall be made to:

- i. the account owner or the beneficiary, as designated in the owner's agreement, if the Account owner is a natural person; or
- ii. the beneficiary, if the account owner is a legal entity.

c. the beneficiary receives a scholarship, waiver of Tuition, or similar subvention that the LATTA determines cannot be converted into money by the beneficiary, to the extent the amount of the refund does not exceed the amount of the scholarship, waiver of tuition, or similar subvention awarded to the beneficiary. In such case, the refund shall be equal to the scholarship, waiver of Tuition, or similar subvention that the LATTA determines cannot be converted into money by the beneficiary of the account, or the redemption value, whichever is less, and shall be made to:

- i. the account owner or the beneficiary, as designated in the owner's agreement, if the Account owner is a natural person; or
- ii. the beneficiary, if the account owner is a legal entity.

4. Refunds made under this §311.F.3 are currently exempt from additional federal taxes.

G Effective Date of Account Termination. Account termination shall be effective at midnight on the business day on which the request for account termination and all supporting documents are received. Accounts will be credited with interest earned on principal deposits through the effective date of the closure of the account.

H. Refund Payments. Payment of refunds for voluntary termination under §311.F or partial refunds of accounts pursuant to §311.F.3 shall be made within 30 days of the date on which the account was terminated. The termination refund shall consist of the principal remaining in the account and interest remaining in the account accrued on the principal through the end of the last calendar year. Interest earned in excess of \$3 during the calendar year of termination will be refunded on or about the forty-fifth day

after the start of the next calendar year. Interest earned of \$3 or less during the calendar year of termination will be forfeited to the Louisiana Education and Tuition Savings Fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:717 (June 1997), amended LR 24:1273 (July 1998), repromulgated LR 26:2265 (October 2000), amended LR 27:38 (January 2001), LR 27:1882 (November 2001), LR 28:779 (April 2002), LR 30:

**§313. Substitution, Assignment, and Transfer**

A. - A.3. ...

4. If the substitute beneficiary is not a member of the family of the previous beneficiary:

a. and the account owner is a natural person classified under §303.A.1-4, the account must be refunded to the account owner and a new account must be opened;

b. and the account owner is a legal entity classified under §303.A. 3 or 4, a new account shall be opened in the name of the new beneficiary; and

i. - ii. ...

c. and the account owner is classified under §303.A. 5, a new account shall be opened in the name of the new beneficiary only if the beneficiary meets all the requirements of §303.A. 5; and

i. these transfers may be treated as refunds under federal and state tax laws in which case the account owner will be subject to any associated tax consequences; and

ii. the earnings enhancements and interest thereon will not be transferred to the new beneficiary; (Note that the deposit(s) will be eligible for earnings enhancement for the year of the deposit.)

iii. the provisions of §301.A.2 shall apply to account owners classified in accordance with §305.A.5.

B. - C.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:718 (June 1997), amended LR 24:1274 (July 1998), repromulgated LR 26:2266 (October 2000), amended LR 27:1883 (November 2001), LR 28:780 (April 2002), LR 30:

**§315. Miscellaneous Provisions**

A. - H. ...

I. No Investment Direction. No account owner or beneficiary of an education savings account may direct the investment of funds credited to an account, except to make an annual election among investment options that offer fixed earnings, variable earnings or both. Deposits will be invested on behalf of the START Savings Program by the State Treasurer.

J. - R. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23: 718 (June 1997), amended LR 24:1274 (July 1998), LR 26:1263 (June 2000), repromulgated LR 26:2267 (October 2000), amended LR 27:1221 (August 2001), LR 27:1884 (November 2001), LR 28:1761 (August 2002), LR 28:2335 (November 2002), LR 30:

Interested persons may submit written comments on the proposed changes until 4:30 p.m. on January 5, 2004, to Jack L. Guinn, Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge  
General Counsel

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

**RULE TITLE: Student Tuition and Revenue  
Trust (START Saving) Program**

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

These rules are required to implement Act 221 of the 2003 Regular Session of the Louisiana Legislature, which modify the Student Tuition Assistance and Revenue Trust (START) Program. This Act added new provisions under the categories of account owners and increased the State match percentage rate for contributions made by such owners. As such, the Act will likely increase Statutorily Dedicated expenditures from the Louisiana Student Tuition Assistance and Revenue Trust (START) Program's Savings Enhancement Fund by unknown amounts in future years.

**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)**

Needy children will benefit from irrevocable donations to START accounts that will be matched by a state Earnings Enhancement. Account owners will be allowed to select investment options that may include equities. Investment in equities offers the potential for higher returns, and includes greater risk of loss.

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

No impact on competition and employment is anticipated to result from this rule.

George Badge Eldredge  
General Counsel  
0312#052

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Environmental Quality  
Office of Environmental Assessment  
Environmental Planning Division**

Certified Solid Waste Operator  
(LAC 46:XXIII.101, 105, 107, 109, 113, 307, 309, 501, 507, 511, 701, 703, 705, 707, 901, 903, 905, 907, 909, 911, 912, 913, 915, 916, 917, 919, 921, 923, 1101, 1103, 1303, 1307, 1501, 1503, 1505, 1507, and 1509)(SW035)

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 Certified Solid Waste Operators regulations, LAC 46:XXIII.101, 105, 107, 109, 113, 307, 309, 501, 507, 511, 701, 703, 705, 707, 901, 903, 905, 907,

909, 911, 912, 913, 915, 916, 917, 919, 921, 923, 1101, 1103, 1303, 1307, 1501, 1503, 1505, 1507, and 1509 (Log #SW035).

The proposed Rule amends definitions to be consistent with LAC 33:VII.Solid Waste regulations, clarifies requirements, deletes the classification for Solid Waste Management Facilities, renames the operator classifications, allows the Department of Environmental Quality to establish additional numbers and levels of operators at permitted facilities, amends requirements for certification, sets specific requirements for conditional certification, and formalizes procedures for revocation, modification, and suspension of certification. The regulations require updating at periodic intervals. These amendments will bring the regulations up-to-date. The basis and rationale for this proposed Rule are to update standards and requirements for operator certification.

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 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XXIII. Certified Solid Waste Operators**

**Chapter 1. General**

**§101. Authority**

A. The Louisiana Solid Waste Operator Certification and Training Program Act, R.S. 37:3151 et seq., creates the Board of Certification and Training for Solid Waste Disposal System Operators and authorizes the board to adopt rules of procedure and establish fees for the certification of solid waste operators.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3154.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:404 (May 1984), amended by the Department of Environmental Quality, Board of Certification and Training for Solid Waste Disposal Operators, LR 14:12 (January 1988), LR 20:656 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

**§105. Objectives**

A. The objectives of these regulations are as follows:

1. to establish a certification program for operators of Type II, II-A, and III solid waste processing and disposal facilities which accommodate residential and commercial solid waste;

2. to develop procedures related to certification, recertification, and training of applicants to meet appropriate certification requirements;

3. to establish procedures for revocation, modification, or suspension of an operator's certification;

4. to establish appropriate fees for examination, certification, and recertification to be paid by the applicant; and

5. to encourage the certification of all Louisiana Department of Environmental Quality employees involved in the inspection and permitting of solid waste processing and disposal facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3154.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:404 (May 1984), amended by the Department of Environmental Quality, Board of Certification and Training for Solid Waste Disposal Operators, LR 14:12 (January 1988), LR 20:656 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

### §107. Definitions

A. As used in these rules, the following words shall have the meanings ascribed to them in this Section unless the context clearly indicates otherwise.

*Classify?* repealed.

*Commercial Solid Waste?* all types of solid waste generated by stores, offices, restaurants, warehouses, and other non-manufacturing activities, excluding residential and industrial solid wastes.

*Conditional Certification?* allows an operator to operate only the facility at which he is employed at the time of certification for a period not to exceed six months.

*Continuing Training?* repealed.

*Department?* the Department of Environmental Quality, as created by R.S. 30:2001 et seq.

\*\*\*

*Regular Certification?* allows an operator to operate any facility of the type for which the certificate is issued. Regular certificates are issued for a four-year period.

\*\*\*

*Solid Waste Management Facility (SWMF)?* any facility classified under the solid waste management system including, but not limited to, nonhazardous solid waste landfills, landfarming operations, incinerators, transfer stations, non-industrial surface impoundments, construction and demolition debris facilities, and composting, refuse-derived, and separation facilities.

\*\*\*

*Training?* the process whereby an operator obtains required formal instruction in the area of solid waste management.

\*\*\*

*Type II-A Facility?* a facility used for processing residential, infectious, or commercial solid waste (e.g., a transfer station, incinerator waste-handling facility, refuse-derived fuel facility, shredder, baler, autoclave, or compactor).

*Type III Facility?* a facility used for disposing or processing of construction/demolition debris or woodwaste, composting organic waste to produce a usable material, or separating recyclable wastes (a separation facility). Residential, commercial, or industrial solid waste must not be disposed of in a Type III facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3151 and R.S. 37:3154.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:404 (May 1984), amended by the Department of Environmental Quality, Board of Certification and Training for Solid Waste Disposal Operators, LR 14:12 (January 1988), LR 20:656 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

### §109. Filing of Documents

A. Any notice, petition, document, or other correspondence that is required to be filed with the board shall be addressed and mailed or delivered to the Board of Certification and Training for Solid Waste Disposal System Operators at the Department of Environmental Quality, Office of Environmental Services.

B. The following requirements and rules shall apply to all documents and papers filed with the board or during a hearing or meeting.

1. The date on which the papers are actually received by the board or at the hearing shall be deemed to be the date of filing.

2. - 3. ...

4. All information regarding an applicant's qualifications shall be provided at least 30 days prior to the date on which the applicant wishes to be tested. This information is to be provided on a board-prescribed application form. The form may be obtained from the Office of Environmental Services, Permits Division or from the internet at [www.deq.state.la.us/misc/topics.stm](http://www.deq.state.la.us/misc/topics.stm), listed alphabetically under the letter "S."

5. Unless otherwise specifically provided by these rules, an original and 12 copies of all documents directed to the board shall be filed.

6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3154.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:405 (May 1984), amended by the Department of Environmental Quality, Board of Certification and Training for Solid Waste Disposal Operators, LR 14:12 (January 1988), LR 20:656 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

### §113. Mandatory Provisions

A. Any SWMF that requires a permit, as determined by the department, shall be categorized in accordance with LAC 33:VII.507.

B. The certificates of all of a SWMF's certified operators shall be prominently displayed at the facility.

C. Certified operators are required at all Type II, II-A, and III SWMFs requiring a permit from the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3154, 3155, and 3156.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 30:

### Chapter 3. Board of Certification and Training for Solid Waste Disposal System Operators

#### §307. Hearings and Meetings

A. The board shall meet as often as necessary to conduct its business.

B - D.1.b. ...

2. Record. All such public hearings and meetings shall be recorded verbatim. All written statements, charts, tabulations, and similar data offered at the hearing shall, subject to exclusion because of redundancy or immateriality, be admitted by the presiding officer. All evidence or materials admitted by the presiding officer at the hearing shall constitute the hearing record. If a presiding officer

conducts the hearing on behalf of the board, he shall prepare a report of the proceedings for the board.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3152 and R.S. 37:3154.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:405 (May 1984), amended by the Department of Environmental Quality, Board of Certification and Training for Solid Waste Disposal Operators, LR 20:656 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

### **§309. Board Records: Custodian**

A. The secretary of the Department of Environmental Quality shall serve as the official custodian of all records of the board. All records of meeting notices, agendas, and other documents relating to the board shall be maintained in a central location within the Office of Environmental Services, Permits Division, Registrations and Certifications Section. All such records shall be available for public inspection in accordance with the provisions of appropriate state or federal law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3151 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Board of Certification and Training for Solid Waste Disposal Operators, LR 14:12 (January 1988), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

## **Chapter 5. Prohibitions**

### **§501. Operation of Facilities by Certified Personnel**

A. No individual, municipality, parish, public or private corporation, partnership, firm, agency of the state, or the United States government, or any agent or subdivision thereof, or any other juridical person shall operate a classified solid waste facility unless such facility is operated by individuals who have been certified in accordance with these rules for the operation of the particular facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3156 and R.S. 37:3154.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:406 (May 1984), amended by the Department of Environmental Quality, Board of Certification and Training for Solid Waste Disposal Operators, LR 20:656 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

### **§507. Incompetence**

A. No person shall continue to operate a facility under a certification issued under these regulations if such person is unable to perform his duties in a proper manner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3156 and R.S. 37:3154.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:406 (May 1984), amended by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 30:

### **§511. Display of Certificate**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3156 and R.S. 37:3154.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:406 (May 1984), repealed by the

Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 30:

## **Chapter 7. Classification of Facilities**

### **§701. Information Used to Classify Facilities**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3155 and R.S. 37:3154.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:406 (May 1984), amended by the Department of Environmental Quality, Board of Certification and Training for Solid Waste Disposal Operators, LR 20:656 (June 1994), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

### **§703. General Classifications**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3155 and R.S. 37:3154.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:406 (May 1984), amended by the Department of Environmental Quality, Board of Certification and Training for Solid Waste Disposal Operators, LR 20:656 (June 1994), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

### **§705. Further Classification**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3155 and R.S. 37:3154.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:406 (May 1984), amended by the Department of Environmental Quality, Board of Certification and Training for Solid Waste Disposal Operators, LR 20:656 (June 1994), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

### **§707. Board's Discretion to Classify**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3155 and R.S. 37:3154.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:406 (May 1984), amended by the Department of Environmental Quality, Board of Certification and Training for Solid Waste Disposal Operators, LR 20:656 (June 1994), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

## **Chapter 9. Operator Certification**

### **§901. Certificate**

A. The board shall certify persons as to their qualifications established by testing, training, education, and experience to operate a classified solid waste processing or disposal facility. A certificate, suitable for framing, shall be provided to each successful applicant by the board. This certificate shall clearly show the name of the operator, type of certification, any limitations imposed, the expiration date, and any other data deemed appropriate by the board. Louisiana Department of Environmental Quality employees involved in the inspection or permitting of a classified solid waste processing or disposal facility may be certified provided they meet the requirements of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3154 and R.S. 37:3156.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:406 (May 1984), amended by the

Department of Environmental Quality, Board of Certification and Training for Solid Waste Disposal Operators, LR 14:12 (January 1988), LR 20:656 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

### **§903. Mandatory Certification**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3155, R.S. 37:3156 and R.S. 37:3154.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:406 (May 1984), repealed by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 30:

### **§905. Regular Certification Validity**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3159 and R.S. 37:3154.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:406 (May 1984), repealed by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 30:

### **§907. Types of Certification**

A. - A.1. ...

2. the level of complexity of SWMF operation.

B. The certification shall be either regular or conditional.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3159 and R.S. 37:3154.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:406 (May 1984), amended by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 30:

### **§909. Facility Designation**

A. Each operator certification will be valid for the management of one type of facility. The classifications and sub-classifications of facilities shall be specified as follows:

1. Type II facilities:
  - a. landfills;
  - b. surface impoundments; and
  - c. landfarms;
2. Type II-A facilities:
  - a. incinerator waste-handling facilities;
  - b. refuse-derived fuel facilities; and
  - c. transfer stations;
3. Type III facilities:
  - a. construction/demolition debris or woodwaste facilities;
  - b. composting facilities; and
  - c. separation facilities.

B. These regulations may be amended by the board to include other types of solid waste systems as they become subject to regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3155 and R.S. 37:3159.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:406 (May 1984), amended by the Department of Environmental Quality, Board of Certification and Training for Solid Waste Disposal Operators, LR 20:656 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

### **§911. Facility Types**

A. Facilities are required, at a minimum, to have certified operators according to the following schedule.

#### 1. Landfills

a. Each facility providing solid waste processing or disposal for a particular parish or region shall have a Level "A" operator in responsible charge of the overall solid waste processing or disposal facility.

b. Each facility shall have either a Level "A" or Level "B" operator who is present at the facility and in direct charge of the day-to-day operation of the facility during hours of operation.

c. Each facility shall have at least one Level "C" operator for each 10 operational people during hours of operation. (Operational personnel does not include personnel solely conducting clerical duties.)

2. Surface Impoundments. Each surface impoundment shall have a Level "A" operator in responsible charge of the solid waste processing or disposal facility.

3. Landfarms, Incinerator Waste-Handling Facilities, Refuse-Derived Fuel Facilities, Transfer Stations, Construction/Demolition Debris or Woodwaste Facilities, Composting Facilities, and Separation Facilities

a. Each facility providing solid waste processing or disposal for a particular parish or region shall have a Level "A" operator in responsible charge of the overall solid waste processing or disposal facility.

b. Each facility shall have either a Level "A" or Level "B" operator who is present at the facility and in direct charge of the day-to-day operation of the facility during hours of operation.

B. The department may determine additional numbers and levels of operators required at a particular facility, as specified in the permit, on a case-by-case basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3155, R.S. 37:3159 and R.S. 37:3154.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:406 (May 1984), amended by the Department of Environmental Quality, Board of Certification and Training for Solid Waste Disposal Operators, LR 14:12 (January 1988), LR 20:656 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

### **§912. Issuance of Certificates to Operators**

A. Certificates issued to operators on or after [date of promulgation to be inserted] will correspond to the facility designations and levels of operator certification as defined in LAC 46:XXIII.909 and 913.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3155, R.S. 37:3159 and R.S. 37:3154.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Board of Certification and Training for Solid Waste Disposal Operators, LR 20:656 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

### **§913. Levels of Operator Certification**

A. Each certification shall specify the level of complexity of SWMF operation for which the certificate is issued. Levels of operator certification are hereby established as "A," "B," and "C." Level "A" represents the most comprehensive level of complexity; Level "B" is an

intermediate level of complexity; and Level "C" represents the least comprehensive level of complexity. Additional levels may be added by amendment to these regulations.

B. A Level "A" certificate shall encompass all of the technical, regulatory, administrative, and management knowledge needed to perform all of the duties necessary for the proper operation of an entire solid waste management facility and shall encompass both procedural and operational aspects of a processing or disposal facility (all technical, regulatory, administrative, and management duties necessary for the proper operation of the solid waste processing or disposal facility), according to the type of facility for which the applicant seeks certification.

C. A Level "B" certificate shall encompass all of the technical, regulatory, administrative, and management knowledge needed to perform the duties necessary for the proper operation of a solid waste management facility as determined by assigned duties and customary practice, and operational knowledge needed to operate a processing or disposal facility (i.e., equipment selection, maintenance, waste handling procedures, safety procedures, personnel hiring and training, reports, and special and hazardous waste identification), according to the type of facility for which the applicant seeks certification.

D. A Level "C" certificate shall encompass the operational knowledge needed to operate a portion of the waste handling aspects of a processing or disposal facility (i.e., unloading and spotting; maintaining smallest practical working face; layering, compacting, covering, cleaning, and maintaining equipment; equipment operation; and special or hazardous waste identification), according to the type of facility for which the applicant seeks certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3154 and R.S. 37:3159.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:407 (May 1984), amended by the Department of Environmental Quality, Board of Certification and Training for Solid Waste Disposal Operators, LR 14:12 (January 1988), LR 20:656 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

### **§915. Qualification Requirements**

A. A Level "A" operator shall have the following qualifications for regular certification.

1. The operator must possess a high school diploma or equivalency certificate.

2. Experience Requirements. The operator must have:  
a. a minimum of three years of experience as described in LAC 46:XXIII.913.B in the field of solid waste management; or

b. a minimum of two years of experience as described in LAC 46:XXIII.913.B in the field of solid waste management and an engineering degree; or

c. a minimum of two years of certification as a Level "B" operator.

3. The operator must be of good character.

B. A Level "B" operator shall have the following qualifications for regular certification.

1. Experience Requirements. The operator must have:  
a. a minimum of two years of experience as described in LAC 46:XXIII.913.C in the field of solid waste management; or

b. a minimum of one year of experience as described in LAC 46:XXIII.913.C in the field of solid waste management and a minimum of two years of experience as a supervisor in the construction field relating to the use of heavy equipment, good drainage practice, and other skills to ensure proper operation of a solid waste processing or disposal facility; or

c. a minimum of one year of experience as described in LAC 46:XXIII.913.C in the field of solid waste management and an engineering degree; or

d. a minimum of two years of certification as a Level "C" operator.

2. The operator must be of good character.

C. A Level "C" operator shall have the following qualifications for regular certification.

1. Experience Requirements. The operator must have:

a. a minimum of one year of experience as described in LAC 46:XXIII.913.D in the field of solid waste management; or

b. a minimum of one year of experience in the construction field relating to the use of heavy equipment, good drainage practice, and other skills to ensure proper operation of a solid waste processing or disposal facility; or

c. an engineering degree.

2. The operator must be of good character.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3153 and R.S. 37:3154.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:407 (May 1984), amended by the Department of Environmental Quality, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:593 (August 1984), LR 14:12 (January 1988), LR 20:656 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

### **§916. Regular Certification**

A. An applicant shall request consideration for certification upon the completion of the following requirements:

1. meet appropriate qualification requirements in LAC 46:XXIII.915;

2. submit an application to the board on a board-prescribed application form, which may be obtained from the Office of Environmental Services, Permits Division or from the internet at [www.deq.state.la.us/misc/topics.stm](http://www.deq.state.la.us/misc/topics.stm), listed alphabetically under the letter "S";

3. receive board approval for certification and examination;

4. achieve a passing score on the examination for the appropriate level of operation; and

5. pay all fees associated with certification.

B. Regular certification shall allow an operator to operate any facility of the type for which the certificate is issued.

C. Regular certificates are issued for a four-year period.

D. Recertification shall be in accordance with LAC 46:XXIII.923.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3154, 3159, and 3160.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 30:

### §917. Conditional Certification

A. A conditional certificate shall allow an operator to operate only the facility at which he is employed at the time of certification.

B. Conditional certification requirements are as follows.

1. The applicant must request a conditional certification.

2. The board must determine that the applicant is qualified to perform duties at a particular facility.

3. The applicant must pass the operator examination and attend one board-approved training class (minimum of 10 hours) within six months.

C. The board may upgrade a conditional certification after receipt of an application and upon its determination that, based on the applicant's training, education, experience, and examination results, the applicant is qualified for regular certification.

D. Any person appointed to replace or succeed a regularly certified operator after August 29, 1983, may be issued a conditional certificate upon application to the board and payment of the same fees as specified for regular certificates. Application for certification must be made within one year of replacement or succession and must specify the need for conditional certification. The term of such a conditional certificate shall not exceed six months. After receipt of such a conditional certificate, the applicant must take and pass the operator examination within six months and attend 10 hours of board-approved training. If the examination is passed, the applicant may be issued an additional conditional certificate, prior to meeting other requirements for a regular certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3159, R.S. 37:3160 and R.S. 37:3154.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:407 (May 1984), amended by the Department of Environmental Quality, Board of Certification and Training for Solid Waste Disposal Operators, LR 14:12 (January 1988), LR 20:656 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

### §919. Operator Examinations

A. An applicant for certification must pass an operator examination as provided in this Section.

B. ...

C. The board shall provide appropriate written examinations for each operator level of SWMFs.

D. ...

E. Notice of the examination shall be published prior to the examination in a method and fashion provided by the board.

F. ...

G. All examinations will be graded on a pass/fail basis.

H. Payment of the examination fee must be submitted before an examination may be taken.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3153 and R.S. 37:3154.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:408 (May 1984), amended by the Department of Environmental Quality, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:593 (August 1984), LR 14:12 (January 1988), LR 20:656 (June 1994), amended

by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

### §921. Certification of Present Practitioners

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3155, R.S. 37:3160 and R.S. 37:3154.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:406 (May 1984), amended by the Department of Environmental Quality, Board of Certification and Training for Solid Waste Disposal Operators, LR 20:656 (June 1994), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

### §923. Recertification

A. Regular certificates shall be valid for four years after issuance. An operator may be recertified upon recommendation by the board for a new four-year period after timely submission of satisfactory evidence that the operator has met the training requirements as specified by LAC 46:XXIII.1103.C. Upon receipt of such evidence, the board shall issue a new certificate.

B. Application for recertification shall be submitted to the board on a board-prescribed form no sooner than six months prior to the expiration of the certification and no later than three months after expiration of the certification. The form may be obtained from the Office of Environmental Services, Permits Division or from the internet at [www.deq.state.la.us/misc/topics.stm](http://www.deq.state.la.us/misc/topics.stm), listed alphabetically under the letter "S." The application shall contain the following documentation:

1. - 2. ...

C. Any operator whose certificate has expired for more than three months shall be treated as a new applicant. Such a person must reapply for certification, take an examination, and otherwise meet the requirements for new applicants.

D. Persons whose certificates have expired, but who make application no later than three months after the expiration date of the certificate, can be considered by the board for recertification; however, they will be required to pay the late recertification fee as provided in LAC 46:XXIII.1305.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3160, R.S. 37:3160 and R.S. 37:3154.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:408 (May 1984), amended by the Department of Environmental Quality, Board of Certification and Training for Solid Waste Disposal Operators, LR 14:12 (January 1988), LR 20:656 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

## Chapter 11. Operator Training for Certification

### §1101. Training

A. The content, frequency, and location of operator training shall be at the discretion of the board. Training may be modified or supplemented as needed at the discretion of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3157 and R.S. 37:3154.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:408 (May 1984), amended by the Department of Environmental Quality, Board of Certification and Training for Solid Waste Disposal Operators, LR 20:656 (June

1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

### **§1103. Responsibilities**

A. The board shall:

1. approve training available to Louisiana operators, which may include short courses, workshops, etc., that meets the standards of the board;
2. determine whether its training requirements can be reasonably satisfied by the operators based on current educational offerings; and
3. provide a list of the available training that meets the requirements of these regulations upon request.

B. In the event that the board determines that adequate training is not reasonably available to the operators, it shall either:

1. promote or otherwise cause adequate training to be available; or
2. waive the training requirements in whole or in part.

C. Operator Responsibilities

1. In order to retain certification, operators must receive the number of contact training hours as set forth below during the four years after receiving certification or recertification.

- a. Level "A" and "B" operators shall receive no fewer than 40 contact training hours.
- b. Level "C" operators shall receive no fewer than 30 contact training hours.
- c. Level "A" surface impoundment operators shall receive no fewer than 20 contact training hours.

2. The operator is responsible for determining whether a specific training course has been approved by the board. To obtain approval of specific training not listed by the board, the applicant may submit a complete course outline, the date and the place of offering, and the name of the offering entity to the board for consideration.

3. The operator is responsible for obtaining and submitting, in a timely manner, to the board, in accordance with LAC 46:XXIII.923, adequate evidence of attendance. Such evidence may include, but is not limited to, educational certificates, certification of attendance, travel vouchers, etc. Such evidence should be submitted as soon as possible after attending a course, with copies retained in the operator's files. All such submissions shall include the operator's certificate number on all documents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3157, R.S. 37:3158 and R.S. 37:3154.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:408 (May 1984), amended by the Department of Environmental Quality, Board of Certification and Training for Solid Waste Disposal Operators, LR 14:12 (January 1988), LR 20:656 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

### **Chapter 13. Fees**

#### **§1303. Method of Payment**

A. Fee payment shall be by check, draft, or money order made payable to the Board of Certification and Training.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3154.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:409 (May 1984), amended by the Department of Environmental Quality, Board of Certification and

Training for Solid Waste Disposal Operators, LR 14:12 (January 1988), LR 20:656 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

#### **§1307. Training Fees**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3154.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:409 (May 1984), repealed by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 30:

### **Chapter 15. Revocation, Modification, and Suspension of Certification**

#### **§1501. Revocation, Modification, and Suspension of Certification**

A. The board may revoke, modify, or suspend an operator's certification, if it determines that the operator has practiced fraud or deception in obtaining certification or in operating thereunder, or has been negligent in applying reasonable care, judgment, knowledge, or ability in the performance of his duties.

B. Written Notice

1. When the board determines that an operator's certification should be suspended, modified, or revoked, the board shall notify that operator by certified mail. Such written notice shall contain the following:

- a. facts that will justify a suspension, modification, or revocation of certification;
- b. a description of the general nature of the evidence supporting the suspension, modification, or revocation; and
- c. a recommendation that the operator's certification be suspended, modified, or revoked, unless the operator, within 30 days after receipt of the notice, submits a request for a hearing before the board. The request for hearing shall be submitted to the Board of Certification and Training. A written statement providing the operator's view of the circumstances shall accompany the request for hearing.

2. If the operator does not mail a request for hearing and a statement of the circumstances within the time frame specified, the board shall recommend suspension for a specified period of time, modification, or revocation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3154.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:409 (May 1984), amended by the Department of Environmental Quality, Board of Certification and Training for Solid Waste Disposal Operators, LR 20:656 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

#### **§1503. Immediate Suspension**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3154.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:409 (May 1984), amended by the Department of Environmental Quality, Board of Certification and Training for Solid Waste Disposal Operators, LR 20:656 (June 1994), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

**§1505. Hearings**

A. A hearing before the board on suspension, modification, or revocation shall proceed as follows.

1. At least 20 days prior to a hearing, the board shall provide the operator with a notice of the hearing. The notice shall be sent by certified mail and include the time, date, and location of the hearing.

2. The hearing shall be conducted summarily without observing all of the formalities associated with an adjudicatory hearing as defined in the Administrative Procedure Act, R.S. 49:951 et seq.

3. Within 90 days after conducting a hearing, the board shall forward its decision to the operator.

4. Upon receiving notice of suspension, modification, or revocation, an operator shall notify the owner/operator of the SWMF within 24 hours.

5. Judicial appeal from the board's decision may be taken in accordance with the Administrative Procedure Act, R.S. 49:951 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3154.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:409 (May 1984), amended by the Department of Environmental Quality, Board of Certification and Training for Solid Waste Disposal Operators, LR 20:656 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

**§1507. Rule to Show Cause**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3154.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:409 (May 1984), amended by the Department of Environmental Quality, Board of Certification and Training for Solid Waste Disposal Operators, LR 20:656 (June 1994), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

**§1509. Record of Hearing**

A. Record. The record of proceedings conducted under this Chapter shall consist of the following:

1. the certificate;
2. the notice of the hearing;
3. all documentary evidence and written comments received;
4. written recommendations received;
5. the decision; and
6. the transcript of the proceedings.

B. Transcript. Any hearing conducted under this Chapter shall be recorded, and a copy of the transcript made available to the public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3154.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Board of Certification and Training for Solid Waste Disposal Operators, LR 10:409 (May 1984), amended by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 30:

A public hearing will be held on January 26, 2004, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room C111, 602 N. Fifth Street, Baton Rouge, LA 70802. 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 Lynn Wilbanks at the address given below or at (225) 219-3550. Free parking is available across the street in the Galvez parking garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by SW035. Such comments must be received no later than February 2, 2004, at 4:30 p.m., and should be sent to Lynn Wilbanks, Office of Environmental Assessment, Environmental Planning Division, Regulation Development Section, Box 4314, Baton Rouge, LA 70821-4314 or to fax (225) 219-3582 or by e-mail to lynn.wilbanks@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of SW035.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.  
Assistant Secretary

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

**RULE TITLE: Certified Solid Waste Operator**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
There will be no costs or savings associated with the implementation of the proposed action.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
An increase or decrease in revenues will not occur as a result of the proposed action.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
Current and future operators of solid waste management facilities will be directly affected by the proposed action, but not economically. The effects will be changes in obtaining their continuing education; new nomenclature and some changed requirements for their various levels of certifications and clarified procedures for disciplinary actions. However, there will be no costs and/or economic benefits as a result of the proposed action.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There will be no impact on competition and employment in the public or private sectors as a result of this proposed Rule.

James H. Brent, Ph.D.  
Assistant Secretary  
0312#062

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

Confidential Information and Records  
(LAC 33:I.Chapter 5)(OS050)

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 Office of the Secretary regulations, LAC 33:I.501, 502, 503, 505, 507, 508, 509, and 511 (Log #OS050).

This revision clarifies the procedures for submission of information and records that meet the criteria for confidentiality under R.S. 30:2030 and the Louisiana Public Records Act, R.S. 44:1 et seq. This revision streamlines procedures by separating the types of submissions and what is required for department processing of each type. This revision also clarifies what information and records will and will not be available to the public in favor of maximum availability of non-confidential information. To achieve this goal, which is consistent with and required by the Louisiana Constitution, art. 7, §12, and art. 12, §3, as well as the Public Records Act, R.S. 44:31(B)(1), those members of the public who submit information and records for which they seek confidentiality must carefully delineate how the submission meets the criteria for confidentiality and segregate confidential from non-confidential information that does not meet the criteria for confidentiality. The amendment clarifies that the burden is on the submitter to provide everything necessary for the department to determine whether confidentiality may be granted. The amendment also reduces the burden on the submitter for purely financial information/records submissions; this change will allow streamlined department processing for this category of submissions. This amendment to restructure and clarify the procedures for various types of confidentiality submissions is required based upon the department's experience with submissions under the current regulations. The basis and rationale for this rule are two-fold. The basis is the need for increased compliance with department requirements for submission of items for which confidentiality is requested and the need for certainty whether each individual item submitted will or will not be available to the public in some form. The rationale is that while certain information or records may meet the criteria for confidentiality, the law requires that, to the extent possible, confidential information be separated so that the public may have access to the non-confidential information.

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 1. Departmental Administrative Procedures Chapter 5. Confidential Information Regulations

##### §501. Scope

A. Department of Environmental Quality information and records obtained under the Louisiana Environmental Quality Act, or by any rule, regulation, order, license, registration, or permit term or condition adopted or issued thereunder, or by any investigation authorized thereby, shall be available to the public, unless confidentiality is requested in writing and the information or records are determined by the department to require confidentiality.

B. Unless otherwise provided by law or regulation, information or records may be classified as confidential if the secretary makes a written determination that confidentiality is necessary to:

1. prevent impairment of an ongoing investigation;
2. prevent prejudice to the final decision regarding a violation;
3. protect trade secrets;
4. protect proprietary secrets;
5. protect commercial or financial information; or
6. comply with federal or state law or regulation or a valid court order.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2030.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:342 (May 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2439 (November 2000), LR 30:

##### §502. Definitions

*Administrative Authority*—repealed.

*Air Emission Data*—any information necessary or used to determine or calculate the identity, amount, frequency, concentration, or other characteristic of any emission or discharge that has been emitted or discharged by a source; or any information necessary or used to determine or calculate the identity, amount, frequency, concentration, or other characteristic of an emission that, under an applicable standard or limitation, a source was authorized to emit or discharge including, to the extent necessary to identify the source and to distinguish it from other sources, a description of the device, installation, or operation constituting the source. This includes the calculation of an “allowable” emission limit for a permit.

*Complete*—in reference to a request for confidentiality of information or records, the request contains everything necessary for a determination to be made. Designating a request complete does not preclude the department from requesting or accepting an amended request.

*Financial Request*—a single character request that contains financial information or records only. This includes, but is not limited to, financial accounts statements, gross revenues statements, profit and loss statements, projected revenues statements, tax returns, financial/accounting statements, and financial audit documentation/reports.

*Mixed Character Record*—a record submitted as part of a request for confidentiality that, in addition to information that meets the criteria for confidentiality specified by law, also contains information that either does not meet the criteria for confidentiality specified by law or is prohibited by law or regulation from being classified as confidential.

*Mixed Character Request*—a request for confidentiality that contains one or more mixed character records.

*Single Character Request*—a request for confidentiality that contains only information or records that meet the criteria for confidentiality specified by law.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2030.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:2439 (November 2000), LR 30:

### **§503. Requests for Confidentiality**

A. Each request for confidentiality shall include all of the following:

1. a statement whether the request for confidentiality is a single character request, a mixed character request, or a financial request;

2. a list or an index identifying each separate record, category of records, or item of information and stating the legal authority under which each separate record or item of information may be determined to require confidentiality;

3. a statement of the measures taken to guard against undesired disclosure to others of each record or item of information;

4. a statement of the extent to which the information or records have been disclosed to others and the precautions taken in connection therewith;

5. a statement whether disclosure of the information or records would be likely to result in substantial harmful effects in the competitive market and, if so:

a. a statement of what those effects would be;

b. a statement of why they should be viewed as substantial; and

c. an explanation of the causal relationship between disclosure and such harmful effects for each record or item of information;

6. a statement whether any previous request for confidentiality has been made to any government agency for the same information or records and, if so, the date of the request and its disposition; and

7. a certification that all statements are true and correct to the best of the requester's knowledge.

B. Each request shall be submitted with two versions of the information or records; one version to be clearly marked "confidential," and the other to be clearly marked "public."

1. The confidential version is to show all information and must clearly indicate what confidential information is excised from the public version.

2. The public version is to have the confidential information excised and must clearly show that confidential information has been excised.

3. Blacking out confidential portions of otherwise public records is permissible, provided that the blacked-out portions are clearly identified in both confidential and public versions.

C. A financial request is not required to comply with the provisions of Paragraphs A.2-5 of this Section.

D. A single character request shall include a certification that no record or item of information is contained in the request that:

1. fails to meet the criteria for confidentiality specified by law; or

2. is prohibited by law or regulation from being classified as confidential.

E. Specific categories of information that are prohibited from being classified as confidential include:

1. air emission data;

2. any permit or portion of a permit issued to a source in accordance with LAC 33:III.507;

3. effluent and discharge data to surface water and groundwater;

4. the location and identification of any buried waste;

5. the name and address of any license, registration, or permit applicant or permittee;

6. all NPDES, LPDES, and other water discharge permit applications or permits and information required by LPDES application forms, including information submitted on the forms and any attachments used to supply information required by the forms;

7. any other information required by law or regulation to be disclosed or made available to the public; and

8. any other information for which a claim of confidentiality is prohibited by law or regulation.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2030.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:342 (May 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

### **§505. Responses to Requests for Confidentiality**

A. The department shall make a determination and send a written response to the requester by certified mail within a reasonable time from receipt of a complete request for confidentiality, except for those requests made in accordance with R.S. 30:2074(D), in which case the department shall send a written response by certified mail within 21 working days from receipt of a complete request for confidentiality.

B. The department's determination shall become final unless, no later than 30 days after receipt of the written determination, the requester files a written request for a hearing.

C. Information or records for which a complete confidentiality request has been submitted shall be held confidential until the department's determination becomes final. Departmental employees, other than those charged with assessing the request for confidentiality, shall not be given access to such information or records, even if necessary for the performance of their jobs, until the department's determination as to confidentiality becomes final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2030.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:342 (May 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

#### **§507. Accessibility**

A. If a request for confidentiality is granted, such confidentiality shall not prevent the necessary use of the information or records by department employees or duly authorized officers or employees of local, state, or federal governments in carrying out their responsibilities under law. The secretary or the secretary's designee must duly authorize any officer or employee of local, state, or federal government who seeks access to confidential information or records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2030 and 30:2074.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:343 (May 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

#### **§508. Maintenance of Confidential Information**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2030.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:343 (May 1996), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

#### **§509. Release of Confidential Information or Records**

A. Information or records that are declared confidential to prevent impairment of an ongoing investigation or prejudice to the final decision regarding a violation will be made available for public inspection upon conclusion of the investigation or rendition of the final decision regarding a violation.

B. All other information or records that are declared confidential are subject to public disclosure three years from the date of determination of confidentiality, unless a complete request for continuance of confidentiality is received no later than 180 days prior to the expiration of the three-year period.

C. The submitter of information or records or the submitter's successor or assignee shall notify the secretary, by authentic act, of any information or record that is no longer considered to be confidential and shall release the secretary from any responsibility with regard to any claim of confidentiality concerning that record or information.

D. Renewal of a grant of confidentiality is at the discretion of the secretary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2030.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:343 (May 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

#### **§511. Disclosure of Confidential Records or Information**

A. Any employee or former employee of the department or anyone acting as a representative of the secretary of the department who is convicted of intentional disclosure or conspiracy to disclose trade secrets or other information that

has been determined to be confidential is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than \$1,000, imprisonment for up to one year, or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2030.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 30:

A public hearing will be held on January 26, 2004, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room C111, 602 N. Fifth Street, Baton Rouge, LA 70802. 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 Lynn Wilbanks at the address given below or at (225) 219-3550. Free parking is available across the street in the Galvez parking garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by OS050. Such comments must be received no later than February 2, 2004, at 4:30 p.m., and should be sent to Lynn Wilbanks, Office of Environmental Assessment, Environmental Planning Division, Regulation Development Section, Box 4314, Baton Rouge, LA 70821-4314 or to fax (225) 219-3582 or by e-mail to [lynn.wilbanks@la.gov](mailto:lynn.wilbanks@la.gov). Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of OS050.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.  
Assistant Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Confidential Information and Records**

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

There will be no costs or savings to state or local governmental units for this proposed Rule.

#### **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 Rule.

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

There will be no costs to directly-affected persons or non-governmental groups as a result of this Rule. The public will be better informed and have a greater understanding of the process

for requesting confidentiality of records or information submitted to the department.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed Rule will have no effect on competition or employment.

James H. Brent, PhD.  
Assistant Secretary  
0312#061

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Environmental Quality  
Office of Environmental Assessment  
Environmental Planning Division**

Toxicity Equivalency (TEQ) Concept in Dioxin Criteria  
(LAC 33:IX.1113)(WQ052)

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 Water Quality regulations, LAC 33:IX.1113 (Log #WQ052).

The proposed Rule incorporates the toxicity equivalency (TEQ) concept by using toxicity equivalency factors (TEFs). The TEQ concept is used to estimate the risks associated with exposure to chlorinated dibenzo-p-dioxins and chlorinated dibenzofurans (CDD/CDF), as well as 2,3,7,8-TCDD. This procedure uses a set of derived TEFs to convert the concentration of any CDD/CDF congener into an equivalent concentration of 2,3,7,8-TCDD. This action is required to more accurately estimate human health risks associated with exposure to dioxin and dioxin-like compounds. Current recommendations from both the Environmental Protection Agency (EPA) and the World Health Organization (WHO) incorporate the TEQ concept as a better estimate of risk than using dioxin. The basis and rationale for the proposed rule are to protect human health. The EPA is encouraging states to adopt the TEQ guidelines proposed by WHO, as these recommendations reflect current scientific thinking. Adoption of the TEQ concept will enable the department to better fulfill its mission of maintaining a healthful environment for the public.

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 IX. Water Quality**

**Chapter 11. Surface Water Quality Standards  
§1113. Criteria**

A. - C.6.f. ...

Table 1 Numerical Criteria for Specific Toxic Substances (In micrograms per liter (µg/L) or parts per billion (ppb) unless designated otherwise)					
Toxic Substance	Aquatic Life Protection			Human Health Protection	
	Freshwater	Marine Water		Drinking Water Supply <sup>1</sup>	Non-Drinking Water Supply <sup>2</sup>
	Acute	Chronic	Acute	Chronic	
***					
<b>Other Organics</b>					
Chlorinated dibenzo-p-dioxins and chlorinated dibenzofurans (TEQ) <sup>12</sup>	--	--	--	--	0.71 ppq <sup>y</sup> 0.72 ppq
<b>Metals and Inorganics</b>					
***					

Footnotes 1 - 11 ...

<sup>12</sup>The dioxin toxicity equivalency (TEQ) concentration is obtained by multiplying each congener's toxicity equivalency factor (TEF) times its respective concentration and then taking the sum of all calculated values.

Congener	TEF
2,3,7,8-Tetrachlorodibenzo-p-dioxin	1
1,2,3,7,8-Pentachlorodibenzo-p-dioxin	1
1,2,3,4,7,8-Hexachlorodibenzo-p-dioxin	0.1
1,2,3,6,7,8-Hexachlorodibenzo-p-dioxin	0.1
1,2,3,7,8,9-Hexachlorodibenzo-p-dioxin	0.1
1,2,3,4,6,7,8-Heptachlorodibenzo-p-dioxin	0.01
Octachlorodibenzo-p-dioxin	0.0001
2,3,7,8-Tetrachlorodibenzofuran	0.1
1,2,3,7,8-Pentachlorodibenzofuran	0.05
2,3,4,7,8-Pentachlorodibenzofuran	0.5
1,2,3,4,7,8-Hexachlorodibenzofuran	0.1
1,2,3,6,7,8-Hexachlorodibenzofuran	0.1
1,2,3,7,8,9-Hexachlorodibenzofuran	0.1
2,3,4,6,7,8-Hexachlorodibenzofuran	0.1
1,2,3,4,6,7,8-Heptachlorodibenzofuran	0.01
1,2,3,4,7,8,9-Heptachlorodibenzofuran	0.01
Octachlorodibenzofuran	0.0001

Table 1A - Footnote d ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2074(B)(1).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:745 (October 1984), amended LR 15:738 (September 1989), LR 17:264 (March 1991), LR 17:967 (October 1991), repromulgated LR 17:1083 (November 1991), amended LR 20:883 (August 1994), LR 24:688 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2402 (December 1999), LR 26:2547 (November 2000), LR 27:289 (March 2001), LR 30:

A public hearing will be held on January 26, 2004, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room C111, 602 N. Fifth Street, Baton Rouge, LA 70802. 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 Lynn Wilbanks at the address given below or at (225) 219-3550. Free parking is available across the street in the Galvez parking garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by WQ052. Such comments must be received no later than February 2, 2004, at 4:30 p.m., and should be sent to Lynn Wilbanks, Office of Environmental Assessment, Environmental Planning Division, Regulation Development Section, Box 4314, Baton Rouge, LA 70821-4314 or to fax (225) 219-3582 or by e-mail to [lynn.wilbanks@la.gov](mailto:lynn.wilbanks@la.gov). Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of WQ052.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.  
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Toxicity Equivalency (TEQ)  
Concept in Dioxin Criteria**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
No significant effect of this proposed rule on state or local governmental expenditures is anticipated.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No significant effect on state or local governmental revenue collections is anticipated.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
No significant costs and/or economic benefits to directly affected persons or non-governmental groups are anticipated.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
No significant effect on competition or employment is anticipated.

James H. Brent, Ph.D.  
Assistant Secretary  
0312#063

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Board of Architectural Examiners**

Rules of Conduct (LAC 46:I.1901)

Under the authority of R.S. 37:144(C) and in accordance with the provisions of R.S. 49:951 et seq., the Board of Architectural Examiners ("board") gives notice that rule making procedures have been initiated for the amendment of LAC 46:1901.E.1 pertaining to a branch office of a firm offering architectural services. The existing Rule provides that any office offering architectural services shall have an architect resident and regularly employed in that office. The proposed Rule deletes the requirement that an office of a firm offering architectural services have an architect resident and regularly employed in that office, provided certain safeguards are in place.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part I. Architects**

**Chapter 19. Rules of Conduct: Violations**

**§1901. Rules of Conduct**

A. – D.3. ...

E Professional Conduct

1. Any branch office of a firm offering architectural services to the public shall be registered with the board as a branch office and shall either (a) have an architect resident and regularly employed in that office, or (b) have a designated registrant in charge of the architectural services provided by that office. The designated registrant shall make periodic visits to the branch office, have direct knowledge and supervisory control of the architectural services provided by that office, and shall be responsible for all of the work performed by that office. In the event a branch office does not have an architect resident and regularly employed therein, the branch office shall inform any person using its services of that fact and of the identity of the designated registrant.

**COMMENTARY** This Rule previously provided that any branch office offering architectural services to the public shall have an architect resident and regularly employed in that office. With advances in technology and changes in architectural practice, the board concluded that this requirement is no longer necessary to protect the public health, safety, and welfare, provided certain safeguards are in place. This rule sets forth those safeguards.

At the same time, the board believes that a potential client seeking architectural services might fairly and reasonably assume that an office offering such services has an architect resident and regularly employed therein. Accordingly, an office offering architectural services to a potential client which does not have an architect resident and regularly employed therein should disclose that fact to the potential client.

**AUTHORITY NOTE** Promulgated and amended in accordance with R.S. 37:144-45.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 29:574 (April 2003); amended LR 30:

Interested persons may submit written comments on this proposed Rule to Mary "Teeny" Simmons, Executive Director, Board of Architectural Examiners, 9625 Fenway Avenue., Suite B, Baton Rouge, LA 70809.

Mary "Teeny" Simmons  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Rules of Conduct**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
There are no estimated implementation costs (savings) to state or local governmental units associated with this proposed Rule.
- 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 this proposed Rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
A few architectural firms may be affected by this proposed Rule. Specifically, an architectural firm that opens a branch office which does not have a resident architect who is employed regularly in that branch office may incur an economic benefit in the form of increased market share in the geographical area of that branch office. At the same time, such a firm will incur the increased costs of having a designated registrant visit and supervise that branch office, as well as the increased overhead and other costs associated with operating any office. In the opinion of the board, such economic benefit, additional cost, and increased market share will vary with each firm and location and are impossible to reasonably calculate.  
Other architectural firms in that geographical area may be impacted by decreased market share, but the board anticipates that any such decreased share will have no significant impact upon those firms or on the costs of architectural services in that area.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
This Rule may lead to increased competition between architectural firms. Nonetheless, the board does not anticipate that the increased competition will have a significant effect on employment or on the costs of architectural services.

Mary "Teeny" Simmons  
Executive Director  
0312#064

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT  
Office of the Governor  
Used Motor Vehicle and Parts Commission**

Licensing Used Motor Vehicle Dealers  
(LAC 46:V.2901, 2905, 4401 and 4403)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and in accordance with Revised Statutes Title 32, Chapters 4A and 4B, the Office of the Governor, Used Motor Vehicle and Parts Commission, notice is hereby given that the Used Motor Vehicle and Parts

Commission proposes to amend rules and regulations governing dealers to be licensed in accordance with R.S. 32:773, garage liability insurance policy in accordance with R.S. 32:774:I(1) and educational seminars in accordance with R.S. 32: 774B.(3)(b)(i)(ii)(iii)(iv).

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part V. Automotive Industry  
Subpart 2. Used Motor Vehicle and Parts Commission  
Chapter 29. USED MOTOR VEHICLE DEALER  
§2901. Dealers to be Licensed**

- A. ...
- B. Dealers in new and used motor homes, new and used semi-trailers, new and used motorcycles, new and used all-terrain vehicles, new and used recreational trailers, new and used boat trailers, and new and used travel trailers, new and used boats, new and used boat motors, daily rentals not of current year or immediate prior year models that have been titled previously to an alternate purchaser, manufacturers and distributors and other types subject to certificate of title law and Title 32 and/or Vehicle Registration Tax Number under Title 47. All new and unused vehicle dealers and other dealers licensed by the Louisiana Used Motor Vehicle and Parts Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:773(B).

HISTORICAL NOTE: Promulgated by Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1062 (November 1985), amended by the Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 24:1682 (September 1998), amended by the Office of the Governor, Used Motor Vehicle and Parts Commission LR 30:

**§2905. Qualifications and Eligibility for Licensure**

- A. The commission, in determining, the qualifications and eligibility of an applicant for a dealer's license, will base its determinations upon the following factors:
  - 1. ...
  - 2. All dealers are required to keep in force a garage liability insurance policy on all vehicles offered for sale or used in any other capacity in demonstrating or utilizing the streets and roadways in accordance with the financial responsibility laws of the state. For those dealers who, in addition to selling vehicles, conduct the business of daily vehicle rentals, a separate renter's policy must be in effect.

B. - D. ...

E. Dealers in new and used motor homes, new and used boats, new and used boat motors, new and used motorcycles, new and used all-terrain vehicles, new and used semi-trailers, new and used recreational trailers, new and used boat trailers, and new and used travel trailers, likewise must meet the above qualifications to be eligible and all these types license numbers will be prefixed by NM, followed by a four digit number then current year of license (NM-0000-98). Semi-trailers are described in the title law as every single vehicle without motive of power designed for carrying property and passengers and so designed in conjunction and used with a motor vehicle that some part of its own weight and that its own load rests or is carried by another vehicle and having one or more load carrying axles.

This includes, of course, recreational trailers, boat trailers and travel trailers, but excludes mobile homes. One license shall be due for new and used operators at the same location.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:772(F)(2).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR11:1062(November 1985), amended by Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 15:258 (April 1989), amended LR 15:375 (May 1989), LR 24:1682 (September 1998), LR 25:245 (February 1999), amended by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 30:

#### **Chapter 44. Educational Seminar**

##### **§4401. Required Attendance**

A. On or after January 1, 2005, every applicant for a used motor vehicle dealer's license must attend a four-hour educational seminar approved and conducted by the Used Motor Vehicle and Parts Commission.

1. - 3. ...

4. Any dealers who are found guilty of violations of commission laws and/or rules and regulations will be required to attend.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:774B.(3)(b)(i)-(iv).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 23:2351 (November 2002), amended LR 30:

##### **§4403. Certification**

A. Upon applying for a 2005 used motor vehicle dealer's license, the applicant must attach a copy of the certificate of completion which documents that the dealership's general manager, office manager, title clerk, or other responsible representative of the dealership has attended the four-hour educational seminar. If the applicant has not completed the educational seminar, he must provide evidence that he has registered to attend such seminar within 60 days after issuance of the license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:774.B (3)(b)(i)

HISTORICAL NOTE: Promulgated by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 23:2351 (November 2002), amended LR 30:

##### **Family Impact Statement**

The proposed Rules of the Louisiana Used Motor Vehicle and Parts Commission 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. a family's earnings and budget;
5. the behavior and personal responsibility of children; or
6. the family's ability or that of the local government to perform the function as contained in the proposed Rules.

Interested persons may submit written comments no later than 4:30 p.m. on January 21, 2004 to John M. Torrance,

Executive Director, 3132 Valley Creek Drive, Baton Rouge, LA 70808, (225) 925-3870.

John M. Torrance  
Executive Director

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Licensing Used Motor Vehicle Dealers**

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

There will be no implementation costs to state or local governmental units regarding the removal of new buses, new fire trucks and new wreckers from the rules regulations or requiring used motor vehicle dealers to maintain a garage liability policy for all vehicles offered for sale or trade.

There will be no implementation costs to state or local governmental units regarding the amendments to the rules and regulations as a result of legislative changes. The four hour educational seminars, which became effective January 1, 2003, were already in place for any dealer or representative of a newly formed dealer operation. The amendment will cost the state for materials given to approximately 4000 dealers that existed prior to January 1, 2003. The one time costs for materials is approximately \$47,264.00. The office operates on self-generated funds and the funds are available.

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

The Louisiana Used Motor Vehicle and Parts Commission was affected by the removal of the new buses, new fire trucks and new wreckers. These dealers were transferred to the Louisiana Motor Vehicle Commission for licensure. Revenues to the Louisiana Used Motor Vehicle and Parts Commission were affected by approximately \$2,340.00 per fiscal year. However, state or local revenues will not be affected by the amendments to the rules and regulations requiring all licensed used motor vehicle dealers to maintain a garage liability policy for vehicles offered "for sale" or for presenting the four hour educational seminar to all dealers that existed prior to January 1, 2003.

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

There will not be any costs or economic benefits in relation to the matters of the removal of new buses, new fire trucks and new wreckers from the jurisdiction of the Louisiana Used Motor Vehicle and Parts Commission or for existing used motor vehicle dealers to attend the four hour educational seminar. There will be significant liability costs to the dealer in relation to keeping in force a garage liability policy that will provide coverage for all vehicles offered "for sale" or used in any other capacity in demonstrating or utilizing the streets and roadways in accordance with the financial liability law. The liability cost to the individual dealer is indeterminable.

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

The amendments mandated by 2003 legislation will not impact competition and employment in the public or private sector.

John M. Torrance  
Executive Director  
0312#030

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Licensed Professional Vocational Rehabilitation  
Counselors Board of Examiners**

Licensing and Advisory Opinions  
(LAC 46:LXXXVI.703 and Chapter 18)

Notice is hereby given, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., that the Louisiana Licensed Professional Vocational Rehabilitation Counselors Board of Examiners pursuant to the authority vested in it by R.S. 37:3445 intends to amend the Professional and Occupational Standards pertaining to Vocational Rehabilitation Counselors in order to provide for the requirements for licensing, and to add Chapter 18 to provide for advisory ethics opinions. The proposed amendments to the Rules are set forth below.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LXXXVI. Vocational Rehabilitation Counselors  
Chapter 7. Requirements for Licensure and Renewal  
of License**

**§703. Requirements**

A. - A.4. ...

5. has received a master's degree in vocational rehabilitation counseling or related field and two years of experience under the direct supervision of a licensed vocational rehabilitation counselor. Such two year period of supervision must be completed within three years of the date the written proposal for such supervision is submitted to the board in accordance with §703.B.15. An applicant may subtract one year of the required professional experience for successfully completing Ph.D. requirements in a rehabilitation counseling program acceptable to the board. In order to meet the requirements of licensure, one must have a degree in vocational rehabilitation counseling or an approved related degree as listed in Section A below.

<b>Section A</b>	
Clinical or Counseling Psychology	
Professional Guidance and Counseling	
Rehabilitation Studies (O.T. and P.T. excluded)	
Special Education (as determined by the board)	

a. The board will consider as a feasible alternative to a vocational rehabilitation degree, a related degree as listed in Section A which includes 42 hours of qualifying courses from an accredited college or university which meet the academic and training content established by the board and listed in Section B below. Both Section A and Section B are at the discretion of the board.

<b>Section B</b>	<b>Hours</b>
Orientation of Vocational Rehabilitation	3
Statistics	3
Medical and/or Psycho-Social Terminology of Disabilities Relative to Vocational Performance	3
Psychological and Social Effects of Disabilities	3
Tests and Measurements	3
Occupational Information and/or Job Placement and Job Development	3

Analysis of the Individual	3
Theories of Personality	3
Theories and Techniques of Counseling	6
Demonstrations and Practice of Counseling	3
Field Work or Practicums	9-12
Psychiatric Disorders and/or Substance Abuse	3
Vocational Analysis or Assessment of Persons with Disabilities	3
Introduction to Psychology	3
Abnormal Psychology	3
Introduction to Sociology	3
Developmental Psychology (Adult or Adolescent)	3
Ethics of Counseling	3
	66

b. A candidate for licensure must have 42 of the 66 hours enumerated, completing each course with a "C" or better. Any substitutions of similar course work will be limited and at the discretion of the board. As of July 20, 1996, anyone possessing an unrelated degree, not specific in the above text, will not be accepted even if they pursue additional course work. Should they obtain an additional degree in the related areas as specified in Section A above, this will be considered.

6. The board shall issue a license to each applicant who files an application upon a form designated by the board and in such a manner as the board prescribes, accompanied by such fee required by R.S. 37:3447 and who furnishes satisfactory evidence to the board that he has met the requirements of Paragraphs A.1 through A.4 and has a bachelor's degree in vocational rehabilitation counseling or related field as defined in Paragraph 703.A.5 and five years of work experience working under the direct supervision of a licensed vocational rehabilitation counselor which period of supervision began prior to September 1, 2004. Such five year period of supervision must be completed within six years of the date the written proposal for such supervision is submitted to the board in accordance with Paragraph 703.B.15. Except as provided in this Paragraph 703.A.6, after September 1, 2009 no license shall be issued to any applicant not meeting the requirements of Paragraphs 703.A.1. - 5.

B.15.c. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:3447.

**HISTORICAL NOTE:** Promulgated by the Department of Social Services, Licensed Professional Vocational Rehabilitation Counselors Board of Examiners, LR 15:277 (April 1989), amended by the Department of Health and Hospitals, Licensed Professional Vocational Rehabilitation Counselors Board of Examiners, LR 19:1570 (December 1993), LR 22:582 (July 1996), LR 30:

**Chapter 18. Guidelines for Requesting Advisory  
Opinions From LLPVRC's Ethics  
Committee**

**§1800. General**

A. Consistent with the intent of the Louisiana Licensed Professional Vocational Rehabilitation Counselors (LLPVRC) Code of Professional Ethics for Licensed Rehabilitation Counselors, the LLPVRC Ethics Committee recommends that licensed rehabilitation counselors who are considering seeking advisory opinions first consult with other rehabilitation counselors and colleagues who are knowledgeable about ethics in order to attempt to resolve questions that may easily be addressed by other

knowledgeable parties. If these attempts do not result in resolution of the matter, individuals may request advisory opinions from the LLPVRC Ethics Committee.

B. The Committee provides advisory opinions on selected situations having ethical implications. These advisory opinions are provided as a general educational service and are rendered in response to limited and unverified information provided to the Committee. Therefore, it should not be construed as direct advice regarding the unique or specific ethical or legal action recommendations that should be followed regarding the issues raised. The considerations described by the Committee's advisory opinion should be regarded only as general educational assistance and not as specific direction in any particular instance.

C. Requests should not be filed if there is reason to believe that a violation of the Code has occurred. Those attempting to determine if alleged behavior violates the Code may receive a response to a request for an advisory opinion that may later appear to contradict a ruling made if a complaint is actually filed. This possible incongruity might be due to the fact that advisory opinions do not allow for full disclosure of all available information in the matter.

D. Information presented in a request for an advisory opinion and the Committee's response to that ruling may be presented for educational purposes to other parties in a sanitized format.

E. LLPVRC's Ethics Committee meets four times per year. Requests received will be scheduled for review at the next scheduled meeting of the Committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3445.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Vocational Rehabilitation Counselors Board of Examiners, LR 30:

#### **§1801. Requesting an Advisory Opinion**

A. Requests should be clear and concise and should include both the scenario and the requestor's opinion as to the Standard(s) in the LLPVRC Code of Professional Ethics for Licensed Rehabilitation Counselors that relate to the matter as well as the requestor's interpretation of how to apply the Standard(s) to the scenario. Further, if the requestor is a LRC, the request should advise as to the results of consultation with other rehabilitation counselors and colleagues.

B. Requests should be sent in writing to Louisiana Licensed Professional Vocational Rehabilitation Counselors Board of Examiners, P.O. Box 41594, Baton Rouge, LA 70835-1594, Attn: Ethics Committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3441-3452 and 36:478(I).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Vocational Rehabilitation Counselors Board of Examiners, LR 30:

#### **Family Impact Statement**

The Licensed Professional Vocational Rehabilitation Counselors Board of Examiners hereby issues this Family Impact Statement: The proposed Rule related to the Board's licensing authority will have no known impact on family formation, stability, and autonomy, as set forth in R.S.49:972.

The proposed action of the Licensed Professional Vocational Rehabilitation Counselors Board of Examiners

complies with the statutory law administered by the board, R.S. 37:3441-3452. A preamble has been prepared with respect to the change in the educational requirements for licensing. A copy may be obtained from the office of the Licensed Professional Vocational Rehabilitation Counselors Board of Examiners at the address set forth hereafter and interested persons may submit written comments on the proposed Rules to Carla Seyler, P.O. Box 41594, Baton Rouge, LA 70835 or by FAX at 225-922-1352 who will be responsible for responding to inquiries concerning this proposed action. The deadline for receipt of all written comments is 4:30 p.m. on February 10, 2004.

Carla Seyler  
Chairperson

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Licensing and Advisory Opinions**

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

The only implementation cost is the estimated \$875.00 cost of preparation and publishing the rule in the *Louisiana Register*.

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

There will be no decrease or increase in revenues.

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

Individuals engaged in activities which require a license pursuant to these rules who are not currently licensed may experience some increased educational expenditures as required by the licensing procedure in order to obtain a license. These requirements are being phased in and will not become fully applicable for five years which allows ample time for those expecting to seek a license to plan for their educational requirements.

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

There is no anticipated impact on competition and employment in the public and private sectors. While those not possessing a masters degree will be unable to obtain a license under the new rule once fully implemented, those who could become licensed under the old rule should be fully capable of obtaining a masters degree instead of meeting the longer supervision requirements for those with bachelors degrees.

Stephen W. Glusman  
General Counsel  
0312#073

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Department of Health and Hospitals Licensed Professional Vocational Rehabilitation Counselors Board of Examiners**

Licensing Fees  
(LAC 46:LXXXVI.901)

Notice is hereby given, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., that the Louisiana Licensed Professional Vocational Rehabilitation Counselors Board of Examiners pursuant to

the authority vested in it by R.S. 37:3445 intends to amend the Professional and Occupational Standards pertaining to Vocational Rehabilitation Counselors in order to provide for fees to be charged for licensing. The proposed amendments to the rules are set forth below.

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LXXXVI. Vocational Rehabilitation Counselors**

**Chapter 9. Fees**

**§901. General**

- A. The board shall collect the following fees.
- |   |        |
|---|--------|
| 1. Application, license and seal            | \$ 200 |
| 2. Renewal of license                       | \$ 100 |
| 3. Written Examination                      | \$ 100 |
| 4. Reissuance for lost or destroyed license | \$ 50  |

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3441-3452 and 36:478(I).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Licensed Professional Vocational Rehabilitation Counselors Board of Examiners, LR 15:277 (April 1989), amended by the Department of Health and Hospitals, Licensed Professional Vocational Rehabilitation Counselors Board of Examiners, LR 30:

**Family Impact Statement**

The Licensed Professional Vocational Rehabilitation Counselors Board of Examiners hereby issues this Family Impact Statement: The proposed Rule related to the Board's licensing authority will have no known impact on family formation, stability, and autonomy, as set forth in R.S.49:972.

The proposed action of the Licensed Professional Vocational Rehabilitation Counselors Board of Examiners complies with the statutory law administered by the board, R.S. 37:3441-3452. No preamble has been prepared with respect to the change in the fees to be charged for licensing. Interested persons may submit written comments on the proposed Rules to Carla Seyler at P.O. Box 41594 Baton Rouge, LA 70835 or by FAX at 225-922-1352 who will be responsible for responding to inquiries concerning this proposed action. The deadline for receipt of all written comments is 4:30 p.m. on February 10, 2004.

Carla Seyler  
Chairperson

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

**RULE TITLE: Licensing Fees**

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

The only implementation cost is the estimated \$750 cost of preparation and publishing the rule in the *Louisiana Register*.

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

There will be an increase in revenues of approximately \$24,000 for FY 04 and subsequent fiscal years.

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

The proposed rule will increase fees for licensed professional rehabilitation counselors from \$100 to \$200 for application, license, and seal; from \$50 to \$100 for renewal;

and add a fee of \$100 for written examinations. Individuals engaged in activities which require a license, approximately 400, pursuant to these rules may experience an increase in expenditures as a result of increased fees charged for licensing.

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

There is no anticipated impact on competition and employment in the public and private sectors.

Stephen W. Glusman  
General Counsel  
0312#074

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Office of the Secretary  
Bureau of Health Services Financing**

Adult Denture Program  
Reimbursement Increase

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated 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 provides coverage under the Medicaid Program for dentures and denture related services rendered to recipients who are 21 years of age and older. As a result of the allocation of additional funds by the legislature during the 2000 Second Extraordinary Session, the bureau increased the reimbursement fees for certain designated denture procedures. In addition, the bureau established requirements for unique identification information to be processed into all new removable dental prosthetics reimbursed under the Medicaid Program (*Louisiana Register*, Volume 27, Number 8). As a result of the allocation of additional funds by the legislature during the 2003 Regular Session, the bureau promulgated an Emergency Rule to increase the reimbursement fees for certain denture procedures (*Louisiana Register*, Volume 29, Number 7). The bureau now proposes to promulgate a Rule to continue the provisions contained in the August 1, 2003 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, or autonomy as described in R.S. 49:972.

**Proposed Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases the following reimbursement fees for certain designated procedures in the Adult Denture Program.

Procedure Code	Description	Fee
D0150	Comprehensive Oral Exam – Adult	\$20
D5110	Complete Denture, Maxillary	\$495
D5120	Complete Denture, Mandibular	\$495

D5130	Immediate Complete Denture, Maxillary	\$495
D5140	Immediate Complete Denture, Mandibular	\$495
D5211	Partial Denture, Resin Base, Maxillary	\$470
D5212	Partial Denture, Resin Base, Mandibular	\$470
D5510	Repair Complete Broken Denture Base	\$100
D5520	Repair Missing or Broken Teeth-Complete Denture, Per Tooth	\$52/\$26*
D5610	Repair Resin Denture Base, Partial Denture	\$100
D5630	Repair or Replace Broken Clasp, Partial Denture	\$95
D5640	Replace Broken Teeth, Partial Denture, Per Tooth	\$52/\$26*
D5650	Add Tooth to Existing Partial Denture	\$52/\$26*
D5660	Add Clasp to Existing Partial Denture	\$95
D5750	Reline Complete Maxillary Denture (Lab)	\$238
D5751	Reline Complete Mandibular Denture (Lab)	\$238
D5760	Reline Maxillary Partial Denture (Lab)	\$208
D5761	Reline Mandibular Partial Denture (Lab)	\$208

\*the rate for each subsequent tooth in the same arch

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, January 27, 2004 at 9:30 a.m. in the Wade O. Martin Auditorium, State Archives Building, 3851 Essen Lane, 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: Adult Denture Program? Reimbursement Increase

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

It is anticipated that the implementation of this proposed rule will increase state program costs by approximately \$99,629 for SFY 2003-2004, \$123,015 for SFY 2004-2005 and \$126,707 for SFY 2005-2006. It is anticipated that \$204 (\$102 SGF and \$102 FED) will be expended in SFY 2003-2004 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 increase federal revenue collections by approximately \$250,284 for SFY 2003-2004, \$309,225 for SFY 2004-2005 and \$318,501 for SFY 2005-2006. \$102 is included in SFY 2003-2004 for the federal administrative expenses for promulgation of this proposed Rule and the final Rule.

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

This proposed Rule will increase reimbursement fees for certain adult denture procedures (approximately 18 codes with increases ranging from \$2 to \$45 per procedure). It is

anticipated that implementation of this proposed Rule will increase expenditures for adult denture services by \$349,709 for SFY 2003-2004, \$432,240 for SFY 2004-2005, and \$445,208 for SFY 2005-2006.

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

It is anticipated that the implementation of this Rule will not have an effect on competition and employment.

Ben A. Bearden  
Director  
0312#087

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

#### NOTICE OF INTENT

#### Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

#### Home Health Services? Medical Necessity Criteria (LAC 50:XIX.Chapters 1-5)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:Chapters 1-5 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated 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 establishing homebound criteria for the provision of home health services under the Medicaid Program (*Louisiana Register, Volume 22, Number 3*). This Rule was subsequently amended to clarify that all three components of the homebound criteria must be met in order for a recipient to be considered for home health services (*Louisiana Register, Volume 23, Number 9*). The bureau later amended the March 20, 1996 Rule to include coverage of occupational and speech therapies under the Home Health Program and to establish new rates for home health rehabilitation services that are the same as the rates paid for outpatient hospital rehabilitation services (*Louisiana Register, Volume 27, Number 5*). The bureau now proposes to repeal the March 20, 1996 and September 20, 1997 Rules and establish medical necessity criteria for home health services in compliance with a clarification in the Centers for Medicare and Medicaid Services guidelines. In addition, the Bureau proposes to establish medical necessity criteria for home health services rendered to infants and toddlers. The Bureau also proposes to promulgate the longstanding general provisions and service limitations governing home health services.

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. It is anticipated that this proposed Rule will have a positive impact on family functioning as described in R.S. 49:972 as it will facilitate access to home health services and alleviate the need for frequent hospital admissions.

**Title 50**  
**PUBLIC HEALTH? MEDICAL ASSISTANCE**

**Part XIX. Other Services**

**Subpart 1. Home Health**

**Chapter 1. General Provisions**

**§101. Definitions**

A. The following words and terms, when used in this Subpart 1, shall have the following meanings, unless the context clearly indicates otherwise:

*Home Health Aide Services?* direct care services to assist in the treatment of the patient's illness or injury provided under the supervision of a registered nurse and in compliance with the standards of nursing practice governing delegation, including assistance with the activities of daily living such as mobility, transferring, walking, grooming, bathing, dressing or undressing, eating, or toileting.

*Home Health Services?* patient care services provided in the patient's home under the order of a physician that are necessary for the diagnosis and treatment of the patient's illness or injury, including one or more of the following services:

- a. skilled nursing;
- b. physical therapy;
- c. speech-language therapy;
- d. occupational therapy;
- e. home health aide services; or
- f. medical supplies, equipment and appliances

suitable for use in the home.

Note: Medical supplies, equipment and appliances for home health are reimbursed through the Durable Medical Equipment Program and must be prior authorized.

*Occupational Therapy Services?* medically prescribed treatment to improve or restore a function which has been impaired by illness or injury or, when the function has been permanently lost or reduced by illness or injury, to improve the individual's ability to perform those tasks required for independent functioning.

*Physical Therapy Services?* rehabilitative services necessary for the treatment of the patient's illness or injury or, restoration and maintenance of function affected by the patient's illness or injury. These services are provided with the expectation, based on the physician's assessment of the patient's rehabilitative potential, that:

- a. the patient's condition will improve materially within a reasonable and generally predictable period of time; or
- b. the services are necessary for the establishment of a safe and effective maintenance program.

*Skilled Nursing Services?* nursing services provided on a part-time or intermittent basis by a registered nurse or licensed practical nurse that are necessary for the diagnosis and treatment of a patient's illness or injury. These services shall be consistent with:

- a. established Medicaid policy;
- b. the nature and severity of the recipient's illness or injury;
- c. the particular medical needs of the patient; and
- d. the accepted standards of medical and nursing practice.

*Speech-Language Therapy Services?* those services necessary for the diagnosis and treatment of speech and

language disorders that result in communication disabilities, and for the diagnosis and treatment of swallowing disorders (dysphagia), regardless of a communication disability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

**§103. Requirements for Home Health Services**

A. Home health services shall be based on an expectation that the care and services are medically reasonable and appropriate for the treatment of an illness or injury, and that the services can be performed adequately by the agency in the recipient's place of residence. A written plan of care for services shall be evaluated and signed by the physician every 60 days. This plan of care shall be maintained in the recipient's medical records by the home health agency.

B. Medicaid recipients who are linked to a CommunityCare primary care physician (PCP) must have a referral from the PCP for home health services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

**§105. Provider Responsibilities**

A. Home health agencies must comply with the following requirements as condition for participation in the Medicaid Program.

1. The home health agency must provide to the Bureau, upon request, the supporting documentation verifying that the recipient meets the medical necessity criteria for services.

2. Home health services shall be terminated when the goals outlined in the plan of care have been achieved, regardless of the number of days or visits that have been approved.

3. The home health agency must ensure that the family is instructed on a home maintenance exercise program which has been established by the treating physical therapist.

4. The home health agency shall discharge a patient once it has been determined that the patient or his/her legally responsible caregiver is noncompliant with the treatment regimen, keeping medical appointments and/or assisting with medication compliance and med-pack setups.

5. The home health agency must report complaints and suspected cases of abuse or neglect of a home health recipient to the appropriate authorities if the agency has knowledge that a minor child, a non-consenting adult or a mentally incompetent adult has been abused or is not receiving proper medical care due to neglect or lack of cooperation on the part of the legal guardians or caretakers. This includes knowledge that a recipient is routinely taken out of the home by a legal guardian or caretaker against medical advice or when it is obviously medically contraindicated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

### Chapter 3. Medical Necessity

#### §301. General Provisions

A. Medical necessity for home health services is determined by the recipient's illness and/or injury and functional limitations. All home health services shall be medically reasonable and appropriate. To be considered medically reasonable and appropriate, the care must be necessary to prevent further deterioration of a recipient's condition regardless of whether the illness or injury is acute, chronic or terminal. The services must be reasonably determined to:

1. diagnose, cure, correct or ameliorate defects, physical and mental illnesses, and diagnosed conditions of the effects of such conditions; or

2. prevent the worsening of conditions, or the effects of conditions, that:

a. endanger life or cause pain;

b. result in illness or infirmity; or

c. have caused, or threatened to cause, a physical or mental dysfunction, impairment, disability, or developmental delay; or

3. effectively reduce the level of direct medical supervision required or reduce the level of medical care or services received in an inpatient or residential care setting; or

4. restore or improve physical or mental functionality, including developmental functioning, lost or delayed as the result of an illness, injury, or other diagnosed condition or the effects of the illness, injury or condition; or

5. provide assistance in gaining access to needed medical, social, educational and other services required to diagnose, treat, or support a diagnosed condition or the effects of the condition, in order that the recipient might attain or retain:

a. independence;

b. self-care;

c. dignity;

d. self-determination;

e. personal safety; and

f. integration into all natural family, community, and facility environments and activities.

B. Home health skilled nursing and aide services are considered medically reasonable and appropriate when the recipient's medical condition and medical records accurately justify the medical necessity for services to be provided in the recipient's home rather than in a physician's office, clinic, or other outpatient setting according to guidelines as stated in this Subpart.

C. Home health services are appropriate when a recipient's illness, injury, or disability causes significant medical hardship and would interfere with the effectiveness of the treatment if he/she had to go to a physician's office, clinic, or other outpatient setting for the needed service. Any statement on the plan of care regarding this medical hardship must be supported by the totality of the recipient's medical records.

D. The following circumstances are not considerations when determining medical necessity for home health services:

a. inconvenience to the recipient or the recipient's family;

b. lack of personal transportation; or

c. failure or lack of cooperation by a recipient or a recipient's legal guardians or caretakers to obtain the required medical services in an outpatient setting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

#### §303. Provisions for Infants and Toddlers

A. For the purpose of this Subpart 1, *Infants or Toddlers* are defined as young children, up to age 3, who have not learned to ambulate without assistance.

B. Home health services are considered to be medically necessary for an infant or toddler when the primary care physician has advised against removing the infant or toddler from the home because it would:

1. place the infant or toddler at serious risk of infection;

2. greatly delay or hamper the recovery process;

3. cause significant further debilitation of an existing medical condition or physical infirmity;

4. seriously threaten to cause or aggravate a handicap or a physical deformity or malfunction;

5. cause great suffering or pain;

6. seriously endanger the well being of the infant or toddler; or

7. otherwise be considered medically contraindicated.

C. The following circumstances are not considered when determining the medical necessity of home health services for infants and toddlers:

1. the provision of services in the home is solely a matter of convenience;

2. a lack of personal transportation; or

3. failure or lack of cooperation by the child's legal guardian(s) to obtain the required medical services in an outpatient setting.

NOTE: The fact that an infant or toddler cannot ambulate or travel without assistance from another is not a factor in determining medical necessity for services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

### Chapter 5. Service Limitations

#### §501. Home Health Visits

A. Home health services are limited to 50 skilled nursing and/or aide visits per year, one service per day for recipients who are 21 years of age and older.

B. The service limitation of 50 skilled nursing and/or aide visits per year, one service per day is not applicable for recipients who are from birth up to the age of 21. However, home health services provided to recipients up to the age of 21 are subject to post-payment review in order to determine if the recipient's condition warrants high utilization.

C. The service limitation of 50 home health visits per year is not applicable for rehabilitation services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, January 27, 2004 at 9:30 a.m. in the Wade O. Martin Auditorium, State Archives Building, 3851 Essen Lane, Baton Rouge, Louisiana. 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 Health Services  
Medical Necessity Criteria**

- 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 to the state general fund other than cost of promulgation for SFY 2003-2004. It is anticipated that \$748 (\$374 SGF and \$374 FED) will be expended in SFY 2003-04 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 affect federal revenue collections other than the federal share of the promulgation costs for SFY 2003-2004. It is anticipated that \$374 will be expended in SFY 2003-2004 for the federal share of the expense for promulgation of this proposed Rule and the final Rule.
- 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 non-governmental groups. This Rule proposes to change the term "homebound criteria" to "medical necessity criteria" in compliance with a clarification in the Centers for Medicare and Medicaid Services guidelines and promulgate the longstanding general provisions and service limitations governing home health services.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
This Rule has no known impact on competition and employment.

Ben A Bearden  
Director  
0312#089

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT  
Department of Health and Hospitals  
Office of the Secretary  
Bureau of Health Services Financing**

Minimum Licensing Standards  
End Stage Renal Disease Treatment Facilities? Licensing  
(LAC 48:I.Chapter 84)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 48:I.Chapter 84 under the Medical Assistance Program as authorized by R.S. 36:254 and 40:2117.4. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Act 650 of the 1999 Regular Session of the Louisiana Legislature, in accordance with R.S. 40:2117.4, authorized the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing to promulgate Rules addressing the minimum licensing standards for end stage renal disease treatment facilities. Act 650 states that any facility that presents itself to the public as a supplier of services related to dialysis/treatment for end stage renal disease is required to have a valid and current license prior to admitting any patients. The bureau adopted the licensing standards for all end stage renal disease treatment facilities in the state of Louisiana (*Louisiana Register*, Volume 28, Number 10). The bureau now proposes to amend the October 20, 2002 Rule to clarify provisions of the minimum licensing standards for end stage renal disease treatment facilities. 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 Health Services Financing amends the Rule governing the licensing of end stage renal disease treatment facilities/programs.

**Title 48**

**PUBLIC HEALTH? GENERAL**

**Part I. General Administration**

**Subpart 3. Licensing and Certification**

**Chapter 84. End Stage Renal Disease Treatment Facilities**

**Subchapter A. General Provisions**

**§8407. Survey**

A. All surveys, except the initial licensing survey, shall be unannounced. This survey may be conducted with other agency personnel and/or personnel from other local, state or federal agencies. A survey of all aspects of the facility's operation is required prior to issuing a license.

B. - G ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2193 (October 2002), amended LR 30:

#### **§8409. Adverse Actions**

A. DHH reserves the right to suspend, deny (initial or renewal), or revoke any license at the discretion of the secretary or his/her designee.

B. - D.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2194 (October 2002), amended LR 30:

#### **Subchapter B. Facility Operations**

#### **§8429. Physical Plant Requirements**

A. - F.4. ...

5. In facilities initially licensed after March 20, 2004, at least one window shall be provided in every treatment area.

F.6. - J.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2196 (October 2002), amended LR 30:

#### **Subchapter C. Personnel**

#### **§8439. General Provisions**

A. - B.2. ...

3. The facility must have formal written agreements with outside professionals or other entities retained to provide contract services. Written agreements shall express the responsibilities between the two parties, be signed by both parties and shall either be time-limited or remain in effect until either party terminates the agreement in writing.

C. - C.5.d.xiv. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2197 (October 2002), amended LR 30:

#### **§8443. Personnel Qualifications and Responsibilities**

A. - C.1.c. ...

d. Repealed.

C.2. - E.2.f. ...

F. Social Worker

1. Qualifications. Currently licensed by the Louisiana State Board of Social Work Examiners as a Licensed Clinical Social Worker or certified by the Board as either a graduate social worker (GSW) or provisional graduate social worker (provisional GSW).

F.2. - H.1. ...

2. At a minimum, each patient receiving dialysis in the facility shall be seen by a physician, physician's assistant, or advanced practice nurse at least once every 30 days; home patients shall be seen at least every three months. There shall be evidence of monthly assessment for new and recurrent problems and review of dialysis adequacy.

H.3. - H.4.c. ...

I. Patient Care Technician (PCT) or Dialysis Technician

1. Qualifications include basic general education (high school or equivalent) and dialysis training as specified in §8441.C.

2. Responsibilities include:

a. performing patient care duties only under the direct and on-site supervision of qualified registered nurses;

b. performing only those patient care duties that are approved by facility management and included in the policy and procedure manual; and

c. performing only those patient care duties for which they have been trained and are documented as competent to perform.

J. Reuse Technician

1. Qualifications. Basic general education (high school or equivalent), facility orientation program, and completion of education and training to include the following:

a. health and safety training, including universal precautions;

b. principles of reprocessing, including dangers to the patient;

c. procedures of reprocessing, including pre-cleaning, processing, storage, transporting, and delivery;

d. maintenance and safe use of equipment, supplies, and machines;

e. general principles of hemodialysis and in-depth information on dialyzer processing; and

f. competency certification on a biannual basis by a designated facility employee.

2. Responsibilities. The reuse technician is responsible for the transport, cleaning, processing, and storage of dialyzers to limit the possibility of cross contamination, and to avoid improper care of multiple use dialyzers.

3. Any technician or professional staff who performs reprocessing shall have documented training in the procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2198 (October 2002), amended LR 30:

#### **Subchapter D. Patient Care**

#### **§8457. Treatment Services**

A. - A.2. ...

B. In addition, the following services may be provided by a facility:

1. home training? home visits, teaching, and professional guidance to teach patients to provide self-dialysis;

2. home support? provision of professional support to assist the patient who is performing self-dialysis.

C. Dialyzer Reprocessing. Reuse shall meet the requirements of 42 CFR. 405.2150. Additionally, the facility shall:

1. develop, implement, and enforce procedures that eliminate or reduce the risk of patient care errors including, but not limited to, a patient receiving another patient's dialyzer, or a dialyzer that has failed performance checks;

2. develop procedures to communicate with staff and to respond immediately to market warnings, alerts, and recalls;

3. develop and utilize education programs that meet the needs of the patient and/or family members to make informed reuse decisions; and

4. be responsible for all facets of reprocessing, even if the facility participates in a centralized reprocessing program.

D. Water treatment shall be in accordance with the *American National Standard, Hemodialysis Systems* published by the Association for the Advancement of Medical Instrumentation (AAMI Standards) and adopted by reference 42 CFR. §405.2140.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2201 (October 2002), amended LR 30:

#### §8459. Treatment Requirements

A. - A.2.b. ...

c. written contracts with those patients who have a history of problems at other facilities, such as disruptive, threatening and abusive behavior to staff or other patients; and

A.2.d. - C.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2201 (October 2002), amended LR 30:

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, January 27, 2004 at 9:30 a.m. in the Wade O. Martin Auditorium, State Archives Building, 3851 Essen Lane, 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: **Minimum Licensing Standards? End Stage Renal Disease Treatment Facilities? Licensing**

#### 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 to the state general fund other than cost of promulgation for SFY 2003-2004. It is anticipated that \$544 (\$272 SGF and \$272 FED) will be expended in SFY 2003-04 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 affect federal revenue collections other than the federal share of the promulgation costs for SFY 2003-2004. It is anticipated that \$272 will be expended in SFY 2003-2004 for the federal share of the expense for promulgation of this proposed Rule and the final Rule.

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

It is anticipated that implementation of this proposed Rule will not have estimable cost or economic benefits for SFY 2003-2004, 2004-2005 and 2005-2006. This Rule proposes to amend and clarify licensing standards relative to physical plant requirements, personnel qualifications, and treatment services and requirements for end stage renal disease treatment facilities (approximately 130) in the state of Louisiana.

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

This Rule has no known impact on competition and employment.

Ben A. Bearden  
Director  
0312#088

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

Personal Assistant Services? Employment Support  
(LAC 50:XV.Chapter 141)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:XV.Chapter 141 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated 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 to establish the provisions governing coverage of personal assistant services as an optional service under the Medicaid State Plan to support the employment efforts of Medicaid recipients with disabilities who are age 18 through 64 years old. (*Louisiana Register, Volume 29, Number 8*). The bureau now proposes to amend the August 20, 2003 Rule to establish provisions governing when a recipient may change personal assistant services providers and staffing requirements for personal assistant services agencies. In addition, the bureau proposes to amend the general provisions and standards for participation contained in the August 20, 2003 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. It is anticipated that implementation of this proposed Rule will have a positive impact on family functioning, stability, and autonomy as described in R.S. 49:972 as it will enhance the quality of services by ensuring that employees of personal assistant services agencies are qualified to provide services.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the August 20, 2003 Rule to establish provisions governing when a recipient may change personal assistant service

providers and staffing requirements for personal assistant agencies. In addition, the bureau proposes to amend the general provisions and standards for participation contained in the August 20, 2003.

#### **Title 50**

### **PUBLIC HEALTH? MEDICAL ASSISTANCE**

#### **Part XV. Services for Special Populations**

##### **Subpart 11. Personal Assistant Services**

#### **Chapter 141. Employment Support**

##### **§14101. General Provisions**

A. - B. ...

C. An assessment shall be performed for every recipient who requests personal assistant services. This assessment shall be utilized to identify the recipient's employment related needs, preferences, the availability of family and community supports and to develop the plan of care. The Minimum Data Set-Home Care (MDS-HC) System will be used as the basic assessment tool. However, other assessment tools may be utilized as a supplement to the MDS-HC to address the needs of special groups within the target population.

D. Authorization. Personal assistant services (PAS) shall be authorized by the Bureau of Health Services Financing or its designee. The Bureau of Health Services Financing or its designee will review the completed assessment, supporting documentation from the recipient's primary physician, plan of care and any other pertinent documents to determine whether the recipient meets the medical necessity criteria for personal assistant services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:1487 (August 2003), amended LR 30:

##### **§14107. Recipient Rights**

A. - A.9. ...

B. Changing Providers. Recipients may request to change personal assistant services providers without cause once after each 90 day service authorization period. Recipients may request to change personal assistant services providers with good cause at any time during the service authorization period. Good cause is defined as the failure of the provider to furnish services in compliance with the service plan. Good cause shall be determined by the bureau or its designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:1488 (August 2003), amended LR 30:

##### **§14109. Standards for Participation**

A. - B.2. ...

3. ensure that a physical examination to determine good health, drug screening test and criminal background check are conducted for all direct care and supervisory staff and that the results are maintained in each employee's personnel record:

a. an employee shall not be assigned to participate in service plan development or to provide services to a recipient until the results have been received from the physical examination and the drug screening test;

b. the drug screening test must be performed by an independent laboratory;

c. the criminal background check must be performed by the Office of the State Police or an agency authorized by the Office of the State Police:

i. the agency may make an offer of temporary employment to an individual pending the results of the criminal background check. In such instances, the worker shall perform his/her duties under the direct supervision of a permanent employee or in the presence of a member of the recipient's immediate family or of a care giver designated by the immediate family;

4. ensure that the direct care staff is qualified to provide personal care services. Assure that all new staff satisfactorily completes an orientation and training program within the first 30 days of employment;

5. - 11. ...

12. have proof of general liability insurance of at least \$200,000. The certificate holder shall be the Department of Health and Hospitals;

13. must maintain an office in each region in which it proposes to provide services. Consideration shall be given to an agency's request to provide services in a parish that borders its designated service region if that parish is within a 50 mile radius of the agency's office:

a. each office must have hours of operation that conform to the customary operating hours for similar businesses in the local community and have written provisions for emergency contact that include a toll-free telephone line with 24-hour accessibility. The written policy governing emergency contact shall be made available to recipients and staff;

b. each office must house the case records and billing documentation for the individuals served by that office;

c. each office must also house the personnel and payroll records for all of the employees who are assigned to that office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:1488 (August 2003), amended LR 30:

##### **§14111. Staffing Requirements**

A. Personal assistant services agencies participating in the Medicaid Program must ensure that all staff providing direct care to the recipient meets the qualifications for furnishing personal assistant services. The PAS worker should demonstrate empathy toward persons with disabilities, an ability to provide care to these recipients, and the maturity and ability to deal effectively with the demands of the job. In addition, all supervisors of direct care staff must meet qualifications set forth in this §14111.

###### **B. Personal Assistant Services Worker Qualifications**

1. Age. The worker must be at least 21 years old or older at the time the offer of employment is made. Verification of age must be maintained in each worker's personnel record.

2. Education and Experience. All personal assistant services workers must meet one of the following minimum education and experience qualifications:

a. a high school diploma or general equivalency diploma (GED) and one year of documented experience providing direct care services to persons with disabilities; or

- b. successful completion of a home health aide training program and competency evaluation; or
- c. successful completion of a certified nursing assistant training program and competency evaluation approved by the Department of Health and Hospitals; or
- d. three years of documented experience providing direct care services to persons with disabilities.

3. The PAS worker must have the ability to read and write in English as well as to carry out directions promptly and accurately.

4. Prior to an offer of employment being finalized, the PAS worker must have:

- a. a physical examination that verifies that he/she is in good health and free from contagious disease;
- b. a drug screening test; and
- c. a criminal background check.

C. Restrictions. A legally responsible relative is prohibited from being the paid PAS worker for a family member. Legally responsible relative is defined as the parent of a minor child, foster parent, curator, tutor, legal guardian or the recipient's spouse.

#### D. Supervisor Qualifications

1. Age. The supervisor must be at least 23 years old or older at the time the offer of employment is made. Verification of age must be maintained in each worker's personnel record.

2. Education and Experience. All supervisors of PAS workers must meet one of the following minimum education and experience qualifications:

- a. a bachelor's degree in one of the human service-related fields:
  - i. social work;
  - ii. psychology;
  - iii. sociology;
  - iv. physical therapy;
  - v. occupational therapy;
  - vi. recreational therapy or counseling from an accredited college or university; or

Note: Thirty hours of graduate level course credit in any of the referenced human service-related fields may be substituted for the one year of required paid experience.

- b. two years of paid experience in a human service-related field providing direct services to persons with disabilities; or
- c. a licensed registered nurse (RN) or a licensed practical nurse (LPN) with one year of paid experience as an RN or LPN providing direct services to persons with disabilities; or
- d. a high school diploma or GED and five years of paid experience providing direct care services to persons with disabilities.

E. Training. Training for personal assistant services workers and supervisors must be provided or arranged for by the personal assistant services agency at its own expense.

1. A minimum of eight hours of orientation must be provided to new direct care and supervisory employees within one week of employment. The orientation provided to staff shall include, but is not limited to:

- a. agency policies and procedures;
- b. staff duties and responsibilities;

- c. ethics and confidentiality;
- d. record keeping;
- e. a description of the population served by the agency; and
- f. a discussion of issues related to providing care for these individuals, including physical and emotional problems associated with disability.

2. New direct care staff must also receive training in cardiopulmonary resuscitation (CPR) and basic first aid within one week of employment. A current, valid certification for CPR and first aid may be accepted as verification of training.

3. A minimum of 16 hours of training must be furnished to new employees within 30 days of employment. The PAS agency training curriculum must, at a minimum, include the following components:

- a. communication skills;
- b. observation, reporting and documentation of the recipient status and the care or service furnished;
- c. basic infection control procedures;
- d. basic elements of body functioning and changes in body function that must be reported to a worker's supervisor;
- e. safe transfer techniques and ambulation;
- f. appropriate and safe techniques in personal hygiene and grooming that include:
  - i. bed bath;
  - ii. sponge, tub, or shower bath;
  - iii. sink, tub, bed shampoo;
  - iv. nail and skin care;
  - v. oral hygiene; and
  - vi. toileting and elimination;
- g. recognizing emergencies and knowledge of emergency procedures;
- h. maintenance of a clean, safe and healthy environment; and

i. treating the recipient with dignity and respect, including the need to respect his/her privacy and property.

4. PAS workers and supervisors must satisfactorily complete a minimum of 20 hours of annual training related to the provision of personal assistant services. This training may include updates on the subjects covered in orientation and initial training. The eight hours of orientation required for new employees are not included as part of the hours required for the annual training.

5. Documentation. All required training must be documented in the employee's personnel record, including the date, time spent in the training sessions, subjects covered and the name of the individual who conducted the training. Verification of training shall be furnished to the Bureau or its designee upon request.

#### F. Supervisory Responsibilities

1. Each supervisor shall be responsible for assessing the job performance of each staff member, reviewing individual cases, providing constructive feedback, and assisting staff to provide services in a more effective manner and to resolve problems using the following methods:

- a. routine face-to-face meetings with individual staff;

- b. routine face-to-face group meetings with all staff;  
or
- c. periodic visits to the recipient's residence to ensure his/her satisfaction with services being provided.

2. Each supervisor shall be responsible for the supervision of no more than 10 PAS workers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Ben A. Bearden at the Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, January 27, 2004 at 9:30 a.m. in the Wade O. Martin Auditorium, State Archives Building, 3851 Essen Lane, 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: Personal Assistant  
Services? Employment Support**

**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 2003-2004, 2004-2005 and 2005-2006. It is anticipated that \$884 (\$442 SGF and \$442 FED) will be expended in SFY 2003-2004 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 affect federal revenue collections for SFY 2003-2004, 2004-2005 and 2005-2006. It is anticipated that \$442 will be expended in SFY 2003-2004 for the federal share of the expense for promulgation of this proposed Rule and the final Rule.

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

It is anticipated that providers of personal assistant services (PAS) (approximately 230) will incur costs in hiring and training PAS workers and supervisors. However, these estimated costs cannot be determined at this time. Implementation of this proposed Rule will amend provisions contained in the August 20, 2003 Rule to establish staffing requirements for personal assistant services and the recipient's rights regarding changing providers.

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

There is no known effect on competition. It is anticipated that this proposed Rule could provide employment opportunities to providers of personal assistant services.

Ben A. Bearden  
Director  
0312#091

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Office of the Secretary  
Bureau of Health Services Financing**

Personal Care Services? Long Term Care  
(LAC 50:XV.Chapter 129)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:XV.Chapter 129 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated 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 to establish the provisions governing coverage of personal care services as an optional service under the Medicaid State Plan (*Louisiana Register*, Volume 29, Number 6). The bureau now proposes to amend the June 20, 2003 Rule to establish provisions governing when a recipient may change personal care service providers and staffing requirements for personal care agencies. In addition, the bureau proposes to amend the general provisions, standards for participation and the place of service requirements contained in the June 20, 2003 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. It is anticipated that implementation of this proposed Rule will have a positive impact on family functioning, stability, and autonomy as described in R.S. 49:972, as it will enhance the quality of services by ensuring that employees of personal care services agencies are qualified to provide services.

**Proposed Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the June 20, 2003 Rule to establish provisions governing when a recipient may change personal care service providers and staffing requirements for personal care agencies. In addition, the bureau proposes to amend the general provisions, standards for participation and the place of service requirements contained in the June 20, 2003 Rule.

**Title 50**

**PUBLIC HEALTH? MEDICAL ASSISTANCE**

**Part XV. Services for Special Populations**

**Subpart 9. Personal Care Services**

**Chapter 129. Long Term Care**

**§12901. General Provisions**

A. ...

B. An assessment shall be performed for every recipient who requests personal care services. This assessment shall be utilized to identify the recipient's long term care needs, preferences, the availability of family and community supports and to develop the plan of care. The Minimum Data Set-Home Care (MDS-HC) System will be used as the basic assessment tool. However, other assessment tools may be utilized as a supplement to the MDS-HC to address the needs of special groups within the target population.

C. Authorization. Personal care services (PCS) shall be authorized by the Bureau of Health Services Financing or its designee. The bureau or its designee will review the completed assessment, supporting documentation from the recipient's primary physician, plan of care and any other pertinent documents to determine whether the recipient meets the medically necessity criteria for personal care services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:911 (June 2003), amended LR 30:

#### **§12907. Recipient Rights**

A. - A.9. ....

B. Changing Providers. Recipients may request to change PCS providers without cause once after each 90 day service authorization period. Recipients may request to change PCS providers with good cause at any time during the service authorization period. Good cause is defined as the failure of the provider to furnish services in compliance with the service plan. Good cause shall be determined by the bureau or its designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 30:

#### **§12909. Standards for Participation**

A. - B.2. ...

3. ensure that a physical examination to determine good health, a drug screening test and a criminal background check are performed for all direct care and supervisory staff and that the results are maintained in each employee's personnel record:

a. an employee shall not be assigned to participate in service plan development or to provide services to a recipient until the results have been received from the physical examination and the drug screening test;

b. the drug screening test must be performed by an independent laboratory;

c. the criminal background check must be performed by the Office of the State Police or an agency authorized by the Office of the State Police:

i. the agency may make an offer of temporary employment to an individual pending the results of the criminal background check. In such instances, the worker shall perform his/her duties under the direct supervision of a permanent employee or in the presence of a member of the recipient's immediate family or of a care giver designated by the immediate family;

4. ensure that the direct care staff is qualified to provide personal care services. Assure that all new staff

satisfactorily complete an orientation and training program within the first 30 days of employment;

B.5 - 10....

11. have proof of general liability insurance of at least \$200,000. The certificate holder shall be the Department of Health and Hospitals;

12. must maintain an office in each region in which it proposes to provide services. Consideration shall be given to an agency's request to provide services in a parish that borders its designated service region if that parish is within a 50-mile radius of the agency's office:

a. each office must have hours of operation that conform to the customary operating hours for similar businesses in the local community and have written provisions for emergency contact that include a toll-free telephone line with 24-hour accessibility. The written policy governing emergency contact shall be made available to recipients and staff;

b. each office must house the case records and billing documentation for the individuals served by that office;

c. each office must also house the personnel and payroll records for all of the employees who are assigned to that office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 30:

#### **§12911. Staffing Requirements**

A. Personal care services agencies participating in the Medicaid Program must ensure that all staff providing direct care to the recipient meet the qualifications for furnishing personal care services. The PCS worker shall demonstrate empathy toward the elderly and persons with disabilities, an ability to provide care to these recipients, and the maturity and ability to deal effectively with the demands of the job. In addition, all supervisors of direct care staff must meet qualifications set forth in this §12911.

B. Personal Care Services Worker Qualifications

1. Age. The worker must be at least 21 years old or older at the time the offer of employment is made. Verification of age must be maintained in each worker's personnel record.

2. Education and Experience. All PCS workers must meet one of the following minimum education and experience qualifications:

a. a high school diploma or general equivalency diploma (GED) and one year of documented experience providing direct care services to the elderly and/or persons with disabilities; or

b. successful completion of a home health aide training program and competency evaluation; or

c. successful completion of a certified nursing assistant training program and competency evaluation approved by the Department of Health and Hospitals; or

d. three years of documented experience providing direct care services to the elderly and/or persons with disabilities.

3. The PCS worker must have the ability to read and write in English as well as to carry out directions promptly and accurately.

4. Prior to an offer of employment being finalized, the PCS worker must have:

- a. a physical examination that verifies that he/she is in good health and free from contagious disease;
- b. a drug screening test; and
- c. a criminal background check.

C. Restrictions. A legally responsible relative is prohibited from being the paid PCS worker for a family member. Legally responsible relative is defined as the parent of a minor child, foster parent, curator, tutor, legal guardian or the recipient's spouse.

D. Supervisor Qualifications

1. Age. The supervisor must be at least 23 years old or older at the time the offer of employment is made. Verification of age must be maintained in each worker's personnel record.

2. Education and Experience. All supervisors of PCS workers must meet one of the following minimum education and experience qualifications:

a. a bachelor's degree from an accredited college or university in one of the following human service-related fields:

- i. social work;
- ii. psychology;
- iii. sociology;
- iv. physical therapy;
- v. occupational therapy; or
- vi. recreational therapy or counseling; or

Note: Thirty hours of graduate level course credit in any of the referenced human service-related fields may be substituted for the one year of required paid experience.

b. two years of paid experience in a human service-related field providing direct services to the elderly and/or persons with disabilities; or

c. a licensed registered nurse (RN) or a licensed practical nurse (LPN) with one year of paid experience as an RN or LPN providing direct services to the elderly and/or persons with disabilities; or

d. a high school diploma or GED and five years of paid experience providing direct care services to the elderly and/or persons with disabilities.

E. Training. Training for PCS workers and supervisors must be provided or arranged for by the personal care services agency at its own expense.

1. A minimum of eight hours of orientation must be provided to new direct care and supervisory employees within one week of employment. The orientation provided to staff shall include, but is not limited to:

- a. agency policies and procedures;
- b. staff duties and responsibilities;
- c. ethics and confidentiality;
- d. record keeping;
- e. a description of the population served by the agency; and
- f. a discussion of issues related to providing care for these individuals, including physical and emotional problems associated with aging and disability.

2. New direct care staff must also receive training in cardiopulmonary resuscitation (CPR) and basic first aid within one week of employment. A current, valid certification for CPR and first aid may be accepted as verification of training.

3. A minimum of 16 hours of training must be furnished to new employees within 30 days of employment. The PCS agency training curriculum must, at a minimum, include the following components:

- a. communication skills;
- b. observation, reporting and documentation of the recipient status and the care or service furnished;
- c. basic infection control procedures;
- d. basic elements of body functioning and changes in body function that must be reported to a worker's supervisor;
- e. safe transfer techniques and ambulation;
- f. appropriate and safe techniques in personal hygiene and grooming that include:
  - i. bed bath;
  - ii. sponge, tub, or shower bath;
  - iii. sink, tub, bed shampoo;
  - iv. nail and skin care;
  - v. oral hygiene; and
  - vi. toileting and elimination;
- g. recognizing emergencies and knowledge of emergency procedures;
- h. maintenance of a clean, safe and healthy environment; and
- i. treating the recipient with dignity and respect, including the need to respect his/her privacy and property.

4. PCS workers and supervisors must satisfactorily complete a minimum of 20 hours of annual training related to the provision of personal care services. This training may include updates on the subjects covered in orientation and initial training. The eight hours of orientation required for new employees are not included as part of the hours required for the annual training.

5. Documentation. All required training must be documented in the employee's personnel record, including the date, time spent in the training sessions, subjects covered and the name of the individual who conducted the training. Verification of training shall be furnished to the bureau or its designee upon request.

F. Supervisory Responsibilities

1. Each supervisor shall be responsible for assessing the job performance of each staff member, reviewing individual cases, providing constructive feedback, and assisting staff to provide services in a more effective manner and to resolve problems using the following methods:

- a. routine face-to-face meetings with individual staff;
  - b. routine face-to-face group meetings with all staff;
- or

c. periodic visits to the recipient's residence to ensure his/her satisfaction with services being provided.

2. Each supervisor shall be responsible for the supervision of no more than 10 PCS workers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

**§12913. Place of Service**

A. Personal care services may be provided in the recipient's home or in another location outside of the recipient's home if the provision of these services allows the

recipient to participate in normal life activities pertaining to the IADLs cited in the plan of care. The recipient's home is defined as the recipient's place of residence including his/her own house or apartment, a boarding house, or the house or apartment of a family member or unpaid primary care-giver. A hospital, institution for mental disease, nursing facility or an intermediate care facility for the mentally retarded, are not considered to be the recipient's home.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:913 (June 2003), amended LR 30:

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to the following address: Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, January 27, 2004 at 9:30 a.m. in the Wade O. Martin Auditorium, State Archives Building, 3851 Essen Lane, 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: **Personal Care Services Long Term Care**

#### 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 2003-2004, 2004-2005 and 2005-2006. It is anticipated that \$816 (\$408 SGF and \$408 FED) will be expended in SFY 2003-2004 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 affect federal revenue collections for SFY 2003-2004, 2004-2005 and 2005-2006. It is anticipated that \$408 will be expended in SFY 2003-2004 for the federal share of the expense for promulgation of this proposed Rule and the final Rule.

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

It is anticipated that personal care services providers (approximately 230) will incur costs for the hiring and training of direct care and supervisory staff. However, the estimable costs to providers cannot be determined at this time. Implementation of this proposed Rule establishes provisions

governing when a recipient may change personal care service providers, staffing requirements for personal care agencies, and amends the general provisions, standards for participation and the place of service requirements.

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

There is no known effect on competition. It is anticipated that this proposed Rule could provide employment opportunities to providers of personal care services.

Ben A. Bearden  
Director  
0312#092

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

Pregnant Women Extended Services? Dental Services  
(LAC 50:XV.16101-16107)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:XV.16101-16107 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated 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 currently provides coverage for dental services under the Early and Periodic Screening, Diagnosis and Treatment Program for Medicaid recipients up to age 21. Under the authority of Section 440.210(a)(2) and 442.220(a)(5) of the *Code of Federal Regulations*, the bureau expanded coverage of certain designated dental services to include Medicaid eligible pregnant women 21 years of age or older who evidenced the need for periodontal treatment (*Louisiana Register, Volume 29, Number 10*). Treating the periodontal needs of this population is effected in order to improve birth outcomes, thus reducing the incidence of pre-term and low weight births. Medicaid coverage of these dental services ends at the conclusion of the pregnancy. The bureau now proposes to promulgate a Rule to continue the provisions contained in the November 1, 2003 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. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability, or autonomy as described in R.S. 49:972 as it will promote the health and welfare of Medicaid eligible pregnant women and their unborn children by addressing those periodontal needs that may affect the pregnancy.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following provisions governing the coverage of the dental services for pregnant women.

**Title 50**

**PUBLIC HEALTH? MEDICAL ASSISTANCE**

**Part XV. Services for Special Populations**

**Subpart 13. Pregnant Women Extended Services**

**Chapter 161. Dental Services**

**§16101. Recipient Qualifications**

A. In order to qualify for the dental services indicated below, a Medicaid eligible pregnant woman must be 21 years of age or older and certified for Medicaid as categorically eligible.

B. Pregnant women who are certified for Medicaid as Qualified Medicare Beneficiaries do not qualify for coverage of dental services unless these services are covered by Medicare.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

**§16103. Provider Responsibilities**

A. The medical professional providing pregnancy care must complete the Referral for Pregnancy-Related Dental Services Form (BHSF Form 9M), including the expected date of delivery. The dental provider must obtain an original completed and signed BHSF 9M prior to the delivery of dental services. This form shall be kept on file at the treating dentist's office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

**§16105. Covered Services**

A. The following dental services are covered for Medicaid eligible pregnant women 21 years of age or older.

Description
Comprehensive Periodontal Evaluation – New or Established Patient
Intraoral - Periapical First Film
Intraoral - Periapical Each Additional Film
*Intraoral - Occlusal Film
Bitewings, Two Films
*Panoramic Film
Prophylaxis – Adult
* Amalgam, One Surface, Primary or Permanent
*Amalgam, Two Surfaces, Primary or Permanent
*Amalgam, Three Surfaces, Primary or Permanent
*Amalgam, Four or More Surfaces, Permanent
*Resin-based Composite, One Surface, Anterior
*Resin-based Composite, Two Surfaces, Anterior
*Resin-based Composite, Three Surfaces, Anterior
*Resin-based Composite, Four or More Surfaces or Involving Incisal Angle, Anterior
*Resin-based Composite Crown, Anterior
*Prefabricated Stainless Steel Crown, Permanent Tooth
*Prefabricated Resin Crown
*Pin Retention, Per Tooth, In Addition to Restoration
*Periodontal Scaling and Root Planing - Four or More Contiguous Teeth or Bounded Teeth Spaces Per Quadrant
*Full Mouth Debridement to Enable Comprehensive Evaluation and Diagnosis
Extraction, Erupted Tooth or Exposed Root (Elevation and/or Forceps Removal)
*Surgical Removal of Erupted Tooth Requiring Elevation of Mucoperiosteal Flap and Removal of Bone and/or Section of Tooth
*Removal of Impacted Tooth, Soft Tissue
*Removal of Impacted Tooth, Partially Bony

\* Prior Authorization Required

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

**§16107. Reimbursement**

A. Reimbursement for these services is a flat fee based on the fee schedule established by the bureau for the Early and Periodic Screening, Diagnosis and Treatment Program minus the amount which any third party coverage would pay.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, January 27, 2004 at 9:30 a.m. in the Wade O. Martin Auditorium, State Archives Building, 3851 Essen Lane, 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: Pregnant Women Extended  
Services? Dental Services**

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

It is anticipated that implementation of this proposed rule will result in estimated cost avoidance to the state of \$348,048 for SFY 2003-2004, \$2,489,350 for SFY 2004-2005 and \$2,564,030 for SFY 2005-2006. It is anticipated that \$408 (\$204 SGF and \$204 FED) will be expended in SFY 2003-2004 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 implementation of this proposed Rule will reduce federal revenue collections by \$875,199 for SFY 2003-2004, \$6,257,486 for SFY 2004-2005 and \$6,445,211 for SFY 2005-2006. \$204 is included in SFY 2003-2004 for the federal administrative expenses for promulgation of this proposed rule and the final Rule.

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

This proposed Rule expands coverage of certain designated dental services to include Medicaid eligible pregnant women (approximately 8,000) who evidenced the need for periodontal treatment. Treating the periodontal needs of this population is

effected in order to improve birth outcomes, thus reducing the incidence of pre-term and low weight births (based on assumptions provided in the study "Periodontal Disease and Pre Term Births: Results of a Pilot Intervention Study" by Dr. Marjorie Jeffcoat, published in August 2003). It is anticipated that implementation of this proposed Rule will result in decreased spending due to improved prenatal care by \$1,223,655 for SFY 2003-2004, \$8,746,836 for SFY 2004-2005 and \$9,009,241 for SFY 2005-2006.

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

It is anticipated that there will be no effect on competition or employment as a result of the implementation of this proposed Rule.

Ben A. Bearden  
Director  
0312#090

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Labor Office of Regulatory Services

Minor Labor Law (LAC 40:VII.Chapters 1-5)

Notice is hereby given, in accordance with R.S. 49:950 et. seq., that the Louisiana Department of Labor, pursuant to authority vested in the department by R.S. 23:153 and in accordance with applicable provisions of the Administrative Procedure Act, proposes to amend Rules, LAC 40:VII.Chapter 1-5, relative to the regulations of conditions under which minor labor may be used.

The proposed amendments address changes enacted pursuant to Act 671 of the 2003 Legislative Session. Proposed amendments will also clarify current law and bring consistency between the current law and the regulations.

#### Title 40

#### LABOR AND EMPLOYMENT

#### Part VII. Conditions Under Which Minor

#### Labor may be Used

#### Chapter 1. Minimum Age Standards for Nonagricultural Employment

#### §101. Oppressive Child Labor

A. Oppressive child labor is defined as employment of children under legal minimum ages in specified occupations as listed in the following Paragraphs.

1. Minimum Age 14. This is the minimum age for certain specified occupations which are allowed outside of school hours. These occupations, along with hours and time standards, are listed in LAC 40:VII.103, 201, 203, 301, and 303.

2. At 16 years of age, youths may be employed in any occupation other than a nonagricultural occupation declared hazardous by the Assistant Secretary of Labor after a public hearing, or any occupation prohibited by R.S. 23:161.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:251.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 7:45 (February 1981), amended LR 15:1086 (December 1989), amended by the Department of Labor, Office of Labor, LR 17:357 (April 1991), amended by the Department of Labor, Office of Regulatory Services, LR 30:

#### §103. Employment Standards for Minors Under 16 Years of Age

A. Employment of minors under 16 years of age is limited to certain occupations under conditions which do not interfere with their schooling, health, or well being.

1. Hours and Time Standards. Minors under 16 years of age may not be employed, or permitted, or suffered to work:

a. during school hours, as defined by the local superintendent for the school district in which the minor resides;

b. before 7 a.m. or after 7 p.m. on any day prior to a day during which school is in session or after 9 p.m. on any day prior to a day during which school is not in session;

c. when employed in theatrical performances, the minor may not be present in the theater, nor shall appear in any performance during the below listed periods of time:

i. more than six hours in any day;

ii. more than 24 hours in any week;

iii. between the hours of 11 p.m. and 6 a.m.;

d. when employed in commercial motion picture, film or video productions, or modeling, the minor may not be present in the studio or on the set, nor shall appear in any performance during the below listed periods of time.

i. before 7 a.m. for studio production, 6 a.m. for location productions, and shall end no later than time specified below:

(a). for minors under six years of age, 7 p.m.;

(b). for minors six years of age to 15 years of age, 8 p.m. on any day prior to a day during which school is in session or 10 p.m. on any day prior to a day during which school is not in session, as defined by the local superintendent for the school district in which the minor resides;

ii. minors under six years of age shall not work more than six hours per day; minors six years of age to 15 years of age shall not work more than eight hours per day;

iii. minors shall receive a 12-hour rest break at the end of each work day, before the commencement of the next day of work;

iv. minors shall not be employed more than six consecutive days in any one week, nor more than 36 hours per week for minors under six years of age, nor more than 48 hours per week for minors six years of age to 15 years of age;

v. applications for waivers for any exception to the foregoing provisions of this Subparagraph may be made to the secretary of the Department of Labor or his designee;

vi. the secretary of labor or his designee may grant a waiver only under the following circumstances:

(a). written notification through a listing of specific dates and times that the minor(s) shall be employed and/or present for either studio production or location production;

(b). written acknowledgement that the minor's parent(s), tutor, or custodian have been fully informed of the circumstances and have granted advance consent.

AUTHORITY NOTE: Promulgated in accordance with R. S. 23:251.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 7:45 (February 1981), amended LR 15:1086 (December 1989), amended by the Department of

Employment and Training, Office of Labor, LR 17:357 (April 1991), amended by the Department of Labor, Office of Labor, LR 20:897 (August 1994), amended by the Department of Labor, Office of Regulatory Services, LR 30:

**Chapter 2. Occupations Permitted for 14 and 15 Year-Old Minors**

**§201. Types of Employment**

A. Types of employment in which 14 and 15 year-old minors may be employed:

1. office and clerical work (including operation of office machines);
2. cashiering, selling, modeling, art work, work in advertising departments, window trimming, and comparative shopping;
3. price marking and tagging by hand or machine, assembling orders, packing and shelving;
4. bagging and carrying out customers' orders;
5. errand and delivery work by foot, bicycle, and public transportation;
6. cleanup work, including use of vacuum cleaners and floor waxers; and maintenance of grounds, but not including use of power-driven mowers or cutters;
7. kitchen work and other work involved in preparing and serving food and beverages, including operation of machines and devices used in performance of such work, such as, but not limited to, dishwashers, toasters, dumbwaiters, popcorn poppers, milk shake blenders, and coffee grinders;
8. work in connection with cars and trucks if confined to the following:
  - a. dispensing gasoline and oil;
  - b. courtesy service on premises of gasoline service station;
  - c. car cleaning, washing, and polishing;
9. cleaning vegetables and fruits; and wrapping, sealing, weighing, labeling, pricing, and stocking goods when performed in areas physically separated from areas where meat is prepared for sale;
10. selling, offering for sale, soliciting for or displaying articles, goods, merchandise, commercial service, posters, circulars, newspapers, or magazines;
11. delivery of, and collection for newspapers and periodicals;
12. work as a golf caddy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:251.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 7:45 (February, 1981), amended LR 15:1087 (December 1989), amended by the Department of Labor, Office of Labor, LR 17:357 (April 1991), amended by the Department of Labor, Office of Regulatory Services, LR 30:

**§203. Occupations Permitted for Minors under 16 Years of Age in Theatrical Performances, Exhibitions, Commercial Motion Pictures, Films, Video Productions, or Modeling**

A. Minors may be employed in theatrical performances or exhibitions as follows:

1. as a singer, musician, or actor in a church, school or academy;
2. teaching or learning the science or practice of music or singing;

3. as a singer, musician, or actor in a concert or in the presentation of a play or musical comedy under the following conditions:

- a. not more than nine weekly performances may be presented; and
- b. a permit must be granted by the assistant secretary of labor at least five days prior to the performance;
4. as a singer, musician, or actor in a play or musical comedy presented by a traveling theatrical company, provided that no more than eight performances are given in any one week. During a week in which a national or state holiday occurs, nine performances may be given under the following conditions:
  - a. a special permit must be obtained from the assistant secretary of the Office of Regulatory Services by the manager of the theater in which the minor is to appear;
  - b. the minor must hold a valid certificate from the state or city where the minor resides which permits participation in theatrical performances;
  - c. in the opinion of the assistant secretary of the Office of Regulatory Services, employment in such performances is not detrimental to the health and morals of the minor.

B. Minors may be employed in commercial motion pictures, films, video productions, or modeling, as follows.

1. A duly authorized agent shall make applications for a permit to the assistant secretary of the Office of Regulatory Services at least five days before the minor is scheduled to begin work.

2. The assistant secretary of the Office of Regulatory Services shall issue permits after satisfying himself that the supervision of the minor is adequate, and that the conditions of employment are not detrimental to the health, morals or safety of the minor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:251.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 7:45 (February 1981), amended LR 15:1087 (December 1989), amended by the Department of Labor, Office of Labor, LR 17:357 (April 1991), amended by the Department of Labor, Office of Regulatory Services, LR 30:

**Chapter 3. Occupations Not Permitted**

**§301. Occupations Not Permitted for 14 and 15 Year-Old Minors**

- A. 14 and 15 year-old minors may not be employed in:
1. any manufacturing occupation;
  2. any mining occupation;
  3. processing occupations or commercial laundering and dry-cleaning;
  4. occupations which require performance of any duties in workrooms or workplaces where goods are manufactured, mined, or otherwise processed, except to the extent expressly permitted in §201;
  5. operating or tending hoisting or lifting apparatus or the inflation of any tire mounted on a rim equipped with a removable retaining ring;
  6. occupations connected with:
    - a. transportation of persons or property by rail, highway, air, water, pipeline, or other means;
    - b. communications and public utilities, except office and clerical work;

- c. construction, including repair work;
- 7. any of the following occupations:
  - a. work performed in or about boiler or engine rooms;
  - b. work in connection with repair of machines or mechanical equipment;
  - c. all work that involves use of ladders and scaffolds or their substitutes;
  - d. cooking and baking;
  - e. occupations which involve operating, setting up, adjusting, cleaning, oiling, or repairing power-driven food slicers and grinders, choppers and cutters, and bakery type mixers;
  - f. work in freezers and meat coolers;
  - g. all work in preparation of meat for sale, except wrapping, sealing, labeling, weighing, pricing, and stocking when such work is not performed in processing areas;
  - h. loading and unloading goods on and off trucks, railroad cars, and conveyors; or
  - i. all occupations in warehouses, except office and clerical work;
- 8. any occupation about or in connection with power-driven machinery; or
- 9. any other occupation found and declared to be hazardous by the assistant secretary of Labor after a public hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:251.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 7:45 (February 1981), amended LR 15:1088 (December 1989), amended by the Department of Labor, Office of Labor, LR 17:357 (April 1991), amended by the Department of Labor, Office of Regulatory Services, LR 30:

### §303. Employment of Minors 16 and 17 Years of Age

A. Minors may not work in any illegal, indecent, or immoral exhibition or practice, including but not limited to; striptease, exotic dancer, etc.

B. Minors may not work at any occupation which the assistant secretary of the Office of Regulatory Services has found and declared to be hazardous for 16 and 17 year-old persons. This minimum age applies even when the minor is employed by a parent or person standing in place of the parent.

C. There are no time standards for minors 16 and 17 years of age regarding the numbers of hours worked per day or per week, however, minors shall receive an eight hour rest break at the end of each work day, before the commencement of the next day of work.

D. No minor who has not graduated from high school shall be employed, or permitted, or suffered to work before 5 a.m. No minor who has not graduated from high school shall be employed, or permitted, or suffered to work after 10 p.m. on any day prior to a day during which school is in session or after midnight on any day prior to a day during which school is not in session. For purposes of this subparagraph, a minor who has taken and passed a General Education Development test (GED) and who has been awarded a High School Equivalency Diploma from the Louisiana Department of Education will be considered to have graduated from high school.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:251.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 7:45 (February 1981), amended LR 15:1088 (December 1989), amended by the Department of Labor, Office of Labor, LR 17:357 (April 1991), amended by the Department of Labor, Office of Regulatory Services, LR 30:

## Chapter 5. Hazardous Occupations

### §501. Preface

A. In the following sections certain occupations are listed as hazardous. These occupations are specified both on an industry-wide basis, and on an occupational basis, regardless of the industry in which they are found.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:161.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 7:46 (February 1981), amended by the Department of Labor, Office of Labor, LR 17:357 (April 1991), amended by the Department of Labor, Office of Regulatory Services, LR 30:

### §503. Manufacturing or Storage Operations Involving Explosives

#### A. Definitions

*Explosives and Articles Containing Explosives?* ammunition, black powder, blasting caps, high explosives, primers, smokeless powder, and all goods classified and defined as explosives by the Interstate Commerce Commission in regulations governing transportation of explosives and other dangerous substances by common carriers.

*Plant or Establishment Manufacturing or Storing Explosive Articles?* the land with all buildings and structures thereon which are used in connection with manufacturing, processing, or storing explosives or articles which contain explosive components.

#### B. Non-explosive Area

1. An area which meets all of the following criteria is deemed a non-explosive area.

a. No work performed in the area involves handling or use of explosives.

b. The area is separated from the explosive area by a distance not less than that prescribed in the American Table of Distances for protection of inhabited buildings.

c. The area is separated from the explosive area by a fence or is otherwise located so that it constitutes a designated area.

2. Satisfactory controls have been established to prevent employees under 18 years of age who are working within the area from entering any area in or about the plant which does not meet criteria listed in Subsection C below.

C. Occupations prohibited in plants which manufacture or store explosives. The following occupations in or about any plant or establishment which manufactures or stores explosives are prohibited:

1. all occupations in manufacturing, mixing, transporting, or handling explosive compounds in manufacture of explosives, and all other occupations which require performance of any duties in an explosive area in which explosive compounds are manufactured or mixed;

2. all occupations involved in manufacturing, handling, or transportation of primers, and performance of any other duties in the same building in which primers are manufactured;

3. all occupations involved in priming cartridges, and performance of any other duties in the same room in which cartridges are primed;

4. all occupations involved in plate loading cartridges and in operation of automatic loading machines;

5. all occupations which involve loading, inspecting, packing, storing, and shipping blasting caps; and

6. all other occupations in or about any plant or establishment which manufactures or stores explosives except when such occupation is performed in a non-explosive area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:161.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 7:46 (February 1981), amended by the Department of Labor, Office of Labor, LR 17:357 (April 1991), amended by the Department of Labor, Office of Regulatory Services, LR 30:

### **§505. Occupations Involving Motor Vehicles**

#### A. Definitions

*Driver?* any individual who, in the course of employment, drives a motor vehicle at any time.

*Gross Vehicle Weight?* the weight of the vehicle chassis, including lubricants, water, and full tank or tanks of fuel, plus the weight of the cab or drivers compartment, body, special chassis and body equipment, and payload.

*Motor Vehicle?* any automobile, truck, truck-trailer combination, trailer, semi-trailers, motorcycle, or similar vehicle which is propelled or drawn by mechanical or electrical power, and designed for use as means of transportation, but does not mean any vehicle operated exclusively on rails.

B. Occupations Prohibited. Any occupation as motor-vehicle driver is prohibited except as permitted in R.S. 23:161 (10) and the Teen Drive for Employment Act which amends the Federal Fair Labor Standards Act, 26 U.S.C. 212 through 213.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:161.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor LR 7:46 (February 1981), amended by the Department of Labor, Office of Labor, LR 17:357 (April 1991), amended by the Department of Labor, Office of Regulatory Services, LR 30:

### **§507. Occupations in Connection with Mining**

#### A. Definitions

*Mining Occupations?* all work performed:

- a. underground in mines and quarries;
- b. on the surface at underground mines and underground quarries;
- c. in or about open-cut mines, open quarries, clay pits, and sand and gravel operations;
- d. at or about placer mining operations;
- e. at or about operations dredging for clay, sand or gravel;
- f. at or about bore-hole mining operations;
- g. in or about all metal mills, washer plants, or grinding mills which reduce bulk of extracted minerals; or
- h. at or about any crushing, grinding, screening, sizing, washing, or cleansing operations performed upon extracted minerals, except when such operations are performed as part of a manufacturing process outside of area of the mine or quarry.

B. Prohibited Occupations. All occupations in connection with mining or operation of a quarry are prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:161.

HISTORICAL NOTE: Adopted by the Department of Labor, Office of Labor, LR 7:46 (February 1981), amended by the Department of Labor, Office of Labor, LR 17:357 (April 1991), amended by the Department of Labor, Office of Regulatory Services, LR 30:

### **§509. Logging and Sawmill Operations**

#### A. Definitions

*Occupations in Logging?* all work performed in connection with felling timber, bucking or converting timber into logs, poles, piles, ties, bolts, pulpwood, chemical wood, excelsior wood, cordwood, fenceposts, or similar products; collecting, skidding, yarding, loading, transporting, and unloading such products in connection with logging; and other work performed in connection with logging that is declared to be hazardous by the assistant secretary of labor.

*Occupations in Sawmilling?* all work performed in connection with the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill, or in or about any such mill in connection with storing logs and bolts; converting logs or bolts into sawn lumber, laths, shingles, or cooperate stock, or other products of such mills; or any other work performed in connection with operating any sawmill, lath mill, shingle mill, or cooperage mill.

B. Prohibited Occupations. All occupations in logging and all occupations in operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill are prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:161.

HISTORICAL NOTE: Adopted by the Department of Labor, Office of Labor, LR 7:46 (February 1981), amended by the Department of Labor, Office of Labor, LR 17:357 (April 1991), amended by the Department of Labor, Office of Regulatory Services, LR 30:

### **§511. Power Driven Woodworking Machine Occupations**

#### A. Definitions

*Power-Driven Woodworking Machines?* all fixed or portable machines or tools driven by mechanical or electrical power, and are used or designed for cutting, shaping, forming, nailing, stapling, wire-stitching, fastening, or otherwise assembling, pressing, or printing wood veneer, or other products.

*Off-Bearing?* removal of material or refuse directly from a saw table or from the point of operation.

B. Prohibited Occupations. The following occupations involved in operation of power-driven woodworking machines are prohibited:

1. supervising or controlling operation of any woodworking machines;
2. feeding materials into any woodworking machine;
3. helping to feed materials into any woodworking machine;
4. setting up and adjusting, repairing, oiling, or cleaning power-driven woodworking machines;
5. any off-bearing occupations such as removing materials from circular saws and guillotine-action veneer clippers.

C. Operations not considered to be off-bearing are:

1. removal of material or refuse from a circular saw or guillotine-action veneer clipper when such material or refuse has been conveyed away from the saw table or point of operation by a gravity chute or by some mechanical means, such as a moving belt or expulsion device;

2. carrying, moving, or transporting materials from one machine to another, or from one part of the plant to another;

3. piling, stacking or arranging materials to be fed into a machine by another person; and

4. sorting, tying, bundling or loading materials into conveyances.

D. Exemptions. Registered apprentices and registered student-learners are exempt from prohibitions which apply to power-driven woodworking machine occupations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:161.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 7:47 (February 1981), amended by the Department of Labor, Office of Labor, LR 17:357 (April 1991), amended by the Department of Labor, Office of Regulatory Services, LR 30:

### **§513. Occupations Which Involve Operations of Power-Driven Circular Saws, Band Saws, and Guillotine Shears**

#### A. Definitions

*Band Saw?* a machine which is equipped with an endless steel band which has a continuous series of notches or teeth on one edge. The band runs over wheels or pulleys, and is used to saw material.

*Circular Saw?* a machine which is equipped with a thin steel disc which has a continuous series of notches or teeth on the peripheral edge, mounted on a shaft, and used for sawing materials.

*Guillotine Shears?* a machine which is equipped with a movable cutting blade and is operated vertically to shear material.

*Helper?* any person who assists in operation of a machine by helping to place materials into or remove materials from the machine.

*Machine Equipped with Full Automatic Feed and Ejection?* any machine which is equipped with devices which automatically feed and eject materials, and has a fixed barrier guard to prevent completely an operator or helper from placing any part of his body in the point of operation.

*Operator?* any person who operates a machine by performing the functions of starting or stopping the machine, placing materials into or removing materials from the machine, or any other function directly associated with operation of the machine.

B. Prohibited Occupations. Minors are prohibited from working in all occupations which involve operations of power-driven circular saws, band saws, and guillotine shears except in the operation of machines equipped with full automatic feed and ejection.

C. Exemptions. Registered apprentices and registered student-learners are exempt from prohibitions which apply to power-driven circular saws, band saws, and guillotine shears.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:161.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 7:47 (February 1981), amended by the

Department of Labor, Office of Labor, LR 17:357 (April 1991), amended by the Department of Labor, Office of Regulatory Services, LR 30:

### **§515. Power-Driven Metal-Forming, Rolling, Punching, and Shearing Machine Occupations**

#### A. Definitions

*Forming, Rolling, Punching, and Shearing Machines?* power-driven metal-working machines which change the shape of or cut metals by means of tools, such as dies, rolls, or knives which are mounted on rams, plungers, or other moving devices.

*Helper?* any person who assists in the operation of a machine by helping place materials into or removing materials from the machine.

*Operator?* any person who operates a machine by performing such functions as starting or stopping the machine, placing materials into or removing materials from the machine, or any other function which is directly involved in operation of the machine.

B. Prohibited Occupations. Minors are prohibited from working in occupations as operator or helper on:

1. all rolling machines, such as beading, straightening, corrugating, flanging, or bending rolls; and on hot or cold rolling mills;

2. all pressing or punching machines, except those which are provided with full automatic feed and ejection, and with a fixed barrier guard to prevent the hands or fingers of the operator from entering the area between the dies or cutting surfaces;

3. all bending machines, such as apron brakes and press brakes;

4. all hammering machines, such as drop-hammers and power hammers;

5. all shearing machines, such as guillotine or squaring shears, alligator shears and rotary shears;

6. or in setting up, adjusting, repairing, oiling, or cleaning any type of machine described in 515 B.1-5 above, including those with automatic feed and ejection, are prohibited.

C. Exemptions. Registered apprentices and registered student-learners are exempt from prohibitions which apply to power-driven metal-forming, rolling, punching, and shearing machine occupations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:161.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 7:47 (February 1981), amended by the Department of Labor, Office of Labor, LR 17:357 (April 1991), amended by the Department of Labor, Office of Regulatory Services, LR 30:

### **§517. Power-Driven Paper-Product Machine Occupations**

#### A. Definitions

*Operating or Assisting to Operate?* all work involved in starting, stopping, loading materials into, and removing materials from a machine or other work directly involved in operating the machine.

*Paper Products Machine?* any power-driven machine used to manufacture or convert paper or pulp into a finished product. The term is understood to apply to such machines whether they are used in establishments that manufacture converted paper pulp products, or in any other type of manufacturing or non-manufacturing establishment.

## B. Prohibited Occupations

1. Minors are prohibited from operating or assisting to operate any of the following or similar machines: Arm-type wirestitcher, stapler, circular or ban saw, corner cutter or mitering machine, corrugating and single or double facing machine, envelope die-cutting press, guillotine paper cutter or shear, horizontal bar scorer, laminating or combining machine, sheeting machine, scrap paper baler or vertical slotter, platen die-cutting press, platen printing press and punch press which involves hand-feeding.

2. Minors are prohibited from setting up, adjusting, repairing, oiling, or cleaning above machines, including those which do not involve hand-feeding.

C. Exemptions. Registered apprentices and registered student-learners are exempt from all prohibitions in occupations involving power-driven paper-product machines and equipment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:161.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 7:47 (February 1981), amended by the Department of Labor, Office of Labor, LR 17:357 (April 1991), amended by the Department of Labor, Office of Regulatory Services, LR 30:

### §519. Power Driven Bakery Machine Occupations

A. Prohibited Occupations. Minors are prohibited from engaging in the following occupations: operating, assisting to operate, or setting up, adjusting, repairing, oiling, or cleaning any horizontal dough mixer, batter mixer, bread dividing, rounding, or molding machine; dough brake, dough sheeter, combination slicing and wrapping machine; cake cutting band saw; setting up or adjusting a cookie or cracker machine.

B. Exception. Sixteen or 17 year old minors are not prohibited from operating pizza dough rollers constructed with safeguards contained in the basic design so as to prevent fingers, hands, or clothing from being caught in the in-running point of the rollers; which have gears that are completely enclosed, and have microswitches that disengage the machinery if the backs or sides of the rollers are removed; provided that such safeguards are present on the machine, are operational, and cannot be overridden.

C. Exemption. Registered apprentices are exempt from all prohibitions affecting occupations involving power-driven baking equipment and machines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:161.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor LR 7:47 (February 1981), amended by the Department of Labor, Office of Labor, LR 17:357 (April 1991), amended by the Department of Labor, Office of Regulatory Services, LR 30:

### §521. Power Driven Hoisting Apparatus Occupations

#### A. Definitions

*Automatic Elevator?* a passenger elevator, freight elevator, or a combination freight-passenger elevator. Such elevator is controlled by pushbuttons in such a manner that starting, stopping, going to a landing and holding, and opening and closing car and hoistway doors is entirely automatic.

*Automatic Signal Operation Elevator?* an elevator which is started in response to operation of a switch in the car which, when operated by the operator, actuates a starting

device which automatically closes the car and hoistway doors, controls movement of the car to a selected landing, holds it when it arrives, and automatically opens the car and hoistway doors.

*Crane?* a power-driven machine used for lifting and lowering a load and moving it horizontally. The hoisting mechanism is an integral part of the machine. Included are cantilever gantry, crawler, gantry, hammerhead, ingot-pouring, locomotive, motor truck, overhead traveling, pillar jib, pintle, portal, semi-gantry, semi-portal, storage bridge, tower, walking jib, and wall cranes.

*Derrick?* a power-driven apparatus which consists of a mast or equivalent members held at the top by guys or braces, with or without a boom, for use with a hoisting mechanism and operating ropes. All types of derricks are included, such as A-frame, breast, Chicago boom, gin-pole, guy, and stiff leg derricks.

*Elevator?* any power-driven hoisting or lowering mechanism equipped with a car or platform which moves in guides in a substantially vertical direction. Both passenger and freight elevators are included (also portable elevators and tiering machines). Dumbwaiters are not included.

*High-Lift Truck?* a power-driven industrial type truck used for lateral transportation, and is equipped with a power-lifting device, usually in the form of a fork or platform capable of tiering loaded pallets one above the other. Instead of a fork or platform, the lifting device may consist of a ram, shovel, scoop, crane, revolving fork, or other attachments for handling specific loads. Such trucks may be known as forklifts, fork trucks, tiering or stacking trucks, front-end loaders, or graders. Not included are low-lift, or low-lift platform trucks which are designed for transportation of, but not tiering of, materials.

*Hoist?* any power driven apparatus used for raising or lowering a load by application of a pulling force. This includes all types of hoists, such as base-mounted electric, clevis suspension, hood suspension, monorail, overhead electric, simple drum, and trolley suspension hoists.

*Manlift?* a device which is intended for conveyance of persons. It consists of platforms or brackets mounted on, or attached to, an endless belt, cable, chain, or similar suspension device. Such chain device operates in a substantially vertical direction, and is supported by, and driven through pulleys, sheaves, or sprockets at top and bottom.

B. Prohibited Occupations. The following occupations are prohibited for minors:

1. operating a crane, derrick, elevator, hoist, or high-lift truck;
2. work which involves riding in a manlift or on a freight elevator, except a freight elevator operated by an assigned operator;
3. assisting in operation of a crane, derrick or hoist; or in work performed by crane;
4. hookers, crane chasers, hookers-on, riggers, rigger helper, and similar occupations.

C. Exemptions. Registered apprentices are exempt from all prohibitions affecting occupations involving power-driven hoisting apparatus.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:161.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 7:48 (February 1981), amended by the

Department of Labor, Office of Labor, LR 17:357 (April 1991), amended by the Department of Labor, Office of Regulatory Services, LR 30:

### **§523. Wrecking, Demolition, and Shipbreaking Occupations**

A. Prohibited Occupations. All work in wrecking, demolition, and shipbreaking is prohibited. This includes cleanup and salvage work, performed at the site of total or partial razing, demolishing, or dismantling a building, tower, bridge, steeple, chimney, or other structure, ship, or other vessel.

B. Exemptions. Registered apprentices are exempt from prohibitions which apply to occupations in wrecking, demolition, and shipbreaking.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:161.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 7:48 (February 1981), amended by the Department of Labor, Office of Labor, LR 17:357 (April 1991), amended by the Department of Labor, Office of Regulatory Services, LR 30:

### **§525. Brick, Tile and Kindred Products Manufacturing Occupations**

A. Prohibited Occupations. All work in and about establishments in which clay construction products and silica brick are manufactured and in other silica refractories is prohibited with the exceptions listed in 525.B. below.

B. Exemptions. Registered apprentices are exempt from prohibitions which apply to occupations in manufacture of brick, tile and kindred products.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:161.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 7:48 (February 1981), amended by the Department of Labor, Office of Labor, LR 17:357 (April 1991), amended by the Department of Labor, Office of Regulatory Services, LR 30:

### **§527. Roofing Occupations**

A. All occupations in roofing operations are prohibited. These include:

1. installation of roofs, including related metal work, such as flashing, etc.;
2. alterations, additions, maintenance, and repair, including painting and coating existing roofs.

B. Exemptions. Registered apprentices and registered student-learners are exempt from prohibitions which apply to occupations in roofing operations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:161.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 7:48 (February 1981), amended by the Department of Labor, Office of Labor, LR 17:357 (April 1991), amended by the Department of Labor, Office of Regulatory Services, LR 30:

### **§529. Excavation Occupations**

A. Prohibited Occupations. The following occupations are prohibited to minors:

1. excavating, working in, or backfilling trenches which exceed four feet in depth at any point;
2. excavating for buildings or other structures, or working in such excavations which exceed four feet in depth at any point;
3. working within tunnels prior to completion of all driving and shoring operations; and

4. working within shafts prior to the completion of all sinking and shoring occupations.

B. Exemptions. Registered apprentices and registered student-learners are exempt from the prohibitions which apply to occupations in excavation work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:161.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 7:48 (February 1981), amended by the Department of Labor, Office of Labor, LR 17:357 (April 1991), amended by the Department of Labor, Office of Regulatory Services, LR 30:

### **§531. Slaughtering, Meat-Packing or Processing, or Rendering Occupations**

A. Definitions

*Boning Occupation?* an occupation which involves removal of bones from meat cuts. It does not include scraping or trimming meat from cuts containing bones.

*Curing Cellar?* a workroom or workplace which is primarily devoted to preservation and flavoring meat by curing materials. It does not include an area where meat is smoked.

*Hide Cellar?* a workroom or workplace in which hides are graded, trimmed, slated, and otherwise cured.

*Killing Floor?* the workroom or workplace in which cattle, hogs, calves, sheep, lambs, goats, or other animals are immobilized, shackled, or killed, and the carcasses are dressed prior to being chilled.

*Rendering Plant?* any establishment engaged in conversion of dead animals, animal offal, animal fats, scrap meats, blood, and bones into stock feed, tallow, inedible greases, fertilizer ingredients, and similar products.

*Slaughtering and Meat-Packing Establishment?* places in and about which cattle, calves, hogs, sheep, lambs, goats, or other animals are killed, butchered, or processed. Including are establishments which manufacture or process meat products or sausage casings from such animals.

B. Prohibited Occupations. The following occupations are prohibited:

1. all occupations on the killing floor, in curing cellars, and in hide cellars;
2. all occupations involved in recovery of lard and oils;
3. all occupations involved in tankage or rendering whether or not in a rendering plant, or a slaughter house;
4. all occupations involved in operating, setting up, adjusting, oiling, or cleaning any power-driven machine used in a slaughtering, meat-packing or processing, or rendering plant;
5. all boning work;
6. all occupations which involve pushing or dropping any suspended carcass, half carcass, or quarter carcass;
7. all occupations involving hand carrying any carcass or half carcass of beef, pork, or horse, or any quarter carcass of beef or horse.

C. Exemptions. Registered apprentices and registered student learners are exempt from prohibitions which apply to occupations involved in slaughtering, meat-packing or processing, or rendering.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:161.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 7:48 (February 1981), amended by the

Department of Labor, Office of Labor, LR 17:357 (April 1991), amended by the Department of Labor, Office of Regulatory Services, LR 30:

**§533. Occupations Involving Exposure to Radioactive Substances and Ionizing Radiation**

A. All work is prohibited in any workroom in which:

1. radium is stored or used in the manufacture of self-luminous compounds;
2. self-luminous compounds are manufactured, processed, or packaged;
3. self-luminous compounds are stored, used, or worked on;
4. incandescent mantles are made from fabric and solutions containing thorium salts, or where these are packaged or stored;
5. other radioactive substances are present in the air in average concentrations exceeding ten percent of the maximum permissible concentration in air recommended for exposure by the national Committee on Radiation Protection as set forth in the forty-hour week column of Table One of the National Bureau of Standards, Handbook No. 69, entitled Maximum Permissible Body Burdens and Maximum Permissible Concentrations of Radionuclides in Air and Water for Occupational Exposure, issued June 5, 1959; or
6. any other work which involves exposure to ionizing radiations in excess of 0.5 rem per year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:161.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 7:49 (February 1981), amended by the Department of Labor, Office of Labor, LR 17:357 (April 1991), amended by the Department of Labor, Office of Regulatory Services, LR 30:

**§535. Occupations Involving Use of or Contact with Lead or any Other Toxic Substance**

A. Any occupation which involves use of or contact with any toxic substance is prohibited. Such occupations include spray painting, transporting, or physically handling such substance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:161.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Labor, LR 7:49 (February 1981), amended by the Department of Labor, Office of Labor, LR 17:357 (April 1991), amended by the Department of Labor, Office of Regulatory Services, LR 30:

**§535. Welding Occupations**

A. Definitions

*Welding Machines?* shielded metal arc welding machines, gas tungsten arc welding machines, flux-cored arc welding machines, gas metal arc welding machines, and similar machines used to apply heat to a welding rod or continuously fed wire and to metal pieces, melting and fusing the pieces to form a permanent bond.

*Soldering, and Brazing Welding Equipment?* oxygen and acetylene tanks, acetylene torches, assorted tips and soldering and brazing rods used to apply heat to melt the rods and to fuse the pieces to form a permanent bond.

*Welding and Cutting Equipment?* oxygen and acetylene tanks, acetylene torches, cutting tips, carbon arc cutting equipment, gouging machines, chipping hammers, wire brushes, power grinders, etc.

B. Prohibited Occupations. Minors are prohibited from working as an operator or helper in the operation of any of the above described machines or equipment.

C. Registered apprentices and registered student-learners are exempt from the prohibitions which apply to occupations in welding occupations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:161.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Regulatory Services, LR 30:

**§539. Registered Apprentices**

A. For purposes of this chapter, *Registered Apprentices* means minors participating in job training programs which have been approved and registered by the Louisiana Department of Labor, Apprenticeship Division in accordance with R.S.23:381, et seq.

B. Registered apprentices are exempt from hazardous occupations prohibitions while participating in job training as an indentured apprentice in a registered program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:161.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Regulatory Services, LR 30:

**§541. Registered Student Learners**

A. For purposes of this chapter, *registered student learners* means minor students participating in job training programs approved by and administered by the Louisiana Office of Career and Technical Education or the Louisiana Community and Technical College System.

B. Registered Student Learners may be exempt from hazardous occupation prohibitions concerning the following equipment and job tasks, provided that all conditions of Subsection C below are met:

1. power-driven woodworking machines;
2. power-driven circular saws, band saws, and guillotine shears;
3. power-driven metal-forming, punching and shearing machines;
4. power-driven paper product machines;
5. roofing operations;
6. excavation operations;
7. slaughtering, meat-packing or processing, or rendering;
8. welding operations.

C. Conditions

1. Such student learner is employed under a written agreement which provides:

a. that the work of the student learner in the occupations declared hazardous shall be incidental to the training;

b. that such work shall be intermittent and for short periods of time and under the direct and close supervision of a qualified and experienced person;

c. that safety instruction shall be given by the school and correlated by the employer with on-the-job training;

d. that a schedule of organized and progressive work processes to be performed on the job shall have been prepared and made a part of the written agreement; and

e. that the written agreement be signed by the school coordinator, the employer, the minor student learner and the student's consenting parent or guardian.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:161.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Regulatory Services, LR 30:

The proposed Rule is available for inspection at the Louisiana Department of Labor, 1001 North Twenty-Third Street, Baton Rouge, LA, from 8 am until 4:30 pm.

All interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than Monday, January 26, 2004, to Cecil Formby, Office of Regulatory Services, Minor Labor Law Division, P.O. Box 94094, Baton Rouge, LA 70804-9094, or to 1001 North Twenty-Third Street, Baton Rouge, LA, from 8 am to 4:30 pm.

A public hearing will be held on January 27, 2004 at 10 am in room 244 at the Louisiana Department of labor, 1001 North Twenty-Third Street, Baton Rouge, LA. Interested persons are invited to attend and submit oral comments on the proposed amendments.

Dawn Romero Watson  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Minor Labor Law**

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

The amendments to the Rules will not result in any implementation costs or savings to state or local government 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)**

The Department of Labor is unable to determine whether or not directly affected person or non-governmental groups will experience any costs or economic benefits, but no such costs or economic benefits are expected.

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

Some employers may have to make adjustments in their scheduling of staff to accommodate the change in lateness of hour restriction for 16 and 17 year old minors. The Department of Labor is unaware of any factors which might cause additional cost for employers.

Since these Rule changes are being implemented on a state-wide basis, all Louisiana employers who employ minors will be affected in the same manner. Accordingly, these Rule changes should have no effect on competition and employment.

Dawn Romero Watson  
Secretary of Labor  
0312#056

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
Office of State Police**

**Motor Carrier Safety and Hazardous Materials  
(LAC 33:V.10303)**

The Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section, proposes to amend LAC 33:V.10303 pertaining to Motor Carrier Safety and Hazardous Material requirements to restate the revision date of the previously adopted Parts of 49 CFR as authorized by R.S. 32:1501 et seq.

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part V. Hazardous Wastes And Hazardous Materials  
Subpart 2. Department Of Public Safety And  
Corrections? Hazardous Materials**

**Chapter 103. Motor Carrier Safety and Hazardous  
Materials**

**§10303. Federal? Motor Carrier Safety and Hazardous  
Materials**

A. The following federal motor carrier safety regulations and hazardous materials regulations promulgated by the United States Department of Transportation, revised as of October 1, 2003 and contained in the following parts of 49 CFR as now in effect or as hereafter amended, are made a part of this chapter.

**Hazardous Material Regulations**

Part 171 General Information, Regulations, and Definitions  
Part 172 Hazardous Materials Table, Special Provisions, and Hazardous Materials Communications, Emergency Response Information, and Training Requirements

Part 173 Shippers? General Requirements for Shipments and Packagings

Part 177 Carriage by Public Highways

Part 178 Specifications for Packagings

Part 180 Continuing Qualification and Maintenance of Packagings

**Motor Carrier Safety Regulations**

Part 382 Controlled Substances and Alcohol Use and Testing

Part 383 Commercial Driver's License Standards; Requirements and Penalties

Part 385 Safety Fitness Procedures

Part 390 Federal Motor Carrier Safety Regulations; General

Part 391 Qualifications of Drivers

Part 392 Driving of Commercial Motor Vehicles

Part 393 Parts and Accessories Necessary for Safe Operation

Part 395 Hours of Service of Drivers

Part 396 Inspection, Repair, and Maintenance

Part 397 Transportation of Hazardous Materials; Driving and Parking Rules

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 14:31 (January 1988), amended L.R. 17:1115 (November 1991), LR 19:351 (March 1993), LR 10:58 (January 1994), LR 24:956 (May 1998), LR 24:2321 (December 1998), LR 30:

**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 earning and family budget.

5. The Effect of these Rules on the Behavior and Personal Responsibility of Children. These rules will have no effect on the behavior and personal responsibility of children.

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.

Interested persons may submit written comments to: Paul Schexnayder, Post Office Box 66614, Baton Rouge, LA 70896. Written comments will be accepted through January 15, 2004.

Chris A. Keaton  
Undersecretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Motor Carrier Safety and Hazardous  
Materials**

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

There should be no additional costs incurred, nor savings realized, as a result of the adoption of these Rules.

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

There should be no effect on revenue as a result of these Rules.

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

The proposed Rule change readopts by reference federal regulations which have been previously adopted. These regulations have changed the permitted hours of service for drivers in the motor carrier industry and have specified new load securement requirements. The fiscal impact of these new federal regulations cannot be quantified as these new regulations simultaneously permit more driving hours per day while requiring more out of service hours for extended driving periods. The load securement requirements will affect every carrier differently depending on the carrier's previous methods of securing its loads. The new regulations are designed to increase safety on the highways which will result in economic benefits to the driving public by reducing vehicle crashes.

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

These Rules should not affect competition or employment.

Chris A. Keaton  
Undersecretary  
0312#066

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
Office of the State Fire Marshal**

Fire Codes (LAC 55V.103 and 303)

In accordance with the provisions of R.S. 49:950, et seq. and R.S. 40:1563.F, relative to the authority of the State Fire Marshal to promulgate and enforce Rules, the Office of the State Fire Marshal amends the following Rule.

**Title 55**

**PUBLIC SAFETY**

**Part V. Fire Protection**

**Chapter 1. Preliminary Provisions**

**§103. General Provisions**

A. It shall be the policy of the State Fire Marshal that in all instances or specifications provided in the statutes or in the codes referenced by the statutes, or by any specific references in administrative rulings by the State Fire Marshal, that the *Standard Building Code* published by the Southern Building Code Congress International, and the *International Building Code* published by the International Code Council, and the *National Fire Codes* published by the National Fire Protection Association as specifically identified in the following list, shall be used as the resource materials for determinations by the State Fire Marshal.

NFPA 1	2003 Edition	Uniform Fire Code
NFPA 10	2002 Edition	Standard for Portable Fire Extinguishers
NFPA 11	2002 Edition	Standard for Low-, Medium-, and High-Expansion Foam
NFPA 12	2000 Edition	Standard on Carbon Dioxide Extinguishing Systems
NFPA 12A	1997 Edition	Standard on Halon 1301 Fire Extinguishing Systems
NFPA 13	2002 Edition	Standard for the Installation of Sprinkler Systems
NFPA 13D	2002 Edition	Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes
NFPA 13R	2002 Edition	Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height
NFPA 14	2003 Edition	Standard for the Installation of Standpipe and Hose Systems
NFPA 15	2001 Edition	Standard for Water Spray Fixed Systems for Fire Protection
NFPA 16	2003 Edition	Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems

NFPA 17	2002 Edition	Standard for Dry Chemical Extinguishing Systems
NFPA 17A	2002 Edition	Standard for Wet Chemical Extinguishing Systems
NFPA 18	1995 Edition	Standard on Wetting Agents
NFPA 20	1999 Edition	Standard for the Installation of Stationary Pumps for Fire Protection
NFPA 22	2003 Edition	Standard for Water Tanks for Private Fire Protection
NFPA 25	2002 Edition	Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems
NFPA 30	2000 Edition	Flammable and Combustible Liquids Code
NFPA 30A	2000 Edition	Code for Motor Fuel Dispensing Facilities and Repair Garages
NFPA 30B	2002 Edition	Code for the Manufacture and Storage of Aerosol Products
NFPA 31	2001 Edition	Standard for the Installation of Oil-Burning Equipment
NFPA 32	2000 Edition	Standard for Drycleaning Plants
NFPA 33	2000 Edition	Standard for Spray Application Using Flammable or Combustible Materials
NFPA 34	2000 Edition	Standard for Dipping and Coating Processes Using Flammable or Combustible Liquids
NFPA 37	2002 Edition	Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines
NFPA 42	2002 Edition	Code for the Storage of Pyroxylin Plastic
NFPA 45	2000 Edition	Standard on Fire Protection for Laboratories Using Chemicals
NFPA 49	1994 Edition	Standard on Fire Protection for Laboratories Using Chemicals
NFPA 50	2001 Edition	Standard for Bulk Oxygen Systems at Consumer Sites
NFPA 50A	1999 Edition	Standard for Gaseous Hydrogen Systems at Consumer Sites
NFPA 50B	1999 Edition	Standard for Liquefied Hydrogen Systems at Consumer Sites
NFPA 51	2002 Edition	Standard for the Design and Installation of Oxygen-Fuel Gas Systems for Welding, Cutting, and Allied Processes
NFPA 51B	1999 Edition	Standard for Fire Prevention During Welding, Cutting, and Other Hot Work
NFPA 52	2002 Edition	Compressed Natural Gas (CNG) Vehicular Fuel Systems Code
NFPA 53	1999 Edition	Recommended Practice on Materials, Equipment, and Systems Used in Oxygen-Enriched Atmospheres
NFPA 54	2002 Edition	ANSI Z223.1-2002 National Fuel Gas Code
NFPA 55	2003 Edition	Standard for the Storage, Use, and Handling of Compressed Gases and Cryogenic Fluids in Portable and Stationary Containers, Cylinders, and Tanks
NFPA 57	2002 Edition	Liquefied Natural Gas (LNG) Vehicular Fuel Systems Code
NFPA 58	2001 Edition	Liquefied Petroleum Gas Code
NFPA 59A	2001 Edition	Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)
NFPA 61	2002 Edition	Standard for the Prevention of Fires and Dust Explosions in Agricultural and Food Processing Facilities
NFPA 68	2002 Edition	Guide for Venting of Deflagrations
NFPA 69	2002 Edition	Standard on Explosion Prevention Systems

NFPA 70	2002 Edition	National Electrical Code
NFPA 72	2002 Edition	National Fire Alarm Code
NFPA 80	1999 Edition	Standard for Fire Doors and Fire Windows
NFPA 82	1999 Edition	Standard on Incinerators and Waste and Linen Handling Systems and Equipment
NFPA 88A	2002 Edition	Standard for Parking Structures
NFPA 88B	1997 Edition	Standard for Repair Garages
NFPA 90A	2002 Edition	Standard for the Installation of Air-Conditioning and Ventilating Systems
NFPA 90B	2002 Edition	Standard for the Installation of Warm Air Heating and Air-Conditioning Systems
NFPA 92A	2000 Edition	Recommended Practice for Smoke-Control Systems
NFPA 92B	2000 Edition	Guide for Smoke Management Systems in Malls, Atria, and Large Areas
NFPA 96	2001 Edition	Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations
NFPA 99	2002 Edition	Standard for Health Care Facilities
NFPA 99B	2002 Edition	Standard for Hypobaric Facilities
NFPA 101	2003 Edition	Life Safety Code
NFPA 101A	2001 Edition	Guide on Alternative Approaches to Life Safety
NFPA 102	1995 Edition	Standard for Grandstands, Folding and Telescopic Seating, Tents, and Membrane Structures
NFPA 105	2003 Edition	Standard for the Installation of Smoke Door Assemblies
NFPA 110	2002 Edition	Standard for Emergency and Standby Power Systems
NFPA 111	2001 Edition	Standard on Stored Electrical Energy Emergency and Standby Power Systems
NFPA 140	1999 Edition	Standard on Motion Picture and Television Production Studio Soundstages and Approved Production Facilities
NFPA 150	2000 Edition	Standard on Fire Safety in Racetrack Stables
NFPA 160	2001 Edition	Standard for Flame Effects Before an Audience
NFPA 170	2002 Edition	Standard for Fire Safety Symbols
NFPA 204	2002 Edition	Standard for Smoke and Heat Venting
NFPA 211	2003 Edition	Standard for Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances
NFPA 220	1999 Edition	Standard on Types of Building Construction
NFPA 221	2000 Edition	Standard for Fire Walls and Fire Barrier Walls
NFPA 230	2003 Edition	Standard for the Fire Protection of Storage
NFPA 231D	1994 Edition	Standard for Storage of Rubber Tires
NFPA 303	2000 Edition	Fire Protection Standard for Marinas and Boatyards
NFPA 307	2000 Edition	Standard for the Construction and Fire Protection of Marine Terminals, Piers, and Wharves
NFPA 407	2001 Edition	Standard for Aircraft Fuel Servicing
NFPA 409	2001 Edition	Standard on Aircraft Hangars
NFPA 415	2002 Edition	Standard on Airport Terminal Buildings, Fueling Ramp Drainage, and Loading Walkways
NFPA 418	2001 Edition	Standard for Heliports
NFPA 430	2000 Edition	Code for the Storage of Liquid and Solid Oxidizers
NFPA 432	2002 Edition	Code for the Storage of Organic Peroxide Formulations

NFPA 434	2002 Edition	Code for the Storage of Pesticides
NFPA 484	2002 Edition	Standard for Combustible Metals, Metal Powders, and Metal Dusts
NFPA 490	2002 Edition	Code for the Storage of Ammonium Nitrate
NFPA 495	2001 Edition	Explosive Materials Code
NFPA 513	1998 Edition	Standard for Motor Freight Terminals
NFPA 654	2000 Edition	Standard for the Prevention of Fire and Dust Explosions from the Manufacturing, Processing, and Handling of Combustible Particulate Solids
NFPA 664	2002 Edition	Standard for the Prevention of Fires and Explosions in Wood Processing and Woodworking Facilities
NFPA 701	1999 Edition	Standard Methods of Fire Tests for Flame Propagation of Textiles and Films
NFPA 703	2000 Edition	Standard for Fire Retardant Impregnated Wood and Fire Retardant Coatings for Building Materials
NFPA 750	2003 Edition	Standard on Water Mist Fire Protection Systems
NFPA 801	2003 Edition	Standard for Fire Protection For Facilities Handling Radioactive Materials
NFPA 820	1999 Edition	Standard for Fire Protection in Wastewater Treatment and Collection Facilities
NFPA 901	2001 Edition	Standard Classifications for Incident Reporting and Fire Protection Data
NFPA 902	1997 Edition	Fire Reporting Field Incident Guide
NFPA 903	1996 Edition	Fire Reporting Property Survey
NFPA 904	1996 Edition	Incident Follow-up Report Guide
NFPA 906	1998 Edition	Guide for Fire Incident Field Notes
NFPA 909	2001 Edition	Code for the Protection of Cultural Resources
NFPA 914	2001 Edition	Code for Fire Protection of Historic Structures
NFPA 1031	1998 Edition	Professional Qualifications for Fire Inspector and Plan Examiner
NFPA 1123	2000 Edition	Code for Fireworks Display
NFPA 1124	2003 Edition	Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles
NFPA 1126	2001 Edition	Standard for the Use of Pyrotechnics before a Proximate Audience
NFPA 1221	2002 Edition	Standard for the Installation, Maintenance, and Use of Emergency Services Communications Systems
NFPA 1402	2002 Edition	Guide to Building Fire Service Training Centers
NFPA 1403	2002 Edition	Standard on Live Fire Training Evolutions
NFPA 2001	2000 Edition	Standard on Clean Agent Fire Extinguishing Systems
NFPA 8501	1997 Edition	Standard for Single Burner Boiler Operation
NFPA 8502	1999 Edition	Standard for the Prevention of Furnace Explosions/Implosions in Multiple Burner Boilers

B. All inspections and other evaluations of buildings constructed or remodeled pursuant to plans submitted to the Office of State Fire Marshal for review shall be made utilizing new construction requirements set forth in the *Life Safety Code* published by the National Fire Protection Association and the 'Special Provisions for High-Rise Buildings' Section of the *Standard Building Code* published

by the Southern Building Code Congress International as follows.

Building Constructed Or Remodeled	Life Safety Code Edition	Section / Standard Building Code Edition	Sections / International Building Code Edition
prior to 1/1/1975	1967	-	-
1/1/1975 to 12/31/1979	1973	518 / 1974 Chapter 4 revisions to 1973	-
1/1/1980 to 8/31/1981	1976	518 / 1974 Chapter 4 revisions to 1973	-
9/1/1981 to 8/31/1986	1981	506 / 1979	-
9/1/1986 to 2/18/1989	1985	506 / 1985	-
2/19/1989 to 5/31/1992	1988	506 / 1985	-
6/1/1992 to 1/4/1995	1991	506 / 1988	-
1/5/1995 to 5/31/1998	1994	506 / 1991	-
6/1/1998 to 6/30/2001	1997	412 / 1994	-
7/1/2001 to 12/31/2001	2000	412 / 1994	-
1/1/2002 to 6/30/2004	2000	412 / 1997	-
after 6/30/2004	2003	-	-

C. All references to performance based criteria in the *Life Safety Code* shall only be considered by the Office of State Fire Marshal after an appeal of a decision has been timely made.

D. - K. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Fire Protection, LR 1:145 (February 1975), amended LR 5:468 (December 1979), LR 6:71 (February 1980), amended by the Office of the State Fire Marshal, LR 7:588 (November 1981), LR 9:417 (June 1983), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 15:96 (February 1989), LR 17:1114 (November 1991), LR 23:1688 (December 1997), LR 27:857 (June 2001), LR 2257 (December 2001), repromulgated LR 29:183 (February 2003), amended LR 30:

### Chapter 3. Buildings

#### §303. Plans and Specifications for New Buildings

A. As of July 1, 2004, the plans and specifications for every structure built or remodeled in the state of Louisiana must be drawn in accordance with the requirements of the 2003 Edition of the *Life and Safety Code* (excluding Chapter 5 and all TIA's) of the National Fire Protection Association. Chapter 5, Performance Based Option, may be used as a basis for appeal equivalency determinations.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Fire Protection, LR 1:143 (February 1975), amended LR 5:468 (December 1979), LR 6:72 (February 1980), amended by the Office of the State Fire Marshal, LR 7:344 (July 1981), LR 7:588 (November 1981), LR 9:417 (June 1983), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 12:116 (February 1986), LR 15:96 (February 1989), LR 17:1115 (November 1991), LR 23:1692 (December 1997), amended LR 30:

Interested persons may submit comments until 4:30 p.m., February 8, 2004, to Tony Walker at 8181 Independence Blvd., Baton Rouge, LA 70806.

V. J. Bella  
State Fire Marshal

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

**RULE TITLE: Fire Codes**

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

There will be no significant change in practice or implementation cost.

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

It is anticipated that there will be no direct 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)**

The purpose of revising the promulgated code editions periodically is to improve preventative measures. A multitude of detailed measures may be modified during each cycle that are not susceptible of meaningful estimation of fiscal impact on the construction and insurance industries. The purpose of the code is to prevent fires. This means the economic benefit would be found in estimating the value of lives and property that do not experience a fire loss as a consequence of the applicable code changes.

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

No net effect on competition or employment is anticipated since all entities will be equally effected.

V.J. Bella  
State Fire Marshal  
0312#026

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Revenue  
Tax Commission**

**Ad Valorem Taxation**

(LAC 61.V.303, 309, 703, 907, 1103, 1503, 2503,  
2703, 2705, 2707, 2711, 2713, 3101, 3105, and 3501)

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and in compliance with statutory law administered by this agency as set forth in R.S. 47:1837, notice is hereby given that the Tax Commission intends to adopt, amend and/or repeal sections of the Louisiana Tax Commission Real/Personal Property rules and regulations for use in the 2004 (2005 Orleans Parish) tax year.

The full text of these proposed Rules may be viewed in the Emergency Rule section of this issue of the *Louisiana Register*.

Interested persons may submit written comments on the proposed Rule until 4 p.m., January 6, 2004, to Teri V. Callender, Budget Analyst 3, Louisiana Tax Commission, P.O. Box 66788, Baton Rouge, LA 70896.

Russell R. Gaspard  
Chairman

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

**RULE TITLE: Ad Valorem Taxation**

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

Implementation costs to the agency are the costs of preparation, reproduction and distributing of updated regulations and complete manuals. These costs are estimated at \$7,500.00 for the 2003-2004 fiscal year and are being reimbursed through an existing user service fee of \$75.00 per entire manual and \$15.00 per set for updates.

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

**Local Governmental Units**

These revisions will generally increase certain 2004 real and personal property assessments for property of similar age and condition in comparison with equivalent assessments in 2003. Composite multiplier tables for assessment of most personal property will decrease by .21 percent. Specific valuation tables for assessment of oil and gas wells will generally increase by an estimated 22 percent and drilling rigs will generally increase by an estimated 45 percent. Also, the assessments for AG land will decrease by an estimated 7.5 percent and timberland will increase by an estimated 5 percent. The net effect of these revisions is estimated to increase assessments by 2.2 percent and tax collections by \$14,045,000 on the basis of existing statewide average millage. However, these revisions will not necessarily effect revenue collections of local government units as any net increase or decrease in assessed valuations are authorized to be offset by millage adjustment provisions of Article VII, Section 23 of the state Constitution.

**State Governmental Units**

Under authority granted by R.S. 47:1838, the Tax Commission will receive state revenue collections generated by assessment service fees estimated to be \$318,000 from public service companies and \$122,000 from financial institutions and insurance companies all of which are assessed by the Tax Commission.

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

The affects of these new rules on assessments of individual items of equivalent real and personal property will generally be higher in 2004 than in 2003. Specific assessments will depend on the age and condition of the property subject to assessment.

The estimated costs that will be paid by affected persons as a result of the assessment and user service fees as itemized above total \$440,000 to be paid by public service property owners, financial institutions and insurance companies for 2003/2004.

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

The impact on competition and employment cannot be quantified. In as much as the proposed changes in assessments and charges are relatively small, the impact is thought to be minimal.

Vergie A. Booty  
Director  
0312#102

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Revenue Policy Services Division

Corporation Franchise Tax  
(LAC 61:I.301-313 and 317)

Under the authority of R.S. 47:601-617 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 re promulgate LAC 61:I.301-313 and repeal LAC 61:I.317.

Louisiana Administrative Code 61:I.301-313 are being repromulgated to reaffirm the Secretary of Revenue's rulemaking authority with respect to the Louisiana Corporation Franchise Tax. In *Collector of Revenue v. Mossler Acceptance Co.*, 139 So. 2d 263 (La. App. 1st Cir. 1962), the First Circuit held that regulations defining the terms used in the corporation franchise tax statutes went beyond the secretary's authority in R.S. 47:1511 to promulgate Rules regarding "the proper administration and enforcement" of the tax statutes. Since the Mossler decision, R.S. 47:1511 was amended removing the language that the First Circuit determined was a limitation on the secretary's rulemaking authority. Although no taxpayer has relied on Mossler to refute the secretary's rulemaking authority, repromulgation of Sections 301-313 will reaffirm the secretary's authority.

Louisiana Administrative Code 61:I.317, which pertains to corporation franchise tax refunds and credits, is being repealed because it is obsolete and in conflict with R.S. 47:617, which was amended to provide that interest on overpayments will be paid at the rate established pursuant to Civil Code Article 2924(B)(3).

#### Title 61

### REVENUE AND TAXATION

#### Part I. Taxes Collected and Administered by the Secretary of Revenue

#### Chapter 3. Corporation Franchise Tax

#### §301. Imposition of Tax

A. Except as specifically exempted by R.S. 47:608, R.S. 47:601 imposes a corporation franchise tax, in addition to all other taxes levied by any other statute, on all corporations, joint stock companies or associations, or other business organizations organized under the laws of the state of Louisiana which have privileges, powers, rights, or immunities not possessed by individuals or partnerships, all of which are hereinafter designated as *domestic corporations*, for the right granted by the laws of this state to exist as such an organization and on both domestic and foreign corporations for the enjoyment under the protection of the laws of this state of the powers, rights, privileges, and immunities derived by reason of the corporate form of existence and operation. Liability for the tax is created whenever any such organization qualifies to do business in this state, exercises its charter or continues its charter within this state, owns or uses any part of its capital, plant, or any other property in this state, through the buying, selling, or procuring of services in this state, or actually does business in this state through exercising or enjoying each and every act, power, right, privilege, or immunity as an incident to or

by virtue of the powers and privileges acquired by the nature of such organizations.

B. With respect to foreign corporations, R.S. 12:306 generally grants such organizations authority to transact business in this state subject to and limited by any restrictions recited in the certificate of authorization, and in addition thereto provides that they shall enjoy the same, but no greater, rights and privileges as a business or nonprofit corporation organized under the laws of the state of Louisiana to transact the business which such corporation is authorized to contract, and are subject to the same duties, restrictions, penalties, and liabilities (including the payment of taxes) as are imposed on a business or nonprofit corporation organized under the laws of this state. In view of the grant of such rights, privileges, immunities, and the imposition of the same duties, restrictions, penalties, and liabilities on foreign corporations as are imposed on domestic corporations, the exercise of any right, privilege, or the enjoyment of any immunity within this state by a foreign corporation which might be exercised or enjoyed by a domestic business or nonprofit corporation organized under the laws of this state renders the foreign corporation liable for the same taxes, penalties, and interest, where applicable, which would be imposed on a domestic corporation.

C. Thus, both domestic and foreign corporations which enjoy or exercise within this state any of the powers, privileges, or immunities granted to business corporations organized under the provisions of R.S. 12:41 are subject to and liable for the payment of the franchise tax imposed by this Section. R.S. 12:41 recites those privileges to be as follows:

1. the power to perform any acts which are necessary or proper to accomplish its purposes as expressed or implied in the articles of incorporation, or which may be incidental thereto and which are not repugnant to law;
2. without limiting the grant of power contained in §301.C.1, every corporation shall have the authority to:
  - a. have a corporate seal which may be altered at pleasure, and to use the same by causing it or a facsimile thereof to be impressed or affixed or in any manner reproduced; but failure to affix a seal shall not affect the validity of any instrument;
  - b. have perpetual existence, unless a limited period of duration is stated in its articles of incorporation;
  - c. sue and be sued in its corporate name;
  - d. in any legal manner to acquire, hold, use, and alienate or encumber property of any kind, including its own shares, subject to special provisions and limitations prescribed by law or the articles;
  - e. in any legal manner to acquire, hold, vote, and use, alienate and encumber, and to deal in and with, shares, memberships, or other interests in, or obligations of, other businesses, nonprofit or foreign corporations, associations, partnerships, joint ventures, individuals, or governmental entities;
  - f. make contracts and guarantees, including guarantees of the obligations of other businesses, nonprofit or foreign corporations, associations, partnerships, joint ventures, individuals, or governmental entities, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by hypothecation of any kind of property;

g. lend money for its corporate purposes and invest and reinvest its funds, and take and hold property or rights of any kind as security for loans or investments;

h. conduct business and exercise its powers in this state and elsewhere as may be permitted by law;

i. elect or appoint officers and agents, define their duties, and fix their compensation; pay pensions and establish pension plans, pension trusts, profit-sharing plans, and other incentive and benefit plans for any or all of its directors, officers, and employees; and establish stock bonus plans, stock option plans, and plans for the offer and sale of any or all of its unissued shares, or of shares purchased or to be purchased, to the employees of the corporation, or to employees of subsidiary corporations, or to trustees on their behalf; such plans:

i. may include the establishment of a special fund or funds for the purchase of such shares, in which such employees, during the period of their employment, or any other period of time, may be privileged to share on such terms as are imposed with respect thereto; and

ii. may provide for the payment of the price of such shares in installments;

j. make and alter bylaws, not inconsistent with the laws of this state or with the articles, for the administration and regulation of the affairs of the corporation;

k. provide indemnity and insurance pursuant to R.S. 12:83;

l. make donations for the public welfare, or for charitable, scientific, educational, or civic purposes; and

m. in time of war or other national emergency, do any lawful business in aid thereof, at the request or direction of any apparently authorized governmental authority.

D. Thus, the mere ownership of property within this state, or an interest in property within this state, including but not limited to mineral interests and oil payments dependent upon production within Louisiana, whether owned directly or by or through a partnership or joint venture or otherwise, renders the corporation subject to franchise tax in Louisiana since a portion of its capital is employed in this state.

E. The tax imposed by this Section shall be at the rate prescribed in R.S. 47:601 for each \$1,000, or a major fraction thereof, on the amount of its capital stock, determined as provided in R.S. 47:604, its surplus and undivided profits, determined as provided in R.S. 47:605, and its borrowed capital, determined as provided in R.S. 47:603 on the amount of such capital stock, surplus, and undivided profits, and borrowed capital as is employed in the exercise of its rights, powers, and immunities within this state determined in compliance with the provisions of R.S. 47:606 and R.S. 47:607.

F. The accrual, payment, and reporting of franchise taxes imposed by this Section are set forth in R.S. 47:609.

G. In the case of any domestic or foreign corporation subject to the tax herein imposed, the tax shall not be less than the minimum tax provided in R.S. 47:601.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:601.

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), repromulgated by the Department of Revenue, Policy Services Division, LR 30:

### §302. Determination of Taxable Capital

A. Taxable Capital. Every corporation subject to the tax imposed by R.S. 47:601 must determine the total of its capital stock, as defined in R.S. 47:604, its surplus and undivided profits, as defined in R.S. 47:605, and its borrowed capital, as defined in R.S. 47:603, which total amount shall be used as the basis for determining the extent to which its franchise and the rights, powers, and immunities granted by Louisiana are exercised within this state. Determination of the taxable amount thereof shall be made in accordance with the provisions of R.S. 47:606 and R.S. 47:607, and the rules and regulations issued thereunder by the secretary of Revenue and Taxation.

B. Holding Corporation Deduction. Any corporation which owns at least 80 percent of the capital stock of a banking corporation organized under the laws of the United States or of the state of Louisiana may deduct from its total taxable base, determined as provided in §302.A and before the allocation of taxable base to Louisiana as provided in R.S. 47:606 and R.S. 47:607, the amount by which its investment in and advances to such banking corporation exceeds the excess of total assets of the holding corporation over total taxable capital of the holding corporation, determined as provided in §302.A.

C. Public Utility Holding Corporation Deductions. Any corporation registered under the Public Utility Holding Company Act of 1935 that owns at least 80 percent of the voting power of all classes of the stock in another corporation (not including nonvoting stock which is limited and preferred as to dividends) may, after having determined its Louisiana taxable capital as provided in R.S. 47:602(A), R.S. 47:606, and R.S. 47:607, deduct therefrom the amount of investment in and advances to such corporation which was allocated to Louisiana under the provisions of R.S. 47:606(B). The only reduction for investment in and advances to subsidiaries allowed by this Subsection is with respect to those subsidiaries in which the registered public utility holding company owns at least 80 percent of all classes of stock described herein; the reduction is not allowable with respect to other subsidiaries in which the holding company owns less than 80 percent of the stock of the subsidiary, notwithstanding the fact that such investments in and advances to the subsidiary may have been attributed to Louisiana under the provisions of R.S. 47:606(B). In no case shall a reduction be allowed with respect to revenues from the subsidiary. Any repeal of the Public Utility Holding Company Act of 1935 shall not affect the entitlement to deductions under this Subsection of corporations registered under the provisions of the Public Utility Holding Company Act of 1935 prior to its repeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:602.

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), repromulgated by the Department of Revenue, Policy Services Division, LR 30:

### §303. Borrowed Capital

#### A. General

1. As used in this Chapter, *borrowed capital* means all indebtedness of a corporation, subject to the provisions of this Chapter, maturing more than one year from the date incurred, or which is not paid within one year from the date incurred regardless of maturity date.

2. All indebtedness of a corporation is construed to be capital employed by the corporation in the conduct of its business or pursuit of the purpose for which it was organized, and in the absence of a specific exclusion, qualification, or limitation contained in the statute, must be included in the total taxable base. No amount of indebtedness of a corporation may be excluded from borrowed capital except in those cases in which the corporation can demonstrate conclusively that a specific statutory provision permits exclusion of the indebtedness from borrowed capital.

3. In the case of amounts owed by a corporation to a creditor who does not meet the definition of an *affiliated corporation* contained in R.S. 47:603, all indebtedness of a corporation which has a maturity date of more than one year from the date on which the debt was incurred and all indebtedness which has not been paid within one year from the date the indebtedness was incurred, regardless of the maturity or due date of the indebtedness, shall be included in borrowed capital. Determination of the one-year controlling factor is with respect to the original date that the indebtedness was incurred and is not to be determined by any date the debt is renewed or refinanced. The entire amount of long-term debt not having a maturity date of less than one year, which was not paid within the one-year period, constitutes borrowed capital, even though it may constitute the current liability for payment on the long-term debt.

4. The fact that indebtedness which had a maturity date of more than one year from the date it was incurred, was actually liquidated within one year does not remove the indebtedness from the definition of borrowed capital.

5. For purposes of determining whether indebtedness has a maturity date in excess of one year from the date incurred or whether the indebtedness was paid within one year from the date incurred, the following shall apply: With respect to any indebtedness which was extended, renewed, or refinanced, the date the indebtedness was originally incurred shall be the date the extended, renewed, or refinanced indebtedness was incurred. All debt extended, renewed, or refinanced shall be included in borrowed capital if the extended maturity date is more than one year from, or if the debt has not been paid within one year from, that date. In instances of debts which are extended, renewed, or refinanced by initiating indebtedness with a creditor different from the original creditor, the indebtedness shall be construed to be new indebtedness and the one-year controlling factor will be measured from the date that the new debt is incurred.

6. For purposes of determining whether indebtedness has a maturity date in excess of one year from the date incurred or whether the indebtedness was paid within one year from the date incurred, with respect to the amount due on a mortgage on real estate purchased subject to the mortgage, the date the indebtedness was originally incurred

shall be the date the property subject to the mortgage was acquired by the corporation.

7. In the case of amounts owed by a corporation to a creditor who meets the definition of an *affiliated corporation* contained in R.S. 47:603, the age or maturity date of the indebtedness is immaterial. An affiliated corporation is defined to be any corporation which through (a) stock ownership, (b) directorate control, or (c) any other means, substantially influences policy of some other corporation or is influenced through the same channels by some other corporation. It is not necessary that control exist between the corporations but only that policy be influenced substantially. Any indebtedness between such corporations constitutes borrowed capital to the extent it represents capital substantially used to finance or carry on the business of the debtor corporation, regardless of the age of the indebtedness. For this purpose, all funds, materials, products, or services furnished to a corporation for which indebtedness is incurred, except as provided in this section with respect to normal trading accounts and offsetting indebtedness, are construed to be used by the corporation to finance or carry on the business of the corporation; in the absence of a conclusive showing by the taxpayer to the contrary, all such indebtedness shall be included in borrowed capital.

a. To illustrate this principle, assume:

- i. Corporation A? Parent of B, C, D, and E;
- ii. Corporation B? Nonoperating, funds flow conduit, owning no stock in C, D, or E;
- iii. Corporation C? Other Corporation;
- iv. Corporation D? Other Corporation;
- v. Corporation E? Other Corporation;
- vi. any funds furnished by the parent A to either B, C, D, or E constitute either a contribution to capital or an advance which must be included in the taxable base of the receiving corporation;
- vii. any funds supplied by D or E to C, whether or not channeled through A or B, would constitute borrowed capital to C, and the indebtedness must be included in the taxable base. In the absence of a formal declaration of a dividend from D or E to A, the funds constitute an advance to A by D or E and borrowed capital to A. In all such financing arrangements, the multiple transfers of funds are held to constitute capital substantially used to carry on each taxpayer's business.

8. The amount that normal trading-account indebtedness bears to capitalization of a debtor determines to what extent said indebtedness constitutes borrowed capital substantially used to finance or carry on the business of the debtor. Due consideration should also be given to the debtor's ability to have incurred a similar amount of indebtedness, equally payable as to terms and periods of time.

9. In the case of equally demandable and payable indebtedness of the same type between two corporations, wherein each is indebted to the other, only the excess of the amount due by any such corporation over the amount of its receivable from the other corporation shall be deemed to be borrowed capital.

10. With respect to any amount due from which debt discount was paid upon inception of the debt, that portion of the unamortized debt discount applicable to the indebtedness which would otherwise constitute borrowed capital shall be eliminated in calculating the amount of the indebtedness to be included in taxable base.

#### B. Exclusions from Borrowed Capital

1. Federal, State and Local Taxes. R.S. 47:603 provides that an amount equivalent to certain indebtedness shall not be included in borrowed capital. With respect to accruals of federal, state, and local taxes, the only amounts which may be excluded are the tax accruals determined to be due to the taxing authority or taxes due and not delinquent for more than 30 days. In the case of reserves for taxes, only so much of the reserve as represents the additional liability due at the taxpayer's year-end for taxes incurred during the accrual period may be excluded. Any amount of the reserve balance in excess of the amount additionally due for the accrual period shall be included in the taxable base, since the excess does not constitute a reserve for a definitely fixed liability. This *additional amount due* is determined by subtracting the taxpayer's tax deposits during the year from the total liability for the period. All reserves for anticipated future liabilities due to accounting and tax timing differences shall be included in the taxable base. Any taxes which are due and are delinquent more than 30 days must be included in borrowed capital. For purposes of determining whether taxes are delinquent, extensions of time granted by the taxing authority for the filing of the tax return or for payment of the tax shall be considered as establishing the date from which delinquency is measured.

#### 2. Voluntary Deposits

a. The liability of a taxpayer to a depositor created as the result of advances, credits, or sums of money having been voluntarily left on deposit shall not constitute borrowed capital if:

i. said moneys have been voluntarily left on deposit to facilitate the transaction of business between the parties; and

ii. said moneys have been segregated by the taxpayer and are not otherwise used in the conduct of its business.

b. Neither the relationship of the depositor to the taxpayer nor the length of time the deposits remain for the intended purpose has an effect on the amount of such liability which shall be excluded from borrowed capital.

#### 3. Deposits with Trustees

a. The principal amount of cash or securities deposited with a trustee or other custodian or segregated into a separate or special account may be excluded from the indebtedness which would otherwise constitute borrowed capital if such segregation is fixed by a prior written commitment or court order for the payment of principal or interest on funded indebtedness or other fixed obligations. In the absence of a prior written commitment or court order fixing segregation of the funds or securities, no reduction of borrowed capital shall be made with respect to such deposits or segregated amounts.

b. Whenever a liability for the payment of dividends theretofore lawfully and formally authorized would constitute borrowed capital as defined in this Section, an amount equivalent to the amount of cash or securities deposited with a trustee or other custodian or segregated into a separate or special account for payment of the dividend liability may be excluded from borrowed capital.

4. Receiverships, Bankruptcies and Reorganizations. In the case of a corporation having indebtedness which could have been paid from cash and temporary investments on hand which were not currently needed for working capital and in which case the corporation has secured approval or allowance by the court of the petition for receivership, bankruptcy, or reorganization under the bankruptcy law, after such allowance or approval by the court of the taxpayer's petition, the taxpayer may then reduce the amount which would otherwise constitute borrowed capital by the amount of cash or temporary investment which it could have paid on the indebtedness prior to such approval, to the extent that they are permitted to make such payments under the terms of the receivership, bankruptcy, or reorganization proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:603.

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), repromulgated by the Department of Revenue, Policy Services Division, LR 30:

#### §304. Capital Stock

A. For the purpose of determining the amount of capital stock upon which the tax imposed by R.S. 47:601 is based, such stock shall in every instance have such value as is reflected on the books of the corporation, subject to whatever increases to the recorded book values may be found necessary by the secretary of Revenue and Taxation to reflect the true value of the stock. In no case shall the value upon which the tax is based be less than is shown on the books of the corporation.

B. In any case in which capital stock of a corporation has been issued in exchange for assets, the capital stock shall have a value equal to the fair market value of the assets received in exchange for the stock, plus any intangibles received in the exchange, except as provided in the following Subsection.

C. In any such case in which capital stock of a corporation is transferred to one or more persons in exchange for assets, and the only consideration for the exchange was stock or securities of the corporation, and immediately after the exchange such person or persons owned at least 80 percent of the total voting power of all voting stock and at least 80 percent of the total number of shares of all of the stock of the corporation, the value of the stock exchanged for the assets so acquired shall be the same as the basis of the assets received in the hands of the transferor of the assets, plus any intangibles received in the exchange. The only other exception to the rule that capital stock exchanged for assets shall have such value as equals the fair market value of the assets received and any intangibles received is in the case of stock issued in exchange for assets in a reorganization, which transaction was fully exempt from the tax imposed by the Louisiana

income tax law, in which case the value of the stock shall have a value equal to the basis of the assets received in the hands of the transferor of the assets, plus any intangibles received.

D. In any case in which an exchange of stock of a corporation for assets resulted in a transaction taxable in part or in full under the Louisiana income tax law, the value of the stock so exchanged shall be equal to the fair market value of all of the assets received in the exchange, including the value of any intangibles received.

E. Capital stock, valued as set forth heretofore, shall include all issued and outstanding stock, including treasury stock, fractional shares, full shares, and any certificates or options convertible into shares.

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### **§305. Surplus and Undivided Profits**

#### **A. Determination of Value? Assets**

1. For the purpose of determining the tax imposed by R.S. 47:601, there are statutory limitations on both the maximum and minimum amounts which shall be included in the taxable base with respect to surplus and undivided profits. The minimum amount which shall be included in the taxable base shall be no less than the amount reflected on the books of the taxpayer. Irrespective of the reason for any book entry which increases the franchise tax base, such as, but not limited to, entries to record asset appreciation, entries to reflect equity accounting for investments in affiliates or subsidiaries, and amounts credited to surplus to record accrual of anticipated future tax refunds created by accounting timing differences, the amount reflected on the books must be included in the tax base.

2. Entries to the books of any corporation to record the decrease in value of any investment through the use of equity accounting will be allowed as a reduction in taxable surplus and its related asset account for property factor purposes. This is only in those cases in which all investments are recorded under the principles of equity accounting, and such reductions in the value of any particular investment below cost thereof to the taxpayer will not be allowed. The exception is in those instances in which the taxpayer can show that such reduction is in the nature of a bona fide valuation adjustment based on the fair value of the investment. In no case will a reduction below zero value be recognized. Corresponding adjustments shall in all instances be made to the value of assets for property factor purposes.

3. In any instance in which an asset is required to be included in the property factor under the provisions of R. S. 47:606 and the regulations issued thereunder, the acquisition of which resulted in the establishment of a contra account, such as, but not limited to, an account to record unrealized gain from an installment sale, all such contra accounts shall be included in the taxable base, except to the extent such contra accounts constitute a reserve permitted to be excluded under the provisions of R.S. 47:605(A) and the regulations issued under §305.A. See §306.A for required adjustments to

assets with respect to any contra account or reserve which is not included in the taxable base.

4. The minimum value under the statute is subject to examination and revision by the secretary of Revenue and Taxation. The recorded book value of surplus and undivided profits may be increased, but not in excess of cost, as the result of such examination to the extent found necessary by the secretary to reflect the true value of surplus and undivided profits. The secretary is prohibited from making revisions which would reflect any value below the amount reflected on the books of the taxpayer. A taxpayer may, in his own discretion, reflect values in excess of cost; that option is not extended to the secretary in any examination of recorded cost.

5. In determining cost to which the revisions limitation applies, the fair market value of any asset received in an exchange of properties shall be deemed to constitute the cost of the asset to the taxpayer under the generally recognized concept that no prudent person will exchange an article of value for one of lesser value. In application of that concept, the secretary of Revenue and Taxation shall, except as provided in the following Paragraphs, construe cost of any asset to be fair market value of the asset received in exchange therefor.

6. Exception to the rules stated above will be made only in those instances in which the exchange resulted in a fully tax-free exchange under provisions of the Louisiana income tax law, in which case cost shall be construed to be the income tax basis of the properties received for purposes of calculating depreciation and the determination of gain or loss on any subsequent disposition of the assets. Limitation of the valuation of the cost of any asset to the income tax basis will be considered only in the case of fully tax-free exchanges and will not be considered if the transaction was taxable to any extent under the provisions of the Louisiana income tax law contained in R.S. 47:131, 132, 133, 134, 135, 136, and 138.

#### **B. Determination of Value? Reserves**

1. There must be included in the franchise taxable base determined in the manner heretofore described, all reserves other than those for:

- a. definitely fixed liabilities;
- b. reasonable depreciation (or amortization), but only to the extent recorded on the books of the taxpayer, except as noted in the following paragraphs with respect to taxpayers subject to regulations of governmental agencies controlling the books of such taxpayers;
- c. bad debts; and
- d. other established valuation reserves.

2. No deduction from surplus and undivided profits shall be made with respect to any reserve for contingencies of any nature, without regard to whether the reserve is partially or fully funded. Reserves for future liability for income taxes shall not be excluded from the tax base. Deferred federal income tax accounts may be netted in determining the amount of reserve to be included in the taxable base. Reserves for fixed liabilities shall be included in the taxable base to the extent that they constitute borrowed capital under the provisions of R.S. 47:603 and the regulations issued thereunder.

3. In addition to the four classifications of reserves which may be excluded from the taxable base, any amount of surplus which has been set aside and segregated pursuant to a court order so as not to be available for distribution to stockholders or for investment in properties which would produce income which would be distributable to stockholders may also be excluded from the taxable base.

C. Adjustment by regulated companies for depreciation sustained but not recorded. When, because of regulations of a governmental agency controlling the books of a taxpayer, the taxpayer is unable to record on its books the full amount of depreciation sustained, the taxpayer may apply to the collector of revenue for permission to add to its reserve for depreciation and deduct from its surplus the amount of depreciation sustained but not recorded, and if the collector finds that the amount proposed to be so added represents a reasonable allowance for actual depreciation, he shall grant such permission.

1. Permission to add to depreciation reserves and reduce surplus must be requested in advance and shall be granted only in those instances in which a governmental agency requires that the books of the corporation reflect a depreciation method under which the total accumulated depreciation reflected on the books is less than would be reflected if the straight-line method of depreciation had been applied from the date of acquisition of the asset. The period over which depreciation shall be computed shall be the expected useful life of the asset.

2. The amount of adjustment shall be the amount of accumulated depreciation which would be reflected on the books if the straight-line method had been applied from the date of acquisition of the asset, less the amount of accumulated depreciation actually reflected on the books.

3. Permission granted by the secretary shall be automatically revoked upon a material change in the facts and circumstances presented by the taxpayer.

4. Permission granted by the secretary shall be for a period of six years, at which time the taxpayer must reapply for permission to continue making the adjustment.

D. For purposes of this Chapter, reserves include all accounts appearing on the books of a corporation that represent amounts payable or potentially payable to others. However, the term reserves shall not include accounts included in capital stock as used in R.S. 47:604 and shall not include accounts that represent indebtedness, regardless of maturity date, as indebtedness is used in R.S. 47:603.

E. For purposes of this Chapter, the term assets shall mean all of a corporation's property and rights of every kind. The definition of the term assets for corporation franchise tax purposes may differ from the definition of assets for general accounting purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:605.

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), LR 28:1995 (September 2002), LR 29:1520 (August 2003), repromulgated by the Department of Revenue, Policy Services Division, LR 30:

### §306. Allocation of Taxable Capital

A. General Allocation Formula. Every corporation subject to the tax imposed by this chapter must determine

the extent to which its entire franchise taxable base is employed in the exercise of its franchise within this state. The extent of such use of total taxable base in the state is determined by multiplying the total of all issued and outstanding capital stock, surplus and undivided profits, and borrowed capital by the ratio obtained through the arithmetical average of the ratio of net sales made to customers in the regular course of business and other revenues attributable to Louisiana to total net sales made to customers in the regular course of business and total other revenues, and the ratio that the value of all of the taxpayer's property and assets situated or used by the taxpayer in Louisiana bears to all of the taxpayer's property and assets wherever situated or used.

1. Net Sales and Other Revenue. Net sales to be combined with other revenue in determining both the numerator and denominator of the revenue factor for purposes of calculating the portion of the taxpayer's total capital stock, surplus and undivided profits, and borrowed capital to be allocated to Louisiana are only those sales made to customers in the regular course of the taxpayer's business. In transactions in which raw materials, products, or merchandise are transferred to another party at one location in exchange for raw materials, products, or merchandise at another location in agreements requiring the subsequent replacement with similar property on a routine, continuing, or repeated basis, all such transactions shall be carefully analyzed in order to determine whether they constitute sales made to customers which should be included in the sales factor or whether they constitute exchanges which are not sales and should be excluded from the sales factor. Sales of scrap materials and by-products are construed to meet the requirements for inclusion in the sales factor. Sales made other than to customers, such as, but not limited to, sales of stocks, bonds, and other evidence of investment on the open market, regardless of the frequency or volume of those sales, shall not be included in the revenue factor. Similarly, revenues and/or gains on the sale of property other than stock in trade shall not be included in the revenue factor since they generally do not meet the specific requirements that only sales made to customers in the regular course of business of the taxpayer should be included. Whenever a transaction is determined to be a sale which is not to be included as a sale to customers in the regular course of business, the amount does not constitute *other revenue* so as to qualify for inclusion in either the numerator or the denominator of the allocation ratio.

a. Sales made to customers in the regular course of business attributable to Louisiana are those sales where the goods, merchandise, or property are received in Louisiana by the purchaser. Where goods are delivered into Louisiana by public carrier, or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. The transportation in question is the initial transportation relating to the sale by the taxpayer.

i. Transportation by Taxpayer or by Public Carrier. Where the goods are delivered by the taxpayer-vendor in his own equipment, it is presumed that such

transportation relates to the sale. Where the goods are delivered by a common or contract carrier, whether shipped F.O.B. shipping point and whether the carrier be a pipeline, trucking line, railroad, airline, or some other type of carrier, the place where the goods are ultimately received by the purchaser after the transportation incident to the sale has ended is deemed to be the place where the goods are received by the purchaser. The attribution of sales to each state is based upon actual delivery rather than technical or constructive delivery.

ii. Transportation by Purchaser

(a). Where the transportation involved is transportation by the purchaser, it is recognized that it is more difficult to determine whether or not the transportation is related to the sale by the taxpayer. To be related to the initial sale, the transportation should be commenced immediately. However, before a lapse of time is conclusive, consideration must be given to the nature and character of the goods purchased, the availability of transportation, and other pertinent economic and natural circumstances occurring at the time.

(b). The intent of the parties to the sale must also be considered. The intent and purpose of the purchaser may be determined directly, or by an evaluation of the nature and scope of his operation, customs of the trade, customary activities of the purchaser, and all pertinent actions and words of the purchaser at the time of the sale.

(c). In order for the transportation by the purchaser to be related to the initial sale by the taxpayer to the purchaser, such transportation must be generally the same in nature and scope as that performed by the vendor or by a carrier. There is no difference between a case where a taxpayer in Houston ships F.O.B. Houston to a purchaser in Baton Rouge, by common carrier, and a case where all facts are the same except that the purchaser goes to Houston in his own vehicle and returns with the goods to Baton Rouge.

iii. Sales to a Pipeline Company. The sale of natural resources to a pipeline company is attributable to the state in which the goods are placed in the pipeline. Such purchasers are engaged in the business of moving or transporting their own property through their own lines. Thus, all transportation of the natural resources after introduction into the line is related to the use or sale by the pipeline, and is not related to the sale by the taxpayer.

iv. Transportation of Natural Resources by a Public Carrier Pipeline

(a). Generally, transportation by public carrier pipelines is accorded the same treatment as transportation by any other type of public carrier, that is, actual delivery to the purchaser controls, rather than technical or constructive delivery. However, because of the nature and character of the property, the type of carrier, and the customs of the trade, the natural resources in the pipeline carrier may become intermixed with other natural resources in the pipeline and lose their particular identity. Where delivery is made to a purchaser in more than one state, or to different purchasers in different states, peculiar problems of attribution arise. In all cases possible, attribution will be made in accordance with the rules applicable to all public carrier transportation, that is, where it can be shown that a taxpayer in one state sold a quantity of crude oil to a purchaser in another state,

and the oil was transported to the purchaser by pipeline carrier, the sale will be attributed to the state where the crude oil is received by the purchaser, even though the crude oil delivered might not be the identical oil sold because of commingling in the pipeline. Custom of the trade indicates the purchaser buys a quantity of oil of certain quality, but not any specific oil.

(b). In situations involving several deliveries in several different states to one or more purchasers, the general rules should be applied. To illustrate, consider the incident where three different taxpayers, A, B, and C, all in Texas, each sells to X Refinery, in Louisiana, 10,000 barrels of crude oil, shipped F.O.B. Texas by public carrier pipeline.

(i). If X Refinery receives all 30,000 barrels in Louisiana, each taxpayer must attribute his total sale to Louisiana.

(ii). If X Refinery receives 10,000 barrels in Louisiana, 10,000 barrels in Mississippi, and 10,000 barrels in Alabama, it cannot be said by any taxpayer that all of his sale was received either in Louisiana or in one of the other states. Since each taxpayer contributed one-third of the mass of commingled crude oil, it follows that one-third of each taxpayer's sale was received in Louisiana, and must be attributed to Louisiana accordingly.

(iii). To further illustrate, consider the incident of the three different taxpayers, A, B, and C, in Texas, selling to three different purchasers, X Refinery in Louisiana, Y Refinery in Mississippi, and Z Refinery in Alabama. The same rules governing the problems set forth above are applicable.

(iv). If A sells to X Refinery, in Louisiana, and delivery is by public carrier pipeline, the oil is received in Louisiana and the entire sale is attributed to Louisiana, even though the crude oil delivered might not be the identical oil sold because of commingling in the pipeline with oil sold by B and C to Y Refinery and Z Refinery.

(v). If A sells to X, B to Y, and C to Z, with X, Y, and Z receiving a portion of their purchases in Louisiana, in Mississippi, and in Alabama, that portion received by X, Y, and Z in Louisiana must be attributed to Louisiana by A, B, and C.

v. Storage of Property after Purchase

(a). In determining the place of receipt by the purchaser after the initial transportation has ended, peculiar problems may be created by the storage of the property purchased immediately upon purchase and at a place other than the place of intended use. The primary problem created by such storage is in determining whether or not the transportation after storage is of a temporary nature.

(b). In cases where the storage is permanent or semipermanent, delivery to the place of storage concludes the initial transportation, and the sale is attributed to the place of storage. However, where the storage is of a temporary nature, such as that necessitated by lack of transportation or by change from one means of transportation to another, or by natural conditions, the place of such storage is of no significance.

b. Revenue from Air Transportation. All revenues derived from the transportation of cargo or passengers by air shall be attributed within and without this state based on the point at which the cargo shipment or passenger journey

originates. Other revenues received by a corporation engaged primarily in the business of transportation of passengers and cargo shall be attributed within and without this state in accordance with the processes and formulas provided elsewhere in the regulations issued under this section for the particular type of revenue received.

c. Revenue from Transportation for Others through Pipelines

i. Revenues derived from the transportation of crude petroleum, natural gas, petroleum products, or other commodities for others through pipelines shall be attributed to this state on the basis of the ratio of the number of units of transportation performed in Louisiana to the total of such units of transportation. In the case of transportation performed entirely within this state, total revenues from the transportation shall be attributed to Louisiana.

ii. In the case of transportation performed partly within and partly without Louisiana, revenue from such transportation shall be attributed to this state in the following manner.

(a). Crude Petroleum and Liquid Petroleum Products. Revenues from the transportation of crude petroleum and liquid petroleum products shall be attributed to this state upon the ratio which the number of barrels of such liquid transported times the number of miles transported within Louisiana bears to the total number of such barrels transported times the total number of miles transported both within and without Louisiana.

(b). Natural Gas. Revenues from the transportation of natural gas shall be attributed to this state upon the ratio which the number of thousand cubic feet of natural gas transported within this state times the number of miles transported within Louisiana bears to the total number of thousand cubic feet of such gas transported times the total number of miles such gas transported both within and without Louisiana.

(c). Other Commodities

(i). Revenues from the transportation of other commodities shall be attributed to this state upon the ratio which the number of tons of such commodities transported within Louisiana times the number of miles transported within Louisiana bears to the total number of tons of such commodities transported times the total number of miles transported both within and without Louisiana.

(ii). In any case in which the prescribed ratio for the particular commodity does not represent the basis upon which the transportation charges are calculated, the ratio used as the basis for attributing revenues to this state shall be the unit of measurement upon which the charges are based times the number of miles which the commodity is transported within this state to the total of such units times the total number of miles the commodity is transported both within and without Louisiana. Whenever the information is not readily available with which to calculate the required units of transportation, the secretary of Revenue and Taxation may require the use of any method deemed reasonable.

(iii). Other revenues received by a corporation engaged primarily in the business of transporting commodities for others through pipelines shall be attributed within and without this state in accordance with the processes and formulas provided elsewhere in the

regulations issued under this Section for the particular kind or type of revenue received.

d. Revenue Derived from Transportation Other Than by Aircraft or Pipeline. Revenue attributable to Louisiana from transportation other than by aircraft or pipeline shall include all such revenues derived from such transportation entirely within Louisiana and shall also include a pro rata portion of revenue from transportation performed partly within and partly without Louisiana, such pro rata portion to be based on the number of units of transportation service performed in Louisiana to the total of such units. The revenue to be attributed will be calculated separately for each of the various types of transportation service. A unit of transportation service for each of the various types shall consist of the following:

i. in the case of the transportation of passengers, the transportation of one passenger a distance of one mile;

ii. in the case of transportation of liquid commodities, the transportation of one barrel of the commodity a distance of one mile;

iii. in the case of transportation of property other than liquids, the transportation of one ton of property a distance of one mile;

iv. in the case of the transportation of a liquid commodity or other property when barrels or tons are not the common basis for the transportation charges, the quantity used as the basis for calculating total transportation charges for a distance of one mile shall be used. In the determination of miles within Louisiana, one-half of the mileage of all navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles.

v. In the case where another method would more accurately reflect revenue from transportation attributable to the service performed in Louisiana, or when the information is not readily available with which to calculate the required units of transportation, the secretary of Revenue and Taxation may require the use of any alternate method deemed reasonable.

vi. Other revenues received by a corporation engaged primarily in the business of transportation other than by aircraft or pipeline shall be attributed to Louisiana in accordance with the processes and formulas provided elsewhere in the regulations issued under this section for the particular type of revenue received.

e. Revenue from Services Other Than from Transportation

i. Revenue derived from services other than from transportation shall be attributed to the state in which the services are rendered. In the case of services in which property is not a material revenue-producing factor, the services shall be presumed to have been performed in the state in which the personnel engaged in rendering the services are located. In the case of services in which personnel and property are material revenue-producing factors, such revenue shall be attributed within and without this state on the basis of the arithmetical average of the following two ratios:

(a). the ratio that salaries and wages paid to personnel performing such services within Louisiana bear to

total salaries and wages for personnel performing such services both within and without Louisiana; and

(b). the ratio that the value of property used in Louisiana in performing the services (whether owned by the taxpayer or not) bears to the total value of all property used in performing the services both within and without Louisiana.

ii. In any case in which it can be shown that charges for services constitute a pure recovery of the cost of performing the services and do not include a reasonable rate of profit, amounts received in reimbursement of such costs shall not be construed to be revenues received and shall be omitted from both the numerator and denominator of the attribution ratio.

f. Rents and Royalties from Immovable or Corporeal Movable Property

i. Rents and royalties from immovable or corporeal movable property shall be attributed to the state where the property is located at the time the revenue is derived, which is construed to be the place at which the property is used resulting in the rental payment. Rents, royalties, and other income from mineral leases, royalty interests, oil payments, and other mineral interests shall be allocated to the state in which the property subject to such interest is located.

ii. In the case of movable property which is used in more than one state or when the lessor has no knowledge of where the property is located at all times, application of the general rule for attributing the revenue from rental of the property may be sufficiently difficult so as to require use of a formula or formulas to determine the place of use for which the rents were paid. The specific formula to be used must be determined by reference to the basis on which rents are charged, the basis of which is usually set forth in the rental agreement. In those cases in which time of possession in the hands of the lessee is the only consideration in calculating rental charges, time used by the lessee in each state will be used as the basis for attributing the revenue to each state. Where miles traveled is the basis for the rental charge, revenue shall be attributed on that basis; where ton miles or traffic density in combination with miles traveled is the basis for the rental charges, revenue will be attributed to each state on that basis. In the case of drilling equipment where rentals are based on the number of feet drilled, income will be attributed to each state based on the ratio of the number of feet drilled within that state to the total number of feet drilled in all states by the rented equipment during the taxable period covered by the rental agreement.

g. Interest on Customers' Notes and Accounts

i. Interest on customers' notes and accounts can generally be associated directly with the specific credit instrument or account upon which the interest is paid and shall be attributed to the state at which the goods were received by the purchaser or services rendered. For purposes of this Section, interest is construed to include all charges made for the extension of credit, such as finance charges and carrying charges.

ii. When the records of the taxpayer are not sufficiently detailed so as to enable direct attribution of the revenue, interest, as defined herein, shall be attributed to

each state on the basis of a formula or formulas which give due consideration to credit sales in the various states, outstanding customer accounts and notes receivable, and variances in the rates of interest charged or permitted to be charged in each of the states where the taxpayer makes credit sales.

h. Other Interest and Dividends

i. Interest, other than on customers' notes and accounts, and dividends shall be attributed to the state in which the securities producing such revenue have their situs, which shall be at the business situs of such securities if they have been so used in connection with the taxpayer's business as to acquire a business situs, or, in the absence of such a business situs, shall be at the commercial domicile of the taxpayer.

ii. *Used in connection with the taxpayer's business* is construed to mean use of a continuing nature in the regular course of business and does not include the mere holding of the instrument at a location or the use of the property as security for credit. Business situs must be established on the basis of facts, indicating precisely the use to which the securities have been put and the manner in which the taxpayer conducts its business.

iii. *Commercial Domicile* is in that state where management decisions are implemented which is presumed to be the state where the taxpayer conducts its principal business and thereby benefits from public facilities and protection provided by that state. Commercial domicile cannot be assigned to a state where the taxpayer has no substantial operation or facility, other than the location of one or more management level employees. The location of board of directors' meetings is not presumed to create commercial domicile at the location.

iv. Interest and dividends from a parent or subsidiary corporation shall be attributed as provided in R.S. 47:606(B) and the regulations issued thereunder.

i. Royalties or Similar Revenue from the Use of Patents, Trademarks, Secret Processes, and Other Similar Intangible Rights

i. Royalties or similar revenue received for the use of patents, trademarks, secret processes, and other similar intangible rights shall be attributed to the state or states in which such rights are used by the licensee from whom the income is received.

ii. In those cases where the rights are used by the licensee in more than one state, royalties and similar revenue will be attributed to the states on the basis of a ratio which gives due consideration to the proportion of use of the right by the licensee within each of the states. When the royalty is based on a measurable unit of production, sales, or other measurable unit, the attribution ratio shall be based on such units within each state to the total of such units for which the royalties were received. When the royalty or similar revenue is not based on measurable units, the attribution ratio will be based on the relative amounts of income produced by the licensee in each state or on such other ratio as will clearly reflect the proportion of use of the rights by the licensee in each state.

j. Revenue from a Parent or Subsidiary Corporation. Revenue from a parent or subsidiary corporation shall be allocated as provided in R.S. 47:606(B) and the regulations issued thereunder.

k. All Other Revenues

i. All revenues which are not specifically described in §306.A.1.a-j shall be attributed within and without Louisiana on the basis of such ratio or ratios as may be reasonably applicable to the type of revenue and business involved.

ii. In the case of revenue from construction, repairs, and similar services, generally, all of the work will be performed at a specific geographical location and the total revenue, including all billings by the taxpayer without regard to the method of reporting gain for purpose of the income tax statutes, shall be attributed to the place where the work is performed. In the case of contracts wherein a material part or parts of the work may have been performed in another state, such as the design, engineering, manufacture, fabrication, or preassembly of component parts, total revenue from the specific elements will be attributed to the place at which that segment of the work was performed on the basis of segregated charges contained in the performance contract. In the absence of segregated charges in the contract, revenues shall be allocated on the basis of a formula or formulas which give due consideration to such factors as direct cost, time devoted to the separate elements, and relative profitability of the specific function. Such ratios may be based on estimates of costs compiled during calculation of bid amounts for purposes of securing the contract in the absence of sufficient contract segregation of the charges between functions or sufficient records necessary to determine direct cost.

iii. For purposes of this Chapter, revenues from partnerships shall be attributed within and without Louisiana based on the percentage of the partnership's capital employed in Louisiana, determined by the arithmetical average of the following two ratios:

(a). The ratio that the partnership's net sales and other revenue in Louisiana bear to the partnership's total net sales and other revenue everywhere as described in R.S. 47:606(A)(1) and subparts thereunder; and

(b). The ratio that the partnership's Louisiana property bears to the partnership's total property everywhere as described in R.S. 47:606(A)(2) and subparts thereunder.

iv. For the purposes of this Chapter, the term *partnership* includes a syndicate, group, pool, joint venture, or other unincorporated organizations through or by means of which any business, financial operation, or venture is carried on.

2. Property and Assets. For the purpose of calculating the ratio of the value of property situated or used by a corporation in Louisiana to the value of all property wherever situated, both tangible and intangible property must be considered. The minimum value to be included in both the numerator and denominator is the value recorded on the books of the taxpayer. Both the cost recorded on the books of the corporation and the reserves applicable thereto are subject to examination and revision by the secretary of

Revenue and Taxation when such revision is found to be necessary in order to reflect properly the extent to which capital of the corporation is employed in the exercise of its charter; in no event, however, shall the revision by the secretary to any asset value or applicable reserve result in a net valuation which exceeds actual cost of the asset to the taxpayer. Specific rules as contained in the governing statute prescribe the state to which any asset will be allocated. Those rules are as follows:

a. Cash on Hand. Cash on hand shall be allocated to the state in which the cash is physically located.

b. Cash in Banks and Temporary Investments. Cash in banks and temporary cash investments shall be allocated to the state in which they have their business situs if they have been so used as to have acquired a business situs. In the absence of a business situs for such assets, cash in banks and temporary cash investments shall be allocated to the state in which the commercial domicile of the taxpayer is located.

c. Trade Accounts and Trade Notes Receivable. Trade accounts and trade notes receivable are construed to mean only those accounts and notes receivable resulting from the sale of merchandise or the performance of services for customers in the regular course of business of the taxpayer. Such accounts and notes shall be allocated to the location at which the merchandise was delivered or at which the services were performed resulting in the receivable. In the absence of sufficient recorded detail upon which to base the allocation of specific accounts and notes receivable to the various states, such accounts and notes may, by agreement between the secretary of Revenue and Taxation and the corporation, be allocated to the separate states based upon the ratio of credit sales within any particular state to the total of all credit sales.

d. Investments In and Advances To a Parent or Subsidiary. Investments in and advances to a parent or subsidiary corporation shall be allocated as provided in R.S. 47:606(B) and the regulations issued thereunder.

e. Notes and Accounts Other Than Temporary Cash Investments, Trade Notes and Accounts, and Advances To a Parent or Subsidiary. Notes and accounts receivable other than temporary cash investments, trade notes and accounts, and advances to a parent or subsidiary, shall be allocated to the state in which they have their business situs if they have been so used as to have acquired a business situs. In the absence of a business situs for such assets, notes and accounts receivable other than temporary cash investments, trade notes and accounts, and advances to a parent or subsidiary shall be allocated to the state in which the commercial domicile of the taxpayer is located. See §306.A.1.h relative to *business situs* and *commercial domicile*.

f. Stocks and Bonds Other Than Temporary Cash Investments and Investments In or Advances to a Parent or Subsidiary Corporation. Stocks and bonds other than temporary cash investments and investments in or advances to a parent or subsidiary corporation shall be allocated to the state in which they have their business situs if they have been so used as to have acquired a business situs. In the absence of a business situs for such assets, stocks and bonds other than temporary cash investments and advances to a parent or subsidiary corporation shall be allocated to the state in which the commercial domicile of the corporation is

located. See §306.A.1.h relative to *business situs* and *commercial domicile*.

g. Immovable and Corporeal Movable Property. Immovable property and corporeal movable property which is used entirely within a particular state shall be allocated to the state in which the property is located. Movable property which is not limited in use to any particular state shall be allocated among the states in which used on the basis of a ratio which gives due consideration to the extent of use in each of the states. For the purpose of determining the amount to be included in the numerator of the property ratio with respect to corporeal movable property used both within and without Louisiana, the following rules shall apply:

i. the value of diesel locomotives shall be allocated to Louisiana on the basis of the ratio of diesel locomotive miles traveled in Louisiana to total diesel locomotive miles;

ii. the value of other locomotives shall be allocated to Louisiana on the basis of the ratio of other locomotive miles traveled in Louisiana to total other locomotive miles;

iii. the value of freight train cars shall be allocated to Louisiana on the basis of the ratio of freight car miles traveled in Louisiana to total freight car miles;

iv. the value of railroad passenger cars shall be allocated to Louisiana on the basis of the ratio of passenger car miles traveled in Louisiana to total passenger car miles;

v. the value of passenger buses shall be allocated to Louisiana on the basis of the ratio of passenger bus miles traveled in Louisiana to total passenger bus miles;

vi. the value of diesel trucks shall be allocated to Louisiana on the basis of the ratio of diesel truck miles traveled in Louisiana to total diesel truck miles;

vii. the value of other trucks shall be allocated to Louisiana on the basis of the ratio of other truck miles traveled in Louisiana to total other truck miles;

viii. the value of trailers shall be allocated to Louisiana on the basis of the ratio of trailer miles traveled in Louisiana to total trailer miles;

ix. the value of towboats shall be allocated to Louisiana on the basis of the ratio of towboat miles traveled in Louisiana to total towboat miles. In the determination of Louisiana towboat miles, one-half of the mileage of navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles;

x. the value of tugs shall be allocated to Louisiana on the basis of the ratio of tug miles traveled in Louisiana to total tug miles. In the determination of Louisiana tug miles, one-half of the mileage of navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles;

xi. the value of barges shall be allocated to Louisiana on the basis of the ratio of barge miles traveled in Louisiana to total barge miles. In the determination of Louisiana barge miles, one-half of the mileage of navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles;

xii. the value of work and miscellaneous equipment shall be allocated to Louisiana in the following manner:

(a). in the case of a railroad, on the basis of the ratio of track miles in Louisiana to total track miles;

(b). in the case of truck and bus transportation, on the basis of the ratio of route miles operated in Louisiana to total route miles; and

(c). in the case of inland waterway transportation, on the basis of the ratio of bank miles in Louisiana to total bank miles. In the determination of bank mileage of navigable streams bordering on both Louisiana and another state, one-half of such mileage shall be considered Louisiana miles.

xiii. the value of other floating equipment shall be allocated to Louisiana on the basis of the ratio of operating equipment miles within Louisiana to total operating equipment miles for the particular equipment to be allocated. In the determination of Louisiana operating equipment miles, one-half of the mileage of navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles;

xiv. the value of flight equipment shall be allocated to Louisiana on the basis of the ratio of ton miles flown within Louisiana to total ton miles. For the purpose of determining Louisiana ton miles, a passenger and his luggage shall be assigned a weight factor of two hundred pounds;

xv. the value of inventories of merchandise in transit shall be allocated to the state in which their delivery destination is located in the absence of conclusive evidence to the contrary;

xvi. all other corporeal movable property shall be allocated to Louisiana on the basis of such ratio or ratios as will reasonably reflect the extent of their use within this state. In any case where the information necessary to determine the prescribed ratio is not readily available from the taxpayer's records, the secretary of Revenue and Taxation may require the allocation of the value of the property on the basis of any method deemed reasonable.

h. All Other Assets. All other assets shall be allocated within or without Louisiana on such basis as may be reasonably applicable to the particular asset and the type of business involved. Investments in or advances to a partnership shall be attributed within and without Louisiana based on the percentage of the partnership's capital employed in Louisiana, determined by the arithmetical average of the following two ratios:

i. the ratio that the partnership's net sales and other revenue in Louisiana bear to the partnership's total net sales and other revenue everywhere as described in R.S. 47:606(A)(1) and subparts thereunder; and

ii. the ratio that the partnership's Louisiana property bears to the partnership's total property everywhere as described in R.S. 47:606(A)(2) and subparts thereunder. See §306.A.1.k.iv for the definition of a partnership.

#### B. Allocation of Intercompany Items

1. Without regard to the legal or commercial domicile of a corporation subject to the tax imposed by this Chapter, and without regard to the business situs of investments in or advances to a subsidiary or parent corporation by a corporation subject to the tax imposed by this Chapter, all such investments in, advances to, and revenue from such

parent or subsidiary shall be allocated to Louisiana on the basis of the percentage of capital employed in Louisiana by the parent or subsidiary corporation for franchise tax purposes. The corporation franchise tax ratio of the parent or subsidiary shall be the measure of the extent to which the investment in, advances to, and revenues from the parent or subsidiary are attributable to Louisiana for purposes of determining the revenue and property ratios to be used in allocating the total taxable base of any corporation subject to the tax imposed by this Chapter to Louisiana.

2. A subsidiary corporation is any corporation the majority of the capital stock of which is actually, wholly, or substantially owned by another corporation and whose management, business policies, and operations are, howsoever, actually, wholly, or substantially controlled by another corporation. Such latter corporation shall be termed the parent corporation.

3. In general, the ownership, either directly or indirectly, of more than 50 percent of the voting stock of any corporation constitutes control of that corporation's management, business policies, and operations for purposes of application of this subsection, whether such control is documented by formal directives from the owner of such stock or not.

4. Other criteria which will be construed to constitute control of the management, business policies, and operations of a corporation are:

a. the filing of a consolidated income tax return in which operations of the corporation are included with operations of the corporation owning more than 50 percent of its stock for purposes of determining its federal income tax liability, foreign tax credits, investment credits, other credits against its tax, and the minimum tax on preferential items of income; or

b. the requirement or policy that the purchase of a majority of the merchandise, equipment, supplies, or services required for operations be made from the corporation owning more than 50 percent of its stock, its designee, or from another corporation in which the owning corporation owns more than 50 percent of the stock; or

c. the requirement or policy that a majority of sales of merchandise, products, or service be made to the corporation owning more than 50 percent of its stock, its designee, or to another corporation in which the owning corporation owns more than 50 percent of the stock; or

d. the participation in a retirement, profit-sharing, or stock option plan administered by or participating in the profits or purchase of stock of the corporation owning more than 50 percent of its stock; or

e. the filing of reports with the Securities and Exchange Commission or other regulatory bodies in which its operations, assets, liabilities, and other financial information are reflected as a part of similar information of the corporation owning more than 50 percent of its stock; or

f. the presence on its Board of Directors of a majority of members who are directors, officers, or employees of the corporation owning more than 50 percent of its stock.

5. In the case of a corporation which owns more than 50 percent of a corporation, the burden of proving that control of the management, business policies, and operations of the latter does not exist shall rest with the taxpayer.

6. For purposes of this Subsection, accounts receivable which may be considered to be advances resulting from normal trading between the companies in the regular course of business and the sales of merchandise, products, or services in such transactions shall not be included in advances to or revenue from a parent or subsidiary under this provision, but shall be allocated and attributed as provided in R.S. 47:606(A) and the regulations issued thereunder.

C. Minimum Allocation; Assessed Value of Real and Personal Property. The minimum amount of issued and outstanding capital stock, surplus and undivided profits, and borrowed capital upon which the tax imposed by this Chapter is calculated shall be the total assessed value of all real and personal property of a corporation in this state. Total assessed value is construed to be the value, after any and all exemptions, upon which the ad valorem tax is based. The assessed value to be used as the basis for the minimum tax calculation is the value upon which the ad valorem tax was calculated for the calendar year preceding the year in which the corporation franchise tax is due.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:606.

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), repromulgated by the Department of Revenue, Policy Services Division, LR 30:

### **§308. Exemptions**

#### **A. General**

1. Corporations organized for the purposes described in §308.B.1-15 of this Section are fully exempt from the payment of Louisiana Corporation Franchise Tax. Only those corporations which meet the prescribed standards of organization, ownership, control, sources of income, and disposition of funds are exempt from the tax, whether or not they may enjoy exemption from any other tax, federal, state, or local, or whether or not they may be specifically exempted from all taxes under the laws of the state in which they were organized, chartered, or domiciled.

2. A corporation is not exempt from the corporation franchise tax merely because it is a nonprofit organization. In each case, an organization other than those described in §308.B.1.a.ii and iii as limited by §308.B.1.c.i and ii, must file a verified application for exemption with the secretary of Revenue and Taxation which shall include an affidavit showing, in addition to such other information as the secretary may deem necessary from any particular applicant, the following:

- a. character of the organization;
- b. purpose for which organized;
- c. its actual activities;
- d. ownership of stock in the corporation;
- e. the source of its income;
- f. the disposition of its income;
- g. whether or not any of its income is credited to surplus, and if so, the intended future use of the retained amounts;
- h. whether any of its income may inure to the benefit of any shareholder or individual;
- i. a copy of the charter or articles of incorporation;
- j. bylaws of the organization;

k. the latest statement of the assets, liabilities, receipts, and disbursements;

l. any other facts relating to its operations which affect its right to exemption from the tax; and

m. a copy of the ruling or determination letter issued by the federal Internal Revenue Service.

3. The required application for exemption may be filed by an organization before it has started operations or at any time it can describe its operations in sufficient detail to permit a conclusion that it will be clearly exempt under the particular requirements of the Section for which the exemption is sought.

4. Once the secretary has issued a ruling or determination letter that an organization, except those described in §308.B.1.a.ii and iii, as limited by §308.B.1.c.i and ii, meets the exemption requirements, there is no mandatory provision that it make a return or any further showing that it meets the specified requirements unless it changes the character of its organization or operations. The secretary reserves the right to review any exemption granted, and may require the filing of whatever information deemed necessary to permit proper evaluation of the exempt status.

5. No exemption will be granted to a corporation, other than those described in §308.B.1.a.ii and iii, as limited by §308.B.1.c.i and ii, organized and operated for the purpose of carrying on a trade or business for profit, even though its entire income may be contributed or distributed to another organization or organizations which are themselves exempt from the tax.

6. An application for exemption filed by a corporation under either the Louisiana income tax law or the Louisiana corporation franchise tax law may be accepted by the secretary as fulfilling the application requirements under both laws. Taxpayers are cautioned, however, that approval of exemption under either law does not grant exemption under the other law in the absence of a statement contained in the ruling to that effect.

7. A corporation is either entirely exempt from the corporation franchise tax law or it is wholly taxable. There is no statutory provision under which partial exemption may be granted.

#### B. Exempt Corporations

##### 1. Labor, Agricultural or Horticultural Organizations

a. Labor, agricultural, or horticultural organizations which are exempt under this provision are those corporations which have:

i. no net income inuring to the benefit of any stockholder or member and are educational or instructive in character, and have as their objects the betterment of conditions of those engaged in such pursuits, or improvements of the grade of their respective occupations; or

ii. at least 75 percent of the beneficial ownership held by or for the benefit of members, or the spouses of members of a family, and at least 80 percent of total gross income is from the production, harvesting, and preparation for market of products produced by the corporation; or

iii. at least 80 percent of total gross income of the corporation derived from the production, harvesting, and preparation for market of products produced by the corporation, but only if total gross income of such corporation did not exceed \$500,000 for the previous year.

b. For purposes of this Subsection, *agricultural* includes the art or science of cultivating land, harvesting crops or aquatic resources, excluding minerals, or raising livestock, poultry, fish, and crawfish. Thus, the following types of organizations (but not limited thereto) which meet the requirements of §308.B.1.a.i, will be deemed to be exempt from the tax:

i. an organization engaged in the promotion of artificial insemination of livestock;

ii. a nonprofit organization of growers and producers formed principally to negotiate with processors for the price to be paid to members for their produce;

iii. a nonprofit organization of persons engaged in raising fish (or crawfish) as a cash crop on farms that were formed to encourage better and more economical methods of fish farming and to promote the interest of its members; or

iv. parish fairs and like organizations formed to encourage the development of better agricultural and horticultural products through a system of awards, and whose income is used exclusively to meet the necessary expenses of upkeep and operations.

c. corporations engaged in growing agricultural or horticultural products for profit are not exempt from the tax, except as provided in §308.B.1.a.ii and iii, subject to the following limitations:

i. any corporation engaged in the production, harvesting, and preparation for market of raw agricultural products or horticultural products produced by it and that has at least 80 percent of its gross income from such pursuits is exempt from corporation franchise tax, but only if 75 percent or more of the beneficial ownership in such corporation is held by or for the benefit of a single family. For purposes of this Paragraph, a single family shall consist of brothers, sisters, spouses, ancestors, and lineal descendants, including those legally adopted;

ii. any corporation engaged in the production, harvesting, and preparation for market of raw agricultural or horticultural products produced by such corporation is exempt from corporation franchise tax, but only if:

(a). at least 80 percent of its income is from such activity; and

(b). total gross income of the corporation for the previous year did not exceed \$500,000.

##### 2. Mutual Savings Banks, National Banking Corporations and Banking Corporations Organized under the Laws of Louisiana, and Building and Loan Associations

a. Mutual savings banks, national banking corporations, and building and loan associations are exempt from the tax imposed by this Chapter regardless of where organized.

b. Banking corporations organized under the laws of the state of Louisiana which are required by other laws of this state to pay a tax for their shareholders, or whose shareholders are required to pay a tax on their shares of stock, are exempt.

c. Banking corporations, other than those described in §308.B.2.a and b above, organized under the laws of a state other than the state of Louisiana are not exempt from the tax.

##### 3. Fraternal Beneficiary Societies, Orders or Associations Operating Under the Lodge System. Fraternal

beneficiary societies, orders, or associations are exempt from tax only if operated under the *lodge system* or for the exclusive benefit of the members of a fraternity itself operating under the lodge system. *Operating under the lodge system* means carrying on its activities under a form of organization that comprises local branches, chartered by a parent organization, and largely self-governing, called lodges, chapters, or the like. In order to be exempt, it is necessary that the organization have an established system for the payment of life, sick, accident, or other benefits to its members or their dependents.

#### 4. Cemetery Companies

a. Cemetery companies are exempt from the corporation franchise tax if:

i. they are owned and operated exclusively for the benefit of their lot owners who hold such lots for bona fide burial purposes and not for the purpose of resale, or they are not operated for profit;

ii. they are not permitted by their charter to engage in any business not necessarily incident to burial purposes; and

iii. no part of their net earnings inures to the benefit of any private shareholder or individual.

b. For purposes of this Paragraph, a nonprofit corporation engaged in the operation of a crematory, which otherwise meets the exemption qualifications set forth herein, will be deemed to be an exempt cemetery company.

c. Such companies may issue preferred stock entitling the holders to dividends at a fixed rate not exceeding 8 percent per annum on the value of the consideration for which the stock was issued, but only if the articles of incorporation require that the preferred stock shall be retired at par as soon as sufficient funds available therefor are realized from sales, and that all funds not required for the payment of dividends or for retirement of the preferred stock shall be used for the care and improvement of the cemetery property.

#### 5. Community Chests, Funds or Foundations

##### a. Organizational and Operational Tests

i. In order to be exempt as an organization described in R.S. 47:608(5), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

ii. The term *exempt purpose or purposes* as used in this Section means any purpose or purposes specified in R.S. 47:608(5), as defined and elaborated in Subparagraph d of this Section (see §308.B.5.d).

##### b. Organizational Test

###### i. In General

(a). An organization is organized exclusively for one or more exempt purposes only if its articles of organization (referred to in this Section as *its articles*) as defined in §308.B.5.b.ii:

(i). limit the purposes of such organization to one or more exempt purposes; and

(ii). do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

(b). In meeting the organizational test, the organization's purposes, as stated in its articles, may be as broad as, or more specific than, the purposes stated in R.S. 47:608(5). Therefore, an organization which, by the terms of its articles, is formed for *literary and scientific purposes*, within the meaning of R.S. 47:608(5) shall, if it otherwise meets the requirements in this Paragraph, be considered to have met the organizational test. Similarly, articles stating that the organization is created solely to receive contributions and pay them over to organizations which are described in R.S. 47:608(5) and exempt from taxation under R.S. 47:608(5) are sufficient for purposes of the organizational test. Moreover, it is sufficient if the articles set forth the purpose of the organization to be the operation of a school for adult education and describe in detail the manner of the operation of such school. In addition, if the articles state that the organization is formed for *charitable purposes*, such articles ordinarily shall be sufficient for purposes of the organizational test (see §308.B.5.b.v) for rules relating to construction of terms.

(c). An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes, even though such organization is, by the terms of such articles, created for a purpose that is no broader than the purposes specified in R.S. 47:608(5). Thus, an organization that is empowered by its articles *to engage in a manufacturing business*, or *to engage in the operation of a social club* does not meet the organizational test regardless of the fact that its articles may state that such organization is created for *charitable purposes* within the meaning of R.S. 47:608(5).

(d). In no case shall an organization be considered to be organized exclusively for one or more exempt purposes if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in R.S. 47:608(5). The fact that the actual operations of such an organization have been exclusively in furtherance of one or more exempt purposes shall not be sufficient to permit the organization to meet the organizational test. Similarly, such an organization will not meet the organizational test as a result of statements or other evidence that the members thereof intend to operate only in furtherance of one or more exempt purposes.

(e). An organization must, in order to establish its exemption, submit a detailed statement of its proposed activities with and as a part of its application for exemption.

ii. Articles of Organization. For purposes of this section, the term *articles of organization or articles* includes the trust instrument, the corporate charter, the articles of association, or any other written instrument by which an organization is created.

###### iii. Authorization of Legislative or Political Activities

(a). An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it:

(i). to devote more than an insubstantial part of its activities attempting to influence legislation by propaganda;

(ii). to directly or indirectly participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office; or

(iii). to have objectives and to engage in activities which characterize it as an *action* organization as defined in §308.B.5.c.iii;

(b). The terms used in §308.B.5.b.iii.(a).(i)-(iii) shall have the meanings provided in §308.B.5.c.

iv. Distribution of Assets on Dissolution. An organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the federal government, or to a state or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as the court decides will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles of incorporation or the law of the state in which it was created provided that its assets would, upon dissolution, be distributed to its members or shareholders.

v. Construction of Terms. The law of the state in which an organization is created shall be controlling in interpreting the terms of its articles. However, any organization which contends that such terms have, under state law, a different meaning from their generally accepted meaning must establish such special meaning by clear and convincing reference to relevant court decisions, opinions of the state attorney general, or other evidence of applicable state law.

vi. Applicability of the Organization Test. A determination by the secretary that an organization as described in R.S. 47:608(5) and exempt under R.S. 47:608(5) will not be granted the exemption unless such organization meets the organizational test prescribed by this Subparagraph. If an organization has been determined by the secretary to be exempt as an organization described in R.S. 47:608(5) and such determination has not been revoked, the fact that such organization does not meet the organizational test prescribed by this Subparagraph shall not be basis for revoking such determination. Accordingly, an organization which has been determined to be exempt, and which does not seek a new determination of exemption, is not required to amend its articles of organization to conform to the rules of this Subparagraph.

#### c. Operational Test

i. Primary Activities. An organization will be regarded as *operated exclusively* for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in R.S. 47:608(5). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

ii. Distribution of Earnings. An organization is not operated exclusively for one or more exempt purposes if its

net earnings inure in whole or in part to the benefit of private shareholders or individuals.

#### iii. Action Organizations

(a). An organization is not operated exclusively for one or more exempt purposes if it is an *action* organization as defined in §308.B.5.c.iii.(b), (c), or (d).

(b). An organization is an *action* organization if a substantial part of its activities is attempting to influence legislation by propaganda or otherwise. For this purpose, an organization will be regarded as attempting to influence legislation if the organization:

(i). contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or

(ii). advocates the adoption or rejection of legislation. The term *legislation*, as used in this Clause, includes action by the Congress, by any state legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure. An organization will not fail to meet the operational test merely because it advocates, as an insubstantial part of its activities, the adoption or rejection of legislation.

(c). An organization is an *action* organization if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The term *candidate for public office* means an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, state, or local. Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate.

(d). An organization is an *action* organization if it has the following two characteristics:

(i). its main or primary objective or objectives (as distinguished from its incidental or secondary objectives) may be attained only by legislation or a defeat of proposed legislation; and

(ii). it advocates, or campaigns for, the attainment of such main or primary objective or objectives as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public. In determining whether an organization has such characteristics, all the surrounding facts and circumstances, including the articles and all activities of the organization, are to be considered.

(e). An *action* organization, described in §308.B.5.c.iii.(b) or (d), though it cannot qualify under R.S. 47:608(5), may nevertheless qualify as a social welfare organization under R.S. 47:608(7) if it meets the requirements set out in R.S. 47:608(7).

#### d. Exempt Purposes

##### i. In General

(a). An organization may be exempt as an organization described in R. S. 47:608(5) if it is organized and operated exclusively for one or more of the following purposes:

(i). religious;

- (ii). charitable;
- (iii). scientific;
- (iv). literary;
- (v). educational; or
- (vi). prevention of cruelty to children or animals.

(b). An organization is not organized or operated exclusively for one or more of the purposes specified in §308.B.5.d.i.(a) unless it serves a public rather than a private interest. Thus, to meet the requirement of this Subclause, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interest such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interest.

(c). Since each of the purposes specified in §308.B.5.d.i.(a) is an exempt purpose in itself, an organization may be exempt if it is organized and operated exclusively for any one or more of such purposes.

(d). If, in fact, an organization is organized and operated exclusively for an exempt purpose or purposes, exemption will be granted to such an organization regardless of the purpose or purposes specified in its application for exemption. For example, if an organization claims exemption on the ground that it is *educational*, an exemption will not be denied if, in fact, it is *charitable*.

#### ii. Charitable Defined

(a). The term *charitable* as used in R.S. 47:608(5) in its generally accepted legal sense is not to be construed as limited by the separate enumeration in R.S. 47:608(5) of other tax-exempt purposes which may fall within the broad outlines of charity as developed by judicial decisions. Such term includes: relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or work; lessening of the burdens of government; and promotion of social welfare by organizations designed to accomplish any of the above purposes; or

- (i). to lessen neighborhood tension;
- (ii). to eliminate prejudice and discrimination;
- (iii). to defend human and civil rights secured by law; or
- (iv). to combat community deterioration and juvenile delinquency.

(b). The fact that an organization which is organized and operated for the relief of indigent persons may receive voluntary contributions from the persons intended to be relieved will not necessarily prevent such organization from being exempt as an organization organized and operated exclusively for charitable purposes.

(c). The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinions on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying under R.S. 47:608(5) so long as it is not an *action* organization of any one of the types described in §308.B.5.c.iii.

#### iii. Educational Defined

(a). In General. The term *educational*, as used in R.S. 47:608(5), relates to:

- (i). the instruction or training of the individual for the purpose of improving or developing his capabilities; or
- (ii). the instruction of the public on subjects useful to the individual and beneficial to the community.

(b). An organization may be educational even though it advocates a particular position or viewpoint, so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.

(c). Examples of Educational Organizations. The following are examples of organizations which, if they otherwise meet the requirements of this Subsection, are educational.

(i). Example. An organization, such as a primary or secondary school, a college, or a professional or trade school, which has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on.

(ii). Example. An organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs. Such programs may be on radio or television.

(iii). Example. An organization which presents a course of instruction by means of correspondence or through the use of television or radio.

(iv). Example. Museums, zoos, planetariums, symphony orchestras, and other similar organizations.

#### iv. Scientific Defined

(a). Since an organization may meet the requirements of R.S. 47:608(5) only if it serves a public rather than a private interest, a *scientific* organization must be organized and operated in the public interest (§308.B.5.d.i.[b]). Therefore, the term *scientific*, as used in R.S. 47:608(5) includes the carrying on of scientific research in the public interest. Research when taken alone is a word with various meanings; it is not synonymous with *scientific*, and the nature of particular research depends upon the purpose which it serves. For research to be *scientific* within the meaning of R.S. 47:608(5), it must be carried on in furtherance of a *scientific* purpose. The determination as to whether research is *scientific* does not depend on such research being classified as *fundamental* or *basic*, as contrasted with *applied* or *practical*.

(b). Scientific research does not include activities of a type ordinarily carried on as an incident to commercial or industrial operations, as, for example, the ordinary testing or inspection of materials or products, or the designing or construction of equipment, buildings, etc.

(c). Scientific research will be regarded as carried on in the public interest:

- (i). if the results of such research (including any patents, copyrights, processes, or formulas resulting from such research) are made available to the public on a nondiscriminatory basis;

(ii). if such research is performed for the United States, or any of its agencies or instrumentalities, or for a state or political Subdivision thereof; or

(iii). if such research is directed toward benefiting the public. The following are examples of scientific research which will be considered as directed toward benefiting the public, and, therefore, which will be regarded as carried on in the public interest:

[a]. scientific research carried on for the purpose of aiding in the scientific education of college or university students;

[b]. scientific research carried on for the purpose of obtaining scientific information, which is published in a treatise, thesis, trade publication, or in any other form that is available to the interested public;

[c]. scientific research carried on for the purpose of discovering a cure for a disease; or

[d]. scientific research carried on for the purpose of aiding a community or geographical area by attracting new industry to the community or area or by encouraging the development of, or retention of, an industry in the community or area. Scientific research described in §308.B.5.d.iv.(c) will be regarded as carried on in the public interest even though such research is performed pursuant to a contract or agreement under which the sponsor or sponsors of the research have the right to obtain ownership or control of any patents, copyrights, processes, or formulas resulting from such research.

(d). An organization will not be regarded as organized and operated for the purpose of carrying on scientific research in the public interest and, consequently, will not qualify under R.S. 47:608(5) as a *scientific* organization, if:

(i). such organization will perform research only for persons who are (directly or indirectly) its creators and who are not described in R.S. 47:608(5); or

(ii). such organization retains (directly or indirectly) the ownership or control of more than an insubstantial portion of the patents, copyrights, processes, or formulas resulting from its research and does not make such patents, copyrights, processes, or formulas available to the public. For purposes of this Subclause, a patent, copyright, process, or formula shall be considered as made available to the public if such patent, copyright, process, or formula is made available to the public on a nondiscriminatory basis. In addition, although one person is granted the exclusive right to the use of a patent, copyright, process, or formula, it shall be considered as made available to the public if the granting of such exclusive right is the only practicable manner in which the patent, copyright, process, or formula can be used to benefit the public. In such a case, however, the research from which the patent, copyright, process, or formula resulted will be regarded as carried on in the public interest (within the meaning of §308.B.5.d.iv.c.iii) if it is carried on for a person described in §308.B.5.d.iv.c.ii or if it is scientific research described in §308.B.5.d.iv.c.iii.

(e). The fact that any organization (including a college, university, or hospital) carries on research which is not in furtherance of an exempt purpose described in R.S. 47:608(5) will not preclude such organization from meeting the requirements of R.S. 47:608(5) so long as the organization meets the organizational test and is not operated

for the primary purpose of carrying on such research (see §308.B.5.e relating to organizations carrying on a trade or business).

e. Organizations Carrying on Trade or Business. In general, an organization may meet the requirements of R.S. 47:608(5) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business. In determining the existence or nonexistence of such primary purpose, all the circumstances must be considered, including the size and extent of the trade or business and the size and extent of the activities which are in furtherance of one or more exempt purposes. An organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under R.S. 47:608(5), even though it has certain religious purposes, its property is held in common, and its profits do not inure to the benefit of individual members of the organization.

6. Business Leagues, Chambers of Commerce, Real Estate Boards, and Boards of Trade. A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self sustaining, is not a business league. An association engaged in furnishing information to prospective investors to enable them to make sound investments is not a business league since its activities do not further any common business interest, even though all of its income is devoted to the purpose stated. A stock or commodity exchange is not a business league, a chamber of commerce, or a board of trade within the meaning of R.S. 47:608(6) and is not exempt from the tax.

7. Civic Leagues and Local Associations of Employees

a. Civic leagues or organizations may be exempt, provided they are not organized or operated for profit, and are operated exclusively for the promotion of social welfare. An organization is operated exclusively for social welfare only if it is primarily engaged in promoting in some manner the common good and general welfare of people in the community. An organization embraced within this provision is one which is operated primarily for the purpose of bringing about civic betterment and social improvements. A *social welfare* organization will qualify for exemption as a charitable organization if it falls within the definition of *charitable* set forth in §308.B.5.d.ii and is not an *action* organization as set forth in §308.B.5.c.iii.

b. The promotion of social welfare does not include direct or indirect participation or intervention in political

campaigns on behalf of or in opposition to any candidate for public office, nor is an organization operated primarily for the promotion of social welfare if its primary activity is operating a social club for the benefit, pleasure, or recreation of its members, or is carrying on a business with the general public in a manner similar to organizations which are operated for profit. See R.S. 47:608(6) and the regulations issued thereunder, relating to business leagues and similar organizations. A social welfare organization may qualify under this Section even though it is an *action* organization described in §308.B if it otherwise qualifies under this Section.

c. Local associations of employees described in R.S. 47:608(7) are expressly entitled to exemption. As conditions to exemption, it is required that:

i. membership of such an association be limited to the employees of a designated person or persons in a particular municipality;

ii. the net earnings of the association be devoted exclusively to charitable, educational, or recreational purposes;

iii. its activities are confined to a particular community, place, or district. If the activities are limited only by the borders of a state, it cannot be considered to be local in character; and

iv. no substantial part of the activities of the association is carrying on propaganda or otherwise attempting to influence legislation.

#### 8. Social Clubs

a. The exemption provided by R.S. 47:608(8) applies only to clubs which are organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, but does not apply to any club if any part of its net earnings inures to the benefit of any private shareholder. In general, the exemption extends to social and recreational clubs which are supported solely by membership fees, dues, and assessments. However, a club otherwise entitled to exemption will not be disqualified because it raises revenue from members through the use of club facilities or in connection with club activities.

b. A club which engages in business, such as making its social and recreational facilities available to the general public or by selling real estate or other products, is not organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, and is not exempt. Solicitation by advertisement or otherwise for public patronage to its facilities is *prima facie* evidence that the club is engaging in business and is not being operated exclusively for pleasure, recreation, or social purposes. However, an incidental sale of property will not deprive a club of its exemption.

9. Local Benevolent Life Insurance Associations, Mutual Ditch or Irrigation Companies, Mutual Cooperative or Telephone Companies, and Like Organizations

a. In order to be exempt under the provision of R.S. 47:608(9), an organization of the type specified must receive at least 85 percent of its income from amounts collected from members for the sole purpose of meeting losses and expenses. If an organization issues policies for stipulated cash premiums, or if it requires advance deposits to cover

the cost of insurance and maintains investments from which more than 15 percent of its income is derived, it is not entitled to an exemption. Although it may make advance assessments for the sole purpose of meeting future losses and expenses, an organization may be entitled to the exemption provided that the balance of such assessments remaining on hand at the end of the year is retained to meet losses and expenses or is returned to members.

b. The phrase *of a purely local character* applies only to benevolent life insurance associations and organizations exempt on the ground that they are organizations similar to a benevolent life insurance association, and not to the other organizations specified in R. S. 47:608(9). An organization of a purely local character is one whose business activities are confined to a particular community, place, or district, irrespective of political subdivisions. If the activities of an organization are limited only by the borders of a state, it cannot be considered to be purely local in character.

10. Insurance Corporations. Insurance companies which pay or which are required to pay a premium tax under the provisions of Title 22 of the Louisiana Revised Statutes of 1950 are exempt from the corporation franchise tax.

#### 11. Farmers' and Fruit Growers' Cooperatives

a. Farmers' cooperative marketing associations engaged in the marketing of farm products for farmers, fruit growers, livestock growers, dairymen, etc. and turning back to the producers the proceeds of the sales of their products, less the necessary operating expenses, on the basis of either the quantity or the value of the products furnished by them, are exempt from the corporation franchise tax. Nonmember patrons must be treated the same as members insofar as the distribution of patronage dividends is concerned. Thus, if products are marketed for nonmember producers, the proceeds of the sales, less necessary operating expenses, must be returned to the patron from the sale of whose goods such proceeds result, whether or not such patrons are members of the association. In order to establish compliance with the statutory requirement that the proceeds of sales, less necessary operating expenses, be turned back to all producers on the basis of either the quantity or the value of the products furnished by them, it is necessary for such an association to keep permanent records of the business done with both members and nonmembers. While patronage dividends must be paid to all producers on the same basis, the requirement is complied with if an association, instead of paying patronage dividends to nonmembers in cash, keeps permanent records from which the proportionate share of the patronage dividends due to nonmember producers can be determined, and such shares are made applicable toward the purchase price of a share of stock or of a membership in the association.

b. An association which has capital stock will not for such reason be denied exemption:

i. if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the state of incorporation on the value of the consideration for which the stock was issued; and

ii. if substantially all of such stock (with the exception noted below) is owned by producers who market

their products or purchase their supplies and equipment through the association. Any ownership of stock by others than such actual producers must be satisfactorily explained in the association's application for exemption. The association will be required to show that the ownership of its capital stock has been restricted as far as possible to such actual producers. If by statutory requirement all officers of an association must be shareholders, the ownership of a share of stock by a nonproducer to qualify him as an officer will not destroy the association's exemption. Likewise, if a shareholder for any reason ceases to be a producer and the association, because of a constitutional restriction or prohibition or other reason beyond the control of the association, is unable to purchase or retire the stock of such nonproducer, the fact that under such circumstances a small amount of the outstanding capital stock is owned by shareholders who are no longer producers will not destroy the exemption. The restriction placed on the ownership of capital stock of an exempt cooperative association shall not apply to nonvoting preferred stock, provided the owners of such stock are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends.

c. The accumulation and maintenance of a reserve required by state statute, or the accumulation and maintenance of a reasonable reserve or surplus for any necessary purpose, such as to provide for the erection of buildings and facilities required in business or for the purchase and installation of machinery and equipment or to retire indebtedness incurred for such purposes, will not destroy the exemption. An association will not be denied exemption because it markets the products of nonmembers, provided the value of the products marketed for nonmembers does not exceed the value of the products marketed for members. Anyone who shares in the profits of a farmers' cooperative marketing association and is entitled to participate in the management of the association must be regarded as a member of such association.

d. Cooperative associations engaged in the purchasing of supplies and equipment for farmers, fruit growers, livestock growers, dairymen, etc., and turning over such supplies and equipment to them at actual cost, plus the necessary operating expenses, are exempt. The term *supplies and equipment* includes groceries and all other goods and merchandise used by farmers in the operation and maintenance of a farm or farmer's household. The provisions relating to a reserve or surplus and to capital stock shall apply to associations coming under this Paragraph. An association which purchases supplies and equipment for nonmembers will not for such reason be denied exemption, provided the value of the purchases for nonmembers does not exceed the value of the purchases made for members, and provided the value of the purchases made for nonmembers who are not producers does not exceed 15 percent of the value of all its purchases.

e. In order to be exempt under R.S. 47:608(11), an association must establish that it has no income for its own account other than that reflected in a reserve or surplus authorized therein. An association engaged both in marketing farm products and in purchasing supplies and equipment is exempt only if it meets the prescribed requirements for each of its functions.

f. To be exempt, an association must not only be organized but actually operated in the manner of and for the purposes specified in R.S. 47:608(11).

g. Cooperative organizations engaged in activities dissimilar from those of farmers, fruitgrowers, and the like, are not exempt.

12. Corporations Organized to Finance Crop Operations. A corporation organized by a farmers' cooperative marketing or purchasing association, or the members thereof, for the purpose of financing the ordinary crop operations of such members or other producers is exempt, provided the marketing or purchasing association is exempt under the provisions of R. S. 47:608(11) and the financing corporation is operated in conjunction with the marketing or purchasing association. The provisions of R.S. 47:608(11) relating to a reserve or surplus and to capital stock also apply to corporations coming under this Paragraph.

13. Corporations Organized for the Exclusive Purpose of Holding Title to Property

a. Corporations organized for the exclusive purpose of holding title to property are exempt from the corporation franchise tax, but only if:

i. the entire amount of income from the property, less expenses, is turned over to organizations which are organized and operated exclusively for:

- (a). religious purposes;
- (b). charitable purposes;
- (c). scientific purposes;
- (d). literary purposes; or
- (e). educational purposes; and

ii. no part of the net earnings inures to the benefit of any private shareholder or any organization organized and operated for a purpose other than those enumerated under §308.B.13.a.i.(a), whether or not the benefiting organization is exempt under other provisions of R.S. 47:608.

b. Corporations whose articles of incorporation or by-laws permit activities other than the holding of title to property, collecting the income therefrom, paying the necessary expenses of operating the property, and turning over the entire amount of its income, after expenses, to the specified types of organizations are not exempt.

14. Voluntary Employees' Beneficiary Associations

a. In general, the exemption provided by R.S. 47:608(14) applies if all of the following requirements are met:

i. the organization is an association of employees;

ii. membership of the employees in the association is voluntary;

iii. the organization is operated only for the purpose of providing for the payment of life, sick, accident, or other benefits to its members or their dependents;

iv. no part of the net earnings of the organization inures, other than by payment of the benefits described in

§308.B.14.a.iii, to the benefit of any private shareholder or individual; and

v. at least 85 percent of the income of the organization consists of amounts collected from members for the sole purpose of such payments of benefits and meeting expenses.

b. Explanation of requirements necessary to constitute an organization described in R.S. 47:608(14) [LAC 61.I.308.B.14.b.ii]. For purposes of §308.B.14.b:

i. Association of Employees

(a). In general, an organization described in R.S. 47:608(14) must be composed of individuals who are entitled to participate in the association by reason of their status as employees who are members of a common working unit. The members of a common working unit include, for example, the employees of a single employer, one industry, or the members of one labor union. Although membership in such an association need not be offered to all the employees of a common working unit, membership must be offered to all of the employees of one or more classes of the common working unit and such class or classes must be selected on the basis of criteria which do not limit membership to shareholders, highly compensated employees, or other like individuals. The criteria for defining a class may be restricted by conditions reasonably related to employment, such as a limitation based on a reasonable minimum period of service, a limitation based on a maximum compensation, or a requirement that a member be employed on a full-time basis. The criteria for defining a class may also be restricted by conditions relating to the type and amount of benefits offered, such as a requirement that members need a reasonable minimum health standard in order to be eligible for life, sick, or accident benefits, or a requirement which excludes, or has the effect of excluding, employees who are members of another organization offering similar benefits to the extent such employees are eligible for such benefits. Whether a group of employees constitutes an acceptable class is a question to be determined with regard to all the facts and circumstances, taking into account the guidelines set forth in this Clause. Furthermore, exemption will not be barred merely because the membership of the association includes some individuals who are not employees (within the meaning of §308.B.14.b.i.b) or who are not members of the common working unit, provided that these individuals constitute no more than 10 percent of the total membership of the association.

(b). Meaning of *Employee*

(i). The term *employee* has reference to the legal and bona fide relationship of employer and employee.

(ii). The term *employee* also includes:

[a]. an individual who would otherwise qualify for membership under §308.B.14.b.i.(b)(i), but for the fact that he is retired or on leave of absence;

[b]. an individual who would otherwise qualify under §308.B.14.b.i.(b)(i), but subsequent to the time he qualifies for membership he becomes temporarily unemployed. The term *temporary unemployment* means involuntary or seasonal unemployment, which can reasonably be expected to be of limited duration. An individual will still qualify as an employee under §308.B.14.b.i.(b)(i), during a period of temporary

unemployment, he performs services as an independent contractor or for another employer; or

[c]. an individual who qualifies as an employee under the state or federal unemployment compensation law covering his employment, whether or not such an individual could qualify as an employee under the usual common law rules applicable in determining the employer-employee relationship.

ii. Explanation of Voluntary Association. An association is not a voluntary association if the employer unilaterally imposes membership in the association on the employee as a condition of his employment and the employee incurs a detriment (for example, in the form of deductions from his pay) because of his membership in the association. An employer will not be deemed to have unilaterally imposed membership on the employee if such employer requires membership as the result of a collective bargaining agreement which validly requires membership in the association.

iii. Life, Sick, Accident, or Other Benefits

(a). In general, a voluntary employee's beneficiary association must provide solely (and not merely primarily) for the payment of life, sick, accident, or other benefits to its members or their dependents. Such benefits may take the form of cash or non-cash benefits.

(i). Life Benefits. The term *life benefits* includes life insurance benefits, or similar benefits payable on the death of the member, made available to members for current protection only. Thus, term life insurance is an acceptable benefit. However, life insurance protection made available under an endowment insurance plan or a plan providing cash surrender values to the member is not included. *Life benefits* may be payable to any designated beneficiary of a member.

(ii). Sick and Accident Benefits. A sick and accident benefit is, in general, an amount furnished in the event of illness or personal injury to or on behalf of members or their dependents. For example, a sick and accident benefit includes an amount provided under a plan to reimburse a member for amounts he expends because of illness or injury, or for premiums which he pays to a medical benefit program such as Medicare. Sick and accident benefits may also be furnished in noncash form, such as benefits in the nature of clinical care, services by visiting nurses, and transportation furnished for medical care.

(iii). Other Benefits. The term *other benefits* includes only benefits furnished to members or their dependents which are similar to life, sick and accident benefits. A benefit is similar to a life, sick or accident benefit if it is intended to safeguard or improve the health of the employee or to protect against a contingency which interrupts earning power. Thus, paying vacation benefits, subsidizing recreational activities such as athletic leagues, and providing vacation facilities are considered *other benefits* since such benefits protect against physical or mental fatigue and accidents or illness which may result therefrom. Severance payments or supplemental unemployment compensation benefits paid because of a reduction in force or temporary layoff are *other benefits* since they protect the employee in the event of interruption

of earning power. However, severance payments at a time of mandatory or voluntary retirement and benefits of the type provided by pension, annuity, profit-sharing, or stock bonus plans are not *other benefits* since their purpose is not to protect in the event of an interruption of earning power. Furthermore, the term *other benefits* does not include the furnishing of automobile or fire insurance or the furnishing of scholarships to the members' dependents.

iv. Inurement to the Benefit of Any Private Shareholder or Individual. No part of the net earnings of the organization may inure to the benefit of any private shareholder or individual other than through the payment of benefits described in §308.B.14.b.iii. The disposition of property to, or the performance of services for, any person for less than its cost (including the indirect costs) to the association, other than for the purpose of providing such a benefit, will constitute inurement. Further, the payment to any member of disproportionate benefits will not be considered a benefit within the meaning of §308.B.14.b.iii even though the benefit is of the type described in §308.B.14.b.iii. For example, the payment to highly compensated personnel of benefits which are disproportionate in relation to benefits received by other members of the association will constitute inurement. However, the payment to similarly situated employees of benefits which differ in kind or amount will not constitute inurement if such benefits are paid pursuant to objective and reasonable standards. For example, two employees who are similarly situated while employed receive unemployment benefits which differ in kind and amount. These unemployment benefits will not constitute inurement if the reason for the larger payment to the one employee is to provide training for that employee to qualify for reemployment and the other employee has already received such training. Furthermore, the rebate of excess insurance premiums based on experience to the payor of the premium, or a distribution to member-employees upon the dissolution of the association, will not constitute inurement. However, the return of contributions to an employer upon the dissolution of the association will constitute inurement.

v. Meaning of the term *income*. The requirement of R.S. 47:608(14) that 85 percent of the income of a voluntary employees' beneficiary association consist of amounts collected from members and amounts contributed by the employer for the sole purpose of making payment of the benefits described in §308.B.14.b.iii (including meeting the expenses of the association) assures that not more than a limited amount (15 percent) of an association's income is from sources such as investments, selling goods, and performing services, which are foreign to what must be the principal source of the association's income, i.e., the employees. Therefore, the term *income* as used in R.S. 47:608(14) means the gross receipts of the organization for the taxable year, including income from tax-exempt investments (but exclusive of gifts and donations) and computed without regard to losses and expenses paid or incurred for the taxable year. The term *income* does not include the return to the association of an amount previously expended. Thus, for example, rebates of insurance premiums paid in excess of actual insurance costs do not constitute income for this purpose. In order to be an amount collected from a member, it must be collected as a payment, such as

dues, qualifying the member to receive an allowable benefit, or as a payment for an allowable benefit actually received. For example, if the association furnishes medical care in a hospital operated by it for its members, an amount received from the member as payment of a portion of the hospital costs is an amount collected from such a member. However, an amount paid by an employee as interest on a loan made by the association is not an amount collected from a member since the interest is not an amount collected as payment for an allowable benefit received. For the same reason, gross receipts collected by the association as a result of employee purchases of work clothing from an association-owned store, or employee purchases of food from an association-owned vending machine, are not amounts collected from members. Amounts collected from members or amounts contributed to the association by the employer of the members are not considered gifts or donations.

vi. Record-Keeping Requirements

(a). In addition to such other records which may be required, every organization described in R.S. 47:608(14) must maintain records indicating the amount of benefits paid by such organization to each member. If the organization is financed, in whole or in part, by amounts collected from members, the organization must maintain records indicating the amount of each member's contribution.

(b). A supplemental unemployment compensation benefit plan may also qualify for exemption under the provisions of R.S. 47:608(14).

15. Teachers' Retirement Fund Associations. Teachers' retirement fund associations are exempt from the corporation franchise tax only if:

a. they are of a purely local character whose activities are confined to a particular community, place, or district, irrespective of political subdivisions, but if the activities are limited only by the borders of a state, it cannot be considered to be purely local in character;

b. its income consists solely of amounts received from public taxation, assessments upon the teaching salaries of members, and income from investments; and

c. no part of its net earnings inures (other than through the payment of retirement benefits) to the benefit of any private shareholder or individual.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:608.

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), repromulgated by the Department of Revenue, Policy Services Division, LR 30:

**§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 foreign 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. In the case of a mere change in the name or change in the state of incorporation, the tax shall be determined and paid as if the change had not occurred.

E. For provisions relating to newly taxable corporations, see R.S. 47:611.

F. For provisions relating to requests for extensions of time within which to file the report required by this Chapter, see R.S. 47:612.

G. In the case of mergers which have an effective time and date of 12 midnight of the last day of the merged corporation's accounting period which coincides with the last day of the surviving corporation's accounting period, the surviving corporation shall include the assets of the merged corporation with its assets in computing the ratios of property and assets for the purpose of determining the amount of tax due for the year following the date of the merger.

H. If the surviving corporation was not previously subject to the tax, it shall pay the minimum tax for the accounting period within which such merger date occurs as required of newly taxable corporations under the provisions of R.S. 47:611.

**AUTHORITY NOTE:** Promulgated in accordance with 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 28:97 (January 2002), LR 30:

### **§311. Newly Taxable Corporations**

A. Every corporation shall pay only the minimum tax in the first accounting period or fraction thereof in which it becomes subject to the tax. It is immaterial whether the corporation became liable for the tax on the first day or the last day of the accounting period regularly used by the taxpayer in keeping its books; the minimum tax is due for

that accounting period. The tax accrues immediately upon the corporation's becoming subject thereto.

B. The tax for all accounting periods subsequent to the period in which the corporation became subject to the tax accrues on the first day of the period and is based on the previous period's closing.

C. In all instances, the tax is payable on or before the fifteenth day of the fourth month following the month in which the tax accrues.

**AUTHORITY NOTE:** Promulgated in accordance with 47:611.

**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), repromulgated by the Department of Revenue, Policy Services Division, LR 30:

### **§312. Extension of Time for Filing Return and Paying the Tax**

A. When such application for an extension of time within which to file the report required by this Chapter has been filed, the secretary of Revenue and Taxation may grant such extension for a period not to exceed six months from the due date of the report prescribed by R.S. 47:609 and R.S. 47:611. In any case in which the taxpayer has filed a request for an automatic extension of time within which to file its federal income tax return with the U.S. Internal Revenue Service, a copy of the automatic extension request attached to the report required by this Chapter will be accepted by the secretary as an application filed under this Section, and an extension equal to that granted by the federal government will be granted by Louisiana.

B. The granting of an extension of time within which to file the report required by this Chapter does not automatically grant an extension of time within which the tax shall be paid, and the secretary may require payment of the estimated amount of tax due as a condition to granting the report filing extension.

C. Whenever an extension has been granted with respect to payment of the tax, interest accrues thereon for the period from the payment date prescribed by R.S. 47:609 to the date on which the tax is paid.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 47:612.

**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), repromulgated by the Department of Revenue, Policy Services Division, LR 30:

### **§313. Fiscal Year; Accounting Period**

A. *Fiscal year* means an accounting period of 12 months ending on the last day of any month other than December. In the case of a taxpayer that, in keeping its books, regularly uses a 52- to 53-week period permitted under R.S. 47:91(F), the secretary of Revenue and Taxation may permit the use of such accounting period for purposes of this Chapter, provided that in any case in which the effective date or the applicability of any provisions of this Chapter is expressed in terms of taxable years beginning or ending with reference to a specified date which is the first or last day of a month, such 52- or 53-week accounting period shall be treated:

1. as beginning with the first day of the calendar month beginning nearest to the first day of such taxable period; or

2. as ending with the last day of the calendar month ending nearest to the last day of such taxable period, as the case may be.

B. However, no fiscal year will be recognized unless, before its close, it was definitely established as an accounting period and the books of the taxpayer were kept accordingly.

C. Once an accounting period has been established, no change from that period shall be made without the approval of the secretary of Revenue and Taxation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:613.

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), repromulgated by the Department of Revenue, Policy Services Division, LR 30:

### §317. Refunds and Credits

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:601-617 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), repealed by the Department of Revenue, Policy Services Division, LR 30:

### Family Impact Statement

The proposed repeal of LAC 61:I. 317, regarding interest on overpayments of corporation franchise tax and the repromulgation of LAC 61:I. 301-313, which reaffirms the secretary's rule making authority, 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 44098, Baton Rouge, LA 70804-4098. All comments must be received no later than 4:30 p.m. Wednesday, January 28, 2004. A public hearing will be held on Thursday, January 29, 2004 at 10 a.m. in the River Room Conference Room on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA.

Cynthia Bridges  
Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Corporation Franchise Tax

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

Implementation of this proposed repeal of LAC 61:I.317, and the repromulgation of LAC 61:I.301-313 will result in no expenditures for the department. The rule to be repealed pertains to corporation franchise tax refunds and credits. It is obsolete and in conflict with the statute as amended. The repromulgation of the corporation franchise tax regulations reaffirms the secretary's rule making authority with respect to the corporation franchise tax. There will be no impact on local government costs.

#### 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 will be no directly affected persons or non-governmental groups. Current compliance requirements will not change.

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

This proposed regulation should have no effect on competition or employment.

Cynthia Bridges  
Secretary  
0312#025

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Revenue Policy Services Division

#### Corporation Income Tax (LAC 61:I.1115-1189)

Under the authority of R.S. 47:287.2-287.785 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 repromulgate LAC 61:I.1115-1189.

Louisiana Administrative Code 61:I.1115-1189 are being repromulgated to reaffirm the Secretary of Revenue's rulemaking authority. In *Collector of Revenue v. Mossler Acceptance Co.*, 139 So.2d 263 (La.App. 1<sup>st</sup> Cir. 1962), the First Circuit held that regulations defining the terms used in the tax statutes went beyond the secretary's authority in R.S. 47:1511 to promulgate rules regarding "the proper administration and enforcement" of the tax statutes. Since the Mossler decision, R.S. 47:1511 was amended removing the language that the First Circuit determined was a limitation on the secretary's rulemaking authority. Although no taxpayer has relied on Mossler to refute the secretary's rulemaking authority, repromulgation of Sections 1115-1189 will reaffirm the secretary's authority.

**Title 61  
REVENUE AND TAXATION**

**Part I. Taxes Collected and Administered by the  
Secretary of Revenue**

**Chapter 11. Income: Corporation Income Tax**

**§1115. Modifications to Deductions from Gross Income  
Allowed by Federal Law**

A. Dividends Received by a Corporation. R.S. 47:287.73(C)(1) allows a deduction for dividends received by one corporation from another to the extent that the income from which the dividends are paid has been earned from Louisiana sources and has borne Louisiana income tax. The amount of the income from which the dividends are paid that has borne Louisiana income tax shall be determined by relating the Louisiana net taxable income to the total book net income of the declaring corporation, less adjustments.

B. Example. During the calendar year 1986, ABC Inc., a Louisiana corporation, derived a total Louisiana net taxable income of \$10,000 and \$10,000 of net income from Texas. The depreciation expense deducted on the tax return exceeds depreciation expense deducted on the books by \$10,000. The depletion expense deducted on the tax return exceeds depletion expense deducted on the books by \$10,000 which is a noncompensating difference. The total net income determined from the books of the corporation is \$60,000. The book income includes \$20,000 of interest on U.S. obligations that is not included in taxable income. On January 7, 1987, the corporation paid a dividend of \$30,000. The allowable deduction to recipient corporations is computed as follows:

Items	Per Books	Per Louisiana Income Tax Return
Net Income	\$60,000	\$10,000
Less: Excess of tax depreciation over book depreciation	\$10,000	
Adjusted Net Income	\$50,000	\$10,000
Ratio		<u>20%</u>
Dividend Paid		<u>\$30,000</u>
Allowable Deduction		<u>\$6,000</u>

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.73.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:95 (February 1988), repromulgated by the Policy Services Division, LR 30:

**§1122. Taxes Not Deductible**

A. General. R.S. 47:287.83 provides that federal income tax levied on net income upon which no Louisiana income tax has been incurred, or upon which, for any reason whatsoever, no Louisiana income tax will be paid, is not deductible.

**B. Federal Alternative Minimum Tax**

1. Federal alternative minimum tax attributable to tax preferred items such as, but not limited to, accelerated depreciation, depletion, and intangible drilling and development cost, is not deductible. The nondeductible portion of federal alternative minimum tax after credits is the excess of the total federal alternative minimum tax after credits over the deductible portion of federal alternative minimum tax attributed to Louisiana net income.

2. Federal alternative minimum tax on federal alternative minimum taxable net income from sources other than tax preferred items is deductible to the extent the alternative minimum taxable net income is taxed by Louisiana. The deductible portion of federal alternative minimum tax attributable to Louisiana apportionable and allocable net income, which is taxed at alternative minimum taxable income rates, is the result obtained by multiplying the federal alternative minimum tax after credits by a fraction, the numerator of which is Louisiana apportionable and allocable net income which is taxed at alternative minimum taxable net income rates and the denominator of which is the excess of federal alternative minimum taxable income over regular federal taxable income. The determination of the amount of deductible and nondeductible federal alternative minimum tax is illustrated by the following example.

C. Example. The ABC Corporation earns 100 percent of its net income in Louisiana. The ABC Corporation is on a fiscal year beginning July 1, 1987 and ending June 30, 1988. ABC's regular federal taxable income for fiscal year ending June 30, 1988, was \$200,000 and regular federal income tax was \$56,250. Book net income before federal income tax was \$450,000. Of the total difference between book and tax net income, \$150,000 was due to the tax preferred item, excess tax depreciation expense over book depreciation expense, and \$100,000 was due to interest income earned on municipal bonds exempt from regular federal income tax, but not from Louisiana income tax. Louisiana apportionable and allocable net income before the federal income tax deduction is \$300,000.

**Computation of Alternative Minimum Taxable Income**

1. Regular federal taxable income	200,000
2. Income from tax preferred items (excess tax depreciation over book depreciation expense)	150,000
3. Book income adjustment (interest on municipal bonds issued by a state or its political subdivisions other than Louisiana: 100,000 multiplied by 50%)	
4. Alternative minimum taxable income (AMTI, the sum of lines 1, 2 and 3)	<u>400,000</u>

**Computation of Alternative Minimum Tax**

5. Alternative minimum taxable income (ATMI from line 4)	\$ 400,000
6. Less exemption	\$ -0-
7. AMTI after exemption	\$ 400,000
8. Federal alternative minimum tax rate	\$ 20%
9. Tentative alternative minimum tax rate (line 7 multiplied by line 8)	\$ 80,000
10. Less credits	\$ -0-
11. Less regular federal income tax (after credits)	<u>\$ 56,250</u>
12. Alternative minimum tax (AMT line 9 minus line 11)	<u>\$ 23,750</u>

**Computation of Alternative Minimum Tax Attributable to Louisiana Net Income Which is Taxed at AMTI Rates**

13. Louisiana allocable and apportionable net income	\$ 300,000
14. Less:	
a. Louisiana net income which is taxed at federal ordinary and alternative capital gain tax rates	\$200,000
b. Louisiana net income which is not taxed by federal (interest on municipal bonds \$100,000 multiplied by 50%)	\$ 50,000
15. Louisiana net income which is taxed at AMTI rates (line 13 minus line 14)	\$ 50,000
16. Excess of AMTI over regular federal taxable income (\$400,000 minus \$200,000)	\$ 200,000

17. Ratio (Louisiana net income which is taxed at AMTI rates over the excess of AMTI over regular federal taxable income, line 15 divided by line 16)	\$ 25%
18. AMT (from line 12)	\$ 23,750
19. AMT deductible (the amount attributable to Louisiana net income which is taxed at AMTI rates, line 18 multiplied by line 17)	\$ 5,938
20. AMT not deductible (line 18 minus line 19)	<u>\$ 17,812</u>

D. Net Operating Loss Carryback. Federal income tax deducted from Louisiana net income in taxable periods to which a net operating loss is carried back shall be computed to determine the amount of federal income tax attributable to net income which is taxed by the federal but which is not taxed by Louisiana as a result of a net operating loss

E. Examples:

**Example 1**

The ABC Corporation does not include its net income in a consolidated federal income return as provided by Section 1501 of the *Internal Revenue Code*. ABC files state and federal income tax returns on a calendar year basis. ABC Corporation's net income and other financial information used to file state and federal income tax returns for the four-year period ending December 31, 1987, include the following.

Taxable Periods	1984	1985	1986	1987
Federal net income or (loss)	\$ 2,000,000	\$ 4,000,000	\$ 5,000,000	\$ 600,000
Louisiana net income or (loss)	1,200,000	1,800,000	3,000,000	(1,000,000)
Federal income tax	800,000	1,600,000	2,000,000	240,000
Federal income tax deducted from Louisiana net income	467,280	706,240	1,171,200	-0-
State income tax deducted from federal net income but not Louisiana net income	57,500	86,000	144,000	-0-
Income tax apportionment ratio	55%	40%	50%	50%
Louisiana taxable income	732,720	1,093,760	1,828,800	-0-

ABC Corporation elects to carry their 1987 Louisiana net operating loss back to 1984 pursuant to R.S. 47:287.86. Federal income tax attributable to net income which is not taxed by Louisiana as a result of the net operating loss carryback is computed as follows.

1. Louisiana net income, 1984	\$ 1,200,000
2. Less: State income tax deduction allowed by the federal but not Louisiana	\$57,500
Multiplied by the income tax apportionment ratio	55%
Balance	\$31,625
Louisiana net operating loss, 1987	\$1,000,000
Adjustment	\$ 1,031,625
3. Louisiana net income after deducting the net operating loss carryback (line 1 minus line 2)	\$ 168,375
4. Federal net income, 1984	\$ 2,000,000
5. Ratio (line 3 divided by line 4)	8.4188%
6. Federal income tax, 1984	\$ 800,000
7. Allowable federal income tax deduction after the Louisiana net operating loss carryback (line 6 multiplied by line 5)	\$ 67,350
8. Federal income tax deducted from Louisiana net income before the net operating loss carryback	\$ 467,280
9. Federal income tax attributable to net income which is not taxed by Louisiana (line 8 minus line 7)	\$ 399,930
10. Louisiana net operating loss before deduction for federal income tax attributable to net income which is not taxed by Louisiana	\$ 1,000,000
11. Federal income tax attributable to net income which is not taxed by Louisiana (from line 9)	\$ 399,930
12. Louisiana net operating loss after deduction for federal income tax attributable to net income which is not taxed by Louisiana (line 10 minus line 11)	\$ 600,070

**Example 2**

Assume the same facts in Example 1 except that the ABC Corporation sustained a \$2,000,000 federal net operating loss in 1987 and elects to carry the federal loss back to 1984. Federal income tax after the net operating loss carryback is zero.

1. Louisiana net income, 1984	\$ 1,200,000
2. Less: State income tax deduction allowed by the federal but not Louisiana	\$57,500
Multiplied by the income tax apportionment ratio	55%
Balance	\$31,625
Louisiana net operating loss, 1987	\$1,000,000
Adjustment	\$ 1,031,625
3. Louisiana net income after deducting the net operating loss carryback (line 1 minus line 2)	\$ 168,375
4. Federal net income, 1984	\$ 2,000,000

5. Federal net operating loss carryback from 1987		\$ (2,000,000)
6. Federal net income after federal net operating loss carryback from 1987 (line 4 minus line 5)		-0-
7. Ratio (line 3 divided by line 6)		-0-
8. Federal income tax after the federal net operating loss carryback		-0-
9. Allowable federal income tax deduction after the netoperating loss carryback (line 8 multiplied by line 7)		-0-
10. Federal income tax deducted from Louisiana net income before the net operating loss carryback		\$ 467,280
11. Federal income tax attributable to net income which is not taxed by Louisiana (line 10 minus line 9)		\$ 467,280
12. Louisiana net operating loss before deduction for federal income tax attributable to net income which is not taxed by Louisiana		\$ 1,000,000
13. Federal income tax attributable to net income which is not taxed by Louisiana (from line 11)		\$ 467,280
14. Louisiana net operating loss after deduction for federal income tax attributable to net income which is not taxed by Louisiana (line 12 minus line 13)		\$ 532,720

### Example 3

Assume the same facts in Examples 1 and 2 except that the Louisiana and federal net operating losses in 1987 are \$350,000 and \$1,800,000 respectively. Federal income tax after the net operating loss carryback is \$80,000.

1. Louisiana net income, 1984		\$ 1,200,000
2. Less: State income tax deduction allowed by the federal but not Louisiana	\$57,500	
Multiplied by the income tax apportionment ratio	55%	
Balance	\$31,625	
Louisiana net operating loss, 1987	\$350,000	
Adjustment		\$ 381,625
3. Louisiana net income after deducting the net operating loss carryback (line 1 minus line 2)		\$ 818,375
4. Federal net income, 1984		\$ 2,000,000
5. Federal net operating loss carryback from 1987		\$ (1,800,000)
6. Federal net income after federal net operating loss carryback from 1987 (line 4 minus line 5)		\$ 200,000
7. Ratio (line 3 divided by line 6)		100%
8. Federal income tax after the federal net operating loss carryback		\$ 80,000
9. Allowable federal income tax deduction after the netoperating loss carryback (line 8 times line 7)		\$ 80,000
10. Federal income tax deducted from Louisiana net income before the net operating loss carryback		\$ 467,280
11. Federal income tax attributable to net income which is not taxed by Louisiana, 1984 (line 10 minus line 9)		\$ 387,280
12. Louisiana net operating loss before deduction for federal income tax attributable to net income which is not taxed by Louisiana		\$ 350,000
13. Federal income tax attributable to net income which is not taxed by Louisiana (from line 11)		\$ 387,280
14. Louisiana net operating loss after deduction for the amount of federal income tax attributable to net income which is not taxed by Louisiana (line 12 minus line 13)		-0-
15. Additional Louisiana taxable income for 1987 due to excess of federal income tax attributable to net income which is not taxed by Louisiana over the Louisiana net operating loss (line 13 minus line 12)		\$ 37,280

F. Definitions. For the purposes of this Section, alternative minimum tax, regular federal income tax, alternative tax on capital gains, and regular tax on ordinary net income are defined as provided in §1123.F.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.83.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:96 (February 1988), repromulgated by the Policy Services Division, LR 30:

#### §1123. Federal Income Tax Deduction

A. General. R.S. 47:287.85(C) permits corporations to claim as a deduction in computing net income that portion of the federal income tax levied with respect to the Louisiana net income, which is applicable to the year for which the Louisiana return is filed, regardless of the method of accounting utilized (cash, accrual, etc.). For determination of the deductible amount of federal alternative minimum tax attributable to Louisiana net income, refer to §1122. When a corporation includes its net income in a consolidated federal income tax return, total federal income tax for the purpose of this Section shall be the amount determined pursuant to §1123.E.

B. Computations. The deductible portion of the federal income tax, the tax attributable to Louisiana income, is the sum of the amounts determined in §1123.B.1 and 2.

1. The deductible portion of federal income tax attributable to Louisiana apportionable and allocable net income which is taxed at alternative capital gain rates is the result obtained by multiplying the federal income tax which is calculated at alternative capital gain rates by a fraction, the numerator of which is Louisiana apportionable and allocable net income which is taxed at alternative capital gain rates and the denominator of which is federal net income which is taxed at alternative capital gain rates.

2. The deductible portion of federal income tax attributable to Louisiana apportionable and allocable net income, less adjustment for the net operating loss deduction if applicable, which is taxed at ordinary rates, is the result obtained by multiplying the federal income tax which is calculated at ordinary rates by a fraction, the numerator of which is Louisiana apportionable and allocable net income, less adjustment for the net operating loss deduction if applicable, which is taxed at ordinary rates and the denominator of which is federal net income which is taxed at ordinary rates.

C. Numerator. The numerator to be used in §1123.B shall be determined as set forth in §1123.C.1 and 2.

1. The numerator in the case of Louisiana net income which is taxed by federal at alternative capital gain rates is the sum of:

a. the amount of net apportionable and net allocable income, subject to tax at alternative capital gain rates for federal income tax purposes, apportioned and allocated to Louisiana;

b. any compensating item of income attributable to Louisiana and which is taxed by federal at alternative capital gain rates but which is not taxed by Louisiana; and

c. any compensating loss item of income, of a character which would be allowable by federal in arriving at income which is taxed at alternative capital gain rates, attributed to and allowed by Louisiana but not allowed by federal, reduced by the sum of:

d. any compensating item of income, of a character which would be subject to tax by federal at alternative capital gain rates, attributed to and taxed by Louisiana but which is not taxed by federal;

e. any compensating loss item of income attributable to Louisiana and allowed by federal in arriving at income which is taxed at alternative capital gain rates but not allowed by Louisiana; and

f. any excess of the sum of:

i. any noncompensating loss item of income attributable to Louisiana and allowed by federal in arriving at income which is taxed at alternative capital gain rates, but not allowed by Louisiana; and

ii. any noncompensating item of income, of a character which would be subject to tax by federal at alternative capital gain rates, attributed to and taxed by Louisiana but which is not taxed by federal; over

iii. any noncompensating loss item of income, of a character which would be allowable in arriving at income which is taxed at alternative capital gain rates by federal, attributed to and allowed by Louisiana but not allowed by federal.

2. The numerator in the case of Louisiana net income which is taxed by federal at ordinary rates is the sum of:

a. the amount of net apportionable and net allocable income, less adjustment for the net operating loss deduction if applicable, subject to tax at ordinary rates for federal income tax purposes, apportioned and allocated to Louisiana;

b. any compensating item of gross income attributable to Louisiana and taxed by federal at ordinary rates but which is not taxed by Louisiana; and

c. any compensating item of deduction, of a character which would be allowable by federal in arriving at income which is taxed at ordinary rates, attributed to and allowed by Louisiana but not allowed by federal, and not attributable to any item of gross income taxable by Louisiana but not by federal; reduced by the sum of:

d. any compensating item of gross income, which would be subject to tax by federal at ordinary rates, attributed to and taxed by Louisiana but which is not taxed by federal;

e. any compensating item of deduction attributable to Louisiana and allowed by federal in arriving at income which is taxed at ordinary rates but not allowed by Louisiana;

f. any excess of the sum of:

i. any noncompensating item of deduction attributable to Louisiana and allowed by federal in arriving at income which is taxed at ordinary rates, but not allowed by Louisiana, and not attributable to any item of gross income taxable by federal but not by Louisiana; and

ii. any noncompensating item of gross income, of a character which would be subject to tax at ordinary rates, attributed to and taxed by Louisiana but which is not taxed by federal; over

iii. any noncompensating item of deduction, which would be allowable by federal in arriving at income which is taxed at ordinary rates, attributed to and allowed by Louisiana but not allowed by federal, and not attributable to any item of gross income taxable by Louisiana but which is not by federal.

D. Example. The following example illustrates these principles. Facts: The income reported and deductions claimed by ABC, Inc., a Delaware corporation having its commercial domicile in Louisiana and having several places of business outside this state, are reflected below. The difference between the federal depreciation deduction and the depreciation deducted in arriving at total net income is a compensating item. One-half of the total royalty income, depletion, and other expenses related thereto are attributable to a Louisiana oil property. There are \$15,000 in expenses attributable to the royalty income in addition to the depletion deduction. The portion of net income from royalties allocable to Louisiana is \$25,000. Of the total profit from the sale of capital assets, \$25,000 is allocable to Louisiana.

Items	----- RETURNS -----	
	Federal	Louisiana
<b>Income</b>		
Gross profit from sales	\$ 1,400,000	\$ 1,400,000
Royalties	100,000	100,000
Interest—Bond, State of Mississippi	-0-	5,000
Interest—Bond, U.S. Government	5,000	-0-
Long-term gain from sale of capital assets	100,000	100,000
Total Income	<u>\$ 1,605,000</u>	<u>\$ 1,605,000</u>
<b>Deductions</b>		
Louisiana income tax	10,000	-0-
Officers' compensation	50,000	50,000
Repairs	10,000	10,000
Interest	15,000	15,000
Bad debts	5,000	5,000
Depletion	27,500	35,000
Depreciation	25,000	35,000

Contributions		5,000	5,000
Other deductions		350,000	350,000
Total deductions		<u>\$ 497,500</u>	<u>\$ 505,000</u>
Net Income		<u>\$ 1,107,500</u>	<u>\$ 1,100,000</u>
Federal income tax—			
Ordinary income	\$518,400		
Capital gains	25,000		
Total	<u>\$543,400</u>		

1. The taxpayer files on the apportionment basis and the following computation discloses the net allocable and net apportionable income derived from Louisiana sources.

Total net income			\$ 1,100,000
Deduct allocable income			
Profit from sale of capital assets	\$ 100,000		
Interest—Bonds, State of Mississippi	5,000		
Net royalty income	<u>50,000</u>		<u>\$ 155,000</u>
Net income for apportionment			<u>\$ 945,000</u>
Net income apportioned to Louisiana (20% of \$945,000)			<u>\$ 189,000</u>
Add Louisiana allocable income			
Interest	\$ 5,000		
Profit from sale of capital assets	25,000		
Royalty income	<u>25,000</u>		<u>55,000</u>
Total Louisiana apportionable and allocable income			<u>\$ 244,000</u>

## 2. Computations

	Ordinary Rates	Alternative Capital Gains Rates
Net income apportioned and allocated to Louisiana	\$ 219,000	\$ 25,000
Add: Compensating items of income attributable to Louisiana and taxed by federal but which is not taxed by Louisiana	-0-	-0-
Compensating items of deduction attributed to Louisiana and allowed by Louisiana but not allowed by federal depreciation (20% of \$10,000)	2,000	-0-
Total:	<u>\$ 221,000</u>	<u>\$ 25,000</u>
Deduct: Compensating items of income attributed to and taxed by Louisiana but not taxed by federal	-0-	
Compensating items of deduction attributable to Louisiana and allowed by federal but not allowed by Louisiana	-0-	-0-
TOTAL:	<u>\$ 221,000</u>	<u>\$ 25,000</u>
Excess of the sum of noncompensating items of deduction attributable to Louisiana and allowed by federal but not allowed by Louisiana		
Louisiana income tax (20% of \$10,000)*	\$ 2,000	
Noncompensating items of gross income attributed to and taxed by Louisiana but which is not taxed by federal		
Bond interest—State of Mississippi	5,000	
Total	<u>\$ 7,000</u>	
Over		
Noncompensating items of deduction attributed to and allowed by Louisiana but not allowed by federal depletion on oil royalties	\$ 3,750	
Excess	\$ 3,250	-0-
Louisiana net income which is taxed by federal	<u>\$ 217,750</u>	<u>\$ 25,000</u>
Federal net income	\$ 1,007,500	\$ 100,000
	0	
Ratio	21.61%	25.00%
Federal income tax liability	\$ 518,400	\$ 25,000
Deductible federal income tax		
21.61% of \$518,400	<u>\$ 112,026</u>	
25% of \$25,000		\$ 6,250
Grand Total		<u>\$ 118,276</u>

\* Where the separate method of reporting is used, the entire amount of Louisiana income tax deducted in the federal return is attributed to Louisiana under this item.

E. Consolidated Returns. When a corporation includes its net income in a consolidated federal income tax return, the portion of the consolidated federal income tax after credits attributable to such corporation shall consist of the sum of the amounts determined in §1123.E.1, 2, and 3:

1. the consolidated regular tax on ordinary net income multiplied by the percentage determined by a fraction, the numerator of which is regular tax on ordinary net income of each member of the consolidated group computed on a separate return basis and the denominator of which is regular tax of all members of the group so computed; plus

2. the consolidated alternative tax on net capital gains multiplied by the percentage determined by a fraction, the numerator of which is alternative tax on net capital gains of each member of the consolidated group computed on a separate return basis and the denominator of which is alternative tax on net capital gains of all members of the group so computed; plus

3. the consolidated alternative minimum tax multiplied by the percentage determined by a fraction, the numerator of which is alternative minimum tax of each member of the consolidated group computed on a separate return basis and the denominator of which is alternative minimum tax of all members of the group so computed.

#### F. Definitions

*Alternative Minimum Tax?* the excess of the federal tentative minimum tax after credits for the tax year, over the federal regular tax after credits for the taxable year.

*Alternative Tax on Capital Gains?* the net tax liability imposed by Section 1201(a)(2) of the *Internal Revenue Code* on net capital gains, less credits.

*Compensating Item?* any difference in any deduction or item of income for a particular year arising solely by reason of the fact that the item is accounted for in different periods for federal and Louisiana income tax purposes. However, if a larger federal income tax deduction would be allowable were an item treated as a compensating item than would be allowable were the item treated as a noncompensating item, the item is a compensating item only to the extent that it is equal to the result obtained by multiplying the difference in the item by a fraction determined as follows:

a. in the case of a deduction:

i. the numerator shall be the excess, if any, of the amount of the item allowed by federal over the amount allowed by Louisiana in each prior year in which the federal allowance exceeded the Louisiana allowance and which has been taken into consideration fully in determining the allowable federal income tax deduction for Louisiana income tax purposes for such prior years, plus the excess, if any, of the amount of the item to be allowed by federal over the amount to be allowed by Louisiana in each future year in which the federal allowance will exceed the Louisiana allowance and which reasonably can be expected to be taken into consideration in determining the allowable federal income tax deduction for Louisiana income tax purposes in such future years;

ii. the denominator shall be the total of all excesses of the amount of the item allowed by federal over the amount of the item allowed by Louisiana in each prior year and of all excesses of the amount of the item to be allowed by federal over the amount to be allowed by Louisiana in each future year;

b. in the case of an item of income:

i. the numerator shall be the excess, if any, of the amount of the item taxed by Louisiana over the amount taxed by federal in each prior year in which the amount taxed by Louisiana exceeded the amount taxed by federal and which has been fully taken into consideration in determining the allowable federal income tax deduction for Louisiana income tax purposes for such prior years, plus the excess, if any, of the amount of the item to be taxed by Louisiana over the amount to be taxed by federal in each future year in which the amount to be taxed by Louisiana

will exceed the amount to be taxed by federal and which can reasonably be expected to be fully taken into consideration in determining the allowable federal income tax deduction in such future years for Louisiana income tax purposes;

ii. the denominator shall be the total of all excesses of the amount of the item taxed by Louisiana over the amount taxed by federal in each prior year and of all excesses of the amount of the item to be taxable by Louisiana over the amount to be taxable by federal in each future year.

*Income Taxed?* income included in taxable income, regardless of whether tax has been paid thereon.

*Item of Deduction?* each individual deduction rather than each category of deduction, and includes loss items of gross income. For example, the amount of depreciation on a particular property, as distinguished from the amount of depreciation on all properties of the taxpayer, would be an item of deduction. Similarly, the term *item of income* means each amount of income rather than each category of income. The amount of a Louisiana item of income or deduction is the amount apportioned or allocated to Louisiana. Thus, where a taxpayer has a 10 percent apportionment ratio and has an item of deduction of \$10,000 allowed by Louisiana in arriving at apportionable net income but not allowed by federal, the amount of the Louisiana item is 10 percent of \$10,000 or \$1,000.

*Noncompensating Item?* any item of difference between federal and Louisiana income or deductions for a particular year other than a compensating item.

*Regular Federal Income Tax?* the sum of the tax defined in *regular tax on ordinary net income* and *alternative tax on capital gains*.

*Regular Tax on Ordinary Net Income?* the federal net tax liability imposed on net income after net income is reduced by the amount of net capital gain subject to alternative tax rates, less credits.

*Taken into Consideration Fully in Determining the Allowable Federal Income Tax Deduction for Louisiana Income Tax Purposes for Prior Years?* as used in this Section means fully used in reducing the amount of the federal income tax deduction for such prior years. The purpose of this provision is to allow an adjustment for an item which will increase the federal income tax deduction only to the extent that adjustments applicable to the item in prior years were used to decrease the federal income tax deduction. Similarly, the term *to be fully taken into consideration in determining the allowable federal income tax deduction in ... future years for Louisiana income tax purposes* means to be used fully in reducing the amount of the federal income tax deduction for such future years.

#### G. Special Rules

1. The computations prescribed in §1123.B are subject to the rules provided in R.S. 47:287.442. That is, the computations cannot have the effect of attributing refunds of federal income tax which arose on account of conditions or transactions occurring after the close of the taxable year, to any year other than that in which arose the transactions or conditions giving rise to the refund. Accordingly, appropriate changes shall be made when necessary to attribute the refund to the proper year.

2. Notwithstanding the definition provided in §1123.F. *Noncompensating Item* and *Compensating Item*,

deductions which are declared as allowable in the computation of Louisiana net income pursuant to R.S. 47:287.73(C)4 shall be treated as a compensating item of deduction for the purpose of computing the amount of federal income tax deduction under §1123.C.

3. The federal income tax deduction determined under §1123 must take into account R.S. 47:287.83 which provides in part that no federal income tax deduction shall be allowed on net income upon which no Louisiana income tax has been incurred, or upon which, for any reason whatsoever, no Louisiana income tax will be paid.

4. If the tax of any member computed on a separate return basis under §1123.E.1, 2, and 3 is less than zero, then for the purposes of §1123.E, such member's separate return tax shall be zero.

5. The secretary may adjust the consolidated federal income tax allocation formula prescribed in §1123.E when in his opinion such action is necessary to obtain a reasonable allocation and to clearly reflect Louisiana taxable income.

6. The sum of the net consolidated federal income tax attributed to all members of the consolidated group for the taxable period cannot exceed the amount of consolidated federal income tax paid to the U.S. government for the taxable period.

7. When the alternative tax rate on net capital gains is the same as the regular tax rate on ordinary net income reduced by net capital gains, consolidated regular tax on ordinary net income and alternative tax on capital gains, after credits, may be combined and then attributed to each member of the consolidated group.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.85.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:98 (February 1988), repromulgated by the Policy Services Division, LR 30:

#### §1128. Segregation of Items of Gross Income

A. For the purpose of applying rules for determining the amount of income earned within or derived from sources in Louisiana, all items of gross income must be divided into two general classes-allocable income and apportionable income. The various types of income constituting allocable income are set forth in R.S. 47:287.92(B), and the specific basis for allocating each of these types of income is prescribed in R.S. 47:287.93. Any income which does not fall within any of the types of allocable income as listed in the statute must be treated as apportionable income. When Louisiana net apportionable income is derived primarily from the business of making loans, refer to R.S. 47:287.95(E) and §1134.E for the determination of the Louisiana apportionment percent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.92.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:101 (February 1988), repromulgated by the Policy Services Division, LR 30:

#### §1130. Computation of Net Allocable Income from Louisiana Sources

A. R.S. 47:287.93 provides that items of gross allocable income or loss shall be allocated directly to the states within which such items of income are earned or derived.

1. Reserved.
2. Reserved.

3. Profits from sales or exchanges of property not made in the regular course of business requires that both profits and losses from such transactions be included in income allocated directly to the state in which the property had its situs at the time of the transaction. Whether a sale or exchange is a sale not made in the regular course of business is a factual determination required to be made with respect to each property sold which will take into consideration such factors as the frequency of sales of similar properties and the relationship of the particular sale to other business transacted by the taxpayer.

4. Dividends, profits from the sale or exchange of capital assets consisting of incorporeal property or rights, and interest, other than interest on customers' notes and accounts and interest on securities having their situs in Louisiana received from a controlled corporation by its parent, shall be allocated to the state in which the securities or credits have their situs. If the securities or credits have been so employed as to acquire a business situs, the place of business situs controls. In the absence of a business situs the place of commercial domicile controls in the case of a corporation. (For special rules governing the situs of stock canceled in corporate liquidations see R.S. 47:287.747.) These rules are subject to the exception that dividends upon stock having a situs in Louisiana received by a corporation from another corporation which is controlled by the former, through ownership of 50 percent or more of the voting stock of the latter, shall be allocated to the state or states in which is earned the income from which the dividends are paid, such allocation to be made in proportion to the respective amounts of such income earned in each state.

5. Royalties or similar revenue received for the use of patents, trademarks, copyrights, secret processes and other similar intangible rights shall be allocated to the state or states in which such rights are used. The use referred to is that of the licensee rather than that of the licensor.

Example: X Company, Inc., a Delaware corporation with its commercial domicile in California, owns certain patents relating to the refining of crude oil, which at all times were kept in its safe in California. During 1987, the X Company, Inc. entered into an agreement with the Y Corporation whereby that company was given the right to use the patents at its refineries in consideration for the payment of a royalty based upon units of production. The Y Corporation used the patents exclusively at its Louisiana refinery and paid the X Company, Inc. the amount of \$100,000 for such use. The entire royalty income of \$100,000 is allocable to Louisiana.

6. Income from construction, repair or other similar services is allocable. The phrase *other similar services* means any work which has as its purpose the improvement of immovable property belonging to a person other than the taxpayer where a substantial portion of such work is performed at the location of such property. For the purpose of this Section, mineral properties, whether under lease or not, constitute immovable properties. It is not necessary that the services rendered actually result in the improvement of the immovable property. Thus, the drilling of a well on a mineral lease is considered to have as its purpose the improvement of such property notwithstanding the fact that the well may have been dry. Examples of other similar services are: (a) landscaping services; (b) the painting of houses; (c) the removal of stumps from farm land; (d) the demolition of buildings.

7. Interest on securities and credits having a situs in Louisiana which is received by a corporation from another corporation controlled by the former through the ownership of 50 percent or more of the voting stock of the latter shall be allocated to the state or states in which the real and tangible personal property of the controlled corporation is located. The allocation shall be made on the basis of the ratio of the value of such property located in Louisiana to the value of such property within and without the state, determined as provided below. Whether the securities and credits have a situs in Louisiana shall be determined in accordance with the rules provided in §1130.A.4. For the purpose of this Section, real and tangible personal property includes all such property of the controlled corporation regardless of whether the property is idle or productive and regardless of the nature of the income which it produces.

a. Value of Property to be Used. For purposes of this Section, the value of property is cost to the taxpayer, less a reasonable reserve for depreciation, depletion, and obsolescence. The reserves reflected on the books of the taxpayer shall be deemed reasonable, subject to the right of the secretary to adjust the reserves when in his opinion such action is necessary to reflect the fair value of the property.

b. Average Values. For the purpose of this Section, the value of Louisiana real and tangible property and real and tangible property within and without the state shall be the average of such property at the beginning and close of the year, determined on a comparable basis.

B. From the total gross allocable income from all sources and from the gross allocable income allocated to Louisiana there shall be deducted all expenses, losses, and other deductions, except federal income taxes, allowable under the Louisiana income tax law which are directly attributable to such income plus a ratable portion of the allowable deductions, except federal income taxes, which are not directly attributable to any item or class of gross income.

1. Direct and indirect expenses attributed to allocable income from foreign sources for federal purposes are deductible in arriving at total net allocable income. Expenses sourced pursuant to federal law and regulations to allocable income from foreign sources are presumed to be attributed to such income.

2. The approach set forth in these regulations for the allocation and apportionment of interest expense is based upon the concept of the fungibility of money and requires that interest expense ordinarily be allocated to all of the taxpayer's income-producing activities and properties, regardless of the specific purpose for which the borrowing was incurred; it does not directly require allocation of interest deductions to income. That is, these regulations assume that:

- a. money is fungible in that all of the taxpayer's activities and properties need funds;
- b. the taxpayer's management has substantial flexibility in the source and use of its funds;
- c. the creditors of the taxpayer look to its general credit for repayment and thereby subject the money loaned to the risk of all of the taxpayer's activities; and
- d. the use of money for one purpose frees funds for other purposes. Accordingly, the reasoning continues, it is appropriate to associate part of the cost of money borrowed for a specific purpose to other purposes as well.

3. Interest expense which is applicable to investments which produce or which are held for the production of allocable income within and without Louisiana, shall be an item of deduction in determining net allocable income or loss. For the purpose of this Subsection, investments which produce or which are held for the production of allocable income include but are not limited to investments in and advances or loans to affiliated corporations whether or not such investments, advances, or loans produce any income. The amount of interest which is applicable to such investments shall be determined by multiplying the total amount of interest expense by a ratio, the numerator of which is the average value of investments which produce or which are held for the production of allocable income, and the denominator of which is the average value of all assets of the taxpayer. Although interest on U.S. government bonds and notes is not taxable and hence is not included in allocable income, the adjustment for the amount of interest expense applicable to investments producing such income is computed in the same manner as in the case of investments producing allocable income. Thus for convenience of computation such investments are grouped with investments producing or held for the production of allocable income. Whenever interest expense applicable to U.S. government bonds and notes which are held as temporary cash investments determined as provided above, exceeds the amount of income derived from such investments, the interest expense which is attributable to such investments shall be limited to the amount so derived. The amount of interest expense applicable to U.S. government bonds and notes which are held as temporary cash investments, determined without reference to the income therefrom, is that portion of the interest expense applicable to investments which produce or which are held for the production of allocable income, which the ratio of the average value of U.S. government bonds and notes held as temporary cash investments bears to the average value of all investments which produce or which are held for the production of allocable income.

4. Interest expense which is applicable to investments which produce or which are held for the production of Louisiana allocable income shall be an item of deduction in determining net allocable income or loss from Louisiana. Except when Louisiana apportionable income is determined on the separate accounting method, the amount of interest which is applicable to such investments shall be determined by multiplying the amount of interest expense allocated to total allocable investments, determined without reference to the income limitation in the case of investments in U.S. government bonds and notes held as temporary cash investments, by a ratio, the numerator of which is the average value of investments which produce or which are held for the production of Louisiana allocable income and the denominator of which is the average value of investments which produce or which are held for the production of allocable income within and without Louisiana. When Louisiana net apportionable income is determined on the separate accounting method, refer to §1132.C.1 for rules pertaining to the determination of the amount of interest expense applicable to Louisiana allocable income.

5. Value to be Used. For purposes of this Section, value means cost to the taxpayer, less a reasonable reserve for depreciation, depletion, and obsolescence. The reserves reflected on the books of the taxpayer shall be considered reasonable, subject to the right of the secretary to adjust the reserves when in his opinion such action is necessary to reflect the fair value of the property.

6. Average Value. For purposes of this Section, *average value* means the average of the value of the property at the beginning and at the close of the year.

7. Example: The XYZ Corporation has incurred interest expense in the amount of \$150,000 during the year 1986. During 1986 it derived total allocable income and Louisiana allocable income as follows:

	Louisiana	Total
*Interest on U.S. Treasury notes	\$ -0-	\$ 15,000
Dividends	-0-	5,000
Net rent income	10,000	10,000
Total	\$ 10,000	\$ 30,000

\*Treated as allocable income only for convenience in computing the applicable expense.

Its assets, liabilities, and net worth as of January 1, 1986, and December 31, 1986, were as follows:

	12-31-86		1-1-86	
Cash		\$ 100,000		\$ 150,000
Accounts receivable		780,000		800,000
Inventories		600,000		1,000,000
Stocks		100,000		100,000
U.S. Treasury Notes		420,000		650,000
Real estate (rental property)	100,000		100,000	
Less depreciation reserve	20,000		25,000	
Net		80,000		75,000
Real estate	5,000,000		5,125,000	
Less depreciation reserve	1,080,000		1,300,000	
Net		3,920,000		3,825,000
Total Assets		<u>\$ 6,000,000</u>		<u>\$ 6,600,000</u>
Liabilities:				
Accounts payable	\$ 400,000		\$ 1,000,000	
Bonds	3,000,000		3,000,000	
Total Liabilities		<u>\$ 3,400,000</u>		<u>\$ 4,000,000</u>
Net Worth:				
Capital stock	\$ 2,000,000		\$ 2,000,000	
Earned surplus	600,000		600,000	
Net worth		<u>\$ 2,600,000</u>		<u>\$ 2,600,000</u>
Total Liabilities and Net Worth		<u>\$ 6,000,000</u>		<u>\$ 6,600,000</u>

The amount of interest which is applicable to the investments which produce or are held for the production of allocable income within and without Louisiana is \$16,963.50, determined as follows:

	Allocable Investments		Total Assets	
	1-1-86	12-31-86	1-1-86	12-31-86
U.S. Treasury Notes	\$ 420,000	\$ 650,000	\$ 420,000	\$ 650,000
Rental property (net)	\$ 80,000	75,000	80,000	75,000
Stock	100,000	100,000	100,000	100,000
Other assets	0	0	5,400,000	5,775,000
Totals	<u>\$ 600,000</u>	<u>\$ 825,000</u>	<u>\$ 6,000,000</u>	<u>\$ 6,600,000</u>
1-1-86 totals		600,000		6,000,000
Totals		<u>\$ 1,425,000</u>		<u>\$ 12,600,000</u>
Average		<u>\$ 712,500</u>		<u>\$ 6,300,000</u>
Ratio				.11309
Interest expense allocated to total allocable assets (.11309 x \$150,000)				<u>\$ 16,963.50</u>

The amount of interest expense which is applicable to the investments which produce or are held for the production of Louisiana allocable income is \$1,845.12, determined as follows:

Interest expense allocated to Louisiana allocable assets (.10877 x \$16,963.50) \$ 1,845.12

Louisiana allocable assets (rental property):	
January 1, 1986	\$ 80,000
December 31, 1986	75,000
Total	<u>\$ 155,000</u>
Average	\$ 77,500
Total allocable assets - average	712,500
Ratio	10.877
Interest expense allocated to total allocable assets	\$ 16,963.50

8. Overhead expense attributable to items of gross allocable income derived from sources within and without Louisiana, except gross allocable income from rent of immovable or corporeal movable property or from construction, repair or other similar services, may be determined by any reasonable method which clearly reflects net allocable income from such items of income.

9. Overhead expense attributable to total gross allocable income derived from rent of immovable or corporeal movable property or from construction, repair, or

other similar services shall be deducted from such income for the purposes of determining net allocable income or loss from such items of income. The amount of overhead expense attributable to such income shall be determined by multiplying total overhead expense by the arithmetical average of two ratios, as follows.

a. The ratio of the amount of total gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services to total gross income derived from all sources.

b. The ratio of the amount of direct cost incurred in the production of total gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services to total direct cost incurred in the production of gross income from all sources.

10. Overhead expense attributable to Louisiana gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services shall be deducted from such income for the purposes of determining Louisiana net allocable income or loss from such items of income. The amount of overhead expense attributable to such income shall be determined by multiplying overhead expense attributed to total gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services by the arithmetical average of two ratios, as follows.

a. The ratio of the amount of Louisiana gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services to total gross allocable income from such sources.

b. The ratio of the amount of direct cost incurred in the production of Louisiana gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services to total direct cost incurred in the production of such income.

#### 11. Special Rules

a. When a corporation has a Louisiana commercial domicile and directly owns 50 percent or more of the voting stock of another corporation, the stock shall be included in Louisiana allocable assets in calculating the amount of interest expense attributable to investments which produce or which are held for the production of Louisiana allocable income, except stock owned in a corporation exempt from Louisiana corporation income tax. The stock shall be attributed to Louisiana allocable assets on the basis of the respective amounts of income earned within Louisiana to the income earned everywhere of the controlled corporation.

b. When a corporation has a Louisiana commercial domicile and advances interest bearing funds to a corporation of which it directly owns 50 percent or more of the voting stock, the receivable shall be included in Louisiana allocable assets in calculating the amount of interest expense attributable to investments which produce or which are held for the production of Louisiana allocable income. The receivable shall be attributed to Louisiana allocable assets on the same basis as the income from which the receivable is attributed to Louisiana. For the purpose of this Subparagraph, real and tangible personal property

includes all such property of the controlled corporation whether or not the property is idle or productive and regardless of the type of income which it produces.

c. Accounts or notes receivable resulting from advances on non-interest bearing funds from one corporation to another corporation are deemed to be assets producing or held for the production of allocable income for the purpose of determining the amount of interest expense applicable to investments which produce or which are held for the production of allocable income from sources within and without Louisiana.

d. When a corporation has a Louisiana commercial domicile, accounts or notes receivable resulting from advances of non-interest bearing funds from one corporation to another corporation shall not be included in the numerator of the interest expense allocation formula for the purpose of §1130.B.4, except when the secretary, in order to clearly reflect Louisiana apportionable and allocable net income, imputes interest income on such receivables.

e. For the purpose of §1130.B.11.a and b, direct ownership of 50 percent or more of the voting stock of a corporation constitutes control of that corporation.

f. The secretary is authorized to adjust the allocation of interest expense and/or overhead expense applicable to investments which produce or which are held for the production of allocable income within and without Louisiana if he determines that such adjustment is necessary in order to clearly reflect apportionable and allocable net income.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.93.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:101 (February 1988), repromulgated by the Policy Services Division, LR 30:

### **§1132. Computation of Net Apportionable Income from Louisiana Sources**

#### A. General

1. From the total gross apportionable income there shall be deducted all expenses, losses and other deductions except federal income taxes, allowable under this Chapter, which are directly attributable to such income, and there also shall be deducted a ratable portion of allowable deductions, except federal income taxes, which are not directly attributable to any item or class of gross income. Direct and indirect expenses attributed to total allocable income derived from foreign sources, for federal purposes, are not deductible in arriving at total net apportionable income. Expenses sourced pursuant to federal law and regulations to allocable income from foreign sources are presumed to be attributed to such income.

2. R.S. 47:287.94 provides two methods for computing the amount of net apportionable income from Louisiana sources, viz., the apportionment method and the separate accounting method. The apportionment method must be used unless it produces a manifestly unfair result and the conditions prescribed by R.S. 47:287.94 are met. Where the apportionment method is utilized, the apportionment percentage must be applied to the total apportionable net income without exception. For rules pertaining to the determination of the apportionment percentage refer to §1134.

B. Separate Accounting Method; Permission Obtained from Secretary. Any taxpayer desiring to use the separate accounting method in determining the portion of the total net apportionable income derived from Louisiana sources must first obtain permission from the secretary to use that method. A written request for such permission should be submitted to the secretary not more than 30 days after the close of the taxable year for which the first use of the separate accounting method is to be made if the permission is granted. The secretary will grant such permission if the taxpayer demonstrates to his satisfaction that the apportionment method as applied to the business operations of the taxpayer would produce a manifestly unfair result, that the separate accounting method produces a fair and equitable determination of the amount of net income taxable by Louisiana, and that the other conditions of R.S. 47:287.94 are met. The application of the taxpayer must be accompanied by the following information:

1. a complete description of the nature of the business operations of the taxpayer in Louisiana;
2. a complete description of the nature of the business operations of the taxpayer in other states;
3. a comprehensive statement as to the sources of goods or commodities sold by the taxpayer in Louisiana;
4. a comprehensive statement as to the disposition of goods or commodities produced by the taxpayer in Louisiana;
5. a computation for the preceding taxable year showing the Louisiana net apportionable income on the apportionment basis and on the separate accounting basis;
6. a statement of the particular circumstances in the taxpayer's business operations and the particular factors or elements in the apportionment formula which give rise to the difference between the amounts of Louisiana net apportionable income as computed under the two methods;
7. a statement as to whether the circumstances, factors, and elements mentioned in §1132.B.6 are relatively permanent so that the two methods would reasonably be expected to yield similar differences in results each year, or whether in the ordinary course of the taxpayer's business those circumstances have changed from time-to-time and may be expected to do so in the future; and
8. any other information which the taxpayer may consider pertinent.

C. Separate Accounting of Apportionable Income.

1. When the separate accounting method is used, the net apportionable income taxable in Louisiana shall be determined by deducting from the gross apportionable income from sources in Louisiana all costs and expenses directly attributable to such income and a ratable part of overhead expenses and other expenses which are attributable in part to the Louisiana gross apportionable income.

2. When Louisiana net apportionable income is determined on the separate accounting method, interest expense applicable to Louisiana gross apportionable and allocable income shall be deducted from such gross income for the purposes of determining Louisiana net apportionable and allocable income or loss. The amount of interest expense applicable to Louisiana gross apportionable and allocable income shall be determined by multiplying total interest expense by a ratio, the numerator of which is the average

value of assets in Louisiana and the denominator of which is the average value of all assets of the taxpayer.

3. For the purposes of this Paragraph, *value to be used* and *average value* mean the same as defined in §1130.B.6 and 7. Special rules as provided in §1130.B.11 also apply to this Section.

4. When Louisiana net apportionable income is determined on the separate accounting method, overhead expense shall be deducted from Louisiana gross apportionable income for the purposes of determining Louisiana net apportionable income or loss. The amount of such overhead expense shall be determined by multiplying total overhead expense attributable to gross apportionable income by a ratio, the numerator of which is the amount of direct cost incurred in the production of Louisiana gross apportionable income determined on a separate accounting method and the denominator of which is total direct cost incurred in the production of gross apportionable income from all sources. For the purpose of this Paragraph, the secretary is authorized to adjust the amount of overhead expense allocated to Louisiana gross apportionable income if he determines that such action is necessary in order to clearly reflect Louisiana apportionable net income. For rules pertaining to the determination of the amount of overhead expense attributable to gross allocable income refer to §1130.B.8, 9 and 10.

5. Income from Natural Resources. If the separate accounting method is used by a taxpayer whose business includes the production of natural resources, such as oil, gas, other liquid hydrocarbons, or sulphur, (a) which are sold by the taxpayer prior to refining or processing, or (b) which are transported by the taxpayer into or from the state of Louisiana for refining or processing prior to sale and at the time of production or transfer into or from this state have an ascertainable market value, the Louisiana net apportionable income of such taxpayer shall be computed as set forth below.

a. The gross apportionable income of the taxpayer from sources in Louisiana shall be determined by dividing the activities of the taxpayer into three classes:

- (i). the production of natural resources;
- (ii). the marketing of refined or manufactured products; and
- (iii). all other activities.

b. The Louisiana gross apportionable income from the production of natural resources shall include:

- (i). sales of natural resources produced in Louisiana and sold in this state;
- (ii). the market value, at the time of transfer, of all natural resources produced in this state and transferred by the taxpayer to another state for sale, refining, or processing, provided that if the natural resources are sold by means of an "arm's length" transaction prior to refining or processing, the market value prescribed herein shall not exceed the selling price; and
- (iii). the market value, at the time of transfer, of all natural resources produced by the taxpayer in Louisiana and transferred to a refinery or processing plant of the taxpayer located in Louisiana.

c. The Louisiana gross apportionable income from the marketing of refined or manufactured products shall be the amount of gross sales of such products in this state. From

such gross sales there shall be deducted, in lieu of the usual deduction for cost of goods sold, the market value of the products sold at the time of transfer into this state. In determining the market value, the customary prices for the quantities transferred shall be applied.

d. The Louisiana gross apportionable income from all activities in this state other than the production of natural resources and the marketing of refined or manufactured products shall include all sales and other apportionable revenues derived in this state from such other activities.

e. The net income of the taxpayer from each of the three classes of income set forth in §1132.C.5.b, c, and d shall be determined by deducting from each such class of gross income all allowable deductions directly attributable to the production of such income and a ratable part of all allowable deductions which are attributable in part to the production of such class of income.

6. For the purpose of this Section, a natural resource shall be deemed to be sold in Louisiana if it is located in this state at the time title thereto passes to the purchaser.

7. In the absence of specific proof of the value of natural resources at the time of transfer from or into this state, the value of the natural resources at the time of production, to be determined in accordance with the methods prescribed for the determination of "gross income from the property" for purposes of percentage depletion under R.S. 47:287.745(B), shall be deemed to be the market value at the time of transfer.

D. Change from Separate Accounting to Apportionment Method. A taxpayer who has obtained permission to use the separate accounting method, or who has been required by the secretary to use that method, shall continue to use that method for succeeding taxable years until a change occurs in the nature of the taxpayer's operations which would warrant a change in accounting method. When such a change occurs, the taxpayer shall report the facts to the secretary not later than 30 days after the close of the taxable year in which the change occurred. If the secretary finds, on the basis of the facts reported by the taxpayer or otherwise obtained by the secretary, that the apportionment method should be used, the taxpayer will be notified to use that method for the year in which the change in operations occurred. The apportionment method shall then be used until a change is made pursuant to R.S. 47:287.94.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.94.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:104 (February 1988), repromulgated by the Policy Services Division, LR 30:

#### **§1134. Determination of Louisiana Apportionment Percent**

A. General. R.S. 47:287.95 provides for an apportionment percent which is to be applied to the taxpayer's total net apportionable income in determining the Louisiana net apportionable income. Specific formulas are prescribed for air, pipeline, and other transportation businesses, certain service enterprises, and loan businesses. A general formula is prescribed for manufacturing, merchandising and any other business for which a formula is not specifically prescribed. The statute contemplates that only one specific formula be used in determining the apportionment percent, that being the formula prescribed for

the taxpayer's primary business. As a general rule, where a taxpayer is engaged in more than one business, the taxpayer's primary business shall be that which is the primary source of the taxpayer's net apportionable income. When the numerator and denominator is zero in any one or more factors in the apportionment formula, such factor shall be dropped from the apportionment formula and the arithmetical average determined from the total remaining factors.

#### **B. Property Factor**

1. The value of immovable and corporeal movable property owned by the taxpayer and used in the production of net apportionable income is a factor in each formula except those provided for loan businesses and certain service businesses. Where only a part of the property is used in the production of apportionable income, only the value of that portion so used shall be included in the property factor. However, where the entire property is used in the production of both allocable and apportionable income, such as a railroad track owned by the taxpayer and used jointly with another, the value of the entire property shall be included in the property factor. Idle property and property under construction, during such construction and prior to being placed in service, shall not be included in the property factor. Property held as reserve or standby facilities, or property held as a reserve source of materials shall be considered used. For example, a taxpayer who purchases a lignite deposit which is held as a reserve source of fuel, should include the value of such deposits in the property factor. Non-productive mineral leases are considered to be held for such use and should be included in the property factor. Aircraft owned by a taxpayer whose net apportionable income is derived primarily from air transportation should not be included in the property factor. The value of inventories of merchandise in transit shall be allocated to the state in which their delivery destination is located in the absence of conclusive evidence to the contrary.

2. Value of Property to be Used. For purposes of this Section, the value of property is cost to the taxpayer, less a reasonable reserve for depreciation, depletion and obsolescence. Such reserves, reflected on the books of the taxpayer, shall be used in determining value, subject to the right of the secretary to adjust the reserves when in his opinion such action is necessary to reflect the fair value of the property.

3. Proration of Rolling Stock and Other Mobile Equipment. The average value of rolling stock and other mobile equipment owned by the taxpayer shall be prorated within and without Louisiana as set forth below.

a. The value of diesel locomotives shall be allocated to Louisiana on the basis of the ratio of diesel locomotive miles in Louisiana to total diesel locomotive miles.

b. The value of other locomotives shall be allocated to Louisiana on the basis of the ratio of other locomotive miles in Louisiana to total other locomotive miles.

c. The value of freight train cars shall be allocated to Louisiana on the basis of the ratio of freight car miles in Louisiana to total freight car miles.

d. The value of passenger cars shall be allocated to Louisiana on the basis of the ratio of passenger car miles in Louisiana to total passenger car miles.

e. The value of passenger buses shall be allocated to Louisiana on the basis of the ratio of bus miles in Louisiana to total bus miles.

f. The value of diesel trucks shall be allocated to Louisiana on the basis of the ratio of diesel truck miles in Louisiana to total diesel truck miles.

g. The value of other trucks shall be allocated to Louisiana on the basis of the ratio of other truck miles in Louisiana to total other truck miles.

h. The value of trailers shall be allocated to Louisiana on the basis of the ratio of trailer miles in Louisiana to total trailer miles.

i. The value of towboats shall be allocated to Louisiana on the basis of the ratio of towboat miles in Louisiana to total towboat miles. In the determination of Louisiana towboat miles, one half of the mileage of all navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles.

j. The value of tugs shall be allocated to Louisiana on the basis of the ratio of tug miles in Louisiana to total tug miles. In the determination of Louisiana tug miles, one half of the mileage of all navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles.

k. The value of barges shall be allocated to Louisiana on the basis of the ratio of barge miles in Louisiana to total barge miles. In the determination of Louisiana barge miles, one half of the mileage of all navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles.

l. The value of work and miscellaneous equipment shall be allocated to Louisiana on the basis of the ratio of track miles in Louisiana to total track miles in the case of a railroad, on the basis of the ratio of bank miles operated in Louisiana to total bank miles operated in the case of inland waterway transportation and on the basis of the ratio of route miles operated in Louisiana to total route miles operated in the case of truck and bus transportation. In the determination of bank miles, one half of the bank mileage of navigable streams bordering on both Louisiana and another state shall be considered Louisiana bank miles.

m. The value of other floating equipment shall be allocated to Louisiana on the basis of the ratio of operating equipment miles within Louisiana to the total operating equipment miles, for the particular equipment to be allocated. In the determination of Louisiana operating equipment miles, one half of the mileage of all navigable streams bordering on both Louisiana and another state shall be considered Louisiana bank miles.

4. Insufficient Records. In any case where the information necessary to determine the ratios listed above is not readily available from the taxpayer's records, the secretary, in his discretion, may permit or require the allocation of such equipment on any method deemed reasonable by him.

C. Wage Factor. Salaries, wages and other compensation for personal services as used in R.S. 47:287.95 includes only compensation paid to employees or to a deferred plan for the benefit of employees of the taxpayer for services rendered in connection with the production of net apportionable income. It does not include fees and commissions paid to independent contractors.

D. Revenue Factor. Revenue is a factor in each formula except that provided for loan businesses. This factor is generally composed of sales, charges for service, and other gross apportionable income.

1. Revenue from Transportation other than Air Travel. Gross apportionable income attributable to Louisiana from transportation other than air includes all such revenue derived entirely from sources within Louisiana plus a portion of revenue from transportation performed partly within and partly without Louisiana, based upon the ratio of the number of units of transportation service performed in Louisiana to the total of such units. A unit of transportation shall consist of the following:

a. in the case of the transportation of passengers, the transportation of one passenger a distance of one mile;

b. in the case of the transportation of liquid commodities, including petroleum or related products, the transportation of one barrel of the commodities a distance of one mile;

c. in the case of the transportation of property other than liquids, the transportation of one ton of the property a distance of one mile;

d. in the case of the transportation of natural gas, the transportation of one MCF a distance of one mile (see however, §1134.D.2);

e. transportation revenue should be segregated on the basis of the four classes enumerated above and the gross apportionable income attributable to Louisiana shall be determined by application of the respective ratios to each segregated amount. In any case where another method would more clearly reflect the gross apportionable income attributable to Louisiana, or where the above information is not readily available from the taxpayer's records, the secretary, in his discretion, may permit or require the use of any method deemed reasonable by him.

#### 2. Sales Made in the Regular Course of Business

a. The sales attributable to Louisiana under R.S. 47:287.95 are those sales made in the regular course of business where the goods, merchandise or property are received in Louisiana by the purchaser. Similarly, where the goods, merchandise or property are received in some other state, the sale is attributable to that state. Sales made in the regular course of business include all sales of goods, merchandise or product of the business or businesses of the taxpayer. They do not include the sale of property acquired for use in the production of income. Where a taxpayer under a contract performs essentially a management or supervision function and receives therefor a reimbursement of his costs plus a stipulated amount, the amounts received as reimbursed costs are not sales although the contract so designates them. The stipulated amount constitutes other gross apportionable income and shall be attributed to the state where the contract was performed. Where goods are delivered into Louisiana by a public carrier, or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. The transportation in question is the initial transportation relating to the sale by the taxpayer, and not the transportation relating to a sale or subsequent use by the purchaser.

b. Where the goods are delivered by the taxpayer-vendor in his own equipment, it is presumed that such transportation relates to the sale. Where the goods are delivered by a common or contract carrier, whether shipped F.O.B. shipping point, and whether the carrier be a pipeline, trucking line, railroad, airline or some other type of carrier, the place where the goods are ultimately received by the purchaser after the transportation by the carrier has ended is deemed to be the place where the goods are received by the purchaser. Actual delivery rather than technical or constructive delivery controls.

c. Where the transportation involved is transportation by the purchaser, in determining whether or not the transportation relates to the sale by taxpayer, consideration must be given to the following principles.

i. To be related to the initial sale, the transportation should be commenced immediately. However, before a lapse of time is conclusive, consideration must be given to the nature and character of the goods purchased, the availability of transportation, and other pertinent circumstances.

ii. The intent of the parties to the sale must also be considered. The intent and purpose of the purchaser may be determined directly, or by an evaluation of the nature and scope of his operation, customs of the trade, customary activities of the purchaser, and all pertinent actions and words of the purchaser at the time of the sale.

iii. In order for the transportation by the purchaser to be related to the initial sale by the taxpayer to the purchaser, such transportation must be generally the same in nature and scope as that performed by the vendor or by the carrier. There is no difference between a case where a taxpayer in Houston ships F.O.B., Houston, to a purchaser in Baton Rouge, by common carrier, and a case where all facts are the same except that the purchaser goes to Houston in his own vehicle and returns with the goods to Baton Rouge.

d. The sales of natural resources to a pipeline company are attributable to the state in which the goods are placed in the pipeline. Such purchasers are engaged in the business of moving or transporting their own property through their own lines. Thus, all transportation of the natural resources after introduction into the line is related to the use or sale by the pipeline, and is not related to the sale by the taxpayer.

e. Generally, transportation by public carrier pipelines is accorded the same treatment as transportation by any other type of public carrier. Actual delivery to the purchaser controls, rather than technical or constructive delivery. However, because of the nature and character of the property, the type of carrier, and customs of the trade, the natural resources in the pipeline carrier may become intermixed with other natural resources in the pipeline and lose their particular identity. Where delivery is made to a purchaser in more than one state, or to different purchasers in different states, peculiar problems of attribution arise. In solving such problems consideration must be given to the following principles.

i. Where it can be shown that a taxpayer in one state sold a quantity of crude oil to a purchaser in another state, and the oil was transported to the purchaser by pipeline carrier, the sale will be attributed to the state where the crude oil is received by the purchaser, even though the crude oil

delivered might not be the identical oil sold because of commingling in the pipeline. Custom of the trade indicates the purchaser buys a quantity of oil of certain quality rather than any specific oil.

ii. In situations involving several deliveries in several different states to one or more purchasers, the general rules should be applied with logic and common sense.

f. Examples

i. Three different taxpayers, A, B, C, all in Texas, each sells to X Refinery, in Louisiana, 10,000 barrels of crude oil, shipped F.O.B., Texas, by public carrier pipeline. (a) If X Refinery received all 30,000 barrels in Louisiana, each taxpayer must attribute his total sale to Louisiana. (b) If X Refinery receives 10,000 barrels in Louisiana, 10,000 barrels in Mississippi, and 10,000 barrels in Alabama, it cannot be said by any taxpayer that all of his sale was received either in Louisiana or in one of the other states. Since each taxpayer contributed one-third of the mass of commingled crude oil, it follows that one-third of each taxpayer's sale was received in Louisiana, and accordingly must be attributed to Louisiana.

ii. Three different taxpayers, A, B, and C, in Texas, sell to three different purchasers, X Refinery in Louisiana, Y Refinery in Mississippi, and Z Refinery in Alabama. If A sells to X Refinery in Louisiana and delivery is by public carrier pipeline, the oil is received in Louisiana and the entire sale is attributed to Louisiana, even though the crude oil delivered might not be the identical oil sold because of commingling in the pipeline with oil sold by B and C to Y Refinery and Z Refinery.

g. In determining the place of receipt by the purchaser after the initial transportation has ended, peculiar problems may be created by the storage of the property purchased immediately upon purchase at a place other than the place of intended use. The primary problem created by such storage is in determining whether or not the transportation after storage relates to the sale by the taxpayer. Generally, the rules and principles set forth above will control where the storage is of temporary nature, such as that necessitated by lack of transportation, by change from one means of transportation to another, or by natural conditions. In cases where the storage is permanent or semi-permanent, delivery to the place of storage concludes the initial transportation, and the sale is attributed to the place of storage.

E. Loans factor. Loans made by the taxpayer as provided in R.S. 47:287.95(E) is the arithmetical average of the loan balances outstanding at the beginning and end of the taxable period. This factor is to be used only by taxpayers whose income is derived primarily from the business of making loans. If the average at the beginning and end of the year does not fairly represent the average of loans outstanding during the year, the average may be obtained by dividing the sum of the monthly balances by 12.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.95.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:105 (February 1988), repromulgated by the Policy Services Division, LR 30:

**§1137. Exceptions to Taxable Year of Inclusion; Taxable Year Deductions Taken**

A. Improperly Reported Item of Income. R.S. 47:287.442(A) does not relieve a taxpayer of the responsibility of filing a true and correct return and immediately correcting any errors which are discovered after the return is filed. If an error is discovered, it is the obligation of the taxpayer to file promptly an amended return reflecting the correct tax liability. The purpose of R.S. 47:287.442(A), so far as it deals with improperly reported items of income, is to preclude a taxpayer's being required to pay again on an item of income which has borne tax in full previously, even though for a period in which it was not properly reportable. An item of income will be deemed to have previously borne tax in full if the item, when multiplied by the lowest tax rate applicable to the taxpayer, results in a tax not less than the amount of tax actually paid on the return. If the item has not previously borne tax in full, R.S. 47:287.442(A) is not applicable to that portion of the item which has not previously borne tax. That portion, which shall be the difference between the item of income and the taxable balance of net income, shall be reported as income during the year it was properly reportable.

B. Example: The ABC Corporation, by mistake, reported on its 1982 income tax return an item of accrued interest in the amount of \$5,000 which was properly reportable in 1983. It paid the Louisiana income tax shown to be due on the return. The company never discovered its error. In 1987, the secretary discovers the error. The return for 1982 shows the following.

Accrued interest	\$ 5,000
Income from operations	20,000
Total income	\$ 25,000
Less total authorized deductions	\$ 21,000
Taxable income	\$ 4,000
Tax per return	\$ 160
Computation to determine if item has borne tax in full:	
Amount improperly reported	\$ 5,000
Tax at lowest rate of taxpayer	\$ 200
Tax paid	160
Amount of tax unpaid	\$ 40
Computation of portion of item to be reported in 1983:	
Improperly reported item	\$ 5,000
Taxable balance of net income in 1982	4,000
Portion of item to be reported	\$ 1,000

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.442.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:108 (February 1988), repromulgated by the Policy Services Division, LR 30:

**§1140. Exemption from Tax on Corporations**

A. An organization claiming exemption under R.S. 47:287.501 must submit a copy of the Internal Revenue Service ruling establishing its exempt status. Once an organization establishes with the department its right to an exemption, it need not file any further reports until such time its right to an exemption changes. An organization that has furnished information to the department establishing its right to exemption under the prior law need not submit additional information until such time its exempt status with the Internal Revenue Service changes. A corporation is either

entirely exempt or it is wholly taxable. A partial exemption is not permitted.

B. Mutual savings banks, national banking corporations, building and loan associations, and savings and loan associations are exempt from the tax imposed by this Chapter regardless of where organized.

C. Banking corporations organized under the laws of the state of Louisiana which are required by other laws of this state to pay a tax for their shareholders, or whose shareholders are required to pay a tax on their shares of stock, are exempt. Banking corporations, other than those described above, organized under the laws of a state other than the state of Louisiana are not exempt from the corporation income tax.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.501.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:108 (February 1988), repromulgated by the Policy Services Division, LR 30:

**§1147. Notice of Regulation, Requiring Records, Statements and Special Returns**

A. Every corporation subject to the provisions of Part II.A of Chapter 1 shall, for the purpose of enabling the secretary to determine the correct amount of income subject to tax, keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income and the deductions, credits, and other information required to be shown in any return. Such books or records required by this Section shall be available at all times for inspection by the secretary, and shall be retained so long as the contents thereof may be material in the administration of the income tax law. The secretary may at any time require the taxpayer to submit statements of net worth as of the beginning and end of the taxable year.

AUTHORITY NOTE: Promulgated in accordance with R.S.47:287.601.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:108 (February 1988), repromulgated by the Policy Services Division, LR 30:

**§1148. Corporation Returns**

A. General Rules. Every corporation deriving income from Louisiana sources shall file a return on forms secured from the secretary, unless expressly exempt from the tax. The first return and the last return of a corporation are returns for a full year and not for a fractional part of a year. A corporation does not go out of existence by virtue of being managed by a receiver or trustee who continues to operate it.

B. Liquidation. Upon liquidation or dissolution of a corporation there shall be attached to the final return a statement showing:

1. an outline of the plan under which the corporation was dissolved;
2. the date the dissolution was formally commenced;
3. the date the dissolution was completed;
4. the name and address of each shareholder at dissolution and the number and par value of the shares of stock held by each;
5. a description of assets conveyed to each shareholder, creditor, or other person, showing book value, fair market value, and location, as well as the name and address of each such person;
6. the consideration paid by each person for the assets received; and

7. whether the plan is intended to qualify under one of the sections of the Internal Revenue Code relating to nonrecognition in whole or in part of gain by a shareholder, and, if so, the section involved.

C. Receivers. Receivers, trustees in dissolution, trustees in bankruptcy, and assignees, operating the property or business of corporations, must file returns for such corporations. If a receiver has full custody of and control over the business or property of a corporation, he shall be deemed to be operating such business or property within the meaning of R.S. 47:287.612 whether he is engaged in carrying on the business for which the corporation was organized or only in marshaling, selling, and disposing of its assets for purposes of liquidation. However, a receiver in charge of only part of the property of a corporation, as, for example, a receiver in mortgage foreclosure proceedings involving merely a small portion of its property, need not file a return.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.612.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:108 (February 1988), repromulgated by the Policy Services Division, LR 30:

**§1168. Notice of Fiduciary Relationship**

A. Notice. As soon as the secretary receives notice that a person is acting in a fiduciary capacity, such fiduciary must, except as otherwise specifically provided, assume the powers, rights, duties, and privileges of the taxpayer with respect to the income tax imposed by Part II.A. of Chapter 1. If the person is acting as a fiduciary for a transferee or other person subject to the liability specified in R.S. 47:287.682, such fiduciary is required to assume the powers, rights, duties, and privileges of the transferee or other person under that section. The amount of the tax or liability is ordinarily not collectible from the personal estate of the fiduciary, but is collectible from the estate of the taxpayer or from the estate of the transferee or other person subject to the liability specified in R.S. 47:287.682. [See however R.S. 47:1673]. The "notice to the secretary" provided for in R.S. 47:287.683 shall be a written notice signed by the fiduciary and filed with the secretary. The notice must state the name and address of the person for whom the fiduciary is acting, and the nature of the liability of such person; that is, whether it is a liability for tax, and if so, the year or years involved, or a liability at law or in equity of a transferee of property of a taxpayer, or a liability of a fiduciary in respect of the payment of any tax from the estate of the taxpayer. Any such written notice which has previously been filed with the secretary shall be considered as sufficient notice. Unless there is already on file with the secretary satisfactory evidence of the authority of the fiduciary to act for such person in a fiduciary capacity, such evidence must be filed with and made a part of the notice. If the fiduciary capacity exists by order of court, a certified copy of the order may be regarded as such satisfactory evidence. When the fiduciary capacity has terminated, the fiduciary, in order to be relieved of any further duty or liability as such, must file with the secretary written notice that the fiduciary capacity has terminated as to him, accompanied by satisfactory evidence of the termination of the fiduciary capacity. The notice of termination should state the name and address of the person, if any, who has been substituted as fiduciary.

B. Effect of Failure to Give Notice. If the notice of the fiduciary capacity described in Subsection A above is not filed with the secretary before the sending of notice of assessment by registered mail to the last known address of the taxpayer, or the last known address of the transferee or other person subject to liability, no notice of the deficiency will be sent to the fiduciary. In such a case the sending of the notice to the last known address of the taxpayer, transferee, or other person, as the case may be, will be a sufficient compliance with the requirements of the income tax law, even though such taxpayer, transferee, or other person is deceased, or is under a legal disability, or in the case of a corporation, has terminated its existence. Under such circumstances if no petition is filed with the Board of Tax Appeals within 60 days after the mailing of the notice to the taxpayer, transferee, or other person, the assessment becomes final upon the expiration of such 60-day period and demand for payment will be made.

C. Definition. The term *fiduciary* means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

D. Limitation. This regulation shall not be taken to abridge in any way the powers and duties of fiduciaries provided for in other sections of the income tax law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.683.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:109 (February 1988), repromulgated by the Policy Services Division, LR 30:

**§1189. Situs of Stock Canceled or Redeemed in Liquidation**

A. General Rule. R.S. 47:287.747 provides that the situs of stock canceled or redeemed in the liquidation of a corporation, whether domestic or foreign, shall be in Louisiana in the same ratio that property located in Louisiana, and received by a shareholder, bears to the total property received in the liquidation. *Property* as used in R.S. 47:287.747 means all of the assets of the liquidating corporation without regard to liabilities. For the purpose of determining the situs of the stock canceled or redeemed in liquidation, the fair market value of the property distributed in liquidation shall be used. The location of the property of the corporation shall be determined in accordance with the provisions of R.S. 47:287.93.

B. Example: X, shareholder, owns 10 percent of the shares of ABC, Inc., a foreign corporation. The basis of X's shares is \$1,000. On July 1, 1986, ABC Inc., liquidates and exchanges the following property for its outstanding stock, which it cancels.

	Total Assets (Fair Market Value)	Louisiana Assets (Fair Market Value)
Cash	\$ 10,000	\$ 2,000
Accounts receivable	50,000	8,000
Buildings	60,000	30,000
Land	60,000	10,000
Stocks	20,000	0
	\$ 200,000	\$ 50,000

Since one-fourth of the assets distributed in liquidation are located in Louisiana, one-fourth of X's stock has its situs in Louisiana.

Gain is computed as follows:

Fair market value of property received	\$ 20,000
Basis of property received	1,000
Gain	\$ 19,000
Louisiana taxable gain (1/4 of \$19,000)	\$ 4,750

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.747.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:109 (February 1988), repromulgated by the Policy Services Division, LR 30:

#### Family Impact Statement

The repromulgation of LAC 61:I.1115-1189, which reaffirms the secretary's rule making authority, 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 44098, Baton Rouge, LA 70804-4098. All comments must be received no later than 4:30 p.m. Wednesday, January 28, 2004. A public hearing will be held on Thursday, January 29, 2004 at 10 a.m. in the River Room Conference Room on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA.

Cynthia Bridges  
Secretary

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

##### RULE TITLE: Corporation Income Tax

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

Implementation of this proposed repromulgation of LAC 61:I.1115-1189 will result in no expenditures for the department. The repromulgation of the corporation income tax regulations reaffirms the secretary's rule making authority with respect to the corporation income tax. There will be no impact on local government costs.

#### 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 will be no directly affected persons or nongovernmental groups. Current compliance requirements will not change.

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

This proposed repromulgation should have no effect on competition or employment.

Cynthia Bridges  
Secretary  
0312#054

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

#### NOTICE OF INTENT

##### Department of Social Services Office of Community Services

##### Levels of Care (LAC 67:V.3505)

The Department of Social Services, Office of Community Services (OCS) proposes to change the method of compensation to foster parents for the time, attention, and tasks required to address the special needs of the foster children in their homes. The proposed compensation method called Levels of Care will have five rate components: basic, initial placement, supplemental tasks and activities, positive outcome and administrative. The method has been tested and piloted in the OCS Covington Region since December, 2001. It has been applied to all OCS regular foster homes in Covington Region since June, 2002. The OCS staff met with foster parents, OCS contracted private providers of therapeutic family care (TFC) and private foster care (PFC) in that region to introduce Levels of Care. Statewide implementation planning and training has been planned to begin in the Fall of 2003. OCS intends to have all foster homes, OCS regular foster homes, OCS Alternative foster homes, and OCS Specialized Foster Homes receiving Levels of Care compensation by January 1, 2005. The only OCS foster homes that will continue to receive subsidy payments after January 1, 2005 will be the Diagnostic and Assessment foster homes. All private provider foster homes and therapeutic foster homes will receive Levels of Care compensation by January 1, 2006.

#### Title 67

#### SOCIAL SERVICES

#### Part V. Office of Community Services

#### Subpart 5. Foster Care

#### Chapter 35. Payments, Reimbursables, and Expenditures

#### §3505. Levels of Care

A. The Department of Social Services, Office of Community Services (DSS/OCS) is implementing a new method of compensation to foster parents. The new method, called Levels of Care, will establish a rate of compensation for caring for each individual foster child that is based on five components, as applicable:

1. basic;
2. initial placement;
3. supplemental tasks and activities;
4. positive outcome; and
5. administrative.

B. Basic? a standard board rate of compensation based upon a child's age.

C. Initial Placement? a one-time rate based upon the unique adjustment needs of children as they come into foster care. This rate is approximately 50 percent of the basic board

rate and is applied for the first 30 days that a child is in custody and placed in a foster home.

D. Supplemental Tasks and Activities (STAR)? a customized rate which is based upon a child's individual needs across five assessment categories and the foster parents' supplemental tasks and activities required to nurture the child. There are five daily rate intervals within each of the five STAR assessment categories. This rate is intended to approximate the time and attention required of foster parents to nurture a child's relationship with his biological family and to attend to the child's individualized treatment needs.

E. Positive Outcome? a rate which would follow a reduction in the special needs rate when an improvement in the foster child's problems/behaviors is attributable to the foster parent's contributions. The positive outcome rate lessens the reduction in the special needs rate for a specific period of time.

F. Administrative? a rate to be paid to private child placing agencies relative to foster children placed in foster homes which they employ and supervise. Private child placing agencies currently apply varying administrative rates for their therapeutic foster care and private foster care programs. These administrative rates as well as the provider service expectations will be generalized under a single administrative rate component of Levels of Care.

G. With the exception of diagnostic and assessment subsidy foster homes, DSS/OCS will end all other foster home subsidies i.e. OCS alternative foster care homes and OCS specialized foster homes. These homes will be notified on or before, January 1, 2004, that the subsidies will close December 31, 2004. The notification will be in accordance with OCS policy.

AUTHORITY NOTE: Promulgated in accordance with RS 36:477(C)(1)

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services LR 30:

#### **Family Impact Statement**

1. The Effect on the Stability of the Family. The proposed Rule has no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding Education and Supervision of their Children. The proposed Rule has no effect on the authority and rights of parents regarding education and supervision of their children.

3. The Effect on the Functioning of the Family. The proposed Rule has no effect on the functioning of the family.

4. The Effect on Family Earnings and Family Budget. The proposed Rule has no effect on family earnings and family budget.

5. The Effect on the Behavior and Personal Responsibility of Children. The proposed rule has no effect on the behavior and personal responsibility of children.

6. The Ability of the Family or Local Government to Perform the Function as contained in the Proposed Rule. The proposed Rule has no effect on the ability of the family or local government to perform the function as contained in the proposed Rule.

Submit written comments up to 40 days following the date of this publication to Carmen D. Weisner, Assistant

Secretary, P.O. Box 3318, Baton Rouge, LA 70821. She is the person responsible for responding to inquiries.

A public hearing will be held on Monday, January 26, 2004, at the Office of Community Services state office in the Commerce Building, 333 Laurel Street, Baton Rouge, LA 70801, Room # 652 at 9:30 a.m.

Gwendolyn P. Hamilton  
Secretary

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

#### **RULE TITLE: Levels of Care**

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

There will be no overall cost savings, as the \$1,800,000 currently funding the subsidy for 145 Alternative and Specialized foster homes will be used to fund the increased costs for specialized care to all payable foster homes providing this type of care. This will increase funding for specialized care compensation to foster parents from the current 54 percent to 84 percent of all payable foster care placements.

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

It is estimated that approximately 75 percent of the Office of Community Services foster homes and the private provider foster homes will either receive an increase (58 percent) in special board or will stay the same (17 percent). Approximately 25 percent of the general foster homes will receive a decrease, most decreases will be under \$100.

There will be no effect on revenue collections of state or local governmental units. There will be no need for additional revenue.

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

Our expenditures will remain the same but funds will be more appropriately distributed to foster family homes.

It is estimated that approximately 75 percent of the Office of Community Services foster homes and the private provider foster homes will either receive an increase (58 percent) in special board or will stay the same (17 percent). Approximately 25 percent of the general foster homes will receive a decrease, most decreases will be under \$100.

The Department of Social Services, Office of Community Services (DSS/OCS) plans to implement a more equitable system of remuneration to foster parents which will more accurately reflect the time and effort needed to care for each specific child placed in the custody of the DSS/OCS. This system, called Levels of Care (LOC), will also improve the agency's ability to sustain existing foster parents and recruit new foster parents by recognizing the value of the resources (education, work experience, and foster parent service) that foster parents bring to foster children.

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

There will be no effect on competition and employment.

Debbie Johnson  
Budget Manager  
0312#110

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Social Services Office of Family Support

#### Food Stamp Program? Time Limitation for Certain Aliens (LAC 67.III.1932 and 1995)

The Department of Social Services, Office of Family Support, proposes to amend the Louisiana Administrative Code, Title 67, Part III, Subpart 3, Food Stamps.

Pursuant to Public Law 107-171, The Food Stamp Reauthorization Act of 2002, the agency is amending §§1932 and 1955, to comply with mandates issued by the U. S. Department of Agriculture, Food and Nutrition Service. This law, also known as the 2002 Farm Bill, authorized changes in qualified alien regulations to be effected October 1, 2003. Section 4401 of P.L. 107-171 provides for the restoration of food stamp eligibility to qualified aliens who are otherwise eligible and under the age of 18 regardless of their date of entry into the United States. The law previously allowed only those qualified alien children who were in the country as of August 26, 1996, to be eligible for benefits. Section 4401 also eliminates the deeming requirements for any qualified alien under the age of 18. These requirements count the income and resources of the alien's sponsor when determining Food Stamp eligibility and benefit amounts for the alien child.

A Declaration of Emergency effecting these changes was signed October 1, 2003, and published in the October issue of the *Louisiana Register*.

#### Title 67

#### SOCIAL SERVICES

#### Part III. Office of Family Support

#### Subpart 3. Food Stamps

#### Chapter 19. Certification of Eligible Households

#### Subchapter D. Citizenship and Alien Status

#### §1932. Time Limitations for Certain Aliens

A. ...

B. The following qualified aliens are eligible for an unlimited period of time:

1. - 5. ...

6. effective October 1, 2003, individuals who are lawfully residing in the United States and are under 18 years of age;

7. ...

AUTHORITY NOTE: Promulgated in accordance with P. L. 104-193, P. L. 105-33, P. L. 105-185, and P. L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:711 (April 1999), amended LR 29:606 (April 2003), LR 30:

#### Subchapter K. Action on Households with Special Circumstances

#### §1995. Sponsored Aliens

A. The full amount of income and resources of an alien's sponsor and the sponsor's spouse are counted in determining the eligibility and allotment level of a sponsored alien until the alien becomes a citizen or has worked 40 qualifying quarters of Social Security coverage. These provisions do not apply to battered aliens, their children, the alien parent of a battered child, or effective October 1, 2003, any alien under 18 years of age.

AUTHORITY NOTE: Promulgated in accordance with F.R. 47:55463 et seq. and 47:55903 et seq., 7 CFR 273.11, P.L. 104-193, P. L. 104-208, P. L. 105-33, and P. L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:130 (March 1983), amended by the Department of Social Services, Office of Family Support, LR 23:83 (January 1997), LR 24:355 (February 1998), LR 30:

#### Family Impact Statement

1. What effect will this Rule have on the stability of the family? Implementation of this Rule will have little impact on 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? 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? Family earnings and budget could be positively affected by restoring benefits to those alien children who entered the United States after August 26, 1996.

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 program is strictly an agency function.

All interested persons may submit written comments through January 28, 2004, to Mary M. Joseph, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton Rouge, LA 70804-9065.

A public hearing on the proposed Rule will be held on January 28, 2004, at the Department of Social Services, A.Z. Young Building, Second Floor Auditorium, 755 Third Street, Baton Rouge, LA, 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).

Gwendolyn P. Hamilton  
Secretary

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Food Stamp Program? Time Limitation for Certain Aliens

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

The proposed amendments could increase state costs by making more qualified alien children eligible for food stamp benefits. However, an increase in expenditures in the form of food stamp benefits will be paid directly with federal dollars. It is estimated that the increase in food stamp benefits would be minimal. The cost of publishing the rule and printing policy changes is estimated to be \$375 and routinely included in the

- agency's annual budget. There will be no costs to local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
The proposed rule will have no impact on revenue collections for 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 to any persons or non-governmental groups as a result of this proposed rule.  
Qualified aliens under 18 years of age who are determined eligible as a result of these proposed changes could realize economic benefits in the form of food stamps benefits but this amount is expected to be minimal. Non-governmental groups will not be impacted economically by this rule.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
The proposed rule will have no impact on competition or employment.

Mary M. Joseph  
Assistant Secretary  
0312#107

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Social Services Office of Family Support

Strategies to Empower People (STEP) Program  
(LAC 67:III.1209, 1213, 1221, 1231,1237-1249, 1983, 1987,  
5103-5107, 5111, 5321, 5335, 5339, 5341, 5701-5729)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, and pursuant to Act 58 of the 2003 Regular Session of the Louisiana Legislature, the Department of Social Services, Office of Family Support, proposes to adopt LAC 67:III, Subpart 16, Chapter 57, Strategies to Empower People (STEP) Program and to amend Subpart 2, Chapter 12, Family Independence Temporary Assistance Program (FITAP), Subpart 3, Chapter 19, Food Stamps, Subpart 12, Chapter 51, Child Care Assistance Program (CCAP), and Subpart 13, Chapter 53, Kinship Care Subsidy Program (KCSP).

Pursuant to Act 58 of the 2003 Regular Session of the Louisiana Legislature, otherwise known as the Universal Engagement and Personal Responsibility Act, the Strategies to Empower People (STEP) Program was implemented effective October 1, 2003, by a Declaration of Emergency. The program replaces the Family Independence Work Program (FIND Work) and will assist Louisiana families in becoming economically self-reliant so that their dependence on government benefits for basic needs is minimized. As a result of this implementation, changes are necessary to the FITAP, Food Stamp, CCAP and KCSP programs so that language concerning FIND Work can be replaced with language reflecting the STEP program as well as other changes necessitated by the implementation of STEP.

## Title 67 SOCIAL SERVICES Part III. Family Support

### Subpart 2. Family Independence Temporary Assistance Program

#### Chapter 12. Application, Eligibility, and Furnishing Assistance

##### Subchapter A. Application, Determination of Eligibility, and Furnishing Assistance

###### §1209. Notices of Adverse Actions

A. A notice of adverse action shall be sent at least 13 days prior to taking action to reduce or terminate benefits. In some circumstances advance notice is not required. A concurrent notice shall be sent to the client at the time of action in the following situations:

- 1 - 9. ...
10. Repealed.
11. - 17. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B. and R.S. 46:237; Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2447 (December 1999), amended LR 26:349 (February 2000), LR 29:2565 (December 2002), LR 30:

###### §1213. Domestic Violence

A. The secretary shall waive, for as long as necessary, pursuant to a determination of good cause, any public assistance program requirement that will create obstacles for a victim of domestic violence to escape a domestic violence situation, including but not limited to, time limits on receipt of assistance; work, training, or educational requirements; limitations on TANF assistance to noncitizens; child support or paternity establishment cooperation requirements; residency requirements; and any other program requirements which will create obstacles for such victim to escape violence or penalize that victim for past, present, and potential for abuse. However, a victim of domestic violence shall develop a plan that specifies the necessary actions, goals, and services that may enable the victim to become free of a domestic violence situation. This plan shall be made part of the participant's Family Success Agreement.

- B. - C.5. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474 and R.S. 46:231.1.B; Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2447 (December 1999), amended LR 30:

##### Subchapter B. Conditions of Eligibility

###### §1221. Age Limit

A. A dependent child must be:

1. under 18 years of age; or
2. 18 years of age, enrolled in a secondary school or its equivalent, and expected to graduate on or before his 19th birthday.

- B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474 and R.S. 46:231.2; Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2448 (December 1999), amended LR 30:

### **§1231. Immunization**

A. Failure to follow the schedule of immunizations as promulgated by the Louisiana Office of Public Health for any child under 18 years of age, without good cause, shall result in case closure.

1. The appropriate STEP sanction shall be imposed on a work-eligible family.

2. The case of a family that is not work-eligible shall be closed for at least one month and until the child is in compliance.

B. No person is required to comply with this provision if that person or his/her parent or guardian submits a written statement from a physician stating that the immunization procedure is contraindicated for medical reasons, or if the person or his/her parent or guardian objects to the procedure on religious grounds.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.4; Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2451 (December 1999), amended LR 30:

### **§1237. School Attendance**

A. Work-eligible FITAP recipients must meet the school attendance requirements outlined in LAC 67:III.Chapter 57.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474 and R.S. 46:231.3; Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2452 (December 1999), amended LR 30:

### **§1239. Assignment of Support Rights and Cooperation with Support Enforcement Services**

A. - B.2.d. ...

3. Failure to cooperate in establishing paternity or obtaining child support will result in case closure. The appropriate STEP sanction shall be imposed on a work-eligible family. The case of a family that is not work-eligible shall be closed for at least one month and until the family cooperates.

B.4. - E. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B; Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2452 (December 1999), amended LR:30

### **§1241. Sanctions for Refusal to Accept a Job**

A. Refusal to accept a job will result in the appropriate sanction being imposed on a work-eligible family.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474 and R.S. 46:231.1.B; Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2452 (December 1999), amended LR:30:

### **§1243. Work Requirements**

A. Recipients must meet the work requirements outlined in LAC 67:III.Chapter 57.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.7., 46:231.8 and 46:231.9; Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2453 (December 1999), amended LR 30:

### **§1245. Parenting Skills Education**

A. Recipients must meet the requirements for parenting skills education as outlined in LAC 67:III.Chapter 57.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474 and R.S. 46:231.5; Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2453 (December 1999), amended LR:30

### **§1247. Time Limits**

A. The Office of Family Support shall deny FITAP cash benefits to families if the parent has received FITAP for at least 24 months, whether consecutive or not, during the prior 60-month period. Only months of FITAP receipt after the January 1, 1997 date of implementation count toward the 24-month limit.

B. The following situations represent exemptions from the 24-month time limit:

1. the household contains a permanently incapacitated or disabled individual; or

2. months after June 1999 in which a recipient receives the earned income disregard shall not count toward the 24-month time limit.

C. An extension of the 24-month time limit may be granted in the following situations:

1. an individual has been actively seeking employment by engaging in appropriate job-seeking activities and required work activities as specified in the participant's Family Success Agreement (FSA) but is unable to find employment;

2. factors relating to job availability are unfavorable;

3. an individual loses his job as a result of factors not related to his job performance;

4. an extension of benefits of up to one year will enable an individual to complete employment-related education or training, including workplace literacy, and is required as part of an FSA, where an individual has received an assessment that indicates such activities will likely result in long-term success in the workforce;

5. other hardships have occurred which affect the individual's ability to obtain employment.

D. Eligibility for cash assistance under a program funded by Part IV of the Social Security Act is limited to a lifetime limit of 60 months. No cash assistance will be provided to a family that includes an adult who has received assistance for 60 months (whether or not consecutive) unless one of the following hardships exists (in households with two caretaker relatives, both caretaker relatives must meet at least one of these criteria).

1. An individual has been actively seeking employment by engaging in appropriate job-seeking activities and required work activities as specified in the participant's Family Success Agreement (FSA) but is unable to find employment.

2. Factors relating to job availability are unfavorable.

3. An individual loses his job as a result of factors not related to his job performance.

4. An extension of benefits of up to one year will enable an individual to complete employment-related education or training, including workplace literacy, and is

required as part of an FSA, where an individual has received an assessment that indicates such activities will likely result in long-term success in the workforce.

5. Other hardships have occurred which affect the individual's ability to obtain employment.

E. Any month for which such assistance was provided will be disregarded from the 24- and 60-month time limits with respect to the individual, if the individual was:

1. a minor child; and
2. not the head of a household or married to the head of a household.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.6. and R.S. 46:460.5(A)(3); Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2453 (December 1999), amended LR 26:349 (February 2000), LR 27:2263 (December 2001), amended LR 30:

#### **§1249. Drug Screening, Testing, Education and Rehabilitation Program**

A. - D. ...

E. Failure to Cooperate. Failure or refusal of a recipient to participate in drug screening, testing, or participation in the education and rehabilitation program, without good cause, will result in case closure.

1. The appropriate STEP sanction shall be imposed on a work-eligible family.

2. The case of a family that is not work-eligible shall remain closed for at least one month and until the client has complied.

F. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B., Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2453 (December 1999), amended LR:30

#### **Subpart 3. Food Stamps**

### **Chapter 19. Certification of Eligible Households**

#### **Subchapter I. Income and Deductions**

#### **§1983. Income Deductions and Resource Limits**

A.1. - 2. ...

3. The maximum dependent care deduction is \$200 per month for each child under two years of age and \$175 for each other dependent.

a. A child care expense that is paid for or reimbursed by the STEP Program or the Child Care Assistance Program is not deductible except for that portion of the cost which exceeds the payment or reimbursement.

B. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.9 (d)(2) and (d)(6), P.L. 104-193, P.L. 106-387 and

P.L. 107-171; Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 12:285 (May 1986), amended LR 12:423 (July 1986), LR 12:824 (December 1986), LR 13:181 (March 1987), LR 14:684 (October 1988), LR 15:14 (January 1989), amended by the Department of Social Services, Office of Family Support, LR 19:303 (March 1993), LR 19:905 (July 1993), LR 20:780 (July 1994), LR 20:990 (September 1994), LR 20:1362 (December 1994), LR 21:186 (February 1995), LR 23:82 (January 1997), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 29:607 (April 2003), LR 30:

#### **§1987. Categorical Eligibility for Certain Recipients**

A. Households Considered Categorically Eligible

1. Households in which a member is a recipient of benefits from the FITAP, STEP, and/or Kinship Care Subsidy Programs, and households in which all members are recipients of SSI, shall be considered categorically eligible for food stamps.

A.2. - D. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 51:28196 et seq., 7 CFR 271, 272, 273.10, and 274; F.R. 56:63612-63613, P.L. 104-193, 7 CFR 273.2(j)(2)(xi); Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:90 (February 1987), amended LR 12:755 (November 1986), amended by the Department of Social Services, Office of Family Support, LR 18:142 (February 1992), LR 18:686 (July 1992), LR 18:1267 (November 1992), LR 24:1783 (September 1998), LR 26:349 (February 2000), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 30:

#### **Subpart 12. Child Care Assistance Program**

### **Chapter 51. Child Care Assistance**

#### **§5103. Conditions of Eligibility**

A. Family Independence Temporary Assistance Program (FITAP) recipients who are satisfactorily participating in the Strategies to Empower People (STEP) Program, as determined by the case worker, are categorically eligible. The program will pay 100 percent of the FITAP/STEP participant's child care costs, up to the maximum amounts listed in 5109.B. The following eligibility criteria must be met:

A.1. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193; Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:356 (February 1998), amended LR 25:2444(December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:1490 (June 2002), LR 29:43 (January 2003), LR 30:

#### **§5105. Funding Availability**

A. Louisiana's share of the national total of available funds for child care programs is based on factors determined by federal law and regulation. Funds are appropriated by Congress and allocated on an annual basis so that a limited amount of federal funding is available each year through the Child Care and Development Fund (CCDF). Therefore, a determination will be made of the number of children, or "slots," that the CCDF can pay for based on available funding.

1. The children of STEP participants shall be categorically eligible for child care benefits. The children of STEP participants whose FITAP eligibility is terminated due to earned income will be given priority status with slots available for them as long as other eligibility factors are met and funding is available.

A.2. - 2.a. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and P.L. 104-193; Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:356 (February 1998), amended LR 26:2827 (December 2000), LR 30:

#### **§5107. Child Care Providers**

A. The head of household, or parent/caretaker relative in the case of a STEP participant, shall be free to select a child

care provider of his/her choice including center-based child care (licensed Class A Day Care Centers and licensed Class A Head Start Centers which provide before-and-after school care and/or summer programs), registered Family Child Day Care Homes, in-home child care, and public and non-public BESE-regulated schools which operate kindergarten, pre-kindergarten, and/or before-and after school care programs.

B. - C. ...

D. Under no circumstance can the following be considered an eligible child care provider:

1. ...

2. the child's parent or guardian; or parent/caretaker relative in the case of a STEP participant, regardless of whether that individual lives with the child (if the child's non-custodial parent is residing in the Family Child Day Care Home (FCDCH) in which the child receives care and is not working during the hours that care is needed, the FCDCH provider is ineligible to receive Child Care Assistance payments for that child);

D.3. - H.2. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, Act 152, 2002 First Extraordinary Session, Act 13, 2002 Reg. Session and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2444(December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:349 (February 2002), LR 28:1491 (June 2002), LR 29:43 (January 2003), LR 29:189 (February 2003), LR 30:

#### **§5111. Ineligible Payments**

A. - B.2. ...

C. If an Intentional Program Violation is established, Fraud and Recovery will send a notice to the person to be disqualified and a copy of the notice to the parish office. The parish office will take action to disqualify for the appropriate situations:

1. - 2. ...

3. 24 months for the third violation and for any additional violations. EXCEPTION: The disqualification process will be waived for STEP participants and for participants in federally-or state-funded work or training programs.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:2830 (December 2000), amended LR 30:

#### **Subpart 13. Kinship Care Subsidy Program (KCSP) Chapter 53. Application, Eligibility, and Furnishing Assistance.**

##### **Subchapter B. Conditions of Eligibility**

#### **§5321. Age Limit**

A. A dependent child must be:

1. under 18 years of age; or

2. 18 years of age, enrolled in a secondary school or its equivalent and expected to graduate on or before his nineteenth birthday.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B and R.S. 46:237; Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:352 (February 2000), amended LR 30:

#### **§5335. School Attendance**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B and R.S. 46:237; Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:354 (February 2000), repealed LR 30:

#### **§5339. Parenting Skills Education**

A. As a condition of eligibility for KCSP benefits any child under age 19 who is pregnant or the parent of a child under the age of one must attend a parenting skills education program. Failure to meet this requirement without good cause shall result in that minor's ineligibility. Ineligibility will continue until the child has complied.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B, R.S. 46:237, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:355 (February 2000), amended LR 30:

#### **§5341. Drug Screening, Testing, Education and Rehabilitation Program**

A. - C. ...

D. Failure to Cooperate. Failure or refusal of a recipient to participate in drug screening, testing, or participation in the education and rehabilitation program, without good cause, will result in ineligibility of the noncompliant individual. Cooperation is defined as participating in the component in which the recipient previously failed to cooperate. This includes drug screening, drug testing, or satisfactory participation for two weeks in an education and rehabilitation program.

E. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B, R.S. 46:237; Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:355 (February 2000), amended LR 30:

#### **Subpart 16. Strategies to Empower People (STEP) Program**

##### **Chapter 57. Strategies to Empower People (STEP) Program**

##### **Subchapter A. Designation and Authority of State Agency**

#### **§5701. General Authority**

A. The Strategies to Empower People Program is established in accordance with state and federal laws effective October 1, 2003, to assist recipients of cash assistance to become self-sufficient by providing needed employment-related activities and support services.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:

#### **§5703. Program Administration**

A. The STEP program will be administered by OFS State Office, Regional and Parish staff.

B. The Department of Social Services will coordinate with the Louisiana Workforce Commission, who will identify, direct, and coordinate the provision of employment services offered through the STEP program. These services will include but are not limited to:

1. job readiness, job preparation, and job search;
2. workplace literacy and related assessments; and
3. applicable skill-based training, employer-based training, and other employment activities designed to meet the needs of Louisiana employers with a preference towards demand occupations.

C. The Louisiana Workforce Commission shall coordinate the provision of services utilizing the Department of Labor, one-stop services centers, the Louisiana Community and Technical College system, and the Department of Education adult literacy and community-based organizations.

D. A grievance procedure is available for resolving displacement complaints by regular employees or their representatives relating to STEP participants. A grievance procedure is also available for resolving complaints by, or on behalf of, STEP participants in a work-related activity. This grievance procedure hears complaints relating to on-the-job working conditions and workers' compensation coverage.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:

#### **§5705. Definitions**

*Family Assessment?* consists of an initial employability assessment and a comprehensive assessment.

1. Initial employability assessment is designed to determine the applicant's level of employability, immediate needs, and family circumstances during the application process.

2. Comprehensive assessment is conducted once the applicant is certified for eligibility and shall include workplace literacy, basic skills and educational attainment, interests and aptitude related to employment, barriers to employment, need for education, supportive services such as child care and transportation, and other supportive services. Specialized assessments can occur for issues that arise after an initial assessment has been completed and could include substance abuse, domestic violence, mental health screening, or others as determined by the department.

*Family Success Agreement (FSA)?* the mutually developed contract between a Family Independence Temporary Assistance Program (FITAP) recipient, on behalf of their family, and the agency that sets forth mutual and time-bound responsibilities, expectations, activities, and goals designed to transition the family from receipt of FITAP to self-sufficiency.

*Family Transition Assessment (FTA)?* mutually developed plan between a FITAP recipient, on behalf of their family, and the agency, for those families nearing the end of their FITAP eligibility to identify the action plan necessary to enable a successful transition from receipt of FITAP to self-sufficiency.

*Strategies to Empower People (STEP)?* the program that provides education, employment, training and related services for families receiving FITAP assistance.

*Temporary Exception?* a limited time period in which the work-eligible recipient does not have to participate in an assigned work activity due to temporary incapacity or illness, unavailable child care, or a domestic violence situation.

*Work-eligible Family?* a FITAP family (including cases which do not receive cash because their benefit would be less than \$10) which includes at least one adult under age 60 or a teen head of household who is not permanently disabled or incapacitated, or who is not caring for a family member who is permanently disabled or incapacitated as documented by a medical professional.

*Work-eligible Recipient?* an adult under age 60 or a teen head of household who is included in a work-eligible family and who is not permanently disabled or incapacitated, or who is not caring for a family member who is permanently disabled or incapacitated, as documented by a medical professional.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:

#### **§5707. Domestic Violence**

A. The secretary shall waive, for as long as necessary, pursuant to a determination of good cause, any public assistance program requirement that will create obstacles for a victim of domestic violence to escape a domestic violence situation, including but not limited to time limits on receipt of assistance, work, training or educational requirements, limitations on TANF requirements, residency requirements, and any other program requirements which will create obstacles for such victim to escape violence or penalize that victim for past, present, and potential for abuse. However, a victim of domestic violence shall develop a plan that specifies the necessary actions, goals, and services that may enable the victim to become free of a domestic violence situation. Such plan shall be made a component of the participant's Family Success Agreement.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:

#### **Subchapter B. Participation Requirements**

##### **§5709. School Attendance**

A. Work-eligible FITAP recipients, in order to ensure appropriate child development, educational attainment, and school attendance for each minor child included in the assistance unit, shall agree in the Family Success Agreement (FSA) to:

1. actively participate in their child's education through parent-teacher conferences, homework assistance, or other activities; and

2. provide documentation to the department that they are ensuring school attendance and are engaged in the child's learning.

B. Work-eligible, minor parents who have not yet received a high school diploma or its equivalent shall attend school or related education classes designed to obtain a high school diploma or its equivalent. School attendance shall be the primary work activity for those minor parents who do not have a high school diploma or its equivalent.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:

### §5711. Parenting Skills Education

A. Work-eligible recipients and minors who are pregnant or have a child under age one shall participate in parenting skills education as a primary work activity under the FSA. Applicable child care and transportation shall be provided to participants to enable their participation.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:

### §5713. Work Activities

A. Work-eligible recipients shall participate in appropriate work activities as agreed upon in the FSA. These activities may include but are not limited to:

1. subsidized or unsubsidized employment;
2. unpaid work experience;
3. on-the-job training;
4. job search;
5. job readiness;
6. vocational education;
7. attendance in secondary school for those individuals who have not graduated from high school;
8. participation in GED or basic skills training;
9. employment-related education;
10. job skills training;
11. community service; and
12. the provision of child care to an individual who is participating in community service.

B. Participants who are found not to possess basic workplace or basic literacy skills, as determined by an assessment, shall combine employment and job readiness and job search activities with activities designed to increase their basic and workplace literacy skills.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:

### §5715. Temporary Exceptions

A. A work-eligible applicant or recipient of cash assistance shall immediately participate in work activities for the minimum number of hours per week required by federal law unless one of the following exceptions applies. These temporary exceptions shall not exceed six months in a twelve-month period. The exceptions include:

1. temporary incapacity, illness or disability of household head as documented by a medical professional. The documentation shall include a description and reason for the incapacity, illness, or temporary disability, an indication of how long the condition is expected to persist, and a reasonable expectation of when the participant can return to a work activity. Incapacity, illness, or disability determined for a period of longer than six months shall be referred for eligibility to Supplemental Security Income assistance and to the Louisiana Rehabilitation Services;
2. inability to obtain appropriate child care; or
3. status as a victim of domestic violence based on evidence presented to the department which may include, but not limited to, information from law enforcement agencies or domestic violence providers. This exception shall only be granted if a participant develops a plan to address the domestic violence situation and incorporates this plan in the FSA.

B. During a period in which a participant receives a temporary exception to the work requirement, a revised FSA shall be developed to enable satisfactory progress toward meeting employment and educational activity requirements.

C. Participants who receive a temporary exception shall be informed that this time is counted against their time limits for receipt of cash assistance.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:

### §5717. Sanctions

A. Sanctions shall be used as a last resort to inform participants that they have not met the expectations set forth in the FSA. Participants shall be sanctioned for the following violations:

1. failure of the participant to provide documentation to the department that they are ensuring school attendance and are engaged with their child's learning;
2. failure of a work-eligible, minor parent with a child who has not yet received a high school diploma or its equivalent, to attend school or related education classes designed to obtain a high school diploma or its equivalent;
3. failure of a public assistance recipient who is pregnant or has a child under age one to attend parenting education and other training conducive to the unique needs of new parents;
4. failure of work-eligible families to meet the required employment and education activities for the minimum number of hours without good cause, as specified in the FSA; or
5. failure of work-eligible families to meet other requirements such as but not limited to immunization, cooperation with Support Enforcement Services, compliance with substance abuse screening, testing, treatment, etc. as specified in the FSA.

B. If it is determined that a work-eligible family has failed to meet the required activities as specified in the FSA without good cause, that family shall be ineligible for FITAP benefits as follows:

1. first sanction? a minimum of one month or until compliance, whichever is longer;
2. second sanction? a minimum of two months or until compliance, whichever is longer;
3. third or subsequent sanction? a minimum of three months or until compliance, whichever is longer.

C. The following represent good cause for not complying with the requirements set forth in the FSA.

1. Appropriate child care or transportation is unavailable within a reasonable distance from the participant's home or worksite after efforts have been made, and assistance has been offered, to secure child care or transportation.
2. Situations related to domestic violence. Any participant that receives a good cause exception related to domestic violence shall complete a plan that specifies the necessary actions, goals, and services that may enable the victim to become free of the violence and incorporate this plan into their FSA.
3. Situations related to the treatment of a mental or physical illness, including substance abuse treatment, where there is verification that participation in required activities

would impair a treatment plan of a mental health or medical professional. Any participant that receives a good cause exception related to mental or physical illness shall incorporate the completion of the identified treatment plan in the FSA.

4. Temporary, short-term illness, or the temporary care of a family member who is ill, as documented by a medical professional.

5. Temporary emergency crisis, such as homelessness, fire, accident, dislocation due to natural causes, hurricane, flood, or similar circumstances that can be substantiated.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:

#### **Subchapter C. STEP Program Process**

##### **§5719. Family Assessment**

A. A Family Assessment shall be completed on all FITAP/STEP applicants in order to assist the worker in identifying family strengths, weaknesses, opportunities and barriers as well as determining programs that the applicants will need to become self-sufficient.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:

##### **§5721. Job Readiness**

A. A work-eligible applicant for cash assistance shall participate in job readiness activities as part of the core services available under STEP. The applicant shall receive an initial employability assessment designed to determine their level of employability, immediate needs, and family circumstances.

B. Job developers, through performance-based contracts, will provide job readiness services that shall include, but are not limited to:

1. workplace literacy assessment;
2. résumé development;
3. interview skills;
4. job search;
5. workplace standards and soft-skills development;
6. work ethics;
7. interest inventories related to job market and skills;
8. assistance with identification of available jobs and employers;
9. life skills development;
10. budget and financial management; and
11. client follow-up.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:

##### **§5723. Comprehensive Assessment**

A. Once the applicant is certified for eligibility, a comprehensive assessment shall be conducted and include workplace literacy, basic skills and educational attainment, interests and aptitude related to employment, barriers to employment, need for education, supportive services such as child care and transportation, and other supportive services.

B. Specialized assessments can occur for issues that arise after an initial assessment has been completed and could include substance abuse, domestic violence, mental health screening, or others as determined by the department.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:

##### **§5725. Family Success Agreement (FSA)**

A. Upon determination of eligibility and after completion of the comprehensive assessment, work-eligible participants shall enter into a contractual agreement, known as the Family Success Agreement (FSA), with the department. The FSA will specify:

1. the client's time-bound goals, responsibilities, and work activity participation; and
2. the department's obligation to provide necessary supportive services, assessments, notifications, information, and case management.

B. The FSA shall be updated at least every six months or as the client's needs, goals, barriers, and family circumstances change.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:

##### **§5727. Family Transition Assessment**

A. The department shall complete a Family Transition Assessment (FTA) to assist participants with their transition from cash assistance. The plan will be completed with participants who:

1. have received three of the six months of earned income disregard; or
2. have received 18 months of FITAP assistance when subject to the 24-month time limit; or
3. have received 54 months of FITAP assistance when subject to the 60-month time limit; or
4. when it is determined that the family is leaving FITAP, whichever occurs first.

B. The FTA shall include but is not limited to:

1. a plan for on-going success in the work force;
2. identification of short and long-term goals;
3. identification of potential barriers and an action plan to overcome these barriers; and
4. information regarding eligibility for supportive services including, but not limited to: Medicaid benefits, Food Stamp benefits, Child Care, transportation, Louisiana Child Health Insurance Program, the earned income tax credit, and TANF-funded services.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:

##### **§5729. Support Services**

A. Clients may be provided support services that include but are not limited to:

1. a full range of case maintenance and case management services designed to lead to self-sufficiency;
2. transportation assistance;
3. Food Stamp benefits;
4. Medicaid benefits;
5. Child Care;
6. TANF-funded services;
7. other services necessary to accept or maintain employment; and
8. transitional benefits (post-FITAP support services):

a. these services may be provided to participants who are or become ineligible for cash assistance due to earned income. They include a transportation payment of \$120 per month and other supportive service payments not to exceed a combined total of \$200 per state fiscal year and used to cover certain costs deemed necessary for employment. The payments may begin with the first month of FITAP ineligibility and continue through the twelfth month of ineligibility or through the last month of employment, whichever comes first. The 12 months need not be consecutive.

B. Support services may be provided to:

1. persons participating in the Family Assessment;
2. persons referred by the Agency to other activities, such as drug counseling, prior to their participation in a work activity;
3. FITAP recipients participating in approved activities necessary to meet exemptions to the FITAP time limits;
4. FITAP recipients to facilitate their attendance in the FITAP Drug Testing Program or Parenting Skills Program;
5. allow participation in educational activities for FITAP recipients who are exempt from STEP.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:

#### **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 a needy family by informing clients of all available programs and supportive services and assisting them in obtaining the help necessary to move from cash assistance to full self-sufficiency.

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? Family earnings could increase as the result of a recipient successfully completing all required activities and becoming self-reliant.

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 program is strictly an agency function.

All interested persons may submit written comments through January 28, 2004, to Mary M. Joseph, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton Rouge, LA 70804-9065.

A public hearing on the proposed Rule will be held on January 28, 2004, at the Department of Social Services, A.Z. Young Building, Second Floor Auditorium, 755 Third Street, Baton Rouge, LA, 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).

Gwendolyn P. Hamilton  
Secretary

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

**RULE TITLE: Strategies to Empower People (STEP)  
Program**

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

The costs associated with implementation of this bill will be borne by the current FIND Work budget. DSS/OFS is authorized to spend approximately \$20 million on the approximately 8,335 clients (average monthly participation of all families for FY 2003) participating in the FIND Work Program. The proposed rule will require the Department transfer Louisiana's TANF Block Grant and state Maintenance of Effort funds to other state agencies by an interagency transfer. Administrative costs are built into the contracts, which stipulate that contractors must meet certain performance goals or they will not receive administrative funding. Amendments to Chapters 12, 19, 51, and 53 will not result in any costs or savings to the agency as language referencing the FIND Work Program is being replaced with language referencing the STEP Program.

The only immediate cost to the agency will be the cost of publishing rulemaking which is estimated to be \$1440; printing policy, forms instructions, and forms at a cost of \$4300; printing training manuals at a cost of \$2620; and printing an informational brochure at a cost of \$939 for a total cost of \$8,753. There are no other costs or savings associated with this rule. Printing and publishing costs are routinely included in the agency'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)**

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

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

The proposed rule results in no costs or immediate economic benefits to any persons or non-governmental groups.

The rule will have no immediate effect on income and/or receipts of any person or non-governmental group. However, by revising the sanction policy and providing services to eligible clients that will assist them in becoming work ready, the long-term goal of the STEP Program, that is, to move clients from cash assistance to self-reliance, will be realized and the family's income should be positively impacted.

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

The proposed actions will have no impact on competition and employment.

Mary M. Joseph  
Assistant Secretary  
0312#109

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Social Services Office of Family Support

TANF Initiatives? Teen Pregnancy Prevention Program  
(LAC 67.III.5401-5407, 5505-5509,  
5525, 5529, 5539, 5575, and 5577)

In accordance with R.S.49: 950 et seq., the Administrative Procedure Act, the Department of Social Services, Office of Family Support, will amend LAC 67:III, Subpart 15, Chapter 55, §§5505, 5507, 5509, 5525, and 5539, repeal §5529 and Subpart 14, Chapter 54, the Teen Pregnancy Prevention Program, and adopt §§5575 and 5577, pursuant to Act 14 of the 2003 Legislative Session.

The agency has provided funding through Memoranda of Understanding and contracts, to several state agencies and other entities for implementation and administration of the TANF Initiative programs which provide services to families with minor children in order to meet one of the four TANF goals. The agency is proposing the following changes in order to clarify the services, eligibility requirements, and goals of some programs so that language in the Memoranda of Understanding and contracts will coincide with language in the Louisiana Administrative Code. Section 5505 is being amended to revise the TANF goals being met by the services provided and to clarify the eligibility requirements; Section 5507 is being amended to include additional services that will be provided by the Workforce Commission and the Louisiana Community and Technical College System; Sections 5509 and 5539 are being amended to remove references to the Office of Women's Services and the Supreme Court of Louisiana respectively. By using non-specific language regarding the TANF partners, future amendments to the Louisiana Administrative Code will be avoided. Section 5525 is being amended to specify targeted populations that will be eligible for services.

The agency is repealing Section 5529, Youth in Transition, as funds are no longer being allocated for this program. Additionally, the agency is repealing Subpart 14, Chapter 54, Teen Pregnancy Prevention Program. The program will now be administered by the Department of Education through a Memorandum of Understanding with the agency. Program information will be incorporated into Chapter 55, TANF Initiatives and adopted as Section 5575, Teen Pregnancy Prevention Program. Section 5577, Skills Training for Incarcerated Fathers, is being adopted as a new TANF Initiative.

These changes were effected October 21, 2003, by a Declaration of Emergency that was published in the November issue of the *Louisiana Register*.

#### Title 67

### SOCIAL SERVICES

#### Part III. Family Support

##### Subpart 14. Teen Pregnancy Prevention

#### Chapter 54. Teen Pregnancy Prevention Program

##### §5401. Authority

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474; Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:1018 (July 2001), repealed LR 30:

##### §5403. Strategy

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S.36:474; Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:1019 (July 2001), amended LR 28:1996 (September 2002), repealed LR 30:

##### §5405. Goals and Objectives

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.36:474; Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:1019 (July 2001), amended LR 28:1996 (September 2002), repealed LR 30:

##### §5407. Program Activities

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:474; Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:1019 (July 2001), amended LR 28:1599 (July 2002), repealed LR 30:

#### Subpart 15. Temporary Assistance to Needy Families (TANF) Initiatives

#### Chapter 55. TANF Initiatives

#### §5505. Nonpublic School Early Childhood Development Program

A. ...

B. These services meet the TANF goal to reduce the incidence of out-of-wedlock births by placing children in learning environments at the pre-school level to foster an interest in learning, increase literacy levels, and increase the likelihood of developing responsible behavior.

C. Eligibility for services is limited to families in which the child is one year younger than the eligible age for public school kindergarten and who have earned income at or below 200 percent of poverty level.

D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:350 (February 2002), amended LR 29:715 (May 2003), LR 30:

#### §5507. Adult Education, Basic Skills Training, Job Skills Training, and Retention Services Program

A. The Office of Family Support shall enter into Memoranda of Understanding or contracts to create programs to provide adult education and literacy, basic skills training, jobs skills training, court-ordered training and job retention services to low-income families. Employed participants will be provided child care and transportation services. Unemployed participants will be provided short-term child care and transportation services.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session; Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:870 (April 2002), amended LR 30:

**§5509. Domestic Violence Services**

A. The Office of Family Support shall enter into Memoranda of Understanding or contracts to provide for services pertaining to domestic violence including rural outreach, services to children in shelters, and training of law enforcement and DSS personnel.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:351 (February 2002), amended LR 30:

**§5525. Pre-GED/Skills Option Program**

A. - B. ...

C. Eligibility for services is not limited to needy families; however certain populations are targeted for services provided by the Options Program and the JAG LA Program. They include:

1. Eligible participants in the Options Program shall be students 16 years of age or older and meet one or more of the following:

- a. failed the eighth grade LEAP 21 English language arts or math test for one or more years;
- b. failed English language arts, math, science, or social studies portion of the Graduation Exit Exam;
- c. participated in alternate assessment; or
- d. earned not more than 5 Carnegie units by age 17, not more than 10 Carnegie units by age 18, and not more than 15 Carnegie units by age 19.

2. Eligible participants in the JAG LA Program shall be 16-21 years of age (or at least 15 years of age in the middle school pilot program) and must face at least two designated barriers to success that include economic, academic, personal, environmental, or work related.

D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session; Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:352 (February 2002), amended LR 30:

**§5529. Youth in Transition**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session of the Louisiana Legislature; Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:352 (February 2002), repealed LR 30:

**§5539. Truancy Assessment and Service Centers**

A. OFS shall enter into Memoranda of Understanding or contracts for Truancy Assessment and Service Centers designed to identify, assess, and intervene to ensure that children in kindergarten through sixth grade attend school regularly.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session; Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:353 (February 2002), amended LR 30:

**§5575. Teen Pregnancy Prevention Program**

A. The Department of Social Services, Office of Family Support, shall enter into Memoranda of Understanding or contracts effective July 1, 2003, to prevent or reduce out-of-wedlock and teen pregnancies by enrolling youth ages 8 through 20 in supervised, safe environments, with adults leading activities according to a research-based model aimed at reducing teen pregnancy.

B. Services offered by providers meet the TANF goals to prevent and reduce the incidence of out-of-wedlock births by providing research-based prevention and intervention programming for students who live in poor communities and/or show evidence of academic underperformance, dropping out, or engaging in negative behaviors that can lead to dependency, out-of-wedlock births, or imprisonment.

C. Eligibility for services is not limited to needy families. Custodial and non-custodial parents, legal guardians, or caretaker relatives of youth who are participants in the program may also receive parenting training and educational services.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:

**§5577. Skills Training For Incarcerated Fathers**

A. The Office of Family Support shall enter into Memoranda of Understanding or contracts effective September 1, 2003, to provide educational rehabilitation services to incarcerated male inmates to assist them in becoming self-sustaining individuals upon release.

B. These services meet the TANF goal to encourage the formation and maintenance of two-parent families.

C. Eligibility for services is limited to male inmates housed in a local or state Louisiana correctional facility, who have served a majority of their sentence and are nearing release and who are the parents of minor children.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30

**Family Impact Statement**

1. What effect will this rule have on the stability of the family? Implementation of this rule should have no impact on family stability.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? The 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 should have no impact on family functioning.

4. What effect will this have on family earnings and family budget? The rule will have no immediate effect on family earnings and budget.

5. What effect will this have on the behavior and personal responsibility of children? The rule will 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 January 28, 2004, to Mary M. Joseph, Assistant Secretary, Office of Family Support, and P.O. Box 94065, Baton Rouge, LA 70804-9065.

A public hearing on the proposed rule will be held on January 28, 2004, at the Department of Social Services, A. Z. Young Building, Second Floor Auditorium, 755 Third Street, Baton Rouge, LA, 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).

Gwendolyn P. Hamilton  
Secretary

The proposed rule will result in revenue collections totaling \$8,500,000. \$6,500,000 will be transferred to the Department of Education for implementation of the TPPP and \$2,000,000 will be transferred to the Department of Corrections and the Louisiana Community and Technical College System for the implementation of the Skills Training for Incarcerated Fathers Program.

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

There is no immediate cost or economic benefit to any persons or non-governmental groups. However, the TANF Initiative programs have a long-term goal of improving the economic situations of the targeted families.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will have no impact on competition and employment.

Mary M. Joseph  
Assistant Secretary  
0312#108

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: TANF Initiatives  
Teen Pregnancy Prevention Program**

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

The proposed rule will result in an \$8,500,000 increase in the expenditures for fiscal year 03/04. \$6,500,000 in TANF Funds has been allocated for the implementation and administration of the Teen Pregnancy and Prevention Program and \$2,000,000 has been allocated for the implementation and administration of the Skills for Incarcerated Fathers Program.

There are no associated costs to state or local governmental units for repealing the TANF initiatives at §5529 and Subpart 14, Chapter 54, and amending §§5505, 5507, 5509, 5525, and 5539.

The minimal cost of publishing rulemaking is approximately \$602.00.

The total estimated implementation cost is approximately \$8,500,602.

There are no savings to state or local governmental units.

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

**NOTICE OF INTENT**

**Department of Transportation and Development  
Office of Highways/Engineering**

Design Standards (LAC 70:I.Chapter 9)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Transportation and Development intends to adopt Chapter 9 of Title 70 entitled "Design Standards for Freeways, Arterial, Collector and Local Highways Under the Jurisdiction of Political Subdivisions and Not in the State-Maintained System," in accordance with R.S. 48:35(C).

**Title 70**

**TRANSPORTATION**

**Part I. Highway Construction**

**Chapter 9. Design Standards for Freeways, Arterial, Collector and Local Highways Under the Jurisdiction of Political Subdivisions and Not in the State-Maintained System**

**§901. Design Standards for Rural Arterial Roads**

Item No.	Item	Rural		
		RA-1	RA-2	RA-3
1	Design Speed (mph)	50 1	60 2	70
2	Number of Lanes (minimum) 3	2	2	4
3	Width of Travel Lanes (ft)	11 – 12 4	12	12
4	Width of Shoulders (minimum) (ft)			
	(a) Two Lane	8 5	8 5	N/A
	(b) Divided facilities			
	(1) Inside	4 (Paved)	4 (Paved)	4 6 (Paved)
	(2) Outside	8 5	8 5	8 – 10 7
5	Outside Shoulder Type	Aggregate (2' min paved)	Aggregate (2' min paved)	Paved
6	Parking Lane Width (ft)	N/A	N/A	N/A
7	Width of Median on Divided Facilities (ft)			
	(a) Depressed	42 – 60	42 – 60	60
	(b) Raised	N/A	N/A	N/A

	(c) Two way left turn lane	N/A	N/A	N/A
8	Fore slope (vertical – horizontal)	1:6	1:6	1:6
9	Back slope (vertical – horizontal)	1:4	1:4	1:4
10	Pavement Cross-slope (%) 8	2.5	2.5	2.5
11	Stopping Sight Distance (ft)	425	570	730
12	Maximum Superelevation (%) 9	10	10	10
13	Minimum Radius (ft) 10 (with full superelevation)	700	1,100	1,700
14	Maximum Grade (%) 11	4	3	3
15	Minimum Vertical Clearance (ft) 12	16	16	16
16	Minimum Horizontal Clearance (ft) (from edge of travel lane)	20	30 13	34
17	Bridge Design Live Load 14	AASHTO	AASHTO	AASHTO
18	Width of Bridges (min) (face to face of bridge rail at gutter line) (ft)	Roadway width	Roadway width	Roadway width

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:35(C).

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering LR 30:

**§903. Footnotes for Rural Arterial Design Standards**

A. The design speed may not be less than the current posted speed of the overall route.

B. Consider using RA-3 criteria for roadways that will be widened in the future.

C. Consider increasing to a 4-lane facility if design volume is greater than 6000 vehicles per day and six lanes if design volume is greater than 25,000 vehicles per day. If more than two lanes are to be provided, outside shoulders should be paved.

D. Twelve feet required when design ADT is 1500 or greater.

E. Six foot shoulders are allowed if design volume is between 400 to 2000 vehicles per day. Four foot shoulders are allowed if design volume is less than 400 vehicles per day.

F. Eight to ten feet on six lane facilities.

G. Consider using ten foot outside shoulders where trucks are greater than ten percent or if large agricultural vehicles use the roadway.

H. Two percent acceptable on rehabilitation projects.

I. In Districts 04 and 05, where ice is more frequent, superelevation should not exceed eight percent from the emax = 10 percent table.

J. It may be necessary to increase the radius of the curve and/or increase the shoulder width (maximum twelve feet) to provide adequate stopping sight distance on the structure.

K. Grades 1 percent higher are permissible in rolling terrain.

L. An additional six inches should be added for additional future surfacing.

M. On multilane facilities, use 32 feet.

N. For LFD and ASD designs an HST, 18 vehicle should be included as one of the live load vehicles.

O. General Note: Overlay design standards shall be applicable to those projects for which the primary purpose is to improve the riding surface.

AUTHORITY NOTE: Promulgated in accordance with R. S. 48:35(C).

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering LR 30:

**§905. Design Standards for Freeways**

Item No.	Item	Urban		Rural
		F-1	F-2	F-3 1
1	Design Speed (mph)	50	60	70
2	Level of Service	C 3	C 3	B 2
3	Number of Lanes (minimum)	4	4	4
4	Width of Travel Lanes (ft)	12	12	12
5	Width of Shoulders (ft)			
	(a) Inside 4	6	6	6
	(b) Outside 5	10	10	10
6	Shoulder Type	Paved	Paved	Paved
7	Width of Median (minimum) (ft)			
	(a) Depressed	50	68 (min) – 100 (des)	72 (min) – 100 (des)
	(b) Continuous barrier (4 lane) 6	15	15	15
	Continuous barrier (6 lane) 6	27	27	27
8	Fore Slope (vertical – horizontal)	1:4 to 1:6	1:6	1:6
9	Back Slope (vertical – horizontal)	1:4	1:4	1:4
10	Pavement Cross Slope (%) 7	2.5	2.5	2.5
11	Stopping Sight Distance (ft)	425	570	730
12	Maximum Superelevation (%) 8	10	10	10
13	Minimum Radius (ft) 9 (with 10% superelevation)	700	1,100	1,700

14	Maximum Grade (%) 10	4	3	3
15	Minimum Vertical Clearance (ft) 11	16	16	16
16	Width of Right-of-Way (ft)			
	(a) Depressed median	As Needed	As Needed	Varies 12
	(b) Median barrier	As Needed	As Needed	As Needed
	(c) Minimum from edge of bridge structure 13	15 – 20	15 – 20	15 – 20
17	Bridge Design Live Load 14	AASHTO	AASHTO	AASHTO
18	Minimum Width of Bridges (face to face of bridge rail at gutter line) (ft)	Roadway Width	Roadway Width	Roadway Width
19	Horizontal Clearance (from edge of travel lane) (ft)			
	(a) 1:4 Fore slope	30	N/A	N/A
	(b) 1:6 Fore slope	22	32	34

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:35(C).

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering LR 30:

**§907. Footnotes for Freeway Design Standards**

- A. These standards may be used in urban areas.
- B. Level of Service C can be used in urban areas.
- C. Level of Service D can be used in heavily developed urban areas.
- D. Four feet to be paved, 10 feet to be paved on 6 lane facilities, 12 feet to be paved on 6 lane facilities with truck DDHV greater than 250.
- E. Twelve feet paved when truck DDHV is greater than 250.
- F. For larger medians two barriers may be required. The maximum offset of 15 feet from barrier to edge of travel lane shall not be exceeded.
- G. Two percent permissible for rehabilitation projects.
- H. In Districts 04 and 05, where ice is more frequent, superelevation should not exceed 8 percent from the emax = 10 percent table.

I. It may be necessary to increase the radius of the curve and/or increase the shoulder width (maximum of 12 feet) to provide adequate stopping sight distance on structure.

J. Grades 1 percent higher may be used in urban areas.

K. An additional 6 inches should be added for additional future surfacing. 17 feet is required for trusses and pedestrian overpasses.

L. As needed for urban projects: 300 feet to 330 feet for rural projects depending on median width.

M. Twenty-five feet shall generally be provided in accordance with EDSM II.1.1.1.

N. For LFD and ASD designs a HST-18 vehicle should be included as one of the live load vehicles.

O. General Note: Overlay design standards (separate sheet) shall be applicable to those projects for which the primary purpose is to improve the riding surface.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:35(C).

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering LR 30:

**§909. Design Standards for Local Roads and Streets**

Item No.	Item	Rural			Urban	
		RL-1	RL-2	RL-3	UL-1	UL-2
1	Design Speed (mph) 1	30	40	50	20	30
2	Average Daily Traffic	0 – 250	250 – 400	Over 400	N/A	N/A
3	Typical Number of Lanes	2	2	2	2	2
4	Minimum Width of Travel Lanes (ft)	9	9	11 – 12 2	10 – 11 3	10 – 11 3
5	Minimum Width of Shoulders (ft) 4	2	2	5 – 8 5	When used 6	When used 6
6	Shoulder Type	Aggregate	Aggregate	Aggregate	Paved	Paved
7	Minimum Width of Parking Lanes (where used) (ft)	N/A	N/A	N/A	7 – Residential 8 – Industrial	7 – Residential 8 – Industrial
8	Minimum Width of Sidewalk (where used) (ft)					
	(a) Offset from curb	N/A	N/A	N/A	4	4
	(b) Adjacent to curb	N/A	N/A	N/A	6	6
9	Fore Slope (vertical – horizontal)	1:3 7	1:3 7	1:4	1:3	1:3
10	Back Slope (vertical – horizontal)	1:2	1:2	1:3	1:2	1:2
11	Pavement Cross Slope (%) 8	2.5	2.5	2.5	2.5	2.5
12	Stopping Sight Distance (ft)	200	305	425	115	200
13	Maximum Superelevation (%)	10 9	10 9	10 9	4	4
14	Minimum Radius (ft) 10, 11					
	(a) With normal crown (-2.5% cross slope)	7,585	11,625	16,700	100	325
	(b) With 2.5% superelevation	1,930	3,250	5,000	85	250
	(c) With full superelevation	250	450	700	80	235
15	Maximum Grade (%) 12	7	7	6	10	9
16	Minimum Vertical Clearance (ft)	15	15	15	15	15
17	Minimum Horizontal Clearance (ft)					

	(a) From edge of travel lane	10 7	10 7	Varies 13	7 – Shoulder facilities	10 – Shoulder facilities
	(b) From back of curb	N/A	N/A	N/A	1 (min) – 6 (des)	1 (min) – 6 (des)
18	Bridge Design Load Live 14	AASHTO	AASHTO	AASHTO	AASHTO	AASHTO
19	Minimum Width of Bridges (face to face of bridge rail at gutter line)	Traveled way plus 4'	Traveled way plus 4'	Traveled 15 way plus 6'	Traveled 16, 17 way plus 8'	Traveled 16,17 way plus 8'
20	Bridge End Treatment	Yes	Yes	Yes	16	16

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:35(C).

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering LR 30:

**§911. Footnotes for Local Road and Street Design Standards**

- A. The design speed may not be less than the current posted speed of the overall route.
- B. For ADT greater than 2000, use 12-foot lane widths.
- C. Lane widths in residential areas may be reduced to 9 feet if necessary. 12-foot lane widths are preferred in industrial areas.
- D. Where bicycles are prevalent, a paved 4-foot shoulder should be provided.
- E. For ADT less than 1500, the minimum shoulder width may be reduced to 4 feet if necessary. For ADT 1500 to 2000, use 6-foot shoulders. For ADT over 2000, use 8-foot shoulders.
- F. Select the shoulder width that corresponds to the ADT shown in the rural local standards.
- G. The value shown should be provided on new roadways. A lesser value may be used on existing roads depending on soil stability, right-of-way constraints, the safety record of the road, and the size vehicles using the road. Guidance is available in the publication entitled "AASHTO Guidelines for Geometric Design of Very Low Volume Local Roads (ADT < 400)."
- H. Two percent acceptable for rehabilitation projects.
- I. In Districts 04 and 05, where ice is more frequent, superelevation should not exceed 8 percent from the emax = 10 percent table.
- J. It may be necessary to increase the radius of the curve and/or increase the shoulder width (maximum of 12 feet) to provide adequate stopping sight distance on structure.
- K. On roadways with an ADT < 400, a sharper radius may be used on fully superelevated roadways if necessary. For specific values refer to the publication entitled

"AASHTO Guidelines for Geometric Design of Very Low Volume Local Roads (ADT < 400)." Different radii apply at divisional islands.

- L. Grades 2 percent higher may be used in rural rolling terrain.
  - M. Varies from 14 feet to 28 feet. Refer to the Roadside Design Guide for the applicable value. For spot replacement projects refer to the applicable part of Footnote G.
  - N. For LFD and ASD designs a HST-18 vehicle should be included as one of the live load vehicles.
  - O. For ADT greater than 2000, use roadway width.
  - P. Refer to EDSM II.3.1.4 when sidewalks will be provided and for guardrail requirements.
  - Q. When shoulders are provided, the minimum bridge width shall be the larger of that shown or the roadway width.
  - R. These standards shall not apply to:
    - 1. dead end roads (open at one end only);
    - 2. roads that are dependent on dead end roads for access.
  - S. Urban standards may be applied to any street for which curb is to be used and the posted speed is less than 50 mph, or any street for which a posted speed of 30 mph or less would be appropriate.
  - T. On spot replacement projects the existing geometry and superelevation may remain providing there are no safety problems.
  - U. The appropriate local governing body is authorized to make design exceptions for specific items listed in these standards, with proper engineering justification.
  - V. General Note: Overlay design standards (separate sheet) shall be applicable to those projects for which the primary purpose is to improve the riding surface.
- AUTHORITY NOTE: Promulgated in accordance with R.S. 48:35(C).
- HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering LR 30:

**§913. Design Standards for Rural Collector Roads**

Item No.	Item	Rural		
		RC-1	RC-2	RC-3
1	Average Daily Traffic 1	Under 400	400 – 2000	Over 2000
2	Design Speed (mph)	40 – 60 2	50 – 60 2	60
3	Number of Lanes	2	2	2 – 4 3
4	Width of Travel Lanes (ft)	11	11 – 12 4	12
5	Width of Shoulders (ft)			
	(a) Inside on multilane facilities	N/A	N/A	4
	(b) Outside	2 5	4 – 5 6	8
6	Shoulder Type	Paved	Aggregate (2' min paved)	Aggregate (2' min paved) (4' min paved on 4-lane facilities)

7	Width of Parking Lanes (ft)	N/A	N/A	N/A
8	Width of Median on multilane facilities (ft)			
	(a) Depressed	N/A	N/A	42 – 60
	(b) Raised	N/A	N/A	N/A
9	(c) Two way left turn lane	N/A	N/A	N/A
	Width of Sidewalk (minimum) (ft)			
	(a) Offset from curb	N/A	N/A	N/A
	(b) Adjacent to curb	N/A	N/A	N/A
10	Fore Slope (vertical – horizontal)	1:4	1:4	1:6
11	Back Slope (vertical – horizontal)	1:4 7	1:4	1:4
12	Pavement Cross Slope (%) 8	2.5	2.5	2.5
13	Stopping Sight Distance (ft)	305 (40 mph)	425 (50 mph)	570
		425 (50 mph)	570 (60 mph)	
		570 (60 mph)		
14	Maximum Superelevation (%) 9	10	10	10
15	Minimum Radius (ft) 10 (with full superelevation)	450 11	700 12	1,100
16	Maximum Grade (%)	7 (40 mph)	6 (50 mph)	5
		6 (50 mph)	5 (60 mph)	
		5 (60 mph)		
17	Minimum Vertical Clearance (ft) 13	15	15	15
18	Minimum Horizontal Clearance (ft) (from edge of travel lane)	10, 14, 24 14	26 (50 mph) 32 (60 mph)	30
19	Bridge Design Live Load 15	AASHTO	AASHTO	AASHTO
20	Minimum Width of Bridges (face to face of bridge rail at gutter line) (ft)	30	Roadway width	Roadway width

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:35(C).

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering LR 30:

**§915. Footnotes for Rural Collector Design Standards**

A. Current traffic may be used to determine the appropriate classification.

B. The design speed may not be less than the current posted speed of the overall route.

C. For rolling terrain, limited passing sight distance and high percentage trucks, further analysis should be made to determine if additional lanes are required when ADT is above 7,000.

D. For design speeds greater than 50 mph and ADT greater than 1,500 use 12-foot lanes.

E. Where bicycle activity is observed, a 4-foot shoulder should be provided.

F. For ADT greater than 1,500 use 6 foot shoulders.

G. 1:3 back slopes are allowed where right-of-way restrictions dictate.

H. Two percent acceptable for rehabilitation projects.

I. In Districts 04 and 05, where ice is more frequent, superelevation should not exceed 8 percent from the emax = 10 percent table.

J. It may be necessary to increase the radius of the curve and/or increase the shoulder width (maximum of 12 feet) to provide adequate stopping sight distance on structure.

K. Radius based on 40 mph. Radii for 50 mph and 60 mph are shown under the RC-2 and RC-3 classifications respectively.

L. Radius based on 50 mph. The radius for 60 mph is shown under the RC-3 classification.

M. Where the roadway dips to pass under a structure, a higher vertical clearance may be necessary. An additional 6 inches should be added for additional future surfacing.

N. The lower value is based on a 40 mph design speed, the middle value for 50 mph and the upper value for 60 mph.

O. For LFD and ASD designs a HST-18 vehicle should be included as one of the live load vehicles.

P. General Note: Overlay design standards (separate sheet) shall be applicable to those projects for which the primary purpose is to improve the riding surface.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:35(C).

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering LR 30:

§917. Design Standards for Urban and Suburban Arterial Roads and Streets

Item No.	Item	Urban			Suburban 1	
		UA-1	UA-2	UA-3	SA-1	SA-2
1	Design Speed (mph)	40	45	50	50	55
2	Level of Service	C 2	C 2	C 2	C	C
3	Number of Lanes	2 (min) – 4 (typ)	2 (min) – 4 (typ)	2 (min) – 4 (typ)	2 (min) – 4 (typ)	2 (min) – 4 (typ)
4	Width of Travel Lanes (ft)	11	11 – 12	12	12	12
5	Width of Shoulders (minimum) (ft) 3					
	(a) Inside on multilane facilities	N/A	N/A	4	4	4
	(b) Outside	8	8	8	8	8
6	Shoulder Type	Paved	Paved	Paved	Paved	Paved
7	Parking Lane Width (ft)	10 – 12	10 – 12	N/A	N/A	N/A
8	Width of Median on Multilane Facilities (ft)					
	(a) Depressed	N/A	N/A	30	30 – 42	42
	(b) Raised	6 – 30 4	6 – 30 4	30	30	30
	(c) Two way left turn lane	11 – 14 typ.	11 – 14 typ.	N/A	N/A	N/A
9	Width of Sidewalk (minimum) (where used) (ft) 5					
	(a) Offset from curb	4	4	4	4	4
	(b) Adjacent to curb	6	6	N/A	N/A	N/A
10	Fore slope (vertical – horizontal)	1:3 (min) – 1:4 (des)	1:3 (min) – 1:4 (des)	1:4	1:4 to 1:6	1:6
11	Back slope (vertical – horizontal)	1:3	1:3	1:3	1:3	1:4
12	Pavement Cross-slope (%) 6	2.5	2.5	2.5	2.5	2.5
13	Stopping Sight Distance (ft)	305	360	425	425	495
14	Maximum Superelevation (%)	4	4	4	4	6
15	Minimum Radius (ft) 7, 8					
	(a) With normal crown (-2.5% cross-slope)	700	1,000	16,700	16,700	19,700
	(b) With 2.5% superelevation	550	750	3,500	3,500	5,250
	(c) With full superelevation	500	700	1,000	1,000	1,100
16	Maximum Grade (%)	7	6	6	4 9	4
17	Minimum Vertical Clearance (ft) 10	16	16	16	16	16
18	Minimum Horizontal Clearance (ft)					
	(a) From edge of travel lane	18 11	25 11	28	20 – 28 12	24
	(b) Outside (from back of curb) (when curb is used)	6 (min) – 15 (des)	6 (min) – 15 (des)	19	10 (1:6) 18 (1:4)	14
	(c) Median (from back of curb) (when curb is used)	4 (min) – 15 (des)	4 (min) – 15 (des)	13	12	18
19	Bridge Design Live Load 13	AASHTO	AASHTO	AASHTO	AASHTO	AASHTO
20	Width of Bridges (minimum) (face to face of bridge rail at gutter line) 14					
	(a) Curbed facilities (without sidewalks)	Traveled 15 way plus 8'	Traveled 15 way plus 8'	Roadway width	Roadway width	Roadway width
	(b) Shoulder facilities	Roadway width	Roadway width	Roadway width	Roadway width	Roadway width
21	Guardrail Required at Bridge Ends	15	15	Yes	Yes	Yes

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:35(C).

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering LR 30:

§919. Footnotes for Urban and Suburban Arterial Design Standards

A. These standards may be used only on a rural roadway section that adjoins a roadway section currently classified as urban. The standard selected should be based on the posted speed.

B. Level of service D allowable in heavily developed urban areas.

C. Curb may be used in place of shoulders on UA-1 and UA-2 facilities. If used on suburban facilities, it shall be placed at the edge of shoulder on two lane facilities and 1 foot beyond the edge of the shoulders on multilane facilities. If used on UA-3 facilities, it shall be placed at the edge of

the shoulder. For design speeds greater than 45 mph, curb will not be placed in front of guardrail.

D. The minimum median width may be reduced to 4 feet if curb offsets are not provided. On principal arterials, particularly at intersections, the upper limit should be considered.

E. If shoulders are used, sidewalks should be separated from the shoulder.

F. Two percent acceptable for rehabilitation projects.

G. It may be necessary to increase the radius of the curve and/or increase the shoulder width (maximum of 12 feet) to provide adequate stopping sight distance on structure.

H. Different radii apply at divisional islands.

I. Grades one percent higher are permissible in rolling terrain.

J. An additional 6 inches should be added for additional future surfacing.

K. Applies to facilities with shoulders. Refer to the Roadside Design Guide when 1:3 fore slopes are used.

L. Use the larger value when 1:4 fore slopes are used.

M. For LFD and ASD designs a HST-18 vehicle should be included as one of the live load vehicles.

N. For suburban roads with shoulders and curbs, consider widening each bridge 8 feet to allow for a future lane and 4 foot offsets to bridge rail.

O. Refer to EDSM II.3.1.4 when sidewalks will be provided and for guardrail requirements.

P. General Note: Overlay design standards (separate sheet) shall be applicable to those projects for which the primary purpose is to improve the riding surface.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:35(C).

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering LR 30:

### §921. Design Standards for Urban and Suburban Collector Roads and Streets

Item No.	Item	Urban		Suburban 1		
		UC-1	UC-2	SC-1	SC-2	SC-3
1	Average Daily Traffic	N/A	N/A	N/A	N/A	N/A
2	Design Speed (mph)	30 - 40	45	40	45	50
3	Number of Lanes (minimum)	2 - 4	2 - 4	2 - 4	2 - 4	2 - 4
4	Width of Travel Lanes (ft)	11 - 12	12	11	11	11 - 12 2
5	Width of Shoulders (ft)					
	(a) Inside on multilane facilities	N/A	N/A	N/A	N/A	4 3
	(b) Outside	8 2, 4	8 2, 4	4 - 5 4	4 - 5 4	6, 8 5
6	Shoulder Type	Paved	Paved	Paved	Paved	Paved
7	Width of Parking Lanes (where used) (ft)	7 - 10 6	11	7 - 10 6	11	N/A
8	Width of Median on multilane facilities (ft)					
	(a) Depressed	N/A	N/A	N/A	N/A	30
	(b) Raised	4 (min) - 30 (des)	4 (min) - 30 (des)	4 (min) - 30 (des)	4 (min) - 30 (des)	26
	(c) Two way left turn lane	11 - 14 typ.	11 - 14 typ.	11 - 14 typ.	11 - 14 typ.	N/A
9	Width of Sidewalk (minimum) (where used) (ft) 7					
	(a) Offset from curb	4	4	4	4	4
	(b) Adjacent to curb	6	6	6	6	N/A
10	Fore Slope (vertical - horizontal)	1:3 - 1:4 8	1:3 - 1:4 8	1:4	1:4	1:4
11	Back Slope (vertical - horizontal)	1:3 9	1:3	1:3	1:3	1:3
12	Pavement Cross Slope (%) 10	2.5	2.5	2.5	2.5	2.5
13	Stopping Sight Distance (ft)	200 (30 mph) 305 (40 mph)	360	305	360	425
14	Maximum Superelevation (%)	4	4	4	4	6
15	Minimum Radius (ft) 11, 12					
	(a) With normal crown (-2.5% cross slope)	325 (30 mph) 700 (40 mph)	1,000	700	1,000	16,700
	(b) With 2.5% superelevation	250 (30 mph) 550 (40 mph)	750	550	750	4,400
	(c) With full superelevation	235 (30 mph) 500 (40 mph)	700	500	700	900
16	Maximum Grade (%)	9	8	7	6	6
17	Minimum Vertical Clearance (ft) 13	15	15	15	15	15
18	Minimum Horizontal Clearance (ft)					
	(a) From edge of travel lane	10	10	10	10	26 - 28 14
	(b) Outside (from back of curb) (when curb is used)	1 (min) - 6 (des)	6 (min) - 15 (des)	1 (min) - 6 (des)	6 (min) - 15 (des)	17 - 19 15
	(c) Median (from back of curb) (when curb is used)	1 (min) - 6 (des)	4 (min) - 15 (des)	1 (min) - 6 (des)	4 (min) - 15 (des)	13
19	Bridge Design Live Load 16	AASHTO	AASHTO	AASHTO	AASHTO	AASHTO
20	Minimum Width of Bridges (face to face of bridge rail at gutter line)					
	(a) Curbed facilities (without sidewalks)	Traveled 17 way plus 8'	Traveled 17 way plus 8'	Traveled 17 way plus 8'	Traveled 17 way plus 8'	Roadway width
	(b) Shoulder facilities	Roadway width	Roadway width	Roadway width	Roadway width	Roadway width
21	Guardrail Required at Bridge Ends	17	17	17	17	Yes

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:35(C).

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering LR 30:

### §923. Footnotes for Urban and Suburban Collector Design Standards

A. These standards may be used only on a rural roadway section that adjoins a roadway section currently classified as urban. The standard selected should be based on the posted speed.

B. For ADT less than 2,000 refer to Exhibit 6-5 on page 429 in the "AASHTO 2001 Policy on Geometric Design of Highways and Streets."

C. Applicable to depressed medians only.

D. Curb may be used instead of shoulder. Where bicycle activity is observed, a bike lane should be considered.

E. If curb will not be used, shoulder widths may be reduced, see Footnote B. When curb is used on multilane facilities, it shall be placed at the edge of shoulder. When curb is used on two-lane facilities, 8 foot shoulders will be required if a future center turn lane will be added. Curb will not be placed in front of guardrail.

F. Seven and 8foot widths are limited to residential areas for 30 and 40 mph respectively.

G. If shoulders are used, sidewalks should be separated from shoulder.

H. Where shoulders are used, 1:4 minimum fore slopes are required through the limits of horizontal clearance.

I. 1:2 back slopes are allowed where right of way restrictions dictate.

J. Two percent acceptable for rehabilitation projects.

K. It may be necessary to increase the radius of the curve and/or increase the shoulder width (maximum of 12 feet) to provide adequate stopping sight distance on structure.

L. Different radii apply at divisional islands.

M. Where the roadway dips to pass under a structure, a higher vertical clearance may be necessary. An additional 6 inches should be added for additional future surfacing.

N. The higher value is applicable to roadways with an ADT greater than 6,000.

O. These values apply to roadways with 8-foot shoulders.

P. For LFD and ASD designs a HST-18 vehicle should be included as one of the live load vehicles.

Q. Refer to EDSM II.3.1.4 when sidewalks will be provided and for guardrail requirements.

R. General Note: Overlay design standards (separate sheet) shall be applicable to those projects for which the primary purpose is to improve the riding surface.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:35(C).

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering LR 30:

#### **Family Impact Statement**

The proposed adoption of this Rule 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:

1. The implementation of this proposed Rule will have no known or foreseeable effect on the stability of the family.

2. The implementation of this proposed Rule will have no known or foreseeable effect on the authority and rights of parents regarding the education and supervision of their children.

3. The implementation of this proposed Rule will have no known or foreseeable effect on the functioning of the family.

4. The implementation of this proposed Rule will have no known or foreseeable effect on family earnings and family budget.

5. The implementation of this proposed Rule will have no known or foreseeable effect on the behavior and personal responsibility of children.

6. The implementation of this proposed Rule will have no known or foreseeable effect on the ability of the family or a local government to perform this function.

All interested persons so desiring shall submit oral or written data, views, comments or arguments no later than 30 days from the date of publication of this Notice of Intent. Such comments should be submitted to Sherryl J. Tucker, Senior Attorney, P. O. Box 94245, Baton Rouge, LA 70804, Telephone (225) 237-1359.

Kam K. Movassaghi, Ph.D., P.E.  
Secretary

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Design Standards**

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

There should be no cost to state or local governmental units to implement this Rule. A legislative mandate to prescribe standards for roadways under the jurisdiction of political subdivisions which are not in the state-maintained system is contained in R.S. 48:35. The proposed Rule sets forth the current roadway design standards established by the American Association of State Highway and Transportation Officials (AASHTO). Formal promulgation in accordance with the Administrative Procedure Act, with the opportunity for public comment, is necessary to comply with the provisions of R.S. 48:35. Although this rule directly affects the standards to which local governmental units must build their roads and highways, such standards have been in effect for many years.

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

This Rule change 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 should be no cost or economic benefit to directly affected persons or non-governmental groups.

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

There should be no effect on competition or employment.

John P. Basilica, Jr.  
Undersecretary  
Management and Finance  
0312#080

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office