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This public document was published at a total cost of \$1,950.00. Six hundred fifty (650) copies of this public document were published in this monthly printing at a cost of \$1,950.00. The total cost of all printings of this document including reprints is \$1,950.00. This document was published by Moran Printing, Inc. 5425 Florida Boulevard, Baton Rouge, LA 70806, as a service to the state agencies in keeping them cognizant of the new rules and regulations under the authority of R.S. 49:950-971 and R.S. 981-999. This material was printed in accordance with standards for printing by state agencies established pursuant to R.S. 43:30. Printing of this material was purchased in accordance with the provisions of Title 43 of the Louisiana Revised Statutes.

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Executive Orders

EXECUTIVE ORDER MJF 01-34

Bond Allocation Louisiana Housing Finance Agency

WHEREAS, pursuant to the Tax Reform Act of 1986 and Act 51 of the 1986 Regular Session of the Louisiana Legislature, Executive Order No. MJF 96-25, as amended by Executive Order No. MJF 2000-15, was issued to establish:

(1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year of 2001 (hereafter "the 2001 Ceiling");

(2) the procedure for obtaining an allocation of bonds under the 2001 Ceiling; and

(3) a system of central record keeping for such allocations;

WHEREAS, the Louisiana Housing Finance Agency requested, and was granted in Executive Order No. MJF 2001-22, issued on May 17, 2001, an allocation from the 2001 Ceiling to be used in connection with a program of financing mortgage loans for single family, owner-occupied residences of low and moderate income home-buyers throughout the state of Louisiana, in accordance with the provisions of Section 146 of the Internal Revenue Code of 1986, as amended;

WHEREAS, the allocation from the 2001 Ceiling granted in Executive Order No. MJF 2001-22 was conditioned upon the delivery of the bonds to the initial purchasers on or before August 15, 2001, and that date passed without such delivery, resulting in the expiration of Executive Order No. MJF 2001-22 and/or the allocation from the 2001 Ceiling granted therein; and

WHEREAS, it is in the best interests of the citizens of the state of Louisiana to re-grant the allocation from the 2001 Ceiling to the Louisiana Housing Finance Agency for use in connection with a program of financing mortgage loans for single family, owner-occupied residences of low and moderate income home-buyers throughout the state of Louisiana, in accordance with the provisions of Section 146 of the Internal Revenue Code of 1986, as amended;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: The bond issue, as described in this Section, shall be and is hereby granted an allocation from the 2001 Ceiling as follows:

Amount of Allocation	Name of Issuer	Name of Project
\$48,000,000	Louisiana Housing Finance Agency	Single Family Mortgage Revenue Bonds

SECTION 2: The granted allocation shall be used only for the bond issue described in Section 1 and for the general purpose set forth in the "Application for Allocation of a Portion of the State of Louisiana Private Activity Bond

Ceiling" submitted in connection with the bond issue described in Section 1.

SECTION 3: The granted allocation shall be valid and in full force and effect through the end of 2001, provided that such bonds are delivered to the initial purchasers thereof on or before December 21, 2001.

SECTION 4: All references in this Order to the singular shall include the plural, and all plural references shall include the singular.

SECTION 5: The undersigned certifies, under penalty of perjury, that the granted allocation was not made in consideration of any bribe, gift, or gratuity, or any direct or indirect contribution to any political campaign. The undersigned also certifies that the granted allocation meets the requirements of Section 146 of the Internal Revenue Code of 1986, as amended.

SECTION 6: Executive Order No. MJF 2001-22, issued on May 17, 2001, expired on August 15, 2001, and is terminated.

SECTION 7: This Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the state of Louisiana, at the Capitol, in the city of Baton Rouge, on this 30th day of August, 2001.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0110#001

EXECUTIVE ORDER MJF 01-35

Bond Allocation North Webster Parish Industrial District

WHEREAS, pursuant to the Tax Reform Act of 1986 and Act 51 of the 1986 Regular Session of the Louisiana Legislature, Executive Order No. MJF 96-25, as amended by Executive Order No. MJF 2000-15, was issued to establish:

(1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year of 2001 (hereafter "the 2001 Ceiling");

(2) the procedure for obtaining an allocation of bonds under the 2001 Ceiling; and

(3) a system of central record keeping for such allocations; and

WHEREAS, the North Webster Parish Industrial District has requested an allocation from the 2001 Ceiling to be used to finance the acquisition, construction, installation, and equipping of an approximately 70,000 sq. ft. manufacturing facility to be located in the North Webster

Industrial District, parish of Webster, state of Louisiana, in accordance with the provisions of Section 146 of the Internal Revenue Code of 1986, as amended;

NOW THEREFORE, I, M.J. "MIKE" FOSTER, JR., Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and the laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: The bond issue, as described in this Section, shall be and is hereby granted an allocation from the private activity bond volume limits for the calendar year of 2001 as follows:

Amount of Allocation	Name of Issuer	Name of Project
\$2,900,000	North Webster Parish Industrial District	Continental Structural Plastics (CSP)

SECTION 2: The granted allocation shall be used only for the bond issue described in Section 1 and for the general purpose set forth in the "Application for Allocation of a Portion of the State of Louisiana Private Activity Bond Ceiling" submitted in connection with the bond issue described in Section 1.

SECTION 3: The granted allocation shall be valid and in full force and effect through the end of 2001, provided that such bonds are delivered to the initial purchasers thereof on or before November 28, 2001.

SECTION 4: All references in this Order to the singular shall include the plural, and all plural references shall include the singular.

SECTION 5: The undersigned certifies, under penalty of perjury, that the granted allocation was not made in consideration of any bribe, gift, or gratuity, or any direct or indirect contribution to any political campaign. The undersigned also certifies that the granted allocation meets the requirements of Section 146 of the Internal Revenue Code of 1986, as amended.

SECTION 6: This Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 30th day of August, 2001.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0110#003

EXECUTIVE ORDER MJF 01-37

Flags at Half-Staff Commercial Passenger Aircraft Hijackings, World Trade Center, and Pentagon Terrorist Attacks

WHEREAS, a sequence of terrorist attacks of unprecedented magnitude occurred against the United States and its citizens this date;

WHEREAS, the attacks involved the coordinated hijackings of four (4) commercial passenger aircrafts causing the deaths of sixty-five (65) persons on United Airlines Flight 175, forty-five (45) persons on United Airlines Flight 93, ninety-two (92) persons on American Airlines Flight 11, and sixty-four (64) persons on American Airlines Flight 77;

WHEREAS, the hijacked American Airlines Flights 11 and 77 were flown into the twin 110 story towers of the World Trade Center in New York City, causing the collapse of both towers and a neighboring building, and another commercial passenger aircraft was flown into the Pentagon collapsing a six-story section of the building;

WHEREAS, the death toll and extent of the casualties from these terrorist acts is still unknown, but expected to be extremely high;

WHEREAS, the citizens of the state of Louisiana mourn the loss of those killed and the suffering of those injured and those who lost loved ones due to this national tragedy; and

WHEREAS, Governor M.J. "Mike" Foster, Jr., asks all citizens of the state of Louisiana to join him in prayer for all those affected by these terrorist acts;

NOW THEREFORE, I, M.J. "MIKE" FOSTER, JR., Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and laws of the state of Louisiana, and as a means for the citizens of this state to express their sorrow for those killed or injured as a result of the hijackings of American Airlines Flight 11, American Airlines Flight 77, United Airlines Flight 93, and United Airlines Flight 175, the collapse of the twin towers of the World Trade Center and a neighboring building, and the collapse of a section of the Pentagon, do hereby order and direct that the flags of the United States and the state of Louisiana be flown at half-staff over the State Capitol and all public buildings and institutions of the state of Louisiana, until sunset on Sunday, September 16, 2001.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 11th day of September, 2001.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0109#005

EXECUTIVE ORDER MJF 01-38

Bond Allocation Louisiana Local Government Environmental Facilities and Community Development Authority

WHEREAS, Executive Order No. MJF 2001-27, issued on June 26, 2001, granted a private activity bond allocation from the 2001 private activity bond volume limit to the Louisiana Local Government Environmental Facilities and Community Development Authority in accordance with the requirements of Executive Order No. MJF 96-25, as amended by Executive Order No. MJF 2000-15; and

WHEREAS, it is necessary to amend Executive Order No. MJF 2001-27 in order to extend the time period in which the bonds may be delivered to initial purchasers;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and the laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: Section 3 of Executive Order No. MJF 2001-27, issued on June 26, 2001, is hereby amended to provide as follows:

The granted allocation shall be valid and in full force and effect through the year of 2001, provided that such bonds are delivered to the initial purchasers thereof on or before December 21, 2001.

SECTION 2: All other sections of Executive Order No. MJF 2001-27 shall remain in full force and effect.

SECTION 3: The provisions of this Order are effective upon signature.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 14th day of September, 2001.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0109#008

EXECUTIVE ORDER MJF 01-39

Bond Allocation Louisiana Housing Finance Agency

WHEREAS, pursuant to the Tax Reform Act of 1986 and Act 51 of the 1986 Regular Session of the Louisiana Legislature, Executive Order No. MJF 96-25, as amended by Executive Order No. MJF 2000-15, was issued to establish:

(1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year of 2001 (hereafter "the 2001 Ceiling");

(2) the procedure for obtaining an allocation of bonds under the 2001 Ceiling; and

(3) a system of central record keeping for such allocations;

WHEREAS, the Louisiana Housing Finance Agency requested a \$76 million allocation from the 2001 Ceiling to be used in connection with a program of financing mortgage loans for single family, owner-occupied residences of low and moderate income home-buyers throughout the state of Louisiana, in accordance with the provisions of Section 146 of the Internal Revenue Code of 1986, as amended;

WHEREAS, the Louisiana Housing Finance Agency was granted a \$48 million allocation in Executive Order No. MJF 2001-22, issued on May 17, 2001, as amended by MJF 2001-34, issued on August 30, 2001; and

WHEREAS, the Louisiana Housing Finance Agency has requested the remainder of the allocation it requested from the 2001 Ceiling for its program of financing mortgage

loans for single family, owner-occupied residences of low and moderate income home-buyers throughout the state of Louisiana, in accordance with the provisions of Section 146 of the Internal Revenue Code of 1986, as amended;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: The bond issue, as described in this Section, shall be and is hereby granted an allocation from the 2001 Ceiling as follows:

Amount of Allocation	Name of Issuer	Name of Project
\$28,000,000	Louisiana Housing Finance Agency	Single Family Mortgage Revenue Bonds

SECTION 2: The granted allocation shall be used only for the bond issue described in Section 1 and for the general purpose set forth in the Application for Allocation of a Portion of the State of Louisiana Private Activity Bond Ceiling submitted in connection with the bond issue described in Section 1.

SECTION 3: The granted allocation shall be valid and in full force and effect through the end of 2001, provided that such bonds are delivered to the initial purchasers thereof on or before December 13, 2001.

SECTION 4: All references in this Order to the singular shall include the plural, and all plural references shall include the singular.

SECTION 5: The undersigned certifies, under penalty of perjury, that the granted allocation was not made in consideration of any bribe, gift, or gratuity, or any direct or indirect contribution to any political campaign. The undersigned also certifies that the granted allocation meets the requirements of Section 146 of the Internal Revenue Code of 1986, as amended.

SECTION 6: This Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the state of Louisiana, at the Capitol, in the city of Baton Rouge, on this 14th day of September, 2001.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0110#011

EXECUTIVE ORDER MJF 01-40

Uniform Payroll Insurance Commission

WHEREAS, the state of Louisiana currently offers its employees the State Employees Cafeteria Plan (hereafter "the Plan") to pay for certain healthcare, insurance, and other services by direct payroll deduction;

WHEREAS, Act No. 1029 of the 2001 Regular Session of the Louisiana Legislature requires the governor to

create this commission in order to study issues related to the administration, availability, and purchase of certain insurance products through the state uniform payroll system;

WHEREAS, some of these product offerings are IRS Code Section 125 eligible and therefore must meet certain criteria in order for the employees to receive preferential tax treatment from the Internal Revenue Service for funds spent through the Plan;

WHEREAS, a properly administered payroll deduction plan providing high quality insurance-related products at a reasonable rate may provide a significant benefit to the state's employees;

WHEREAS, the interests of the state and its employees would best be served by the creation of a commission composed of members of the legislature, the executive branch, the Office of Group Benefits, and others to study these issues and to recommend appropriate methods to improve the Plan;

NOW THEREFORE, I, M.J. "MIKE" FOSTER, JR., Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: The Uniform Payroll Insurance Commission (hereafter "Commission") is established within the executive department, Office of the Governor.

SECTION 2: The duties and functions of the Commission shall include, but are not limited to, the following:

A. Studying all issues related to the administration, availability and purchase of certain insurance products by state employees through the state uniform payroll system.

B. Studying the feasibility of improving voluntary insurance products (exclusive of those offered by the Office of Group Benefits) offered under the uniform payroll system operated by the Division of Administration by examining best practices of other local, state, federal, and privately funded programs;

C. Examining all reasonable options to improve the efficiency and cost effective administration of all voluntary insurance products (exclusive of those offered by the Office of Group Benefits) offered under the uniform payroll system operated by the Division of Administration, including: program structure, oversight, offerings, method of selection, internal administration, etc.

D. Establishing criteria for vendor and employee participation, as well as definable and measurable quality control measures; and

E. Conducting public hearings to receive input from state employees, current and potential product offerers=stakeholders, and others that are impacted or affected by the program.

SECTION 3: The Commission shall submit a comprehensive written report to the governor by February 1, 2002, which addresses the issues set forth in Section 2.

SECTION 4: The Commission shall be composed of twelve (12) members who shall be appointed by, and serve at the pleasure of, the governor. The membership of the Commission shall be selected as follows:

A. the governor, or the governor's designee;

B. the commissioner of administration, or the commissioner's designee;

C. the chair of the Senate Insurance Committee, or the chair's designee;

D. the chair of the House Insurance Committee, or the chair's designee;

E. the chief executive officer of the Office of Group Benefits, or the chief executive officer's designee;

F. the commissioner of insurance, or the commissioner's designee;

G. the secretary of the Department of Health and Hospitals, or the secretary's designee;

H. the secretary of the Department of Revenue, or the secretary's designee;

I. the secretary of the Department of Social Services, or the secretary's designee;

J. the secretary of the Department of Corrections, or the secretary's designee; and

K. two (2) members who represent the interests of private insurance companies.

SECTION 5: The governor's designee shall serve as chair of the Commission. All other officers, if any, shall be elected by the members of the Commission.

SECTION 6: The Commission shall meet at the call of the chair.

SECTION 7: Support staff, facilities, and resources for the meetings of the Commission shall be provided by and/or arranged by the Division of Administration.

SECTION 8:

A. Commission members shall not receive additional compensation or a per diem for serving on the Commission.

B. Commission members who are employees or elected public officials of the state of Louisiana may seek reimbursement of travel expenses, in accordance with PPM 49, from their employing and/or elected department, agency, and/or office.

C. Commission members who are also members of the Louisiana Legislature may seek a per diem from the House of Representatives or the Senate, as appropriate, for their attendance at Commission meetings and/or service on the Commission.

SECTION 9: All departments, commissions, boards, agencies, and officers of the state, or any political subdivision thereof, are authorized and directed to cooperate with the Commission in implementing the provisions of this Order.

SECTION 10: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 17th day of September, 2001.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0110#009

EXECUTIVE ORDER MJF 01-41

Extension of Display of Flags at Half-Staff
Victims of Terrorist Attacks of September 11, 2001

WHEREAS, on September 11, 2001, a sequence of terrorist attacks of unprecedented magnitude occurred against the United States and its citizens;

WHEREAS, as a mark of respect and mourning for those killed and injured as a result of the terrorist attacks, Executive Order No. MJF 2001-37 was issued on September 11, 2001, ordering the flags of the United States and the state of Louisiana be flown at half-staff over the State Capitol and all public buildings and institutions of the state of Louisiana, until sunset on Sunday, September 16, 2001; and

WHEREAS, the citizens of the state of Louisiana desire to continue showing their respect and mourning for the loss of those killed and the suffering of those injured or who lost loved ones due to this national tragedy;

NOW THEREFORE, I, M.J. "MIKE" FOSTER, JR., Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and laws of the state of Louisiana, and as a mark of respect and a means for the citizens of this state to continue to express their sorrow for those killed or injured as a result of the hijackings of American Airlines Flight 11, American Airlines Flight 77, United Airlines Flight 93, and United Airlines Flight 175, the collapse of the twin towers of the World Trade Center and neighboring buildings, and the collapse of a section of the Pentagon, do hereby order and direct that the flags of the United States and the state of Louisiana be flown at half-staff over the State Capitol and all public buildings and institutions of the state of Louisiana, until sunset on Saturday, September 22, 2001.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 17th day of September, 2001.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0110#10

EXECUTIVE ORDER MJF 01-42

Louisiana Domestic Terrorism Advisory Committee

WHEREAS, the ability to protect the citizens of the state of Louisiana from threats and acts of domestic terrorism, particularly those which may incorporate Weapons of Mass Destruction (hereafter "WMFD"), depends, in part, upon the adequacy of state and local community emergency response capabilities, training and exercises, and equipment;

WHEREAS, cooperation among federal, state, and local governments and the effective integration of available resources are essential for domestic preparedness;

WHEREAS, the Congress of the United States of America, through the U.S. Department of Justice, Office of

the Assistant Attorney General, Office of the Justice Programs, in coordination with the Federal Bureau of Investigation's National Domestic Preparedness Office, is providing financial assistance directly to states through Public Law 105-277, the U.S. Departments of Commerce, Justice, and State; the Judiciary; and related Agencies Appropriations Acts of 1999; and the Conference Report (H. Rpt. 105-825, p. 988) accompanying the Department of Justice's Fiscal Year Program, in order to ensure that local and state first responders are properly equipped and prepared to respond to incidents of domestic terrorism involving chemical and biological agents, as well as radiological, nuclear, and explosive devices;

WHEREAS, under the auspices of the State Domestic Preparedness Equipment Program, it is the responsibility of states to develop a statewide domestic preparedness strategy; to perform needs assessments to determine specific needs for equipment, first responder training, state and local response capabilities, and other assets involved in a WMD response; to coordinate resources; and to allocate designated federal funds to local and state emergency services providers; and

WHEREAS, it is desirable and prudent to establish an advisory committee which has technical expertise in the field of domestic preparedness in order to administer, recommend, and coordinate relative to public safety matters;

NOW THEREFORE, I, M.J. "MIKE" FOSTER, JR., Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: The Louisiana Domestic Terrorism Advisory Committee (hereafter "Committee") is established within the executive department, Office of the Governor.

SECTION 2: The duties of the Committee shall include, but are not limited to, the following:

1. planning and executing a Louisiana-specific domestic terrorism threat and needs assessment;
2. developing, based on that assessment, a three-year plan to enhance overall emergency response capabilities to terrorist events; and

3. directing, through the Department of Public Safety, the administration and distribution of funds received by the state from the Department of Justice State Domestic Preparedness Equipment Program to accomplish the above and to provide localities with funding to purchase equipment to support state and/or local emergency response personnel.

SECTION 3: On or before March 29, 2002, the Committee shall submit a detailed report to the governor which addresses the issues set forth in Section 2 of this Order.

SECTION 4: The Committee shall be composed of a maximum of fifteen (15) members who, unless otherwise specified, shall be appointed by, and serve at the pleasure of, the governor. The membership of the Committee shall be selected as follows:

1. The deputy secretary of the Department of Public Safety, or the deputy secretary's designee;
2. The adjutant general of the Louisiana Army National Guard, or the adjutant general's designee;
3. The assistant director of the Office of Emergency Preparedness, Military Department, Office of the Governor, or the assistant director's designee;

4. The secretary of the Department of Agricultural and Forestry, or the secretary's designee;

5. The secretary of the Department of Environmental Quality, or the secretary's designee;

6. The secretary of the Department of Health and Hospitals, or the secretary's designee;

7. The secretary of the Department of Wildlife and Fisheries, or the secretary's designee;

8. The president of the Louisiana Sheriffs Association, or the president's designee;

9. The president of the Louisiana Association of Chiefs of Police, or the president's designee;

10. The president of the Louisiana Fire Chiefs Association, or the president's designee;

11. The president of the Louisiana Association of Nationally Registered Emergency Medical Technicians, or the president's designee;

12. The president of the Louisiana Emergency Preparedness Association, or the president's designee;

13. One (1) member of the Louisiana State Police Hazardous Materials Unit;

14. One (1) at-large member representing local emergency management; and

15. One (1) at-large member representing local public works departments.

SECTION 5: The Committee shall be co-chaired by the deputy secretary of the Department of Public Safety and the director of the Office of Emergency Preparedness, or their designees. All other officers, if any, shall be elected by the membership of the Committee.

SECTION 6: The Committee shall meet at regularly scheduled intervals and at the call of the chair.

SECTION 7: Support staff, facilities, and resources for the Committee shall be provided by the Department of Public Safety and Corrections and the Office of Emergency of Preparedness, Military Department, Office of the Governor.

SECTION 8:

A. Committee members shall not receive additional compensation or a per diem from the Office of the Governor for serving on the Committee.

B. Committee members who are also employees or elected public officials of the state of Louisiana may seek reimbursement of travel expenses, in accordance with PPM 49, from their employing and/or elected department, agency, and/or office.

SECTION 9: All departments, commissions, boards, agencies, and officers of the state, or any political subdivision thereof, are authorized and directed to cooperate with the Committee in implementing the provisions of this Order.

SECTION 10: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 21st day of September, 2001.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0110#015

EXECUTIVE ORDER MJF 01-43

Bond Allocation Industrial Development Board
of the City of Donaldsonville, Louisiana, Inc.

WHEREAS, pursuant to the Tax Reform Act of 1986 and Act 51 of the 1986 Regular Session of the Louisiana Legislature, Executive Order No. MJF 96-25, as amended by Executive Order No. MJF 2000-15, was issued to establish:

(1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year of 2001 (hereafter the 2001 Ceiling);

(2) the procedure for obtaining an allocation of bonds under the 2001 Ceiling; and

(3) a system of central record keeping for such allocations; and

WHEREAS, the Industrial Development Board of the City of Donaldsonville, Louisiana, Inc., has requested an allocation from the 2001 Ceiling to be used in connection with a program to provide financing for the acquisition, construction, and equipping of a food manufacturing facility to be located in the parish of Ascension, state of Louisiana, in accordance with the provisions of Section 146 of the Internal Revenue Code of 1986, as amended;

NOW THEREFORE, I, M.J. "MIKE" FOSTER, JR., Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and the laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: The bond issue, as described in this Section, shall be and is hereby granted an allocation from the private activity bond volume limits for the calendar year of 2001 as follows:

Amount of Allocation	Name of Issuer	Name of Project
\$3,600,000	Industrial Development Board of the City of Donaldsonville, Louisiana, Inc.	Chef John Folse & Company, Inc.

SECTION 2: The granted allocation shall be used only for the bond issue described in Section 1 and for the general purpose set forth in the "Application for Allocation of a Portion of the State of Louisiana Private Activity Bond Ceiling" submitted in connection with the bond issue described in Section 1.

SECTION 3: The granted allocation shall be valid and in full force and effect through the end of 2001, provided that such bonds are delivered to the initial purchasers thereof on or before December 24, 2001.

SECTION 4: All references in this Order to the singular shall include the plural, and all plural references shall include the singular.

SECTION 5: The undersigned certifies, under penalty of perjury, that the granted allocation was not made in consideration of any bribe, gift, or gratuity, or any direct or indirect contribution to any political campaign. The undersigned also certifies that the granted allocation meets the requirements of Section 146 of the Internal Revenue Code of 1986, as amended.

SECTION 6: This Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 25th day of September, 2001.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0110#016

EXECUTIVE ORDER MJF 01-44

Bond AllocationCIndustrial Development Board
of the Parish of Ouachita, Louisiana, Inc.

WHEREAS, pursuant to the Tax Reform Act of 1986 and Act 51 of the 1986 Regular Session of the Louisiana Legislature, Executive Order No. MJF 96-25, as amended by Executive Order No. MJF 2000-15, was issued to establish:

(1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year of 2001 (hereafter "the 2001 Ceiling");

(2) the procedure for obtaining an allocation of bonds under the 2001 Ceiling; and

(3) a system of central record keeping for such allocations; and

WHEREAS, the Industrial Development Board of the Parish of Ouachita, Louisiana, Inc., has requested an allocation from the 2001 Ceiling to be used in connection with a program of financing the acquisition, construction, installation and equipping of a new manufacturing facility of products for infants, located in the parish of Ouachita, Louisiana, in accordance with the provisions of Section 146 of the Internal Revenue Code of 1986, as amended;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: The bond issue, as described in this Section, shall be and is hereby granted an allocation from the 2001 Ceiling as follows:

Amount of Allocation	Name of Issuer	Name of Project
\$5,000,000	Industrial Development Board of the Parish of Ouachita, Louisiana, Inc.	Garrett Manufacturing LLC

SECTION 2: The granted allocation shall be used only for the bond issue described in Section 1 and for the general purpose set forth in the "Application for Allocation of a Portion of the State of Louisiana Private Activity Bond Ceiling" submitted in connection with the bond issue described in Section 1.

SECTION 3: The granted allocation shall be valid and in full force and effect through the end of 2001, provided that such bonds are delivered to the initial purchasers thereof on or before December 24, 2001.

SECTION 4: All references in this Order to the singular shall include the plural, and all plural references shall include the singular.

SECTION 5: The undersigned certifies, under penalty of perjury, that the granted allocation was not made in consideration of any bribe, gift, or gratuity, or any direct or indirect contribution to any political campaign. The undersigned also certifies that the granted allocation meets the requirements of Section 146 of the Internal Revenue Code of 1986, as amended.

SECTION 6: This Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the state of Louisiana, at the Capitol, in the city of Baton Rouge, on this 25th day of September, 2001.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0110#017

EXECUTIVE ORDER MJF 01-45

Anesthesiologist Assistant Legislation Commission

WHEREAS, Executive Order No. MJF 2001-31, issued on August 16, 2001, established the Anesthesiologist Assistant Legislation Commission within the executive Department, Office of the Governor;

WHEREAS, it is necessary to amend Executive Order No. MJF 2001-31 in order to extend the date for submitting the draft legislation to the governor and the Louisiana Legislature;

NOW THEREFORE, I, M.J. "MIKE" FOSTER, JR., Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: Section 3 of Executive Order No. MJF 2001-31 is amended to provide as follows:

On or before March 1, 2002, the Commission shall submit draft legislation to the governor and the Louisiana Legislature which addresses the issues set forth in Section 2 of this Order.

SECTION 2: All other sections, subsections, and paragraphs of Executive Order No. MJF 2001-31 shall remain in full force and effect.

SECTION 3: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 27th day of September 2001.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0110#027

EXECUTIVE ORDER MJF 01-46

Environmental Contamination Notification Order

WHEREAS, the 1974 Louisiana Constitution imposes a public trust which requires state government to protect, conserve, and replenish water and other natural resources so far as possible and consistent with the health, safety, and welfare of the people of Louisiana;

WHEREAS, environmental contamination occurs from both manmade and natural sources and sometimes can have adverse health impacts on people;

WHEREAS, several agencies within the executive branch of state government may determine that environmental contamination exists within a certain geographic area;

WHEREAS, the health, safety, and welfare of the people of Louisiana would be improved, and the government would better fulfill its public trust obligations, if those executive branch agencies notified, or caused to be notified, people who may be exposed to environmental contamination when such agency has sound scientific knowledge of environmental contamination that exceeds the applicable federal and state health standards and that may cause adverse health effects;

NOW THEREFORE, I, M.J. "MIKE" FOSTER, JR., Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: Definitions

A. "Affected agencies" shall include all of the following:

Department of Agriculture and Forestry
Department of Environmental Quality

Department of Health and Hospitals
Department of Natural Resources
Department of Wildlife and Fisheries

B. "Notice" shall mean communicating information of environmental contamination by a method or methods which are reasonably calculated to make the people who may be exposed to such contamination aware of the contamination. The type of notice required will vary depending on the nature and severity of the contamination, its geographic location, the number of people in the contaminated area, and other factors. Depending on the pertinent circumstances, such notice may include, but is not limited to, the following: posting of signs, publishing a notice in the official journal(s) of the contaminated area, issuing a press release, holding a press conference, direct mailings to individuals in the contaminated area, posting on the agency's internet website, or personal visits to such individuals.

SECTION 2: Whenever any affected agency has confirmed, through sound scientific methods, the presence of an environmental contaminant which exceeds the applicable federal or state health and safety standards and poses a risk of adverse health effects, then such agency shall give or cause to be given reasonable notice to individuals within that area of the contamination and provide information regarding any potential adverse health effects posed by the contamination.

SECTION 3: All affected agencies shall, to the best of their ability, immediately begin to conduct or cause to be conducted searches of their existing records and give notice of any existing conditions as required by Section 2 of this Order. Such searches shall be completed as soon as is practicable under the circumstances.

SECTION 4: The notice requirements provided in Sections 2 and 3 of this Order are effective immediately. In addition, all affected agencies shall issue emergency rules and shall, without undue delay, begin the process to adopt permanent rules to further implement such notice requirements as are necessary to fulfill the public trust requirements of the 1974 Louisiana Constitution. All affected agencies shall cooperate with each other to ensure that each of their individual notice requirements are similar to and complement those of the other agencies to the fullest extent practicable, and that each agency will share information regarding the presence of environmental contaminants with the others in a timely manner.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 1st day of October, 2001.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0110#034

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Office of Agro Consumer Services

Weights and Measures CMeat Labeling (LAC 7:XXXV.135)

The Commissioner of Agriculture and Forestry hereby adopts the following emergency rules for the implementation of regulations governing the labeling of meat in accordance with R.S. 3:3.B, R.S. 51:614 and the emergency rule provisions of R.S. 49:953.B, in the Administrative Procedure Act.

The Louisiana Legislature, by Act 487 of the 1999 Regular Session, enacted R.S. 51:614 to require the labeling of meat and to provide for the enforcement thereof. As a result of the current outbreak of foot and mouth disease in European livestock and the fact that meat consumed in the United States, including Louisiana, is imported from foreign countries there is an imminent danger that Louisiana citizens will substantially decrease their consumption of meat, including meat raised or processed in Louisiana, if they cannot identify the source of the meat.

Louisiana's livestock industry has suffered severe financial distress as a result of the four-year drought that this state has experienced. The threat of a substantial decline in the consumption of meat poses an imminent peril to Louisiana's livestock industry. Additional economic losses threaten the continuation of the livestock industry in Louisiana. The livestock industry in Louisiana is a vital part of Louisiana's economic base. Therefore, financial deterioration and subsequent failures in the livestock industry pose an imminent peril to Louisiana's economy and to the welfare of the citizens of Louisiana, especially when it occurs in the midst of an economic slowdown.

The Commissioner of Agriculture and Forestry has, therefore, determined that these emergency rules are necessary in order to immediately implement and enforce the labeling of meat in Louisiana as to country of origin.

These rules become effective upon signature and will remain in effect 120 days, unless renewed by the Commissioner of Agriculture and Forestry or until permanent rules are promulgated in accordance with law.

Title 7

AGRICULTURE AND ANIMALS

Part XXXV. Agro-Consumer Services

Chapter 1. Weights and Measures

§135. Meat Labeling

A. As used in this Section the following terms are defined as.

1. *American* Any meat that is produced in the United States.
2. *Blend* Any combination of American and foreign meat.
3. *Imported* Any meat produced in a foreign country.

B. Unless otherwise provided in this Section, all processed or unprocessed meat sold in Louisiana, whether fresh or frozen, shall indicate the meat's country of origin.

1. The country of origin or designations "American," "imported," or "blend of imported and American meats" shall be indicated in clear and conspicuous letters in English.

2. All meat shall be labeled with one of the following designations, "American," "imported," or "blend of imported and American meats" or shall contain the name of the country of origin preceded by the "product of."

Example: Meat produced in the United States would be labeled "American" or "Product of U.S.A."

3. Meat displayed for sale or sold unwrapped shall contain the proper designation as to the country of origin on the meat, or on the immediate container or wrapping, or on a sign included with the display.

4. If an establishment sells only American meat, then a placard indicating that only American meat is sold will be sufficient to meet the requirements of these regulations.

C. The provisions of this Section shall not apply to prepared meat that is sold at retail for consumption on the premises and fully cooked meat as defined by the United States Department of Agriculture Food Safety Inspection Service rules and regulations.

D. The Commissioner of Agriculture and Forestry, the Weights and Measures Commission and the Department of Agriculture and Forestry shall have the power and authority granted under the Weights and Measures Law to enforce the provisions of this Section.

E. The penalty for any violation of this Section shall be as provided in R. S. 51:614.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4608, 3:4607 and R.S. 51:614.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Division of Weights and Measures, LR 28:

Bob Odom
Commissioner

0110#006

DECLARATION OF EMERGENCY

Student Financial Assistance Commission Office of Student Financial Assistance

Scholarship/Grant Programs
(LAC 28:IV. 301 and 2103)

The Louisiana Student Financial Assistance Commission (LASFAC) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend rules of the Scholarship/Grant programs (R.S. 17:3021-3026, R.S. 3041.10-3041.15, and R.S. 17:3042.1, R.S. 17:3048.1).

The emergency rules are necessary to implement changes to the Scholarship/Grant programs to allow the Louisiana Office of Student Financial Assistance and state educational institutions to effectively administer these programs. A delay

in promulgating rules would have an adverse impact on the financial welfare of the eligible students and the financial condition of their families. The commission has, therefore, determined that these emergency rules are necessary in order to prevent imminent financial peril to the welfare of the affected students.

This declaration of emergency is effective September 6, 2001, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

**Title 28
EDUCATION**

Part IV. Student Financial Assistance

Higher Education Scholarship and Grant Programs

Chapter 3. Definitions

§301. Definitions

* * *

Selective Enrollment Program Can advanced college course of study with competitive admissions based on a student's qualifications including successful completion of required college courses and a minimum college cumulative grade point average. Examples of Selective Enrollment Programs include, but are not limited to, medical technology, nursing (bachelor of science), occupational therapy, physical therapy, and radiation technology.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458, 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR 26:1262 (June 2000), LR 26:1601 (August 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 26: 2752 (December 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), LR 27:1219 (August 2001), LR 28:

Chapter 21. Miscellaneous Provisions and Exceptions

§2103. Circumstances Warranting Exception to the Initial and Continuous Enrollment Requirements

A. - E.9.c. ...

10. Transfer C Selective Enrollment Program

a. Definition. A student/recipient who completed his or her program requirements for transfer to a Selective Enrollment Program.

b. Certification Requirements. The student/recipient must submit:

i. a completed exception request form including official college transcripts and the semester(s) affected, and

ii. a written statement from the dean of the college or the dean's designee certifying that the student/recipient has or will complete his or her course requirements for transfer to a Selective Enrollment Program.

c. Maximum Length of Exception. Two semesters or three quarters.

A.11.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 17: 959 (October 1991), amended LR 22:338 (May 1996), LR 23:1647 (December 1997), LR 24:647 (April 1998), LR 24:1916 (October 1998), LR 26:1015 (May 2000) LR 28:

Mark S. Riley
Assistant Executive Director

0110#001

DECLARATION OF EMERGENCY

**Office of the Governor
Division of Administration
Racing Commission**

Net Slot Machine Proceeds
(LAC 35:III.5737)

Editor's Note: The original text in Section 5737 ("Commission Office") was moved to Section 5738 to allow slot machine subject matter to be consecutive. This information is being repromulgated in Section 5738 with no changes for informative purposes only.

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedures Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following emergency rule effective September 24, 2001, and it shall remain in effect for 120 days or until this rule takes effect through the normal promulgation process, whichever comes first.

The Louisiana State Racing Commission finds it necessary to adopt this rule to expand on the statutes involving slot machines housed at racing associations, specifically R.S. 27:353, R.S. 27:354 and R.S. 27:361, and specify certain provisions thereof.

Title 35

HORSE RACING

Part III. Personnel, Registration, and Licensing

Chapter 57. Associations' Duties and Obligations

§5737. Net Slot Machine Proceeds

A. The commission, pursuant to R.S. 27:354, finds that it is in the best interests of licensed associations, breeders associations, horsemen, and the state that the annual payments provided for in R.S. 27:361 be paid in monthly installments.

B. The definitions set forth in R.S. 27:353 are incorporated herein by reference.

C. Not later than the date on which an association installs slot machines at its facility, it shall open three separate checking accounts as provided for herein. One account shall be a control bank account into which not less than 100 percent of the net slot machine proceeds for the activity month shall be deposited in sufficient time to be distributed or disbursed not later than the twentieth day of the following month as required by these rules. The association shall also open two distinct interest bearing accounts, one for thoroughbred purse proceeds and one for quarter horse purse proceeds, into which the association shall make its deposits for purse supplements of 15 percent

of net slot machine proceeds and from which funds, including interest earned, such purse supplements shall be made available as provided by law and these rules.

D. While an association is conducting live racing, the monies due to be paid pursuant to R.S. 27:361(B)(4)(a) shall be made available monthly for use as purses prior to the 20th day of the month following the month in which they are earned, during the current race meeting.

E. While an association is not conducting live racing, the monies due to be paid pursuant to R.S. 27:361(B)(4)(a) shall be deposited in the appropriate breed account either:

1. for accrual until the first day of the next live race meeting conducted by that association for that breed at which time such accumulated monies, including interest, shall be used to supplement appropriate purses during that race meeting; or

2. with prior written agreement of the Louisiana HBPA for reimbursement to the association for actual funds advanced to supplement purses at a preceding race meeting in anticipation of the revenue to be earned from slot machines. However, an association shall not be reimbursed except from proceeds earned during the same annual period during which it advanced the purse supplements.

F. The monies due to be paid by an association pursuant to R.S. 27:361(B)(4)(b) and (c) shall be remitted monthly to the appropriate breeders association and the monies due to be paid by an association pursuant to R.S. 27:361(B)(4)(a)(i) and (ii) shall be remitted monthly to the HBPA, prior to the 20th day of the month following the month in which they are earned.

G. Each racing association conducting slot machine gaming shall file with the commission a complete report, on a form acceptable to the commission, not later than the twentieth day of each month, setting forth the amounts deposited and payments made from the net slot machine proceeds earned the preceding month, as well as payments for purses and payments to breeders associations and to the HBPA. Copies of those bank accounts required to be maintained by Subsection C of this Section shall be submitted to the commission along with the monthly report.

H. Each racing association, after conducting slot machine gaming for 12 months, shall file an annual report with the commission, on forms acceptable to the commission, not later than the twentieth day of the following month, and on that date each following year, which report shall certify under oath by a responsible officer the association's compliance with all requirements under R.S. 27:361(B)(4) and under this rule. Each such 12-month period shall constitute an annual period for the purposes of this rule.

I. All records and reports pertaining to slot machines, including checking accounts, maintained by an association shall be subject to inspection, reporting procedures and audits by the commission. All records and reports on revenues and expenses from slot machines shall be included as part of the association's annual CPA opinion audit submitted to the commission.

J. Before receiving any payments provided by R.S. 27:361(B)(4)(b) or (c), the respective Executive Committee of the Louisiana Thoroughbred Breeders Association and Executive Committee of the Louisiana Quarter Horse Breeders Association shall file with the commission the

schedule or formula and within a time period which it has established for the distribution of such funds. Any amendments or modifications to such distribution schedule or formula shall be filed with the commission within 30 days of its adoption by the Executive Committee. A true and complete copy of each such filing with the commission shall be delivered to each racing association and the filing shall so certify delivery. Each Executive Committee shall also file a monthly report with the commission of revenue received, payments made, and the bank balance on hand along with a copy of the bank statement.

K. After the expiration of one year from the filing of its first distribution schedule or formula with the commission but within 20 days thereafter, and on that date each following year, the respective Executive Committee of the Louisiana Thoroughbred Breeders Association and Executive Committee of the Louisiana Quarter Horse Breeders Association shall file with the commission a report which shall certify under oath by a responsible officer the association's compliance with its applicable distribution schedule or formula and within a time period which it has established for the distribution of such funds.

L. An association shall publicly disclose its schedule for the distribution of funds for purse supplements to be made pursuant to R.S. 27:361(B)(4)(a). Excluding those funds statutorily dedicated to races restricted to accredited Louisiana-breds, the remaining funds shall be distributed proportionately according to the conditions of the races in which the remaining funds are used to insure parity among restricted and non-restricted races.

M. Whenever it appears to the executive director of the commission that a violation may have occurred, he shall furnish the apparent violator with a warning letter, sent by ordinary mail and by fax, affording the party 15 days from the date of the transmission of the letter to correct the violation.

N. If the apparent violation has not been timely corrected, the executive director, or his designee, shall within 10 days give written notice, by certified mail, to the party that its responsible officers are to appear before him for an informal conference to determine whether a violation has occurred and, if so, whether the violation can be corrected in the absence of imposing a fine or indefinitely suspending the license of the party, or refusing to allow the party to receive payments under this rule. Such informal hearing shall be conducted in accordance with the Administrative Procedure Act applicable to such hearing.

O. If the executive director, or his designee, determines after affording the party an opportunity for an informal conference that a violation has occurred and that a fine, license suspension, or other appropriate action should be taken, he shall file a *rule to show cause* with the commission for the notified party and its responsible officers to appear before the commission and show cause why disciplinary action or sanctions should not be imposed. The *rule to show cause* shall be forwarded by certified mail and by fax to the party. The cited party shall have 10 days from transmission, excluding holidays and weekends, to file with the commission a written response, under oath, and to submit a list of the names and addresses of all witnesses it desires to be subpoenaed for the hearing, including those to produce documents and other things. The failure to timely file a

verified response may, in the commission's discretion, result in the cited party being refused to participate in the hearing on the *rule to show cause*.

P. At the conclusion of the hearing, the commission shall take action appropriate to the violation if it finds that one has occurred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:353, R.S. 27:354 and R.S. 27:361.

HISTORICAL NOTE: Promulgated by the Division of Administration, Racing Commission LR 28:

§5738. Commission Office

A. Each association shall provide and furnish an adequate office for the use of the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:435 (December 1976), LR 3:31 (January 1977), LR 4:278 (August 1978), repromulgated by the Office of the Governor, Division of Administration LR 28:

Charles A. Gardiner III
Executive Director

0110#029

DECLARATION OF EMERGENCY

**Office of the Governor
Division of Administration
Racing Commission**

Penalty Guidelines
(LAC 35:I.1797)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedures Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following emergency rule effective September 24, 2001, and it shall remain in effect for 120 days or until this rule takes effect through the normal promulgation process, whichever comes first.

The Louisiana State Racing Commission finds it necessary to amend this rule to provide for revised penalty guidelines for violations of class IV and V drugs/substances found in equine biological samples.

Title 35

HORSE RACING

Part I. General Provisions

Chapter 17. Corrupt and Prohibited Practices

§1797. Penalty Guidelines

A. - B3. ...

4. *Classes IV and V*: possible suspension of license for a period not more than 60 days and a fine of not less than \$500 nor more than \$1,500, or both, depending on the severity and number of violations occurring within a 12-month period. The purse may be redistributed.

a. On ordinary violation(s) of Classes IV or V within a 12-month period the penalty shall be a fine of \$500 on the first violation; a fine of \$1,000 on the second violation; a fine of \$1,000 on the third and subsequent violations and referred to the commission. The purse shall be redistributed commencing with the fourth violation within a 12-month period.

b. On extraordinary violation(s) of Classes IV or V in a manner that might affect the performance of a horse within a 12-month period the penalty shall be a fine of \$1,000 on the first offense; a fine of \$1,000 and referred to the commission for further action on second and subsequent violations. The purse shall be redistributed commencing with the third violation within a 12-month period.

c. On gross violation(s) of Classes IV or V in a manner that intends to affect the performance of a horse the penalty shall be not less than \$1,000 and referred to the commission for further action. The purse shall be redistributed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141 and R.S. 4:148.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission LR 19:612 (May 1993), amended by the Office of the Governor, Division of Administration, Racing Commission LR 28:

Charles A. Gardiner III
Executive Director

0110#030

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Office of the Secretary
Bureau of Health Services Financing**

Emergency Ambulance Transportation
Services Reimbursement Increase

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following emergency rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq. and shall be in effect for the maximum period allowed under the Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing provides reimbursement for emergency ambulance transportation services. Reimbursement for these services is the base rate established by the Bureau minus the amount which any third party coverage would pay. As a result of the allocation of additional funds by the Legislature during the 2000 Second Special Session, the Bureau adopted a rule in February 2001 to restore the seven percent reduction previously made to the reimbursement rates for emergency ambulance transportation services and increase the base rate for these services by two percent (*Louisiana Register*, volume 27, number 2).

As a result of the allocation of additional funds by the Legislature during the 2001 Regular Session, the Bureau increased the reimbursement for certain designated procedure codes for emergency ambulance transportation services by 1.4 percent. This Emergency Rule is being adopted to continue the provisions contained in the July 1, 2001 Rule.

Emergency Rule

Effective for dates of service October 30, 2001 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases the reimbursement for the following designated procedure codes for emergency ambulance transportation services by 1.4 percent:

- A0368 Emergency transport, no specialized ALS services
- A0380 Emergency loaded miles, BLS
- A0382 Routine disposable supplies, BLS
- A0390 Non-Emergency loaded miles, ALS
- A0394 Disposable supplies, ALS
- A0398 Oxygen & oxygen supplies, ALS or BLS
- A0422 Ambulance 02 life sustaining
- A0427 ALS-Emergency
- A0429 BLS-Emergency transport
- A0433 ALS2
- A0434 Specialty care transport

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 all inquiries regarding this emergency rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

David W. Hood
Secretary

0110#054

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Office of the Secretary
Bureau of Health Services Financing**

Hospital ProgramC
Outpatient Surgery Services
Reimbursement Increase

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following emergency rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This emergency rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:953.B(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule in December of 1985 that established the criteria and reimbursement for certain surgical procedures when performed in an outpatient setting. Reimbursement for these surgical procedures was set at a flat fee per service if the procedure code is included in one of the four Medicaid established payment groups. Reimbursement for those surgical procedures not included in the Medicaid outpatient surgery list was not changed from the established methodology (*Louisiana Register*, volume 11, N=number 12). A rule was subsequently adopted in January of 1996

which established the reimbursement methodology for outpatient hospital services at an interim rate of 60 percent of billed charges, except for those outpatient surgeries subject to the Medicaid outpatient surgery list (*Louisiana Register*, volume 22, number 1).

As a result of a budgetary shortfall, the bureau assigned the highest flat fee in the four Medicaid established payment groups for outpatient surgery to those surgical procedures that are not included in the Medicaid outpatient surgery list (*Louisiana Register*, volume 26, number 12).

As a result of the allocation of funds by the Legislature during the 2001 Regular Session, the Bureau increased the reimbursement rates paid to hospitals for outpatient surgery services. This emergency rule is being adopted to continue the provisions contained in the July 1, 2001 Rule.

Emergency Rule

Effective for dates of service on or after October 30, 2001, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases the reimbursement paid to hospitals for those outpatient surgical procedures included in the four payment groups on the Medicaid outpatient surgery list to the following rates:

Group 1	\$444.25
Group 2	\$528.92
Group 3	\$569.32
Group 4	\$646.25

Reimbursement paid to hospitals for those surgical procedures not included on the Medicaid outpatient surgery list shall be the highest flat fee assigned to the outpatient surgery payment groups.

Implementation of this proposed rule shall be contingent upon the certification of matching funds by non-state public hospitals (except small rural hospitals as defined in R.S. 40:1300.143) as set forth in the Appropriations Act of the 2001 Regular Session of the Louisiana Legislature and 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 all inquiries regarding this emergency rule. A copy of this emergency rule is available for review by interested parties at parish Medicaid offices.

David W. Hood
Secretary

0110#059

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Office of the Secretary
Bureau of Health Services Financing**

Inpatient Psychiatric Services
Reimbursement Increase

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following emergency rule in the Medical Assistance

Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This emergency rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:953.B(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule which established the prospective reimbursement methodology for inpatient psychiatric hospital services provided in either a free-standing psychiatric hospital or distinct part psychiatric unit of an acute care general hospital (*Louisiana Register*, volume 19, number 6). This rule was subsequently amended by a rule adopted to discontinue the practice of automatically applying an inflation adjustment to the reimbursement rates for inpatient psychiatric services in those years when the rates are not rebased (*Louisiana Register*, volume 25, number 5).

As a result of the allocation of additional funds by the Legislature during the 2000 Second Special Session, the Bureau adopted a rule in August 2000 to restore the 7 percent reduction previously made to the reimbursement rates for inpatient psychiatric services (*Louisiana Register*, volume 26, number 8).

As a result of the allocation of funds by the Legislature during the 2001 Regular Session, the Bureau increased the reimbursement rate for inpatient psychiatric services provided to recipients up to the age of 21. This emergency rule is being adopted to continue the provisions contained in the July 3, 2001 Rule.

Emergency Rule

Effective for dates of service on or after November 1, 2001, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases the current per diem rate for inpatient psychiatric services by \$50 for services provided to recipients up to the age of 21.

Implementation of this proposed 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 all inquiries regarding this emergency rule. A copy of this emergency rule is available at the parish Medicaid office for review by interested parties.

David W. Hood
Secretary

0110#055

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Office of the Secretary
Bureau of Health Services Financing**

Mental Health Rehabilitation Services
Reimbursement Increase

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following emergency rule in the Medical Assistance

Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:953.B(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing provides reimbursement for mental health rehabilitation services under the Medicaid Program. Reimbursement for these services is a prospective, negotiated and non-capitated rate based on the delivery of services as specified in the service agreement and the service package required for the adult and child/youth populations. As a result of the allocation of additional funds by the Legislature during the 2000 Second Special Session, the Bureau adopted a rule in July of 2000 to restore the 7 percent reduction made to the reimbursement rates in the Mental Health Rehabilitation Program for high need services for adults and children as well as moderate need services for children (*Louisiana Register*, volume 26, number 7).

As a result of the allocation of additional funds by the Legislature during the 2001 Regular Session, the Bureau increased the reimbursement rates for designated procedure codes in the Mental Health Rehabilitation Program for high need, medium need and low need services for adults and children. This emergency rule is being adopted to continue the provisions contained in the July 1, 2001 Rule.

Emergency Rule

Effective for dates of service October 30, 2001 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases the reimbursement rates in the Mental Health Rehabilitation Program for designated procedure codes for high need, medium need and low need services for adults and children to the following rates.

Procedure Code	Procedure Name	New Rate
X0132	AdultCLow Need	\$ 350
X0133	AdultCMedium Need	\$ 750
X0135	ChildCLow Need	\$ 400
X0136	ChildCMedium Need	\$ 840
X0137	ChildCHigh Need	\$1415

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 all inquiries regarding this emergency rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

David W. Hood
Secretary

0110#056

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

Mentally Retarded/Developmentally Disabled Waiver Reimbursement Increase

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services adopts the following Emergency Rule under the Administrative Procedure Act, R.S. 49:950 et seq. The Emergency Rule shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services provides reimbursement for personal care attendant (PCA), supervised independent living (SIL) and respite services provided to recipients in the Mentally Retarded/Developmentally Disabled (MR/DD) Waiver Program. The Bureau adopted emergency rules in July 1995 to reduce the reimbursement rates paid for PCA, SIL and respite services provided to MR/DD waiver recipients (*Louisiana Register*, Volume 21, Number 7). The provisions contained in the July 20, 1995 emergency rules were subsequently repealed by an emergency rule adopted in October 1995 (*Louisiana Register*, Volume 21, Number 10).

As a result of the allocation of additional funds by the Legislature during the 2001 Regular Session, the Bureau increased the reimbursement rates for certain designated procedure codes for personal care attendant, respite and supervised independent living services. This emergency rule is being adopted to continue the provisions contained in the July 1, 2001 Rule.

Emergency Rule

Effective October 30, 2001, the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services increases the reimbursement rates in the Mentally Retarded/Developmentally Disabled Waiver for certain designated procedure codes for personal care attendant, respite and supervised independent living services as follows.

Z0002	PCA	\$10.30
Z0011	PCA - High Need	\$11.64
Z0003	Respite	\$10.30
Z0013	Respite - High Need	\$11.64
Z0004	Respite - Center	\$ 6.66
Z0014	Respite - Center - High Need	\$11.64
Z0053	SIL Day Companion	\$ 7.38
Z0055	SIL Night Companion	\$ 6.35

Interested persons may submit written comments to Barbara Dodge, Bureau of Community Supports and Services, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to all inquiries regarding this emergency rule. A copy of this Emergency Rule is

available for review by interested parties at parish Medicaid offices.

David W. Hood
Secretary

0110#057

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

Non-Emergency Ambulance Services Reimbursement Increase

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following emergency rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq. and shall be in effect for the maximum period allowed under the Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing provides reimbursement for non-emergency ambulance transportation services. Reimbursement for these services is the base rate established by the Bureau minus the amount which any third party coverage would pay. As a result of the allocation of additional funds by the Legislature during the 2000 Second Special Session, the Bureau adopted a rule in February 2001 to restore the base rate for non-emergency ambulance transportation services to the rate that was in effect July 1, 1999 and increase the reimbursement fees for certain designated procedure codes (*Louisiana Register*, volume 27, number 2).

As a result of the allocation of additional funds by the Legislature during the 2001 Regular Session, the Bureau increased reimbursement for certain designated procedure codes for non-emergency ambulance transportation services. This Emergency Rule is being adopted to continue the provisions contained in the July 1, 2001 Rule

Emergency Rule

Effective for dates of service October 30, 2001 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases the reimbursement for certain designated procedure codes for non-emergency ambulance transportation services to the following rates:

A0366	Base rate, Specialized ALS services, 1 st trip	\$152.75
A0426	ALS non-emergency transport	\$152.75
A0428	BLS non-emergency transport	\$152.75
Z5100	Transfer, loaded miles, BLS, 1 st trip	\$152.75
Z5101	Transfer, loaded miles, ALS, 1 st trip	\$152.75
Z9497	Base rate, ALS or BLS, 2 nd trip	\$152.75

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 all inquiries regarding this emergency rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

David W. Hood
Secretary

0110#058

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

Private Nursing Facilities
Reimbursement Increase

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following emergency rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This emergency rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:953.B(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule on June 20, 1984 which established the reimbursement methodology for private nursing facilities (*Louisiana Register*, volume 10, number 6). The reimbursement methodology for private nursing facilities included provisions for interim adjustments to the reimbursement rates and automatic application of an inflation adjustment to the rates in those years when the rates are not rebased. The June 1984 rule was subsequently amended to discontinue the practice of automatically applying an inflation adjustment to the rates in those years when the rates are not rebased (*Louisiana Register*, volume 25, number 6). As a result of the allocation of additional funds by the Legislature during the 2000 Second Special Session, the Bureau adopted an emergency rule to restore the 7 percent reduction previously made to the prospective per diem rates for private nursing facilities (*Louisiana Register*, volume 26, number 7).

As a result of the allocation of funds by the Legislature during the 2001 Regular Session in order to continue initial year rebasing as provided for by R.S. 46:2691 through an approved state plan amendment to be in effect for state fiscal year 2001-2002 only and for cost increases as verified by the Department of Health and Hospitals, the Bureau adjusted the per diem rates paid to private nursing facilities. This emergency rule is being adopted to continue the provisions contained in the July 1, 2001 Rule.

Emergency Rule

Effective for dates of service on or after October 30, 2001, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adjusts the percentile utilized for all cost components, except profit incentive, from the sixtieth to the sixty-second percentile.

Implementation of this proposed rule shall be contingent on the approval of the U.S. Department of Health and Human Services, Center 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 all inquiries regarding this emergency rule. A copy of this emergency rule is available for review by interested parties at parish Medicaid offices.

David W. Hood
Secretary

0110#060

DECLARATION OF EMERGENCY

Department of Natural Resources Office of Conservation

Pollution ControlCStatewide Order No. 29-B
(LAC 43:XIX.501 and 503)

Pursuant to the power delegated under the laws of the state of Louisiana, and particularly Title 30 of the Revised Statutes of 1950, as amended, and in conformity with the provisions of the Louisiana Administrative Procedure Act, Title 49, Sections 953(B)(1) and (2), 954(B)(2), as amended, the following Emergency Rule and reasons therefor are now adopted and promulgated by the Commissioner of Conservation as being necessary to protect the public health, safety and welfare of the people of the state of Louisiana, as well as the environment generally, by continuing a procedure for testing E&P waste after receipt at a commercial facility and identifying acceptable storage, treatment and disposal methods for certain E&P wastes at commercial facilities.

Need and Purpose for Emergency Rule

Certain oil and gas exploration and production waste (E&P waste) is exempt from the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA). This exemption is based on findings from a 1987-1988 Environmental Protection Agency (EPA) study and other studies that determined this type of waste does not pose a significant health or environmental threat when properly managed. The EPA, in its regulatory determination, found that these wastes are adequately regulated under existing federal and state programs.

Existing Louisiana state regulations governing the operations of commercial E&P waste disposal facilities (Statewide Order No. 29-B) require only very limited testing of the waste received for storage, treatment and disposal at each commercial facility. Such limited testing finds its basis in the above-mentioned national exemption for E&P waste recognized by the EPA. However, public concern warranted the Commissioner of Conservation to issue a first Emergency Rule effective May 1, 1998 (May 1, 1998 Emergency Rule), the purpose of which was to gather technical data regarding the chemical and physical makeup of E&P waste disposed at permitted commercial E&P waste disposal facilities within the state of Louisiana. The May 1, 1998 Emergency Rule had an effective term of 120 days. However, technical experts under contract with the Office of Conservation determined during the term of the May 1, 1998

Emergency Rule that sampling and testing should be extended for an additional 30 days for the purpose of receiving additional data in order to strengthen the validity of the inferred concentration distributions within the various E&P waste types. Therefore, a second Emergency Rule was issued on August 29, 1998, and effective through September 30, 1998.

The second Emergency Rule required continued comprehensive analytical testing of E&P waste at the site of generation together with verification testing at the commercial E&P waste disposal facility. During the terms of the first and second Emergency Rules, approximately 1,800 E&P waste testing batches were analyzed, with the raw data results being filed with the Office of Conservation. Technical experts under contract with the Office of Conservation, together with staff of the Office of Conservation, determined that the number of raw data sets of E&P waste types, along with other published analytical results of E&P waste testing, provided adequate numbers of validated test results of the various generic E&P waste types to reach statistically valid conclusions regarding the overall chemical and physical composition of each type of E&P waste.

Therefore, continued testing of E&P waste at the site of generation was unnecessarily redundant, and was discontinued. The third Emergency Rule adopted on October 1, 1998, required continued testing of each E&P waste shipment at the commercial disposal facility according to procedures described in Section D. Such continued testing was required to assure that E&P waste shipments received for disposal at commercial facilities were consistent with evolving E&P waste profiles.

A fourth Emergency Rule, adopted January 29, 1999, a fifth Emergency Rule, adopted May 29, 1999, a sixth Emergency Rule, adopted September 26, 1999, a seventh Emergency Rule, adopted January 24, 2000, an eighth Emergency Rule, adopted May 23, 2000, a ninth Emergency Rule, adopted September 20, 2000, a tenth Emergency Rule, adopted January 18, 2001, and an eleventh Emergency Rule, adopted May 18, 2001, provided requirements for continued testing of all E&P waste shipments received for disposal at commercial E&P waste disposal facilities, as well as identifying acceptable methods of storage, treatment and disposal of certain E&P waste types at such commercial facilities. However, since evaluation of data generated by Emergency Rules 1 and 2 has not been completed and a permanent rule has not been promulgated, it is necessary to adopt an twelfth Emergency Rule, effective September 14, 2001, to continue the requirements of the fourth Emergency Rule.

Concurrent with implementation of this Emergency Rule, the Office of Conservation will continue development of a permanent rule for the management and disposal of E&P waste at commercial facilities within the state of Louisiana. Best E&P waste management practices, based on established E&P waste profiles, will be incorporated into the permanent rule. Such permanent rule will also address specific storage, treatment and disposal options for the various categories of E&P waste.

Synopsis of Emergency Rule

1. E&P Waste Will Be Transported With Identification

Each load of E&P waste transported from the site of generation to a commercial facility for disposal will be

accompanied by an Oilfield Waste Shipping Control Ticket (Form UIC-28) and presented to the operator before offloading. Copies of completed Form UIC-28 are required to be timely filed with the Office of Conservation.

Produced water, produced formation fresh water and other E&P waste fluids are exempt from certain provisions of the testing requirements provided they are:

1) transported in enclosed tank trucks, barges, or other enclosed containers;

2) stored in enclosed tanks at a commercial facility; and

3) disposed by deepwell injection. Such provision is reasonable because, provided the above conditions are met, exposure to the public and to the environment would be minimal.

2. Each Load of E&P Waste Will Be Tested At Commercial Facility

Before offloading at a commercial E&P waste disposal facility and in order to verify that the waste qualifies for the E&P category, each load of E&P waste shall be sampled for required parameters. Additionally, the presence and concentration of BTEX (benzene, toluene, ethyl benzene and xylene) compounds and hydrogen sulfide must be determined. Appropriate records of tests shall be kept at each commercial facility for review by the Office of Conservation.

3. Identification of Acceptable Storage, Treatment and Disposal Methods (Options) for E&P Waste

It is required that all offsite storage, treatment and disposal methods for E&P waste utilize approved technologies that are protective of public health and the environment. Therefore, this Emergency Rule requires that injection in Class II wells, after storage in a closed system, shall be utilized for Waste Types 01 and 14. As a result of the E&P waste study conducted by Louisiana State University and CSI, Inc. (available for review on Conservation's web page), commercial land treatment facilities will not be permitted to receive, treat or dispose of natural gas plant processing waste solids (Waste Type 12). The remainder of the E&P waste types are currently under study to confirm acceptable storage, treatment and disposal methods. Any additional acceptable storage, treatment and disposal methods will be promulgated in the near future.

Reasons

Recognizing the potential advantages of a testing program that is fully protective of public health and the environment and that adequately characterizes such waste as to its potentially toxic constituents, and by the identification of acceptable storage, treatment and disposal methods for certain types of E&P waste, it has been determined that failure to establish such procedures and requirements in the form of an administrative rule may lead to the existence of an imminent peril to the public health, safety and welfare of the people of the state of Louisiana, as well as the environment generally.

Protection of the public and our environment therefore requires the Commissioner of Conservation to take immediate steps to assure that adequate testing is performed and acceptable storage, treatment and disposal methods for certain types of E&P waste are employed at commercial facilities. The Emergency Rule, Amendment to Statewide

Order No. 29-B (Emergency Rule) set forth hereinafter, is now adopted by the Office of Conservation.

Title 43

NATURAL RESOURCES

Part XIX. Office of Conservation General Operations

Subpart 1. Statewide Order No. 29-B

Chapter 5. Off-Site Storage, Treatment and/or disposal of Nonhazardous Oilfield Waste Generated from Drilling and Production of Oil and Gas Wells

§501. Definitions

* * *

Commercial Facility Ca legally permitted waste storage, treatment and/or disposal facility which receives, treats, reclaims, stores, or disposes of exploration and production waste for a fee or other consideration, and shall include the term *transfer station*.

* * *

Exploration and Production (E&P) Waste Cdrilling fluids, produced water, and other waste associated with the exploration, development, or production of crude oil or natural gas and which is not regulated by the provisions of the Louisiana Hazardous Waste Regulations and the Louisiana Solid Waste Regulations. Such wastes include, but are not limited to, the following.

Waste Type	Waste Description
01	salt water (produced brine or produced water), except for salt water whose intended and actual use is in drilling, workover or completion fluids or in enhanced mineral recovery operations, and natural gas plant processing waste fluid which is or may be commingled with produced formation water
02	oil-base drilling mud and cuttings
03	water-base drilling mud and cuttings
04	completion, workover and stimulation fluids
05	production pit sludges
06	production storage tank sludges
07	produced oily sands and solids
08	produced formation fresh water
09	rainwater from ring levees and pits at production and drilling facilities
10	washout water generated from the cleaning of containers that transport E&P waste and are not contaminated by hazardous waste or material
11	washout pit water and solids from oilfield related carriers that are not permitted to haul hazardous waste or material
12	natural gas plant processing (E&P) waste solids
13	waste from approved salvage oil operators who only receive oil (BS&W) from oil and gas leases
14	pipeline test water which does not meet discharge limitations established by the appropriate state agency, or pipeline pigging waste, i.e., waste fluids/solids generated from the cleaning of a pipeline
15	wastes from permitted commercial facilities
16	crude oil spill clean-up waste
50	salvageable hydrocarbons
99	other approved E&P waste (written authorization required)

* * *

*NOW*Exploration and production waste

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2813 (December 2000), amended LR 28:

§509. Criteria for the Operation of Commercial Facilities and Transfer Stations

A. - H.3. ...

I. Receipt, Sampling and Testing of E&P Waste

1. ...

2. Before offloading E&P waste at a commercial facility, including a transfer station, each load of E&P waste shall be sampled and analyzed by commercial facility personnel for the following:

a. pH, electrical conductivity (EC-mmhos/cm) and chloride (Cl) content; and

b. the presence and concentration of BTEX (benzene, toluene, ethyl benzene, and xylene) compounds using an organic vapor monitor or other procedures sufficient to identify and quantify BTEX;

c. the sample temperature (degrees Fahrenheit) representing actual testing conditions of the sample obtained for BTEX analysis by methodology that will assure sufficient accuracy; and

d. the presence and concentration of hydrogen sulfide (H₂S) using a portable gas monitor.

3. ...

4. The commercial facility operator shall enter the pH, electrical conductivity, chloride (Cl) content, BTEX, BTEX sample temperature and hydrogen sulfide measurements on the manifest (Form UIC-28) which accompanies each load of E&P waste.

5. Produced water, produced formation fresh water, and other E&P waste fluids are exempt from organic vapor monitoring measurement (BTEX), and the H₂S measurement in (a) above if the following conditions are met:

a. if transported by the generator or transporter in enclosed tank trucks, barges, or other enclosed containers; and

b. if stored in an enclosed container at a commercial facility; and

c. if disposed by deep well injection.

6. Records of these tests shall be kept on file at each commercial facility for a period of three years and be available for review by the Commissioner or his designated representative. Copies of completed Form UIC-28 shall be filed with the Office of Conservation as provided in § 511.D.

J. - L. ...

M. It is required that all offsite storage, treatment and disposal methods for E&P waste utilize approved technologies that are protective of public health and the environment. The following chart includes acceptable and required storage, treatment and disposal methods for each type of E&P waste disposed of at commercial facilities within the state of Louisiana.

Waste Type	Required Storage, Treatment and Disposal Method(s)
01	Injection in Class II well utilizing a closed system
02	(reserved)
03	(reserved)
04	(reserved)
05	(reserved)
06	(reserved)
07	(reserved)
08	(reserved)
09	(reserved)
10	(reserved)
11	(reserved)

12	Commercial land treatment facilities shall not receive, treat or dispose of natural gas plant processing waste solids (Waste Type 12)
13	(reserved)
14	Pipeline test water - Injection in Class II well utilizing a closed system Pipeline pigging waste - (reserved)
15	(reserved)
16	(reserved)
50	Commercial salvage oil facility
99	(reserved)

DECLARATION OF EMERGENCY

Department of Public Safety and Corrections Corrections Services

Louisiana Risk Review Panel (LAC 22:I.107)

AUTHORITY NOTE: Promulgated in accordance with R.S. 30.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2813 (December 2000), LR 28:

Summary

The Emergency Rule adopted herein above evidences the finding of the Commissioner of Conservation that failure to adopt the above rules may lead to an imminent risk to public health, safety and welfare of the citizens of Louisiana, and that there is not time to provide adequate notice to interested parties. However, the Commissioner of Conservation notes again that a copy of the permanent Amendment to Statewide Order No. 29-B will be developed in the immediate future, with a public hearing to be held as per the requirements of the Administrative Procedure Act.

The Commissioner of Conservation concludes that the above Emergency Rule will better serve the purposes of the Office of Conservation as set forth in Title 30 of the Revised Statutes, and is consistent with legislative intent. The adoption of the above Emergency Rule meets all the requirements provided by Title 49 of the Louisiana Revised Statutes. The adoption of the above Emergency Rule is not intended to affect any other provisions, rules, orders, or regulations of the Office of Conservation, except to the extent specifically provided for in this Emergency Rule.

Within five days from date hereof, notice of the adoption of this Emergency Rule shall be given to all parties on the mailing list of the Office of Conservation by posting a copy of this Emergency Rule with reasons therefor to all such parties. This Emergency Rule with reasons therefor shall be published in full in the *Louisiana Register* as prescribed by law. Written notice has been given contemporaneously herewith notifying the Governor of the state of Louisiana, the attorney general of the state of Louisiana, the Speaker of the House of Representatives, the President of the Senate and the *State Register* of the adoption of this Emergency Rule and reasons for adoption.

Effective Date and Duration

1. The effective date for this Emergency Rule shall be September 14, 2001.

2. The Emergency Rule herein adopted as a part thereof, shall remain effective for a period of not less than 120 days hereafter, or until the adoption of the final version of an Amendment to Statewide Order No. 29-B as noted herein, whichever occurs first.

Signed at Baton Rouge, Louisiana, this 14th day of September, 2001.

Philip N. Asprodites
Commissioner

0110#007

In accordance with the provisions of R.S. 49:953, the Louisiana Department of Public Safety and Corrections, Corrections Services, hereby determines that adoption of an Emergency Rule for implementation of the Louisiana Risk Review Panel is necessary and that for the following reasons failure to adopt the rule on an emergency basis will result in imminent peril to the public health, safety and welfare.

Act. 403 of the 2001 Regular Session of the Louisiana Legislature at R.S. 15:574.22 created the Louisiana Risk Review Panel within the Department of Public Safety and Corrections. The act specifies the composition of the panel(s), call of meetings, powers and duties with regard to evaluation of the risk to society of release of incarcerated individuals. Additionally, the act mandates that the secretary of the Department of Public Safety and Corrections, on or before January 1, 2002, shall adopt and promulgate rules, regulations and procedures for operations of the Louisiana Risk Review Panel. In conjunction with the passage of Act 403, the legislature reduced the annual appropriation to the Department of Public Safety and Corrections, Corrections Services, for the fiscal year 2001-2002 by \$5,095,460. This reduction in operating funds to Corrections Services was primarily in anticipation of a reduction in housing of state inmates in parish jails due to the passage of Act 403.

In order for the Risk Review Panel to meet its statutory obligation to properly review each applicant for consideration relative to his risk of danger to society if released and in order to assist the department in meeting the revised funding schedule, it is imperative that the panel(s) be operational as soon as possible.

The Administrative Procedure Act, R.S. 49:950, et seq., requires, unless a rule is promulgated as an Emergency Rule, a period of approximately 100 days between the filing of the initial Notice of Intent and the effective date of the Rule, which would be beyond the statutorily required promulgation date of January 1, 2002. Delays in the implementation of the Risk Review Panel will greatly impede the ability of the department to meet the stringent fiscal goals established by the legislature for this fiscal year. The inability to immediately process applications and make the requisite recommendations to the Boards of Parole and Pardon may result in significant fiscal problems that will negatively impact programs and conditions of confinement.

For the foregoing reasons, the Louisiana Department of Public Safety and Corrections has determined that the adoption of the following Emergency Rule is necessary and hereby adopts this Emergency Rule effective October 10, 2001, in accordance with R.S. 49:953(B). This Emergency Rule shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule, whichever occurs first.

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW
ENFORCEMENT

Part I. Corrections

Chapter 1. Secretary's Office

§107. Louisiana Risk Review Panel

A. Purpose. To establish the secretary's policy regarding the formation of the Louisiana Risk Review Panel pursuant to legislative intent and the provisions R.S. 15:574.22 (Act 403 of the 2001 Regular Session of the Louisiana Legislature).

B. Applicability. Deputy Secretary, Undersecretary, Assistant Secretary of the Office of Adult Services, Wardens of Adult Institutions, Director of Probation and Parole -Adult, Chairman/Board of Parole, Chairman/Board of Pardons and administrators of local jail facilities.

C. Panel Composition and Guidelines

1. The secretary hereby creates three regional Risk Review Panels to be known as the North Louisiana Panel, (supported by David Wade Correctional Center serving as the regional state facility), the Central Louisiana Panel, (supported by David Wade Correctional Center with the Work Training Facility-North serving as the regional state facility), and the South Louisiana Panel, supported by the Elayn Hunt Correctional Center as the regional state facility.) The secretary shall designate the parishes which comprise each panel and shall appoint a chairman and a Coordinator for each panel.

2. Each Risk Review Panel shall consist of five members as follows:

a. the secretary, or his designee, who shall be chairman;

b. a psychologist (either licensed or working directly under the supervision of a licensed psychologist), who shall be authorized and approved by the secretary;

c. the warden (or his deputy) at the state facility where the inmate is housed or the regional state facility warden (or his deputy) for inmates housed in local jail facilities;

d. a retired judge with criminal law experience, who shall be appointed by the governor; and

e. a probation and parole officer -Adult with a minimum of ten years experience, who shall be appointed by the governor.

3. A majority of members present constitutes a quorum. All official actions of the panel shall require an affirmative vote of a majority of members present.

4. Each panel or panel member may work in any region. A panel shall meet on the call of the chairman or upon the request of any three members.

5. Panel members, other than departmental employees, may receive a per diem for each hearing they attend. The amount of the per diem shall be fixed by the secretary in accordance with R.S. 15:574.22(D.) All members shall receive travel reimbursement in accordance with Department Regulation Number A-03-002 "Travel" and PPM Number 49.

6. Panels will follow the provisions of R.S. 42:1 et seq. (Public Policy for Open Meetings Law) and *Robert's Rules of Order*.

7. Official results will be maintained on a docket sheet results form.

D. Selection Criteria

1. First Priority Inmate Pool - Inmates who committed crimes enumerated in Act 403 prior to the effective date of the Act who have served longer than the mandatory minimums of the Act, or who would be parole eligible under Act 403, except for those statutorily or technically ineligible pursuant to this regulation, (See §107.D.4. and 5.)

2. Second Priority Inmate Pool - Inmates convicted of crimes enumerated in Act 1163, i.e. third, fourth or subsequent offenses for operating a vehicle while intoxicated (DWI.)

3. Third Priority Inmate Pool - First offenders with low level drug, property, or other crimes not otherwise excluded in Act 403.

4. Pursuant to R.S. 15:574.22 G(1), (2), and (3), the following inmates are ineligible to apply for Risk Review Panel consideration:

a. an inmate convicted of a crime of violence as defined or enumerated in R.S. 14:2(13);

b. an inmate convicted of a sex offense as defined in R.S. 15:540 et seq. when the victim was under the age of 18 at the time of commission of the offense;

c. an inmate convicted of a violation of the Uniform Controlled Dangerous Substances Law except for any of the following:

i. possession as defined in R.S. 40:966(C), 967(C), 968(C), 969(C) or 970(C);

ii. distribution or possession with the intent to distribute cocaine where the offense of conviction involved less than 28 grams of cocaine;

iii. distribution or possession with the intent to distribute marijuana where the offense of conviction involved less than one pound of marijuana.

d. an inmate sentenced as a habitual offender under R.S. 15:529.1 where one or more of the crimes was a crime of violence defined or enumerated in R.S. 14:2(13).

5. Pursuant to this regulation, the following inmates are also ineligible to apply for Risk Review Panel consideration:

a. participating in or recommended for participation in the IMPACT program;

b. 120 days or less until regularly scheduled parole hearing;

c. felony detainer(s) or open warrant(s).

6. An application will normally be ineligible for Risk Review Panel referral to the appropriate board in the following circumstances:

a. a poor disciplinary record, to include habitual and compulsive violent behavior, consistent signs of bad work habits, lack of cooperation or good faith and/or other undesirable behavior;

b. maximum custody status;

i. exception: inmates assigned to maximum custody solely based upon classification criteria and not for disciplinary reasons are eligible;

c. low level of program activity - Inmates should demonstrate initiative, participation in self help programs and good work habits (where available);

d. extensive criminal history, to include habitual or compulsive use of violence against the person;

e. probation and parole revocation history;

f. prior history of mental illness that would lead to the conclusion that the individual is a danger to society;

g. communicable or contagious disease for which inmate has not been receptive to or is non-compliant with treatment (e.g., tuberculosis, hepatitis A, B, and C, human immunodeficiency virus (HIV) and sexually transmitted diseases);

h. under the influence or in possession of a controlled dangerous substance.

E. Application Procedures

1. Only inmates who fit the selection criteria and priority established by the department are eligible to apply. All requests for consideration must be submitted on the department's official Risk Review Panel Application.

2. State inmates in state facilities will apply to the warden at the facility in which they are housed. The application will be reviewed by appropriate staff and a recommendation concerning the inmate's statutory and technical eligibility pursuant to this regulation for Risk Review Panel review will be made. Facilities located in the geographical area of the North Louisiana and Central Louisiana Panels will forward the application with recommendation to the appropriate executive staff officer (ESO) at David Wade Correctional Center and those in the geographical area of the South Louisiana Panel will forward the application with recommendation to the ESO at Elayn Hunt Correctional Center.

3. State inmates in local jail facilities in the geographical area of the North Louisiana and Central Louisiana Panels will apply directly to the appropriate ESO at David Wade Correctional Center and those in the geographical area of the South Louisiana Panel will apply directly to the ESO at Elayn Hunt Correctional Center.

4. The ESO will then prepare a preliminary report. This will include confirmation of statutory, technical, and subjective eligibility pursuant to this regulation and a docketing recommendation. A recommendation for docketing is not necessarily a qualification or disqualification, as the Risk Review Panel may take such action as it deems appropriate regarding each application. Applications which are determined to be ineligible for consideration will be returned to the inmate.

5. Applications will be recommended for docketing as follows:

a. defer docketCthe inmate is a poor candidate for consideration. A live review is not recommended. However, the panel may move the inmate from the defer docket to the hearing docket at its discretion;

b. consent docketCthe inmate is an excellent candidate for consideration. A live review may not be necessary if there is sufficient file information for the panel to make a recommendation to the appropriate board;

c. hearing docketCa live review is recommended.

6. Inmates placed on the consent or hearing docket will participate in risk assessment utilizing an instrument determined by the department.

7. If a preliminary recommendation for referral to the appropriate board is made at either a consent or hearing docket, then a psychological evaluation or assessment, if recommended by the panel, will be conducted.

F. Panel Review

1. A decision relative to the location of Risk Review Panels for state inmates housed in local jail facilities will be made based upon volume:

a. if the volume is high, the Risk Review Panel may go on-site locally to conduct reviews;

b. if the volume is low, the inmate may be brought to the closest state facility or other designated site to conduct reviews.

2. The relevance of witness testimony will be determined solely at the discretion of the Risk Review Panel.

3. Panel review may be conducted either live, by file review, review of staff assessments, telephone or video conferencing, or by other conferencing methods at the discretion of the panel.

4. Panel decisions will be recorded on a docket results sheet. The panel may recommend that the inmate be considered for clemency by the Board of Pardons or the panel may recommend that the person be considered for parole by the Board of Parole. The panel may also recommend to the appropriate board such conditions for clemency or parole as may be deemed appropriate. Any recommendation of the panel shall not be binding on either board.

5. For those inmates being heard from the second priority inmate pool, the panel may also request that the Division of Probation and Parole make a recommendation to the court for the inmate's participation in home incarceration in accordance with C.Cr.P. Art. 894.2 or to make a recommendation to the Pardon Board to take such action as may be necessary to enable the inmate to apply for parole under conditions enumerated in Act 1163.

6. The panel's decision shall be disseminated to the inmate by letter from the chairman with a copy to the appropriate warden or local jail administrator. In the event the inmate is denied a favorable recommendation, the letter will include instructions concerning the inmate's ability to reapply for consideration. Re-application frequency shall be a minimum of six months and shall be determined at the discretion of the panel.

7. Risk Review Panel recommendations are not appealable through the Administrative Remedy Procedure.

G. Other Considerations for Panel Deliberations

1. Panels may consider any pertinent information during deliberations. Such information may include, but shall not be limited to the following:

a. presentence reports, master prison records, medical and psychological records;

b. comments submitted by the district attorney, assistant district attorney, the Board of Parole, the Board of Pardons, the victim or victim's family or the inmate;

c. the age of the inmate (to include consideration of chronological age and length of confinement where such contributes to a reduction in danger to the public);

d. current medical condition (where such contributes to a reduction in danger to the public);

e. damage or injury occasioned by the crime committed;

f. resources available to the inmate in the event of release (job and housing, family or other support, skill level).

2. Registered victims will receive a letter advising them of the purpose of the Risk Review Panel review at the time the inmate is placed on a docket.

H. The effective date of this regulation is October 10, 2001.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.22 (as enacted by Act Number 403 of the 2001 Regular Session of the Louisiana Legislature).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 28:

Family Impact Statement

In accordance with the Administrative Procedure Act, R.S. 49:953(A)(1)(a)(viii) and R.S. 49:972, the Department of Public Safety and Corrections, Corrections Services, hereby provides the Family Impact Statement.

Adoption of these disciplinary rules and procedures for adult inmates will have no effect on the stability of the family, on the authority and rights of parents regarding the education and supervision of their children, on the functioning of the family, on family earnings and family budget, on the behavior and personal responsibility of children or on the ability of the family or a local government to perform the function as contained in the proposed rule amendment.

Interested persons may submit oral or written comments to Richard L. Stalder, Secretary, Department of Public Safety and Corrections, Post Office Box 94304, Capitol Station, Baton Rouge, Louisiana 70804-9304, (225) 342-6741. Comments will be accepted through the close of business at 4:30 p.m., November 20, 2001.

Richard L. Stalder
Secretary

0110#101

DECLARATION OF EMERGENCY

Department of Revenue Office of Alcohol and Tobacco Control

Class A General Requirements
(LAC 55:VII.315)

The Office of Alcohol and Tobacco Control is exercising the provisions of the Administrative Procedure Act, R.S. 49:953(B), to adopt this Emergency Rule in accordance with Act 1188 of the 2001 Regular Legislative Session and R.S. 26:71.1(1)(h) and 271.2(1)(h). The commissioner shall promulgate rules regarding requirements related to the number and location of public restrooms to be used in conjunction with the licensed premises of each Class ACGeneral retail permit. This Declaration of Emergency shall be effective on October 1, 2001, and shall remain in effect for 120 days or until adoption of the final Rule, whichever occurs first.

Title 55

PUBLIC SAFETY

Part VII. Alcohol and Tobacco Control

Chapter 3. Liquor Credit Regulations

§315. Qualifications for Class ACGeneral Permits

A. A Class ACGeneral retail permit shall be issued only to an establishment that stands on its own by having its own public restroom facilities.

1. These facilities shall conform to the current regulations as set forth in the Louisiana State Plumbing Code, Chapter XIV of the Louisiana Sanitary Code.

2. A Class ACGeneral permit applicant may not use restrooms located in any other premises, regardless of ownership, to meet the requirement of having their own public restroom facilities pursuant to this regulation.

3. Failure to meet the requirements of this regulation shall result in the denial, suspension, or revocation of the retail alcohol permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:71.1(1)(h) and 271.2(1)(h).

HISTORICAL NOTE: Adopted by the Department of Public Safety, Office of Alcoholic Beverage Control, 1973, filed at the Office of the State Register, 1974, amended by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 28:

Murphy J. Painter
Commissioner

0110#068

DECLARATION OF EMERGENCY

Department of Revenue Policy Services Division

Manufactured and Mobile Home Settlement
Fund Administration (LAC 61:I.4314)

The Department of Revenue, Policy Services Division, is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953.B, to establish procedures for the administration of the Manufactured and Mobile Home Settlement Fund.

This Declaration of Emergency is necessary to clarify the intent and effective period of LAC 61:I.4313, as published in the August 2001 issue of the *Louisiana Register* and republished in the September 2001 issue, that the payment of the judgment issued on February 5, 2001, in the matter of "Shirley M. Avants and Jim W. Miley v. John Neely Kennedy, Secretary, Department of Revenue and Taxation, State of Louisiana; and Elmer Litchfield, Sheriff of East Baton Rouge Parish," No. 434,575 (19th Judicial District Court) in the amount of \$5,167,194 plus interest from the date of judgment be paid only from the state portion of the funds currently held in escrow by the Office of Motor Vehicles. This emergency rule becomes effective October 20, 2001, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule, whichever occurs first.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 43. Sales and Use Tax

§4313. Administration of Claims Against the Manufactured and Mobile Home Settlement Fund as Required by Act 1212 of the 2001 Regular Legislative Session

A. Payment of Avants Judgment

1. The Secretary of Revenue will direct the Office of Motor Vehicles to issue a payment for the judgment rendered on February 5, 2001, in the matter of "Shirley M. Avants and

Jim W. Miley v. John Neely Kennedy, Secretary, Department of Revenue and Taxation, State of Louisiana; and Elmer Litchfield, Sheriff of East Baton Rouge Parish," No. 434,575 (19th Judicial District Court Mar. 12, 1997) in the amount of \$5,167,194 plus interest from the date of the judgment. This payment will be made out of the state funds currently held in escrow by the Office of Motor Vehicles pursuant to the October 22, 1999 order issued in the Avants lawsuit.

2. Those individuals specifically listed as plaintiffs in the Shirley M. Avants lawsuit referenced in §4313.A.1 are not eligible to file a claim against the state regarding the Manufactured and Mobile Homes Settlement Fund described in §4313.B.

B. Source of Funds in the Manufactured and Mobile Homes Settlement Fund. After the payment described in §4313.A is made and an order is issued releasing the remainder of the state funds from escrow, the State Treasurer will transfer all remaining state tax monies held in escrow to the Manufactured and Mobile Homes Settlement Fund, hereinafter referred to as "the Fund."

C. Administration of the Fund with Regard to the Stevens, Rossi, and Miley Suits

1. The Department of Revenue will obtain a list of all persons who were plaintiffs on or before July 1, 2001, in the following three suits:

a. Nancy C. Stevens and Edward Istre, Jr. v. Brett Crawford, Secretary, Department of Revenue, State of Louisiana, No. 466,122 (19th Judicial District Court Nov. 2, 1999);

b. Darla M. Rossi, et al v. Cynthia Bridges, Secretary, Department of Revenue, State of Louisiana, No. 478,526 (19th Judicial District Court Nov. 29, 2000); and

c. Jim W. Miley, Individually, and on behalf of all others similarly situated v. John Neely Kennedy, Secretary, Department of Revenue and Taxation, State of Louisiana, No. 4695 (La. Board of Tax Appeals Apr. 15, 1997).

2. Any plaintiff referred to in §4313.C.1 must provide his legal representative with documentation that identifies the transaction upon which his claim is based. Examples of such documentation include the VIN number of the manufactured or mobile home purchased by the plaintiff, a copy of the plaintiff's registration issued by the Office of Motor Vehicles upon the original purchase of the manufactured or mobile home, or a copy of the bill of sale. The plaintiff's representative must present this documentation to the Department of Revenue by December 31, 2001.

3. The information provided by the plaintiffs in §4313.C.2 will be used to locate the sales transactions in the Office of Motor Vehicle's records to determine the amount of state sales or use tax actually paid on those transactions.

4. After the state tax monies held in escrow are transferred to the Fund, the Secretary of the Department of Revenue will authorize payment from the Fund for the state sales or use tax paid to those plaintiffs described in §4313.C.1.a. - c., but only in instances where the amount of state sales or use tax paid has been verified.

5. If it cannot be determined that a plaintiff described in §4313.C.1.a. - c. has paid state sales or use tax on the purchase of a manufactured or mobile home, or if the amount cannot be verified, the amount claimed by that plaintiff will be denied.

6. Plaintiffs in the suits listed in §4313.C.1.a. - c. are not eligible to file a claim against the state regarding the Manufactured and Mobile Home Settlement Fund.

D. Administration of the Manufactured and Mobile Home Fund with Respect to All Others

1. The Secretary of the Department of Revenue will obtain from the Department of Public Safety, Office of Motor Vehicles, a list of all persons who purchased a manufactured or mobile home after December 31, 1997, and before July 1, 2001.

2. The Department of Revenue will mail a notice to each person described in §4313.D.1. The notice will inform persons who are not a party to the lawsuits referenced in §4313.A.1 or §4313.C.1.a. - c. of their right to file a claim against the state for state sales or use tax paid on manufactured and mobile home purchases and will include a Manufactured and Mobile Homes Settlement Claim Form that must be filed with the claim against the state. The Manufactured and Mobile Homes Settlement Claim Forms will also be available at the Louisiana Board of Tax Appeals, at any office of the Department of Revenue, and on the Department of Revenue's website at www.rev.state.la.us.

3. The Department of Revenue will collect the Manufactured and Mobile Homes Settlement Claim Forms on behalf of the Board of Tax Appeals. Taxpayers who purchased a manufactured or mobile home after December 31, 1997, and before July 1, 2001, must return the completed claim form to the Department of Revenue on or before December 31, 2001. The forms may be delivered to any Department of Revenue office or mailed to the Louisiana Department of Revenue, Manufactured and Mobile Homes Settlement Claims, P.O. Box 15409, Baton Rouge, LA 70895-5409. Forms that are postmarked on or before December 31, 2001, will be deemed received by December 31, 2001.

4. Claimants must include documentation that identifies the transaction upon which their claim is based with the Manufactured and Mobile Homes Settlement Claim Form. Examples of such documentation include the VIN number of the manufactured or mobile home purchased by the plaintiff, a copy of the plaintiff's registration issued by the Office of Motor Vehicles upon the original purchase of the manufactured or mobile home, or a copy of the bill of sale.

5. The information provided by the claimants in §4313.D.4. will be used to locate the sales transactions in the Office of Motor Vehicle's records to determine the amount of state sales or use tax actually paid on those transactions

6. If a claim is filed with incomplete documentation to identify the transaction, the secretary will notify the claimant that the claim is unacceptable. The secretary may allow additional time for the claimant to provide adequate documentation. However, all documentation must be provided no later than February 28, 2002, or the claim will be denied.

7. After the December 31, 2001 deadline to file a Manufactured and Mobile Homes Settlement Claim Form has passed, the Department of Revenue will review the forms in conjunction with the Office of Motor Vehicle's records to determine the amount of state sales or use tax actually paid by each claimant. Thereafter, the Department

will forward the claim forms along with its findings to the Board of Tax Appeals for a ruling.

8. After the Board of Tax Appeals rules on all claims, the Secretary of the Department of Revenue will authorize payment from the Fund of all claims approved by the Board of Tax Appeals in accordance with Paragraphs B and C of Section 4 of Act 1212 of the 2001 Regular Legislative Session.

AUTHORITY NOTE: Promulgated in Accordance with Acts 2001, No. 1212 and R.S. 47:301 (West 2001).

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 28:

Raymond E. Tangney
Senior Policy Consultant

0110#086

DECLARATION OF EMERGENCY

Department of Social Services Office of Family Support

Family Independence Temporary Assistance
Program/Kinship Care Subsidy Program
Drug Treatment Program (LAC 67:III.1291 and 5391)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), to adopt §1291 in the Family Independence Temporary Assistance Program (FITAP) and §5391 in the Kinship Care Subsidy Program (KCSP) effective September 28, 2001. These regulations are implemented pursuant to the Temporary Assistance for Needy Families (TANF) Initiatives provided for in Act 12 of the 2001 Regular Session of the Louisiana Legislature. This rule shall remain in effect for a period of 120 days.

Whereas it has been shown that providing substance abuse treatment to drug-dependent individuals can lead to more responsible behavior which contributes to educational training and job preparation and promotes self-sufficiency, the agency proposes to continue the necessary funding for payment for the cost of drug screening, assessment, testing, and nonmedical treatment of KCSP and FITAP recipients and certain post-KCSP and FITAP recipients. Funding for these services was previously provided for by the Department of Health and Hospitals, Office of Addictive Disorders. Medical services provided during treatment will continue to be paid for by the Department of Health and Hospitals, Office of Addictive Disorders.

Authorization for emergency action is also contained in Act 12 of the 2001 Regular Session of the Louisiana Legislature.

Title 67 SOCIAL SERVICES

Part III. Office of Family Support

Subpart 2. Family Independence Temporary Assistance Program (FITAP)

Chapter 12. Application, Eligibility, and Furnishing Assistance

Subchapter D. Special Initiatives

§1291. Drug Screening Program

A. The Office of Family Support will enter into a Memorandum of Understanding with the Office of Addictive Disorders to fund a prevention and treatment program for the cost of drug screening, testing, and nonmedical treatment of FITAP recipients and certain post-FITAP recipients.

B. These services meet the TANF goal to end the dependence of needy parents on government benefits by providing needy families with drug abuse treatment so that they may become self-sufficient in order to promote job preparation, work, and marriage.

C. Eligibility for services is limited to needy families, that is, a family in which any member receives FITAP benefits. A needy family that loses eligibility for FITAP benefits for any reason shall continue to be eligible for these services for the one-year period following the loss of FITAP benefits.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; and Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

Subpart 13. Kinship Care Subsidy Program (KCSP)

Chapter 53. Application, Eligibility, and Furnishing Assistance

Subchapter D. Special Initiatives

§5391. Drug Screening Program

A. The Office of Family Support will enter into a Memorandum of Understanding with the Office of Addictive Disorders to fund a prevention and treatment program for the cost of drug screening, testing, and nonmedical treatment of KCSP recipients and certain post-KCSP recipients.

B. These services meet the TANF goal to end the dependence of needy parents on government benefits by providing needy families with drug abuse treatment so that they may become self-sufficient in order to promote job preparation, work, and marriage.

C. Eligibility for services is limited to needy families, that is, a family in which any member receives KCSP benefits. A needy family that loses eligibility for KCSP benefits for any reason shall continue to be eligible for these services for the one-year period following the loss of KCSP benefits.

D. Services are considered non-assistance by the agency.
AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; and Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

J. Renea Austin-Duffin
Secretary

0110#033

DECLARATION OF EMERGENCY

Department of Social Services Office of Family Support

Family Independence Temporary Assistance
Program/Kinship Care Subsidy Program/TANF
Initiatives CHousing Support Services
(LAC 67:III.1292, 5329, and 5547)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), to adopt §1292 in the Family Independence Temporary Assistance Program (FITAP), §5392 in the Kinship Care Subsidy Program (KCSP), and §5547 in the Temporary Assistance for Needy Families (TANF) Initiatives effective September 28, 2001. These regulations are implemented pursuant to the Temporary Assistance for Needy Families (TANF) Initiatives provided for in Act 12 of the 2001 Regular Session of the Louisiana Legislature. This rule shall remain in effect for a period of 120 days.

Whereas inadequate housing may pose a significant danger to children residing in a home and create a barrier to self-sufficiency for those adult caretakers in the home, and whereas providing services such as home repairs, relocation assistance, down payment of deposit and/or initial month's rent, housing counseling, and homebuyer education for prospective homeowners, can help meet the basic needs of shelter for needy families thereby eliminating barriers and imminent danger to those residents, the agency proposes to establish the Housing Support Services Program and the Housing Services Program. The Housing Support Services Program will provide funding for home repairs to FITAP and KCSP recipients who own or are buying their homes or live with certain relatives who own the home of residence. The Housing Services Program will provide transitional, short-term, or one-time housing services to needy families with minor children.

Authorization for emergency action is contained in Act 12 of the 2001 Regular Session of the Louisiana Legislature.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 2. Family Independence Temporary Assistance Program (FITAP)

Chapter 12. Application, Eligibility, and Furnishing Assistance

Subchapter D. Special Initiatives

§1292. Housing Support Services Program

A. Based on the availability of funding and a determination of need, the agency may provide payment for

repairs to the homes of FITAP-eligible households or certain relatives with whom they reside. The cost of repairs shall not exceed \$3000 per home. The agency will establish a specific date of eligibility in order to determine when a recipient will receive a letter of eligibility. Only those households certified for a FITAP grant as of that date will be eligible for services.

B. Eligibility for services is limited to FITAP recipients who own their own home or are buying their home. Once the deadline for homeowner applications has expired and based on funding availability, applications for services may be accepted from FITAP recipients who live with a relative within the fifth degree of relationship who owns the home of residence. The recipient must reside in the home in need of repair.

C. These services meet the TANF goal to provide assistance to needy families so that children may be cared for in their own homes or in homes of relatives by helping families meet the basic need of shelter.

D. Application for the Housing Support Services Program and the payment process will be administered by an outside entity through a contractual agreement. Payment for the repairs will be made directly to the repair service provider. Recipients will be required to provide verification of identity, proof of home ownership, and place of residence.

E. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; and Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

Subpart 13. Kinship Care Subsidy Program (KCSP) Chapter 53. Application, Eligibility, and Furnishing Assistance

Subchapter D. Special Initiatives

§5392. Housing Support Services

A. Based on the availability of funding and a determination of need, the agency may provide payment for repairs to the homes of KCSP-eligible households or certain relatives with whom they reside. The cost of repairs shall not exceed \$3000 per home. The agency will establish a specific date of eligibility in order to determine when a recipient will receive a letter of eligibility. Only those households certified for a KCSP grant as of that date will be eligible for services.

B. Eligibility for services is limited to KCSP recipients who own their own home or are buying their home. Once the deadline for homeowner applications has expired and based on funding availability, applications for services may be accepted from KCSP recipients who live with a relative within the fifth degree of relationship who owns the home of residence. The recipient must reside in the home in need of repair.

C. These services meet the TANF goal to provide assistance to needy families so that children may be cared for in their own homes or in homes of relatives by helping families meet the basic need of shelter.

D. Application for the Housing Support Services Program and the payment process will be administered by an outside entity through a contractual agreement. Payment for the repairs will be made directly to the repair service provider. Recipients will be required to provide verification of identity, proof of home ownership, and place of residence.

E. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; and Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

Subpart 15. Temporary Assistance to Needy Families (TANF) Initiatives

Chapter 55. TANF Initiatives

§5547. Housing Services

A. The Department of Social Services, Office of Family Support, may enter into Memoranda of Understanding or contracts to create pilot programs that provide transitional, short-term, or one-time housing services to needy families with minor children who participate in self-sufficiency activities, who are at risk of losing existing housing arrangements, who are in an emergency situation, or who face ineligibility because of increased earnings. These services can include but are not limited to: relocation assistance; costs associated with moving or relocation; down payment of deposit and/or initial month's rent; short-term continuation of a housing voucher; down payment for the purchase of a house; housing counseling and homebuyer education for prospective homeowners; or other transitional services determined in conjunction with the Department of Social Services and the Division of Administration.

B. These services meet the TANF goal to provide assistance to needy families so that children can be cared for in their own homes or the homes of relatives and the TANF goal to end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage.

C. Eligibility for services is limited to parents, legal guardians, or caretaker relatives of minor children who are at or below 200 percent of the federal poverty level or who are eligible for Housing and Urban Development (HUD)-funded 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. 36:474 and 46:231; and Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

J. Renea Austin-Duffin
Secretary

0110#031

DECLARATION OF EMERGENCY

**Department of Social Services
Office of Family Support**

**KITAP, KCSP and TANF Initiatives Energy Assistance
(LAC 67:III.1290, 5390, and 5503)**

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), to repromulgate §§1290 and 5390 for the purpose of amending §5503 of the Temporary Assistance to Needy Families (TANF) Initiatives effective September 28, 2001. These sections were established by a Declaration of Emergency effective August 20, 2001 (LR 27:1506). This rule shall remain in effect for a period of 120 days.

Pursuant to Act 12 of the 2001 Regular Session of the Louisiana Legislature, the Office of Family Support will provide energy assistance to a certain population of the state. Originally, the agency chose to hold a portion of the energy funds in the event of a presidentially-declared energy emergency. However, on reconsideration that such a declaration may not be made and to ensure the expenditure of funds, the agency will assume the authority to declare an energy emergency to assist a wide range of households in time of need.

The authorization for emergency action in this matter is also contained in Act 12.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 2. Family Independence Temporary Assistance Program (FITAP)

Chapter 12. Application, Eligibility, and Furnishing Assistance

Subchapter D. Special Initiatives

§1290. Energy Assistance

A. Based on the availability of funding and a determination of need by OFS, all households receiving a FITAP grant may also be eligible to receive an energy assistance grant effective August 20, 2001, to apply towards the cost of utility service. OFS will establish a specific date of eligibility in order to determine when households will receive a grant, and only those households certified as of that date will be eligible for energy assistance.

B. The payment process will be administered by an outside entity through a contractual agreement. Recipients will be required to provide verification of identity as well as proof of residency at the utility service address. The energy assistance payment will be paid directly to the recipient's utility company or provider.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; and Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

Subpart 13. Kinship Care Subsidy Program (KCSP)

Chapter 53. Application, Eligibility, and Furnishing Assistance

Subchapter D. Special Initiatives

§5390. Energy Assistance

A. Based on the availability of funding and a determination of need by OFS, all households receiving a KCSP grant may also be eligible to receive an energy assistance grant effective August 2001 to apply towards the cost of utility service. OFS will establish a specific date of eligibility in order to determine when households will receive a grant, and only those households certified as of that date will be eligible for energy assistance.

B. The payment process will be administered by an outside entity through a contractual agreement. Recipients will be required to provide verification of identity as well as proof of residency at the utility service address. The energy assistance payment will be paid directly to the recipient's utility company or provider.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; and Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

Subpart 15. Temporary Assistance to Needy Families (TANF) Initiatives

Chapter 55. TANF Initiatives

§5503. Emergency Energy Assistance

A. Effective September 28, 2001, in the event of an agency-declared energy emergency based on the availability of funding and a determination of need by OFS, needy families may receive a grant to apply toward the cost of utility service.

B. Services meet the TANF goal of providing assistance to needy families so that children may be properly cared for in their own homes or in the homes of relatives by providing funds to help pay the costs of cooling and heating the homes.

C. A needy family is defined as a family in which any member receives Food Stamp benefits, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance (LaCHIP), Supplemental Security Income (SSI), or Free or Reduced School Lunch. However, any of the preceding eligibles also receiving FITAP or KCSP grants are not eligible.

D. Services are considered by the agency as non-assistance.

E. The payment process will be administered by an outside entity through a contractual agreement. Recipients will be required to provide verification of identity and eligibility as defined for a "needy family" as well as proof of residency at the utility service address. The energy assistance payment will be paid directly to the recipient's utility company or provider.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; and Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

J. Renea Austin-Duffin
Secretary

0110#032

DECLARATION OF EMERGENCY

**Department of Social Services
Office of Family Support**

**Percentage of Title IV-E Children
in Foster Care Over 24 Months
(LAC 67:V.3510)**

The Department of Social Services, Office of Community Services, adopts the following emergency rule in the Foster Care Program as required by 42 USC Sec. 671 (A) (14) of the Social Security Act. This declaration is necessary to extend the original emergency rule of June 26, 2001 as it is effective only for a maximum of 120 days and will expire before the final rule takes effect in January, 2002. This emergency rule extension shall go into effect October 20, 2001 and cover the time period remaining until the final rule goes into effect.

The Department of Social Services, Office of Community Services, is required by 42 USC Sec. 671 (A) (14) of the

Social Security Act to incorporate into State administrative regulations a goal as to the maximum absolute number or percentage of children in foster care for over 24 continuous months. Without this immediate and emergency rule the Agency plan for Title IV-E funding would be out of compliance with federal requirements. This would potentially cause the state to be at risk of immediate sanctions which could result in penalties such as loss of Title IV-E Program funding. The Department has selected a percentage of all children in foster care receiving assistance under a State Title IV-E program.

Title 67

SOCIAL SERVICES

PART V. Office of Community Services

Subpart 5. Foster Care

Chapter 35. Payments, Reimbursables, and Expenditures

§3510. Percentage of Title IV-E Children in Foster Care over 24 Months

A. For the percentage of all children in foster care receiving assistance under the State Title IV-E program who at any given time during the fiscal year will have been in foster care over 24 months, the Department will limit that percentage to 55 percent of the total foster care population.

AUTHORITY NOTE: Promulgated in accordance with 42 USC Sec. 671 (A) (14) of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 27:1001 (July, 2001), repromulgated LR 28:

J. Renea Austin-Duffin
Secretary

0110#072

DECLARATION OF EMERGENCY

**Department of Social Services
Office of Family Support**

**Temporary Assistance for Needy
Families (TANF) Initiatives
(LAC 67:III.5533 - 5545)**

The Department of Social Services, Office of Family Support, has exercised the emergency provision of R.S. 49:953(B), the Administrative Procedure Act, to adopt §§5533 through 5545 effective September 25, 2001. This emergency rule will remain in effect for a period of 120 days.

Pursuant to Act 12 of the 2001 Regular Session of the Louisiana Legislature, the Office of Family Support will provide funding to various departments of the state of Louisiana and other entities for a variety of programs intended to further the goals and intentions of the federal Temporary Assistance for Needy Families Block Grant to Louisiana. Although §5545 is not funded with the TANF Block Grant, it is considered a TANF initiative since the state fund expenditures are being counted as the agency's "maintenance of effort."

Authorization for emergency action in this matter is also contained in Act 12.

Title 67
SOCIAL SERVICES

Part III. Office of Family Support

**Subpart 15. Temporary Assistance to Needy Families
(TANF) Initiatives**

Chapter 55. TANF Initiatives

§5533. Transportation Services

A. The Office of Family Support will make funding available for transportation of employed participants in TANF initiatives administered through other agencies.

B. These services meet the TANF goal to end the dependence on government benefits by promoting job preparation, work, and marriage.

C. Services may or may not be limited to needy families depending on which program the participant is involved in.

D. Services are considered non-assistance.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; and Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

§5535. Fatherhood

A. Act 639 of the 2001 Regulation Session of the Louisiana Legislature created the Fatherhood Council to develop a plan to promote and monitor fatherhood initiatives. Funding and services may be provided in accordance with the plan developed by the Fatherhood Council.

B. These services meet the TANF goal to encourage the formation and maintenance of two-parent families by providing programs that promote responsible parenting and increase the capacity of fathers to provide emotional and financial support for their children.

C. Eligibility for services is limited to fathers 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. 36:474 and 46:231; Acts 12 and 639, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

§5537. Education and Training

A. The Office of Family Support will enter into a Memorandum of Understanding with the Department of Education to provide structured after-school programs to help children improve academic performance and to provide literacy and basic education services to adults in need of these services. The Department of Education will implement this program through cooperative endeavor agreements with entities in local communities.

B. These services meet the TANF goals to prevent and reduce the incidence of out-of-wedlock births by providing supervised, safe environments for children thus limiting the opportunities for engaging in risky behaviors, and to encourage the formation and maintenance of two-parent families by providing educational services that enhance a parent's ability to financially and emotionally provide for their children.

C. Eligibility for after-school programs is not limited to needy families. Eligibility for adult education services is limited to parents, legal guardians, and caretaker relatives of minor children.

D. The 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 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

§5539. Truancy

A. OFS will enter into a Memorandum of Understanding with the Supreme Court Of Louisiana 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. These services meet the TANF goal to prevent and reduce the incidence of out-of-wedlock births by providing counseling to children and family members designed to assure regular school attendance and improved academic and behavioral outcomes.

C. Eligibility for services is not limited to needy families.

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 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

§5541. Court-Appointed Special Advocates

A. OFS will enter into a Memorandum of Understanding with the Supreme Court Of Louisiana to provide services to needy children identified as abused or neglected who are at risk of being placed in foster care or, are already in foster care. Community advocates provide information gathering and reporting, determination of and advocacy for the children's best interests, and case monitoring to provide for the safe and stable maintenance of the children or return to their own home.

B. The services meet the TANF goal to provide assistance to needy families so that children may be cared for in their own homes or in the home of relatives by ensuring that the time children spend in foster care is minimized.

C. Eligibility for services is limited to needy families, that is, one in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamp benefits, Child Care Assistance Program (CCAP) services, Title IV-E, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP) benefits, Supplemental Security Income (SSI), or Free or Reduced School Lunch, or who have earned income at or below 200 percent of the federal poverty level.

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 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

§5543. Drug Courts

A. OFS will enter into a Memorandum of Understanding with the Supreme Court of Louisiana to provide services to drug court clients that may include nonmedical treatment, assessment, counseling, education, and training. Eligible services shall not include drug court administrative costs.

B. These services meet the TANF goal to prevent and reduce the incidence of out-of-wedlock births and to encourage the formation and maintenance of two-parent families.

C. Eligibility for services is limited to children and to the parents or caretaker relatives 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 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

§5545. Remediation and Tutoring Programs

A. OFS will enter into a Memorandum of Understanding with the Department of Education, Office of Student and School Performance, to establish programs designed to increase the likelihood of a student scoring above the "unsatisfactory" achievement level on the Graduate Exit Exam and the LEAP 21 exam and include:

1. Graduate Exit Exam Summer Remediation, designed to provide additional remedial instruction to targeted students, that is, students who scored "unsatisfactory" on the English language arts and/or mathematics components of the Graduate Exit Exam;

2. Louisiana Education Assessment Program (LEAP) 21 Summer Remediation, designed to provide additional remedial instruction to targeted students, that is, fourth and eighth grade students who did not take the spring LEAP 21 test and fourth and eighth grade students who scored "unsatisfactory" on the English language arts and/or mathematics components of the LEAP 21; and

3. Louisiana Education Assessment Program (LEAP) 21 Tutoring, designed to provide intense early intervention and remedial instruction to targeted students in an effort to increase the likelihood of them scoring above the "unsatisfactory" level on the LEAP 21. The targeted group

includes fourth and eighth grade students who have been retained because of their having scored at the "unsatisfactory" level on the English language arts and/or mathematics components of the LEAP 21 tests, and fourth and eighth grade students whose third and seventh grade IOWA test scores were below the thirtieth percentile and are considered to be at risk of scoring at the "unsatisfactory" level on the English language arts and/or mathematics components of the LEAP 21 tests.

B. These services meet the TANF goal to prevent and reduce the incidence of out-of-wedlock births by encouraging youths to remain in school, reducing their risk of engaging in negative behavior and increasing opportunities for families to become self-sufficient through education and training.

C. Eligibility for services is limited to families, which include a minor child living with a custodial parent, an adult caretaker relative or a legal guardian. A family in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP), Supplemental Security Income (SSI), or Free or Reduced School Lunch is eligible.

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 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

J. Renea Austin-Duffin
Secretary

0110#024

Rules

RULE

Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences

Pesticide Restrictions (LAC 7:XXIII.143)

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Advisory Commission on Pesticides, has amended regulations regarding the restrictions on applications of certain pesticides and their exemption to waiver of restrictions.

The commercial applications of certain herbicides, in certain parishes, in accordance with the current regulations and labels has not been sufficient to control drift onto non target areas. Failure to prevent the drift onto non target areas will adversely affect other crops, particularly cotton. The adverse effects to the cotton crop and other non target crops will cause irreparable harm to the economy of central Louisiana and to Louisiana agricultural producers.

These Rules comply with and are enabled by R.S. 3:3203 and R.S. 3:3223.

Title 7

AGRICULTURE AND ANIMALS

Part XXIII. Advisory Commission on Pesticides

Chapter 1. Advisory Commission on Pesticides

Subchapter I. Regulations Governing Applications of Pesticides.

§143. Restrictions on Application of Certain Pesticides

A. - B.17. ...

C. The pesticides listed in 143.B shall not be applied by commercial applicators between March 15 and September 15 in the following parishes or wards:

- | | |
|-------------------------------------|--|
| 1. Avoyelles | 16. Morehouse |
| 2. Bossier | 17. Natchitoches |
| 3. Caddo | 18. Ouachita |
| 4. Caldwell | 19. Pointe Coupee |
| 5. Catahoula | 20. Rapides |
| 6. Claiborne, Ward 4 | 21. Red River |
| 7. Concordia | 22. Richland |
| 8. DeSoto, Ward 7 | 23. St. Landry |
| 9. East Carroll | 24. St. Martin, Ward 5 |
| 10. Evangeline,
Wards 1, 3 and 5 | 25. Tensas |
| 11. Franklin | 26. Union |
| 12. Grant | 27. West Carroll |
| 13. Iberville Ward 9 | 28. West Baton Rouge,
Wards 5, 6, and 7 |
| 14. LaSalle | 29. Winn, Ward 7 |
| 15. Madison | |

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203, R.S. 3:3242 and R.S. 3:3249.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:169 (April 1983), amended LR 10:193 (March 1984), LR 11:219 (March 1985), LR 11:942 (October 1985), amended by the Department of

Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:953 (September 1992), amended LR 19:791 (September 1993), LR 21:668 (July 1993), LR 21:668 (July 1995), LR 24:281 (February 1998), LR 24:2076 (November 1998), LR 28:1672 (October 2001).

Bob Odom
Commissioner

0110#091

RULE

Department of Agriculture and Forestry Office of the Commissioner

Meat Labeling (LAC 7:XXXV.135)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Weights and Measures Commission, has adopted regulations regarding meat labeling requirements set out in R.S. 51:614.

The Department of Agriculture and Forestry, Weights and Measures Commission, is adopting these regulations in order to implement the meat labeling law set forth in R.S. 51:614. This Rule requires all meat to be labeled "American," "imported," and "blend of imported and American meats" on the wrapping or on a card for display.

These Rules comply with and are enabled by R.S. 3:4608, 3:4607, and R.S. 51:614.

Title 7

AGRICULTURE AND ANIMALS

Part XXXV. Agro-Consumer Services

Chapter 1. Weights and Measures

§135. Meat Labeling

A. As used in this Section the following terms are defined.

1. *American* Any meat that is produced in the United States.
2. *Blend* Any combination of American and foreign meat.
3. *Imported* Any meat produced in a foreign country.

B. Unless otherwise provided in this Section, all processed or unprocessed meat sold in Louisiana, whether fresh or frozen, shall indicate the meat's country of origin.

1. The country of origin or designations "American," "imported" or "blend of imported and American meats" shall be indicated in clear and conspicuous letters in English.

2. All meat shall be labeled with one of the following designations, "American," "imported" or "blend of imported and American meats" or shall contain the name of the country of origin preceded by the "product of." Example: Meat produced in the United States would be labeled "American" or "Product of U.S.A."

3. Meat displayed for sale or sold unwrapped shall contain the proper designation as to the country of origin on

the meat, or on the immediate container or wrapping, or on a sign included with the display.

4. If an establishment sells only American meat, then a placard indicating that only American meat is sold will be sufficient to meet the requirements of these regulations.

C. The provisions of this Section shall not apply to prepared meat that is sold at retail for consumption on the premises and fully cooked meat as defined by the United States Department of Agriculture Food Safety Inspection Service rules and regulations.

D. The Commissioner of Agriculture and Forestry, the Weights and Measures Commission and the Department of Agriculture and Forestry shall have the power and authority granted under the Weights and Measures Law to enforce the provisions of this Section.

E. The penalty for any violation of this Section shall be as provided in R. S. 51:614.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4608, 3:4607 and R.S. 51:614.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Division of Weights and Measures, LR 28:1673 (October 2001).

Bob Odom
Commissioner

0110#092

RULE

Department of Culture, Recreation and Tourism Office of State Parks

State Parks COvernight Facilities, Meeting Rooms,
Day Use, and Reservation Procedures
(LAC 25:IX.303-331 and 501-507)

The Office of State Parks has amended LAC 25:IX.301 et seq. in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and the statutory provisions of R.S. 56:1681 et seq.

The amendments relate to a variety of issues at state parks including use of overnight facilities, meeting rooms, day use, and reservation procedures.

Title 25

CULTURAL RESOURCES

Part IX. Office Of State Parks

Chapter 3. Rules and Regulations

§303. Park Property and Environment

A. - F. ...

G. No person may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on any park. The display, possession, and/or use of metal detectors or other devices is prohibited. It is strictly forbidden to dig for or otherwise remove any historical feature, relic or artifact. Persons wishing to excavate and remove historical features by professional archaeological means for research purposes must request a permit from the Louisiana Archaeological Survey and Antiquities Commission. Applications for such permits must be made through the assistant secretary, office of state parks.

H. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1681-1690.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Parks, LR 8:633 (December 1982), amended LR 12:89 (February 1986), LR 16:1051 (December 1990), LR 26:25 (January 2000), LR 28:1673 (October 2001).

§321. Fines and Enforcement of the Rules and Regulations

A. In addition to any other penalty provided by law, persons violating these rules and regulations are subject to administrative fines for each violation of not less than \$15 nor more than \$250 (R.S. 56:1689), eviction from the park, and/or restitution to the state for damages incurred. If an individual is delinquent in paying for damage incurred, the agency reserves the right to refuse privileges to that individual pending receipt of such restitution.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1681-1690.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Parks, LR 8:633 (December 1982), amended LR 12:89 (February 1986), LR 12:828 (December 1986), LR 26:27 (January 2000), LR 27: 1673 (October 2001).

§331. Overnight Use

A. - A.13. ...

B. Camping

1. With the exception of a campground host, overnight camping and group camp, lodge and cabin use are limited to 15 consecutive days. After 15 consecutive days of occupancy at a park, the visitor must vacate the park for seven consecutive days before occupancy may be resumed. At the site manager's discretion, and subject to availability, overnight camping may be extended on a weekly basis. No campsite may be vacated for longer than a 24-hour continuous period under any permit agreement.

2. - 4. ...

5. The following camping combinations are applicable only to Grand Isle State Park:

- a. one passenger vehicle and two tents (family unit only);
- b. one passenger vehicle and one camping trailer;
- c. one van-type camping vehicle and one tent;
- d. one van-type camping vehicle and one camping trailer.
- e. one pickup truck camper and one tent;
- f. one pickup truck camper and one camping trailer;
- g. one motorized camper (or bus) and one passenger vehicle.

h. In the north camping area, registered campers are allowed to bring a maximum of two vehicles and a maximum of six persons per campsite.

6. Beach campsites cannot be reserved.

C. - C.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1681-1690.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Parks, LR 8:633 (December 1982), amended LR 12:89 (February 1986), LR 14:772 (November 1988), LR 16:1051 (December 1990), LR 26:28 (January 2000), LR 27:1673 (October 2001).

Chapter 5. Procedures and Fees

§503. Fees and Exemptions; Day-Use

A. - F.1.c. ...

G Meeting Rooms. Meeting rooms used to accommodate meetings and functions of private groups, clubs and other organizations are available during normal park operating hours. Kitchen facilities may be used, if available. Meeting room rates are as follows:

- \$75 Type I e.g. Bayou Segnette, North Toledo Bend
- \$125 Type II e.g. Chemin-A-Haut, Chicot
- \$175 Type III e.g. Lake Fausse Pointe

H. Exemptions

1. repealed.

H.2. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1681-1693.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Parks, LR 8:633 (December 1982), amended LR 12:89 (February 1986), LR 14:772 (November 1988), LR 16:1051 (December 1990), LR 26:29 (January 2000), LR 27:1673 (October 2001).

§504. Fees and Exemptions C Overnight Use

A. - B.3. ...

C. Repealed.

D. - F.2. ...

G Group Camps. Group camps are available at certain parks for organized group use. The capacity, type of facility, and rates are as follows:

Classification	Overnight Rate	Maximum Capacity
Class III	\$300	100+
Class II	\$125	50+
Class I	\$75	30+

1. Group camps may be reserved for day or overnight use at a basic rate. In addition, the normal day-use entrance fee will be assessed each vehicle entering the group camp area.

2. Beds, kitchen and necessary cooking ware are furnished. User must furnish his own tableware (silver, dishes, glasses, etc.), bed linens, pillows, towels, and toilet necessities.

H. - H.8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1681-1693.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Parks, LR 8:633 (December 1982), amended LR 12:89 (February 1986), LR 12:828 (December 1986), LR 26:30 (January 2000), LR 27:1674 (October 2001).

§505. Reservation Policy

A. General Provisions

1. - 4. ...

5. A cancellation of a reservation initiated by park users is subject to a surcharge. The cancellation fee is a minimum of \$10 per facility. If the reservation is canceled within 14 days of the first day of intended use, the cancellation fee is the cost of one day's stay or \$10 per facility, whichever is more. A transfer of reservation dates will be treated as a cancellation and a new reservation, and is therefore subject to the cancellation surcharge. There is no charge to transfer a reservation from a facility to the same type of facility within a park.

6. In the event reservations must be canceled for maintenance or emergency reasons by park staff, the rental fee will be refunded in full. Requests for waivers of the cancellation fee must be made in writing to the assistant secretary or his designee and will be granted only for extreme situations.

7. For cabins, lodges, group camps, rally shelters and campsites a two-day minimum reservation is required for weekends. The minimum may be met by reserving the facility on Friday and Saturday nights, on Saturday and Sunday nights or for all three nights. If facilities are not reserved in advance, they may be rented on weekends for one night to walk-up users using the facilities that day. Exceptions may be granted by the assistant secretary or his designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1681-1693.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Parks, LR 8:633 (December 1982), amended LR 12:89 (February 1986), LR 14:772 (November 1988), LR 16:1051 (December 1990), LR 26:32 (January 2000), LR 27:1674 (October 2001).

§507. Special Uses and Restrictions

A. - C.5. ...

D. Passenger Bus Restrictions

1. ...

2. Special Bus Use Permits. Any access to state parks by bus transportation on weekends or holidays during the period between Memorial Day and Labor Day will require a special bus use permit. The application for the permit must be submitted to the site manager at least three days prior to the proposed use date along with the group's proof of \$1,000,000 liability insurance and proof of \$500,000 automobile or bus liability insurance. Children traveling to state parks must be chaperoned by adults. The permit, if approved, does not cover other special day-use charges (rental pavilions, etc.).

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1681-1690.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Parks, LR 8:633 (December 1982), amended LR 12:89 (February 1986), LR 12:828 (December 1986), LR 26:32 (January 2000), LR 27:1674 (October 2001).

Dwight Landreneau
Assistant Secretary

0110#038

RULE

Board of Elementary and Secondary Education

Bulletin 741C Louisiana Handbook for School Administrators
Policy for Louisiana's Public Education
Accountability System (LAC 28:I.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended Bulletin 741, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). 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. This change more clearly explains and refines existing policy as follows:
1) clarification of the transfer/school choice policy.

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 LR 26:635 (April 2000); LR 26:1260 (June 2000), LR 27:1675 (October 2001).

**The Louisiana School and District
Accountability SystemC Transfer Policy**

2.006.11 Parents shall have the right to transfer their child to another public school when an Academically Unacceptable School begins Corrective Actions Level II or any other school begins Corrective Actions Level III.

Transfers shall not be made to Academically Unacceptable Schools or any school undergoing Corrective Actions Level II or Level III.

Upon parental request, districts shall transfer the child to the nearest acceptable school prior to the October 1 student membership count.

If no academically acceptable school in the district is available, the student may transfer to a neighboring district. Parents shall provide the transportation to the school. State dollars shall follow the child when such a transfer occurs.

Schools and districts may refuse to accept a student if there is insufficient space, if a desegregation order prevents such a transfer, or if the student has been subjected to disciplinary actions for behavioral problems.

An LEA must develop a policy for student transfers (School Choice Policy) for Academically Unacceptable schools in Corrective Actions II and III. An LEA shall state its capacity for offering student transfers. SBESE shall approve or disapprove an LEA's School Choice Policy.

An LEA shall declare *Lack of Capacity* when all of the attendance zones under its jurisdiction are unable to provide school choice to eligible students (i.e., desegregation order).

An LEA shall declare *Limited Capacity* when some students in some or all of the attendance zones under its jurisdiction may be provided school choice in an attendance zone (i.e., limited seating capacity in receiving schools).

An LEA declaring *Lack or Limited Capacity* shall request a waiver from SBESE and shall submit the following with its waiver request:

- a description of the general transfer policy or desegregation order (See State's *Guidance on LEAs' Development of School Choice Policies for Public Schools in Louisiana*). Transfer policies must include:
 - 1) a method for determining transfer capacity or evidence of lack of capacity to transfer;
 - 2) transfer options for as many eligible students as possible in the Academically Unacceptable schools in Corrective Actions II or III to other Academically Acceptable schools;
 - 3) equal educational opportunities for all students eligible to transfer, including students with disabilities and Limited English Proficiency (LEP) and in compliance with all civil rights laws pertaining to eligible students;
 - 4) a method for selecting transfer students from the entire eligible student population in cases of *Limited Capacity* (i.e., lottery);
 - 5) a method for communicating to parents the option and wherewithal of School Choice;
 - 6) a method for maintaining a file for all communication involving all interested parties in School Choice;
 - 7) A method for providing transportation for transfer students; and
 - 8) A method for transferring student records, including assessment results and their interpretations.

If SBESE determines that an LEA has demonstrated sufficient evidence of lack of or limited capacity to transfer, then the requesting LEA must submit the following information for SBESE approval:

- a description of the School/District Plan for those schools having to offer School Choice that addresses the following:
 - 1) Educator Quality
- Principal Certification/Qualifications
- Principal Leadership and Effectiveness
- Teacher Qualifications/Certification
 - 2) Professional Development
- To address teacher professional learning based on student data
- To address uncertified/inexperienced teacher professional learning if certified/experienced teachers are unavailable for placement in the school
 - 3) Alignment of Curriculum, Instruction and Assessment with State Content Standards;
 - 4) Teacher/Pupil Ratio;
 - 5) Early Intervention/Remediation Programs;
 - 6) Time on Task/Extended Learning Opportunities;
 - 7) Parental Involvement; and
 - 8) Discipline/Safety/Health Issues;
 - 9) Renovation/Capital Improvement.

If SBESE fails to approve an LEA's School Choice Plan, the implicated schools will lose their School Approval status.

Weegie Peabody
Executive Director

0110#023

RULE

Board of Elementary and Secondary Education

Bulletin 746C Louisiana Standards for State Certification
of School PersonnelC Alternative Certification Program
(LAC 28:I.903)

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. The new Louisiana Alternative Certification Program includes three paths to teacher certification for individuals with non-education degrees: (1) The Practitioner Teacher Program, (2) the Masters Degree Program, and (3) the Non-Masters/Certification-Only Program. These three programs will more effectively standardize the semester hours required for alternate certification throughout the state, regardless of university or private provider.

The Practitioner Teacher Program is a streamlined approach to certification that combines coursework and full-time teaching with demonstrated content knowledge, instructional expertise, and classroom management skills. As a hands-on approach delivered in a fast-track format, the Practitioner Teacher Program is unlike any previously offered alternative route to certification in Louisiana. Coursework will be at minimum 18 hours and at maximum 30 hours.

The other two paths to alternate certification allow candidates to schedule and take coursework on a part-time, rather than a full-time, basis. One path offers a masters degree, whereas the other does not.

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 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 in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975); amended

Bulletin 746, Louisiana Standards for State Certification of School Personnel Louisiana Alternative Certification Program

Providing Alternative Paths to Teacher Certification

The Louisiana Alternative Certification Program provides opportunities for individuals with non-education degrees to become certified public school teachers. Individuals seeking teacher certification under the alternative certification program will follow one of three alternative certification paths: the *Practitioner Teacher Program*, the *Masters Degree Program*, or the *Non-Masters/Certification-Only Program*.

Candidates for admission to any one of the programs must possess a baccalaureate degree from a regionally accredited university and must pass the Pre-Professional Skills Test on the PRAXIS and the content specific examinations for the PRAXIS. More detailed explanations relative to program admission requirements are explained within the description of each alternate certification path.

Individuals seeking certification under the *Practitioner Teacher Program* must submit an official transcript for evaluation to a Louisiana college or university with an approved teacher education program or to a state-approved private practitioner program provider. Individuals seeking certification under the *Masters Degree Program* or the *Non-Masters/Certification-Only Program* must submit an official transcript for evaluation to a Louisiana college or university with an approved teacher education program. [A list of Louisiana colleges and universities offering the *Practitioner Teacher Program*, the *Masters Degree Program*, and/ or the *Non-Masters/Certification-Only Program* is available from the Louisiana Department of Education, Division of Teacher Standards, Assessment, and Certification and on the Louisiana Department of Education's web site, www.doe.state.la.us. A list of private program providers offering the *Practitioner Teacher Program* is also available from these same sources.]

Universities offering alternative certification are required to begin implementation of the newly adopted paths on or before July 2002.

No students should be accepted into the "old" post-baccalaureate alternate certification program after January, 2002. Candidates already in the "old" alternative certification program would be given until January 2005 to complete their programs.

Practitioner Teacher Program
Alternative Path to Certification

State-approved private providers and Louisiana colleges or universities with an approved teacher education program may choose to offer a Practitioner Teacher Program. Practitioner Teacher Programs may offer certification in Grades 1-6, Grades 4-8, or Grades 7-12 (regular or special education). The Practitioner Teacher Program is a streamlined certification path that combines intensive coursework and full-time teaching.

Admission to the Program

To be admitted, individuals should:

1. Possess a baccalaureate degree from a regionally accredited university.
2. Have a 2.5 GPA on undergraduate work. Appropriate, successful work experience can be substituted for the required GPA, at the discretion of the program provider. However, in no case may the GPA be less than 2.0. (Note: State law requires that upon completion of the program the teacher candidate has a 2.5 GPA for certification.)
3. Pass the Pre-Professional Skills Test (e.g. reading, writing, and mathematics) on the PRAXIS.
4. Pass the content specific examinations for the PRAXIS
 - a. Candidates for Grades 1-6 (regular and special education): pass the *Elementary Education: Content Knowledge* specialty examination;
 - b. Candidates for Grades 4-8 (regular and special education): pass the *Middle School Education: Content Knowledge* specialty examination;
 - c. Candidates for Grades 7-12 (regular and special education): pass the *content specialty examination(s)* (e.g. English, Mathematics, etc.) on the PRAXIS in the content area(s) in which they intend to teach.
5. Meet other non-course requirements established by the college or university.

Program Requirements

1. Teaching Preparation (Summer) 9 credit hours (or equivalent 135 contact hours)

Grades 1-6, 4-8 and 7-12 practitioner teachers will complete courses (or equivalent contact hours) pertaining to child/adolescent development/psychology, the diverse learner, classroom management/organization, assessment, instructional design, and instructional strategies before starting their teaching positions.

Mild/moderate special education teachers will take courses (or equivalent contact hours) that focus upon the special needs of the mild/moderate exceptional child, classroom management, behavioral management, assessment and evaluation, methods/materials for mild/moderate exceptional children, and vocational and transition services for students with disabilities.
2. Teaching Internship & First Year Teaching 9 credit hours (or equivalent 135 contact hours)

Practitioner teachers will assume full-time teaching positions in districts. During the school year, these individuals will participate in two seminars (one seminar during the fall and one seminar during the spring) that address immediate needs of the Practitioner Teacher Program teachers and receive one-on-one supervision through an internship provided by the program providers. The practitioner teacher will also receive support from school-based mentor teachers (provided by the Louisiana Teacher Assistance and Assessment Program) and principals.
3. Teaching Performance Review (end of first year)

Program providers, principals, mentors, and practitioner teachers will form teams to review the first year teaching performance of practitioner teachers and determine the extent to which the practitioner teachers have demonstrated teaching proficiency. If practitioner teachers demonstrated proficiency, they will enter into the assessment

portion of the Louisiana Teacher and Assessment Program during the next fall.

If weaknesses are cited, the teams will identify additional types of instruction needed to address the areas of need. Prescriptive plans that require from 1 to 12 credit hours (or 15 -180 equivalent contact hours) of instruction will be developed for practitioner teachers. In addition, the teams will determine if the practitioner teachers should participate in the new teacher assessment during the fall or if the practitioner teachers should receive additional mentor support and be assessed after the fall.

4. Prescriptive Plan Implementation 1-12 credit hours (15-180 contact hours)

Practitioner teachers who demonstrate areas of need will complete prescriptive plans.

5. Louisiana Assessment Program

Practitioner teachers will be assessed during the fall or spring of the second year of teaching depending upon their teaching proficiencies.

6. PRAXIS Review

Program providers will offer review sessions to prepare practitioner teachers to pass remaining components of the PRAXIS.

Certification Requirements

Private Providers and colleges or universities will submit signed statements to the Louisiana Department of Education which indicate that the student completing the *Practitioner Teacher Program* alternative certification path met the following requirements:

1. Passed the PPST components of the PRAXIS. (Note: This test was required for admission.)

2. Completed the program with an overall 2.5 or higher GPA.

3. Passed the specialty examination (PRAXIS) for their area(s) of certification.

a. Grades 1-6: Elementary Education: Content Knowledge specialty examination (Note: This test was required for admission.)

b. Grades 4-8: Middle School Education: Content Knowledge specialty examination (Note: This test was required for admission.)

c. Grades 7-12: Specialty content test in areas to be certified. (Note: This test was required for admission.)

d. Mild/Moderate Special Education 1-12: *Special Education*

4. Passed the Principles of Learning and Teaching examination (PRAXIS)

a. Grades 1-6: Principles of Learning and Teaching

b. Grades 4-8: Principles of Learning and Teaching

c. Grades 7-12: Principles of Learning and Teaching

Masters Degree Program

Alternative Path to Certification

A Louisiana college or university with an approved teacher education program may choose to offer an alternative certification program that leads to a master's degree. Alternative certification programs may be offered by a college or university only in those certification areas in which that institution has an approved teacher education program. The college or university may choose to offer the

masters degree program as either a Master of Education or a Master of Arts in Teaching. Masters Degree Programs may offer certification in Grades PK-3, Grades 1-6, Grades 4-8, or Grades 7-12 (regular or special education).

Admission to the Program

To be admitted, individuals should:

1. Possess a baccalaureate degree from a regionally accredited university.

2. Have a 2.5 GPA, or higher, on undergraduate work.

3. Pass the Pre-Professional Skills Test (e.g. reading, writing, and mathematics) on the PRAXIS.

4. Pass the content specific examinations for the PRAXIS

a. Candidates for PK-3 (regular and special education): pass the *Elementary Education: Content Knowledge* specialty exam;

b. Candidates for Grades 1-6 (regular and special education): pass the *Elementary Education: Content Knowledge* specialty examination;

c. Candidates for Grades 4-8 (regular and special education): pass the *Middle School Education: Content Knowledge* specialty examination;

d. Candidates for Grades 7-12 (regular and special education): pass the *content specialty examination(s)* (e.g., English, Mathematics, etc.) on the PRAXIS in the content area(s) in which they intend to teach.

5. Meet other non-course requirements established by the college or university.

Program Requirements

1. Knowledge of Learner and the Learning Environment 15 credit hours

Grades PK-3, 1-6, 4-8, and 7-12: Child/adolescent development/psychology, the diverse learner, classroom management/organization, assessment, instructional design, and instructional strategies

Mild/Moderate Special Education 1-12: Special needs of the mild/moderate exceptional child, classroom management, behavioral management, assessment and evaluation, methods and materials for mild/moderate exceptional children, vocational and transition services for students with disabilities

2. Methodology and Teaching 12-15 credit hours
Methods courses and field experiences

3. Student Teaching or Internship 6-9 credit hours

Total: 33-39 credit hours

Certification Requirements

Colleges or universities will submit signed statements to the Louisiana Department of Education which indicate that the student completing the *Masters Degree Program* alternative certification path met the following requirements:

1. Passed the PPST components of the PRAXIS. (Note: This test was required for admission.)

2. Completed all coursework (undergraduate and masters program) with an overall 2.5 or higher GPA.

3. Passed the specialty examination (PRAXIS) for their area(s) of certification.

a. Grades PK-3: Elementary Education: Content Knowledge specialty exam (Note: This test was required for admission.)

b. Grades 1-6: Elementary Education: Content Knowledge specialty exam (Note: This test was required for admission.)

c. Grades 4-8: Middle School Education: Content Knowledge specialty examination (Note: This test was required for admission.)

d. Grades 7-12: Specialty content test in area to be certified (Note this test was required for admission.)

e. Mild/Moderate Special Education 1-12: *Special Education*

4. Passed the Principles of Learning and Teaching examination (PRAXIS)

a. Grades PK-3: Principles of Learning and Teaching K-6

b. Grades 1-6: Principles of Learning and Teaching K-6

c. Grades 4-8: Principles of Learning and Teaching 5-9

d. Grades 7-12: Principles of Learning and Teaching 7-12

Non-Masters/Certification-Only Program
Alternative Path to Certification

A Louisiana college or university with an approved teacher education program may choose to offer a post-baccalaureate alternative certification program that does not lead to a degree. Alternative certification programs may be offered by a college or university only in those certification areas in which that institution has an approved teacher education program. Non-Masters/Certification-Only Programs may offer certification in Grades PK-3, Grades 1-6, Grades 4-8, or Grades 7-12 (regular or special education).

Admission to the Program

To be admitted, individuals should:

1. Possess a baccalaureate degree from a regionally accredited university.

2. Have a 2.5 GPA, or higher, on undergraduate work.

3. Pass the Pre-Professional Skills Test (e.g. reading, writing, and mathematics) on the PRAXIS.

4. Pass the content specific examinations for the PRAXIS

a. Candidates for PK-3 (regular and special education): pass the *Elementary Education: Content Knowledge* specialty exam;

b. Candidates for Grades 1-6 (regular and special education): pass the *Elementary Education: Content Knowledge* specialty examination;

c. Candidates for Grades 4-8 (regular and special education): pass the *Middle School Education: Content Knowledge* specialty examination;

d. Candidates for Grades 7-12 (regular and special education): pass the *content specialty examination(s)* (e.g. English, Mathematics, etc.) on the PRAXIS in the content area(s) in which they intend to teach.

Program Requirements

1. Knowledge of Learner and the Learning Environment 9 credit hours

Grades PK-3, 1-6, 4-8, and 7-12: Child/adolescent development/psychology, the diverse learner, classroom management/organization, assessment, instructional design, and instructional strategies

Mild/Moderate Special Education 1-12: Special needs of the mild/moderate exceptional child, classroom management, behavioral management, assessment and evaluation, methods and materials for mild/moderate exceptional children, vocational and transition services for students with disabilities

Methodology and Teaching 6 credit hours

Methods courses and field experience

3. Student Teaching or Internship 6-12 credit hours

Total: 21-27 credit hours

Certification Requirements

Colleges or universities will submit signed statements to the Louisiana Department of Education which indicate that the student completing the *Non-Degree/Certification-Only Program* alternative certification path met the following requirements:

1. Passed the PPST components of the PRAXIS. (Note: This test was required for admission.)

2. Completed all coursework (undergraduate and certification program) with an overall 2.5 or higher GPA.

3. Passed the specialty examination (PRAXIS) for their area(s) of certification.

a. Grades PK-3: Elementary Education: Content Knowledge specialty exam (Note: This test was required for admission.)

b. Grades 1-6: Elementary Education: Content Knowledge specialty examination (Note: This test was required for admission.)

c. Grades 4-8: Middle School Education: Content Knowledge specialty examination (Note: This test was required for admission.)

d. Grades 7-12: Specialty content test in areas to be certified. (Note: This test was required for admission.)

Mild/Moderate Special Education 1-12: Special Education

4. Passed the *Principles of Learning and Teaching* examination (PRAXIS)

a. Grades PK-3: Principles of Learning and Teaching K-6

b. Grades 1-6: Principles of Learning and Teaching K-6

c. Grades 4-8: Principles of Learning and Teaching 5-9

d. Grades 7-12: Principles of Learning and Teaching 7-12

Universities offering alternative certification options are required to begin implementation of the newly adopted paths on or before July 2002.

No students should be accepted into the "old" post-baccalaureate alternate certification program after January 2002. Candidates already in the "old" alternative certification program would be given until January 2005 to complete their programs.

Weegie Peabody
Executive Director

0110#022

RULE

Board of Elementary and Secondary Education

Bulletin 746C Louisiana Standards for State Certification
of School PersonnelC Denial of Certification for
Criminal Offenses (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. This policy includes language relative to specific criminal offenses, which is consistent with the laws requiring background checks. In addition, the change outlines specific procedures for issuance of certificates, the required evidence of rehabilitation, and graduated time lines for convictions rendered at various times in the past.

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

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 in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975); amended LR 26:459 (March 2000), LR 26:635-638 (April 2000), LR 26:638-639 (April 2000), LR 27:1680 (October 2001).

Bulletin 746, Louisiana Standards for State Certification of School PersonnelC Denial of Certificates for Criminal Offenses

One of the three new alternate certification routes in Louisiana, the Practitioner Teacher Program was approved by the State Board of Elementary and Secondary Education for implementation by selected providers as early as summer 2001.

I. An application for a Louisiana teaching certificate shall be denied if the individual applying for the certificate has been convicted of any offense listed in R.S. 15:587.1(C) or any felony offense whatsoever. (See Attachment 1)

II. For the purposes of this policy:

The term *Aoffense@* or *Acrime@* shall include those listed in R.S. 15:587.1(C) and any felony offense whatsoever.

The term *Ateaching certificate@* or *Acertificate@* shall include any license, permit, or certificate issued by the Certification and Higher Education section of the Department of Education.

The term *Aindividual@* shall include any person applying for any permanent, ancillary, provisional or temporary certificate.

The term *Aconvicted@* or *Aconviction@* shall include any proceedings in which the accused pleads guilty or no contest and those proceedings that are tried and result in a judgment of guilty.

The term *ADepartment@* refers to the Louisiana Department of Education.

The term *ABoard@* refers to the Board of Elementary and Secondary Education as a whole and/or any of its standing committees.

III. Any conviction that results in a suspended sentence pursuant to Articles 893 or 894 of the Louisiana Code of Criminal Procedures, shall be treated as a conviction for the purpose of denial.

Gubernatorial pardons, first offender pardons, and expungement may be used as evidence of rehabilitation, but shall not preclude the denial of a teaching certificate.

IV. When the Department is notified that any teacher has been convicted of a specific crime:

A. The teacher shall be notified by certified mail and by any other appropriate means of notice that his/her certificate has been denied and that a hearing will be conducted by a Board committee to consider issuance of Louisiana certification.

B. If the teacher cannot be reached and/or if his/her employment status cannot be determined, denial of the certificate shall proceed, as will all other steps in the process outlined in this policy.

C. A teacher may contact the office of the Board and request a hearing prior to the date set for the denial consideration by the Board. Such hearing will be limited to a determination of the individual's true identity and true conviction status. The teacher shall provide copies of any documents that verify his/her identity and refute the existence of a criminal conviction.

V. Upon official action by the Board, any teacher whose certificate has been denied shall be notified of such action by certified mail. The correspondence shall include instructions for and identification of the date when the individual may apply to the Board for issuance of his/her certificate.

VI. If the conviction upon which a teacher's certificate has been denied is reversed, vacated, or set aside such action may be communicated to the Board through documentation from the court in which the conviction occurred.

VII. A teacher whose certification has been denied under the provisions of this part may apply for issuance only after the time restriction has been completed.

VIII. Time Restrictions on Applications for Reinstatement:

A. Certificate issuance will never be considered for teachers convicted of the following crimes: 14:30, 14:30.1, 14:41, 14:42, 14:42.1, 14:43, 14:43.1, 14:43.2, 14:43.3, 14:43.4, 14:43.5, 14:44, 14:44.1, 14:45, 14:78, 14:79.1, 14:80, 14:81, 14:81.1, 14:81.2, 14:82.1, 14:86, 14:89, 14:89.1, 14:93, 14:93.2.1, and 14:286. (See Attachment 1)

B. Issuance of certificates shall not be considered for any final felony conviction until at least 3 years have elapsed from the date of the final conviction.

IX. Procedures for Issuance:

A. An individual may apply to the Board for issuance of his/her teaching certificate after the lapse of time indicated above and under the following conditions.

1. There have been no other arrests or convictions (the applicant must provide a current background check that is clean and clear).

2. There has been successful completion of all conditions and/or requirements of parole and/or probation (the applicant must provide copies of court records,

sentencing recommendations, probation release forms, etc., and written verification that all requirements have been completed and/or met).

3. There is documented evidence of rehabilitation (the applicant is responsible for providing copies of every requested document).

B. The applicant must:

1. Contact the office of the Board of Elementary and Secondary Education.

2. Provide each item identified above (IX.A.1, and 2) and below (IX.C.1, 2, and 3 *required*, IX.C.4, 5, and 6 *recommended*).

3. Request a hearing for issuance of certificate.

C. Evidence of rehabilitation is not limited to, but shall include 1, 2, and 3 (below) and should include 4, 5, and 6 (below).

1. Letter of support from a local district attorney.

2. Letter of support from a local judge.

3. Letter of support from the applicant's parole/probation officer, local police chief, or local sheriff.

4. Letter of support from a local school superintendent.

5. Letter of support from a local community person (business owner, minister, priest, rabbi, city council person, etc.).

6. Other letters of support or written reports that verify the applicant's rehabilitation.

D. The Board is not required to conduct an issuance hearing and may summarily deny a request for issuance.

E. If the Board or its designees decide to conduct an issuance hearing, Board staff shall notify the applicant of a date, time, and place when a committee of the Board shall consider the applicant's request. The applicant may be represented/accompanied by legal counsel. In addition to the applicant and his/her legal counsel, a maximum of three witnesses may be called to provide testimony regarding the applicant's rehabilitation. Testimony and information considered will be limited to evidence of rehabilitation. The conviction itself will be given full faith and credit. Testimony will not be allowed as to the circumstances surrounding the conviction. The written documentation provided prior to the hearing will also be considered.

F. The committee of the Board shall make a recommendation to the full Board regarding whether the teaching certificate should be granted, or denied. Board staff shall notify the applicant of the Board's action.

X. The Board of Elementary and Secondary Education reserves the right to accept or reject any document or testimony offered as evidence of rehabilitation.

The Board of Elementary and Secondary Education reserves the right to determine if adequate rehabilitation has occurred and will itself determine if and when an applicant is eligible for a teaching certificate.

Attachment 1

The following crimes are reported under R.S.15:587.1: R.S. 14:30, R.S. 14:30.1, R.S. 14:31, R.S. 14:41 through R.S.14:45, R.S. 14:74, R.S. 14:78, R.S. 14:79.1, R.S. 14:80 through R.S. 14:86, R.S. 14:89, R.S. 14:89.1, R.S. 14:92, R.S. 14:93, R.S. 14:93.2.1, R.S. 14:93.3, R.S. 14:106, R.S. 14:282, R.S. 14:286, R.S. 40:966(A), R.S. 40:967(A), R.S. 40:968(A), R.S. 40:969(A), and R.S. 40:970(A) or

convictions for attempt or conspiracy to commit any of those offenses; those of a jurisdiction other than Louisiana which, in the judgment of the bureau employee charged with responsibility for responding to the request, would constitute a crime under the provisions cited in this Subsection, and Those under the Federal Criminal Code having analogous elements of criminal and moral turpitude. (Federal Criminal Code provisions are in Title 18 of U.S.C.A.)

Specifically:

* R.S. 14:30	First degree murder
* R.S. 14:30.1	Second degree murder
R.S. 14:31	Manslaughter
* R.S. 14:41	Rape
* R.S. 14:42	Aggravated rape
* R.S. 14:42.1	Forcible rape
* R.S. 14:43	Simple rape
* R.S. 14:43.1	Sexual battery
* R.S. 14:43.2	Aggravated sexual battery
* R.S. 14:43.3	Oral sexual battery
* R.S. 14:43.4	Aggravated oral sexual battery
* R.S. 14:43.5	Intentional exposure to the AIDS virus
* R.S. 14:44	Aggravated kidnapping
* R.S. 14:44.1	Second degree kidnapping
* R.S. 14:45	Simple kidnapping
R.S. 14:74	Criminal neglect of family
* R.S. 14:78	Incest
* R.S. 14:79.1	Criminal abandonment
* R.S. 14:80	Carnal knowledge of a juvenile
* R.S. 14:81	Indecent behavior with a juvenile
* R.S. 14:81.1	Pornography involving juveniles
* R.S. 14:81.2	Molestation of a juvenile
R.S. 14:82	Prostitution
* R.S. 14:82.1	Prostitution; persons under seventeen; additional offenses
R.S. 14:83	Soliciting for prostitutes
R.S. 14:83.1	Inciting prostitution
R.S. 14:83.2	Promoting prostitution
R.S. 14:83.3	Attachment 1 continued
R.S. 14:83.4	Prostitution by massage
R.S. 14:84	Massage; sexual content prohibited
R.S. 14:85	Pandering
R.S. 14:85.1	Letting premises for prostitution
* R.S. 14:86	Letting premises for obscenity
* R.S. 14:89	Enticing persons into prostitution
* R.S. 14:89.1	Crime against nature
R.S. 14:92	Aggravated crime against nature
* R.S. 14:93	Contributing to the delinquency of juveniles
* R.S. 14:93.2.1	Cruelty to juveniles
R.S. 14:93.3	Child desertion
R.S. 14:106	Cruelty to the infirm
R.S. 14:282	Obscenity
* R.S. 14:286	Operation of places of prostitution prohibited
R.S. 40:966(A)	Sale of minor children
R.S. 40:967(A)	Penalty for distribution or possession with intent to distribute narcotic drugs listed in Schedule I; Manufacture; distribution
R.S. 40:968(A)	Prohibited acts; Schedule II, penalties; Manufacture; distribution
R.S. 40:969(A)	Prohibited acts--Schedule III; penalties; Manufacture; distribution
R.S. 40:969(A)	Prohibited acts--Schedule IV; penalties; Manufacture; distribution

R.S. 40:970(A) Prohibited acts--Schedule V;
penalties; Manufacture; distribution
* Reinstatement will never be considered for crimes
marked with an asterisk.
* * *

Weegie Peabody
Executive Director

0110#021

RULE

Board of Elementary and Secondary Education

Bulletin 1566C Guidelines for Pupil Progression
(LAC 28:XXXIX.503-509, 513, 519, and 1301)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the State Board of Elementary and Secondary Education has amended Bulletin 1566, *Guidelines for Pupil Progression*, referenced in LAC 28:I.907.A. The Rule change extends the waiver for students with disabilities as identified under IDEA for one additional year (2001-2002 school year). This waiver allows students with disabilities to be promoted to grades 5 or 9 without passing the required components of LEAP 21. Revisions to Bulletin 741, *The Louisiana Handbook for School Administrators*, relative to the course sequence for high school students who have not passed certain components of LEAP 21 result in a change to Bulletin 1566 and the High Stakes Testing Policy. The new policy requires that students promoted to 9th or 10th grade who scored at the Unsatisfactory achievement level on the 8th grade LEAP 21, be required to enroll in and pass a high school remedial course before enrolling in a high school level course required for graduation.

Title 28

EDUCATION

Part XXXIX. Bulletin 1566C Guidelines for Pupil Progression

Chapter 5. Placement Policies; State Requirements

§503. Regular Placement¹

A.1. - (iii). ...

(iv). Waiver for students with disabilities eligible under the Individuals with Disabilities Education Act (IDEA). For the 2001-2002 school year only if a student with disabilities (excluding students with only a Speech or Language Impairment) participates in on-level testing, the SBLC may consider a waiver only if the student has participated in the summer remediation program and retest offered by the LEAs. If a student with disabilities (excluding students with only a Speech or Language Impairment) participates in out-of-level testing, promotion decisions shall be determined by the SBLC. If a student with disabilities participates in an alternative assessment, promotion decisions shall be determined by the SBLC for the 2001 school year and beyond. Students with disabilities will be promoted in grades four and eight in accordance with SBEE adopted policies.

(v). - iii. ...

iv. Summer remediation programs and end-of-summer retests must be offered by school systems at no costs to students who did not take the Spring LEAP 21 tests or who score at the Unsatisfactory level on LEAP 21.

a. All students with disabilities who participate in on-level testing should receive services along with regular education students in summer programs, with special supports provided as needed.

b. Students with disabilities who participate in out-of-level testing or alternate assessment are not eligible to attend LEAP 21 summer remediation programs.

(a). Option 1 Students. Students in Option 1 will repeat grade 8. Students in Option 1 will retake all four components of the LEAP 21. For promotional purposes, a student must score at or above the *Approaching Basic* achievement level on the English arts and mathematics components of the LEAP 21 only one time. In accordance with the local Pupil Progression Plan, Option 1 students who scored at the Unsatisfactory achievement level on English Language Arts and/or Mathematics component(s) of the Grade 8 LEAP 21:

(i). may earn Carnegie units in accordance with *Bulletin 741: Louisiana Handbook for School Administrators policy*, regarding high school credit for elementary students;

(ii). may earn a maximum of one Carnegie unit of remedial elective credit toward graduation provided the student passes a specially designed remediation elective and scores at or above the *Basic* achievement level on the component of the 8th grade LEAP 21 that is retaken. LEAP 21 shall be in lieu of a required credit examination. For these specially designed remediation courses, the LEA shall record a grade of *Pass* or *Fail (P/F)* on the student's transcript;

(iii). must pass a high school remedial course in English Language Arts and/or Mathematics before enrolling in or earning Carnegie credit for English and/or Mathematics.

(b). Option 2 Students. Students in Option 2 will participate in a transitional program on the high school campus. Students in Option 2 will retake the 8th grade components of the LEAP 21 previously failed (English and/or Mathematics) and all parts of the Iowa Tests at the 9th grade level. All Option 2 Students who scored at the Unsatisfactory achievement level on English Language Arts or Mathematics component of the Grade 8 LEAP 21:

(i). shall take remedial courses in the component (English language arts and/or mathematics) of the Grade 8 LEAP 21 in which an *Unsatisfactory* achievement level was attained;

(ii). may earn a maximum of one Carnegie unit of remedial elective credit toward graduation provided the student passes a specially designed remediation elective and scores at or above the *Basic* achievement level on the component of the 8th grade LEAP 21 that is retaken. For these specially designed remediation courses, the LEA shall record a grade of *Pass* or *Fail (P/F)* on the students transcript;

(iii). must pass a high school remedial course in English Language Arts and/or Mathematics before enrolling in or earning Carnegie credit for English and/or mathematics;

(iv). may earn Carnegie credit in other content areas;

vi. Exceptional students participating in LEAP 21 must be provided with significant accommodations as noted in the students IEP.

vii. The aforementioned policies will be in effect from spring 2000 through spring 2003. Beginning in spring 2004, the policies will also apply to students scoring at the *Approaching Basic* level.

A.1.b.viii - D.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2171 (November 1999), amended LR 27:1682 (October 2001).

§505. Progression of Students Participating in Alternate Assessment

A. Students with disabilities who participate in the alternate assessment shall have promotion decisions determined by the local Pupil Progression Plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2172 (November 1999), amended LR 27:1683 (October 2001).

§507. Alternatives to Regular Placement

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2172 (November 1999), repealed LR 27:1683 (October 2001).

§509. Alternative Schools/Programs/Settings

A. The local school board may establish alternative schools/programs/settings which shall respond to particular educational need(s) of its students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2172 (November 1999), amended LR 27:1683 (October 2001).

§513. Policies on Records and Reports

A. - B.7. ...

8. a statement regarding written notification to parent concerning retention and due process procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2172 (November 1999), amended LR 27:1683 (October 2001).

§515. Policies on Due Process

A. Due process procedures for teachers, students, and parents shall be specified in each local Pupil Progression Plan as related to student placement. The local school system must assure that these procedures do not contradict the due process rights of students with disabilities as defined in the IDEA -Part B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2173 (November 1999), amended LR 27:1683 (October 2001).

Chapter 13. Appendix B

§1301. LEAP for the 21st Century, High Stakes Testing Policy

A. Grade 4 - 3.b. ...

c. Students with disabilities who participate in out-of-level testing or alternate assessment are not eligible to attend the LEAP 21 summer remediation programs.

d. LEAs are encouraged to offer remediation services to students who score at the *Approaching Basic* level.

4. - 6.a. ...

b. Waiver for Students with Disabilities Eligible under the Individuals with Disabilities Education Act (IDEA).

i. For the 2001-2002 school year only, the SBLC shall be granted the authority to waive the state's grade promotion policy for students with disabilities (excluding students with only a speech or language impairment).

B. Grade 8 - 4. ...

5. In accordance with the local Pupil Progression Plan, Option 1 students who scored at the Unsatisfactory achievement level on English Language Arts and/or Mathematics component(s) of the Grade 8 LEAP 21:

a. may earn Carnegie units in accordance with the policy regarding high school credit for elementary students as found in *Bulletin 741: Louisiana Handbook for School Administration*;

b. may earn a maximum of one Carnegie unit of remedial elective credit toward graduation provided the students pass a specially designed remediation elective and score at or above the *Basic* achievement level on the component of the 8th grade LEAP 21 that is retaken. The LEAP 21 shall be in lieu of a required credit examination. For these specially designed remediation courses, the LEA shall record a grade of *Pass* or *Fail (P/F)* on the student's transcript;

c. must pass a high school remedial course in English Language Arts and/or Mathematics before enrolling in or earning Carnegie credit for English and/or Mathematics.

6. All Option 2 students who scored at the Unsatisfactory achievement level on English Language Arts or Mathematics component of the Grade 8 LEAP 21:

a. shall take remedial courses in the component (English language arts and/or mathematics) of the Grade 8 LEAP 21 in which an *Unsatisfactory* achievement level was attained;

b. may earn a maximum of one Carnegie unit of remedial elective credit toward graduation provided the students pass a specially designed remediation elective and score at or above the *Basic* achievement level on the component of the 8th grade LEAP 21 that is retaken. For these specially designed remediation courses, the LEA shall record a grade of *Pass* or *Fail (P/F)* on the student's transcript;

c. must pass a high school remedial course in English Language Arts and/or Mathematics before enrolling in or earning Carnegie credit for English and/or Mathematics;

d. may earn Carnegie credit in other content areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2171, amended LR 27:1683 (October 2001).

Weegie Peabody
Executive Director

0110#020

RULE

Board of Elementary and Secondary Education

Bulletin 1929C Louisiana Accounting
and Uniform Governmental Handbook
(LAC 28:XLI.503, 903, and 1105)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the State Board of Elementary and Secondary Education has amended Bulletin 1929, *Louisiana Accounting and Uniform Governmental Handbook*, promulgated by the Board of Elementary and Secondary Education in LR 20:1097 (October 1994). The changes incorporate new accounting codes and also revise criteria for distinguishing between a supply item and an equipment item.

Title 28 EDUCATION

Part XLI. Bulletin 1929, Louisiana Accounting and Uniform Governmental Handbook

Chapter 5. Fund Classifications

§503. Governmental Funds

A. - A.2. ...

a. Federal Revenue

i. IASA FundsCAll revenue related to the Improving America's School Act (IASA) including all Parts.

ii. Special Education FundsCAll revenue relating to the Individuals with Disabilities Education Act (IDEA) and all related Parts.

iii. Other Federal RevenueCUsed to account for all other federal revenue including, for example, Adult Education, Vocational Education, and Headstart.

b. Other Revenue

i. School Food Service FundsCAll Revenue, federal, state, or local related to the Child Nutrition Programs including School Lunch, School Breakfast, After School Snacks, Catering, and Nutrition Education.

ii. Other Special RevenueCAll state and/or local revenue specifically dedicated for a purpose.

3. - 4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17(2)(e).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:463 (March 2000), amended LR 27:1684 (October 2001).

Chapter 9. Classification of Expenditures and Other Uses of Funds

§903. Function Codes

A. - D.1. ...

a. 3110 Food Service District OfficeCActivities associated with the overall general administration of the Child Nutrition Programs. (School Breakfast, School Lunch, After School Snacks, Catering, and Nutrition Education)

b. 3111 Office of the District SupervisorCActivities concerned with the directing and managing of the food service operations of all schools in the district. These activities include all personnel and materials in the district office.

c. 3112 Office of the Assistant SupervisorCActivities performed to assist the district

supervisor in managing all food service activities of the LEA.

d. 3120 Food Service SitesCActivities concerned with food service operations for a school.

e. 3121 Office of the Site ManagerCActivities concerned with directing and managing the food service operations of a particular school.

f. 3122 Office of the Assistant Site ManagerCActivities performed by the assistant site manager concerned with directing and managing the food service operations of a particular school.

D.2. - F.2.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17(2)(e).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:474 (March 2000), amended LR 27:1684 (October 2001).

§1105. Fund Equity Codes

A. - B.2. ...

a. It can be expected to serve its principal purpose for at least one year.

B.2.b. - B.2.c. ...

d. It is equal to or greater than \$1,000 per unit cost in value. Note: The unit cost of \$1,000 does not apply to any program funded with 8g monies.

3. Note: food and computer software must always be considered supplies.

4. School districts maintain rigorous accountability for their property whether it is capitalized or not. For accountability and internal control purposes, many items of property that do not meet the districts' capitalization threshold must be inventoried. Thus, the Department of Education recommends maintaining inventory and tracking items that do not meet the equipment criteria if needed for insurance purposes and/or the item has "street value." For instance, districts might inventory VCRs and computers for internal control purposes but not capitalize them due to their low cost.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17(2)(e).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:483 (March 2000), amended LR 27:1684 (October 2001).

Weegie Peabody
Executive Director

0110#019

RULE

Board of Elementary and Secondary Education

Bulletin 1934C Starting Points Preschool Regulations
(LAC 28:XXI.301-305, 311, 503, 507, and 515)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended Bulletin 1934, *Starting Points Preschool Regulations*. Changes in the Rule include the deletion of the eligibility requirements of screening and parental participation; the addition of a minimal co-pay by parents; clarification that wages earned by parents must be at the federal minimum wage; the deletion of the requirement that the school site be located in low income areas as determined by the allocation process utilized by Title I

Programs; clarification documentation needed to verify attendance in a job training/educational program; and revision of the monitoring schedules of teachers rated above average from every other year to every three years.

Title 28

EDUCATION

Part XXI. Bulletin 1934C Starting Points

Preschool Regulations

Chapter 3. Eligibility

§301. Eligibility Criteria

A. - A.1. . . .

2. residing in a family whose mean income is no more than 85 percent of the state median income for a family of the same size and complies with a co-pay based upon a sliding scale if applicable;

3. from families with both parents (or guardian) involved in one of the following:

a. attending a job training or education program full-time;

b. working full-time earning federal minimum wage; or

c. in job training part-time and working part-time.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), amended LR 27:1685 (October 2001).

§303. Definitions

Attending (a job training or educational program) Cto be present for training or educational programs as scheduled except when absent for such reasons as illness or family emergency.

Family C a basic family unit consisting of one or more adults and children, whether or not related by blood or law, and residing in or being part of the same household. Children living under the care of individuals not legally responsible for their care are to be considered part of the family.

Income C basic income eligibility would be based on 85 percent of the state median income adjusted for family size. Earned income is used in determining eligibility.

Job Training or Educational Program C a program of training to prepare a parent/guardian for gainful employment. At the completion of the training period, or reasonably thereafter, the participant could reasonably be expected to fully or substantially support the family. The training or educational program can be in any public or private licensed, accredited, or recognized educational program which normally requires enrollment or leads to receipt of a high school diploma or equivalency certificate, provided that the institution is legally authorized or recognized by the state. The parent/guardian must attend the training or educational program for at least 20 hours per week.

Part-Time (job training or educational program) C part-time status as determined by the institution.

Working C a person who is employed at least 20 hours per week and earning federal minimum wage is considered as meeting the requirement to be classified as a working parent/guardian. In the event a parent/guardian becomes unemployed, a brief period (up to 30 days) may be used to accomplish a job search to obtain employment.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), amended LR 27:1685 (October 2001).

§305. Screening

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), repealed, LR 27:1685 (October 2001).

§311. Job Training/Educational Program Verification

A. If a parent or guardian is enrolled in a job training or educational program, *one* of the following forms of verification must be presented:

1. registration receipts and a copy of class schedule;

2. letter from institution indicating enrollment and the number of hours per week that are spent in the educational program.

B. . . .

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), amended LR 27:1685 (October 2001).

Chapter 5. Program Structure

§503. Teacher Qualifications

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

1. early childhood education;

2. nursery school education; or

3. kindergarten.

4. early intervention

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), amended LR 27: 1685 (October 2001).

§507. Program Location

A. Programs will be placed in every school system based upon the submission of a proposal and final approval by the Board of Elementary and Secondary Education (BESE). Programs will be placed in both public and approved nonpublic schools which comply with Brumfield-Dodd.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), amended LR 27:1685 (October 2001).

§515. Monitoring

A. Program Coordinators from the Elementary Standards Section will evaluate each program annually to ensure that program regulations are being met.

B. The *Early Childhood Environment Rating Scale-Revised (ECERS-R)* will also be used to measure the effectiveness of the program. Each new teacher and those scoring below 5.0 on the ECERS-R will be monitored on a yearly basis until an average score of 5.0 is attained on the scale. All continuing sites serving ten or more Starting Points children that score above 5.0 on the ECERS-R, will be evaluated on a three year cycle.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:254 (February 1999), amended, LR 27:1585 (October 2001).

0110#018

Weegie Peabody
Executive Director

RULE
Office of the Governor
Board of Architectural Examiners

Architectural and Construction Services Combination
(LAC 46:I.1121)

Under the authority of R.S. 37:144(C) and in accordance with the provisions of R.S. 49:950 et seq., the Board of Architectural Examiners has adopted LAC 46:I.1121 pertaining to the board's interpretation of R.S. 37:141(B)(3). R.S. 37:141(B)(3) defines the practice of architecture, and the board interpreted this definition as it pertains to a partnership or corporation offering a combination of architectural services together with construction services.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS
Part I. Architects

Chapter 11. Administration

§1121. Interpretation of R.S. 37:141(B)(3); Design/Build

A. A partnership or corporation offering a combination of architectural services together with construction services may offer to render architectural services only if:

1. an architect registered in this state or otherwise permitted to offer architectural services participates substantially in all material aspects of the offering;
2. there is written disclosure at the time of the offering that such architect is engaged by and contractually responsible to such partnership or corporation;
3. such partnership or corporation agrees that such architect will have responsible control of the architectural work and that such architect's services will not be terminated prior to the completion of the project without the consent of the person engaging the partnership or corporation; and
4. the rendering of architectural services by such architect will conform to the provisions of the architectural registration law and the Rules adopted thereunder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Architectural Examiners, LR 28:1686 (October 2001)

Mary "Teeny" Simmons
Executive Director

0110#083

RULE

Office of the Governor
Board of Architectural Examiners

Architectural Engineers (LAC 46:I.1123)

Under the authority of R.S. 37:144(C) and in accordance with the provisions of R.S. 49:950 et seq., the Board of Architectural Examiners has adopted LAC 46:I.1123 pertaining to the board's interpretation of R.S. 37:145. R.S. 37:145 limits the use of the title "architect," or any term derived therefrom, to persons who have secured from the board a certificate of registration and license; the board interpreted this definition as it pertains to a registered professional engineer who has a degree entitled Architectural Engineering from an accredited public or private college or university, or an entity formed by or employing such an engineer.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS
Part I. Architects

Chapter 11. Administration

§1123. Interpretation of La. R.S. 37:145; Architectural Engineers

A. A registered professional engineer who has a degree entitled Architectural Engineering from a public or private college or university accredited by the Accreditation Board for Engineering and Technology to offer such a degree may use the title "Architectural Engineer." A corporation, partnership, limited liability company, or group may include the title "Architectural Engineer" in its firm name, provided an owner, partner, or principal of that firm is a registered professional engineer who has such a degree from a public or private college or university so accredited.

B. This interpretation limits the use of the words "Architectural Engineer" to the descriptive title only. Nothing contained herein shall be construed to authorize or allow such an individual or firm to practice architecture in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Architectural Examiners, LR 28:1686 (October 2001).

Mary "Teeny" Simmons
Executive Director

0110#084

RULE

Office of the Governor Board of Architectural Examiners

Registration Information (LAC 46:I.901)

Under the authority of R.S. 37:144, and in accordance with the provisions of R.S. 49:950 et seq., the Board of Architectural Examiners amended LAC 46:I.901, 46:I.903 and 46:I.1101 pertaining to fees charged to both in-state and out-of-state architects for initial licensure and registration, license renewal, and delinquent license renewal. The board increased fees for the initial licensure and registration, license renewal fees, and delinquent license renewal fees for both in-state and out-of-state architects.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part I. Architects

Chapter 9. Registration Procedure

§901. Registration Information

A. To obtain information regarding registration to practice architecture in Louisiana an individual, a corporation which satisfies the requirements of the Professional Architectural Corporations Law, an architectural-engineering corporation which satisfies the requirements of the Architectural-Engineering Corporation Law, and a limited liability company which satisfies the requirements of the Limited Liability Company Law shall write the board indicating whether the applicant seeks to be registered as an architect, a professional architectural corporation, an architectural-engineering corporation, or a limited liability company. The applicant will then receive instructions on the procedure to follow. Upon passing all divisions of the examination, an in-state candidate shall be charged a fee of \$75 for the issuance of his or her initial license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Architectural Examiners, December 1965, amended May 1973, amended and promulgated LR 4:334 (September 1978), amended LR 10:738 (October 1994), amended by Department of Economic Development, Board of Architectural Examiners, LR 15:6 (January 1989), LR 20:995 (September 1994), LR 28:1687 (October 2001).

§903. Individuals Registered in Other States

A. The exclusive means for an individual registered in another state(s) seeking to be registered in Louisiana is the submission to the board of an NCARB (Blue Cover) certificate.

B. Upon finding the NCARB (Blue Cover) certificate in order and upon payment of the registration fee of \$300, the board will register said individual and issue a license to said individual to practice architecture in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:148-149.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Architectural Examiners, December 1965, amended May 1973, amended and promulgated LR 4:334 (September 1978), amended LR 10:738 (October 1984), amended by the Department of Economic Development, Board of

Architectural Examiners, LR 15:6 (January 1989) LR 28:1687 (October 2001).

Chapter 11. Administration

§1101. Renewal Procedure

A. A license for individual architects shall expire and become invalid on December 31 of each year. Licenses for professional architectural corporations, architectural-engineering corporations, and limited liability companies shall expire and become invalid on June 30 of each year. An individual architect, professional architectural corporation, architectural-engineering corporation, and limited liability company who desires to continue his or its license in force shall be required annually to renew same.

B. It is the responsibility of the individual architect, professional architectural corporation, architectural-engineering corporation, and limited liability company to obtain, complete, and timely return a renewal form and fee to the board office, which forms are available upon request from said office.

C. Prior to December 1 of each year the board shall mail to all individual architects currently licensed a renewal form. An individual architect who desires to continue his license in force shall complete said form and return same with the renewal fee prior to December 31. The license renewal fee for an individual architect domiciled in Louisiana shall be \$75, the license renewal fee for an individual domiciled outside Louisiana shall be \$150. Upon payment of the renewal fee the executive director shall issue a renewal license or registration.

D. Prior to June 1 of each year the board shall mail to all professional architectural corporations, architectural-engineering corporations, and limited liability companies currently licensed a renewal form. A professional architectural corporation, an architectural-engineering corporation, and a limited liability company which desires to continue its license in force shall complete said form and return same with the renewal fee prior to June 30. The fee shall be \$50. Upon payment of the renewal fee, the executive director shall issue a renewal license.

E. The failure to renew a license timely shall not deprive the architect of the right to renew thereafter. An individual architect domiciled in Louisiana who transmits his renewal form and fee to the board subsequent to December 31 in the year when such renewal fee first became due shall be required to pay a delinquent fee of \$75. An individual architect domiciled outside Louisiana who transmits his renewal form and fee to the board subsequent to December 31 in the year when such renewal fee first became due shall be required to pay a delinquent fee of \$150. The delinquent fee shall be in addition to the renewal fee set forth in §1101.C.

F. The failure to renew its license in proper time shall not deprive a professional architectural corporation, an architectural-engineering corporation, or a limited liability company of the right to renew thereafter. A professional architectural corporation, an architectural-engineering corporation, or a limited liability company who transmits its renewal form and fee to the board subsequent to June 30 in the year when such renewal fee first became due shall be required to pay a delinquent fee of \$50. This delinquent fee shall be in addition to the renewal fee set forth in §1101.D.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Architectural Examiners, December 1965, amended May 1973, amended and promulgated LR 4:334 (September 1978), amended LR 10:739 (October 1984), amended by the Department of Economic Development, Board of Architectural Examiners, LR 15:732 (September 1989), LR 20:995 (September 1994), repromulgated LR 20:1259 (November 1994), amended LR 23:402 (April 1997), amended LR 28:1687 (October 2001).

Mary "Teeny" Simmons
Executive Director

0110#082

RULE

**Office of the Governor
Division of Administration
Office of Planning and Budget**

Annual Program Evaluation Reports (LAC 4:I.Chapter 1)

In accordance with provisions of Administrative Procedure Act, R.S. 49:950 et seq., the Office of the Governor, Division of Administration, has amended LAC 4:I.Chapter 1 regarding the Annual Program Evaluation Reports. These Rules were amended by Act 911 of 1995, effective June 28, 1995.

**Title 4
ADMINISTRATION**

Part 1. General Provisions

Chapter 1. Annual Program Evaluation Reports

§101. Reports from Undersecretaries to Governor

A. Revised Statutes 36:8 (added by Act 160 of 1982 and amended by Act 230 of 1987 and Act 911 of 1995) requires undersecretaries, prior to November 25 of each year, to submit to the departmental secretary an annual report summarizing the activities of his office relating to management and program analysis. R.S. 36:8 also requires the departmental secretary to submit the report to the Governor, Commissioner of Administration, House Committee on Appropriations, Senate Committee on Finance, and the standing committee of each house of the legislature having responsibility for oversight of the department, as provided in R.S. 49:968, prior to December 5 of each year. This report is to be contained on a form prepared by the Division of Administration. The report must contain the following items as required by R.S. 36:8:

1. a description of significant problems, deficiencies, and abuses relating to the administration and management of programs and operations within the department;
2. corrective measures recommended by the office for those problems identified pursuant to Paragraph 1;
3. an identification of significant recommendations in previous reports on which no action has been taken;
4. a summary of reports made to the secretary pursuant to this Section; and
5. a list and brief summary of program evaluations made by the office.

B. The following forms (§§103-111) have been adopted by the Division of Administration to adhere to the

requirements of R.S. 36:8 for annual program evaluation reports, commonly known as "Act 160 Reports."

C. The Division of Administration promulgated as Rules in the December 1982 *Louisiana Register*, the use of four forms for agencies to use to meet the reporting requirements of Act 160 of 1982. The use of a fifth form to capture the required "identification of significant recommendations in previous reports on which no action has been taken" was promulgated as Rule in the February 1984 *Louisiana Register*. Therefore, annual program evaluation reports must include Forms 160-1 through 5 (modified for the appropriate reporting period), which follow.

D. It is understood that the intent of the Act 160 legislation was to provide undersecretaries in each department with a tool for internal planning, management, and control as well as to provide appropriate persons in the House and Senate, the Commissioner of Administration and the Governor with program information. The submission of Forms 160-1 through 5 is an indication of the fulfillment of the role of the undersecretary as defined in R.S. 36:8, and can be evidence to the public of efforts to make state government more efficient and effective. Routine monitoring of programs, institutions, etc., does not need to be included, nor should actual reports be attached in lieu of summarized information on the forms. The "Act 160 Report" should include only significant problems, reports, and evaluations (generally distinguished by the focus on the impact or level of success of a particular program or project).

E. If a department has not identified any significant problems in its administration and management of programs and operations, has made or acquired no evaluations of programs within its agencies, and has not had any significant report made to the undersecretary during the reporting period, the undersecretary shall submit a letter to the House Committee on Appropriations, Senate Committee on Finance, standing committee of each house of the legislature having responsibility for oversight of the department, Governor, and Commissioner of Administration indicating such in lieu of Forms 160-1 through 5 by the December 5 deadline.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:8, R.S. 36:53 and R.S. 36:629(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 8:644 (December 1982), amended LR 10:76 (February 1984), LR 28:1688 (October 2001) .

§103. Form 160-1C Significant Problem, Deficiency, or Abuse

Form 160-1	Department _____
	Reporting Period _____

1. Significant Problem, Deficiency, or Abuse Relating to the Administration or Management of Programs and Operations within the Department. (Complete one sheet per problem.)

- A. Problem Description
 1. What is the nature of the problem?
 2. What organizational unit in the department is experiencing the problem?
 3. Who else is affected by the problem?
 4. How long has the problem existed?
 5. What are the costs and consequences of failure to correct the problem?

- B. Corrective Measures
1. What corrective measures are recommended to alleviate the problem?
 2. What are the criteria for improvement?
 3. What is the expected time frame for corrective measures to be implemented?
 4. What is the expected time frame for improvements to occur?
 5. What are the costs of implementing the corrective measures?
 6. Will additional personnel or funds be required to implement the recommended measures? If so, specify.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:241.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration in LR 8:644 (December 1982), amended LR 28: 1688 (October 2001).

§105. Form 160-2C Reports to the Secretary

Form 160-2 Department _____
Reporting Period _____

Reports to the Secretary
Reports completed between November 25 of the preceding fiscal year and November 25 of the current fiscal year. List titles below and complete a summary sheet for each. (Use Form 160-4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:241.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 8:644 (December 1982), revised LR 28:1689 (October 2001).

§107. Form 160-3C List of Program Evaluations

Form 160-3 Department _____
Reporting Period _____

List of Program Evaluations
Evaluations completed between November 25 of the preceding fiscal year and November 25 of the current fiscal year. List titles below and complete a summary sheet for each. (Use Form 160-4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:241.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 8:644 (December 1982), revised LR 28: 1689 (October 2001).

§109. Form 160-4C Summary of Evaluation or Report

Form 160-4 Department _____
Reporting Period _____

SUMMARY OF EVALUATION OR REPORT

Title:
Entity Evaluated/Reported:
Why was Evaluation/Report initiated?
Questions/Objectives of the Evaluation/Report:
Major Findings and Conclusions:
Major Recommendations:
What action was taken in response to the Evaluation/Report?
Contact person for more information:
Name _____ Agency _____
Phone # _____ Address _____
Fax # _____ E-mail Address _____

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:241.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 8:644 (December 1982), amended LR 28: 1689 (October 2001).

§111. Form 160-5C Significant Recommendations

Department _____
Reporting Period _____

Significant Recommendations from Previous Reports with No Action Taken		
Program/Project	Recommendations	Reason(s) No Action Taken

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:241.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 10:76 (February 1984), amended LR 28:1689 (October 2001).

Ray Stockstill
Director

0110#098

RULE

**Office of the Governor
Division of Administration
Office of Planning and Budget**

Repeal of Planning and Development District Program
(LAC 4:VII.Chapter 7)

Under the authority of R.S. 39:21, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Office of Planning and Budget has repealed LAC 4:VII.Chapter 7.

The Rule was promulgated to establish guidelines for distribution of a one-time appropriation to the state's regional planning and development districts. This appropriation was part of Act 13 of 1982, the general appropriation act of 1982. The statutory provisions authorizing promulgation of the Planning and Development District Program Rules (R.S. 49:1051, 1053, and 1054) were repealed by Act 765 of 1986, effective July 1, 1986.

Title 4

ADMINISTRATION

Part VII. Governor's Office

Chapter 7. State Planning Office

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1051, 1053, 1054. R.S. 49:1051 to 1057, regarding the Louisiana State Planning Office, were repealed by Act 765 of 1986, effective July 1, 1986; current statutory sections, R.S. 49:1051 et seq., contain provisions related to the Louisiana Geographic Information System. Rule repeal is promulgated in accordance with R.S. 39:21.

HISTORICAL NOTE: Promulgated by the Office of the Governor, LR 9:12 (January 1983), repealed LR 28:1689 (October 2001).

Ray Stockstill
Director

0110#097

RULE

Office of Financial Institutions

Non-Depository Records Retention (LAC 10:XI.501 and XVII.701)

Editor's Note: The following Rule is being repromulgated to correct printing errors. The original Rule may be viewed in its entirety on page 1512 of the September 2001 edition of the *Louisiana Register*.

Under the authority of the Administrative Procedure Act, R.S. 49:950 et seq., and in accordance with R.S. 6:121, 6:414, 6:1014, 6:1085, 9:3554, 9:3556.1, 9:3572.7, 9:3573.9, 9:3574.10, 9:3576.4, 9:3578.8, and 37:1807, the commissioner of the Office of Financial Institutions repeals LAC 10:XI.501, regarding records retention schedules, and adopts a Rule providing for a record retention schedule for all non-depository persons subject to the supervision of the commissioner. This Rule significantly streamlines the existing record retention Rule by requiring that applicable institutions maintain minimum records and retention periods as deemed necessary by the commissioner for the proper examination and supervision of the person by this office and clarifies that the rule applies to all non-depository persons supervised by the commissioner.

Title 10

FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES, AND UCC

Part XVII. Miscellaneous Provisions

Chapter 7. Records Retention

§701. Non-Depository Records Retention

A. Each non-depository person subject to the supervision of the Office of Financial Institutions shall retain such minimum records which are deemed necessary for the examination and supervision of such persons by this office and for such minimum retention periods as determined by the commissioner and set forth in a "record retention schedule" to be detailed in policy which may be amended from time to time as necessary. This rule does not replace the person's responsibility to create, implement, and maintain its own comprehensive record retention program, consistent with the person's strategic goals and objectives. Such records may be retained in various forms as approved by the commissioner, including but not limited to, hard copies, photocopies, computer printouts or microfilm, microfiche, imaging, or other types of electronic media storage that can be readily accessed and reproduced into hard copies.

B. For purposes of this rule, non-depository persons refers to any individual, corporation, limited liability company, partnership or other entity other than those considered by the commissioner to be depository institutions, such as banks, savings associations, credit unions and savings banks, and including, but not being limited to, residential mortgage lenders, collection agencies, sellers of checks, bond for deed escrow agents, check cashers, licensed lenders, loan brokers, credit repair services organizations, and pawnbrokers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, 6:414, 6:1014, 6:1085, 9:3554, 9:3556.1, 9:3572.7, 9:3573.9, 9:3574.10, 9:3576.4, 9:3578.8, and 37:1807.

HISTORICAL NOTE: Promulgated by the Office of Financial Institutions, LR 27:1512 (September 2001), repromulgated LR 27:1690 (December 2001).

Part XI. Consumer Credit

Chapter 5. Records Retention

§501. Licensed Lenders Records Retention Schedule

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:3554.

HISTORICAL NOTE: Promulgated by the Office of Financial Institutions, LR 17:588 (June 1991) amended LR 18:76 (January 1992), repealed LR 27:1512 (September 2001), repromulgated LR 27:1690 (October 2001).

John D. Travis
Commissioner

0109#034

RULE

Department of Health and Hospitals Board of Examiners for Speech Language Pathology and Audiology

Speech-Language Pathology and Audiology (LAC 46:LXXXV.Chapters 1-7)

Editor's Note: A portion of this Rule is being repromulgated to correct printing errors and clarify codification. The original Rule may be viewed on pages 116 - 202 of the February 2001 edition of the *Louisiana Register*.

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., notice is given that the Board of Examiners for Speech-Language Pathology and Audiology has adopted the rules, regulations and procedures to replace the board's current rules, regulations and procedures.

The Rules add definitions, amend supervision rules, amend the board's application procedures, amend the continuing education rules, and establish a procedure for applicants who practice illegally in Louisiana as a speech-language pathologist, speech-language pathology assistant, and/or audiologist in the state of Louisiana. A detailed synopsis of the Rules is attached for your information. A complete copy of the Rules may be accessed on the board's website at www.lbespa.org or by completing and submitting the attached order blank to the board office.

Title 46

Professional and Occupational Standards

Part LXXV. Speech Pathology and Audiology

Chapter 1. General Rules

§107. Qualifications for Licensure

A. Coursework Requirements: Audiology License and Provisional Audiology License. The following coursework requirements apply to applicants who began a master's program after January 1, 1994.

1. The applicant shall submit official transcripts from one or more regionally accredited colleges or universities evidencing completion of at least 75 semester hours of coursework which constitutes a well-integrated program that includes at least:

A.1.a. - 2c. ...

B. The following coursework requirements apply to applicants who began a master's program prior to January 1, 1994.

1. The applicant shall submit official transcripts from one or more regionally accredited colleges or universities evidencing completion of at least 60 semester hours of coursework which constitutes a well-integrated program that includes at least 12 semester credit hours in basic human communication processes to include the anatomic and physiologic bases, the physical and psychophysical bases, and the linguistic and psycholinguistic aspects;

B.2.a. - c. ...

C. Coursework Requirements. Speech-Language Pathology License and Provisional Speech-Language Pathology License. The following coursework requirements apply to applicants who began a master's program after January 1, 1994.

1. The applicant shall submit official transcripts from one or more regionally accredited colleges or universities evidencing completion of at least 75 semester hours of coursework which constitutes a well-integrated program that includes at least:

C.1.a. - E.1. ...

2. If the bachelor's degree is not in speech-language pathology, the degree program should include the following core coursework. A total of 39 hours shall be obtained in the following areas. Thirty-six of the hours are required and are designated by an *.

E.3. - G.3.a. ...

i. minimum of 20 hours in speech disorders;

G.3.a.ii. - J.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 14:706 (October 1988), amended LR 22:346 (May 1996), LR 27:197 (February 2001), repromulgated LR 27:1690 (October 2001).

§111. Fees

A. - P. ...

Q.1. Open Book Test Fee C\$30

2. Open Book Retest Fee, per Section C\$10

R. Subpoena

1. within East Baton Rouge Parish C\$50

2. plus \$.30 per mile outside East Baton Rouge Parish C\$50

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 14:706 (October 1988), amended LR 22:350 (May 1996), LR 27:197 (February 2001), repromulgated LR 27:1691 (October 2001).

§121. Supervision Requirements for Speech-Language Pathology Assistant and Provisional Speech-Language Pathology Assistant

A. - H.4. ...

5. Provisional Speech-Language Pathology Assistant Full-Time and Part-time Supervision Requirements

Hours Worked	Required Supervision On-Site, In - View	Required Supervision Alternative Method
21 - 40 hours	1 hour/week	1 hour/week
20 hours or less	1 hour/every 2 weeks	1 hour/every 2 weeks

H.6. - I.8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 14:707 (October 1988), amended LR 22:353 (May 1996), LR 27:200 (February 2001), repromulgated LR 27:1691 (October 2001).

Glenn Wagguespack
Chairperson

0110#035

RULE

Department of Health and Hospitals Office of Public Health

Public Water System Capacity Development (LAC 48:V.7707-7719)

Editor's Note: This Rule is being reprinted in its entirety to correct printing errors. The original Rule may be viewed in the September 20, 2000 edition of the *Louisiana Register* on pages 1520-1522.

Under the authority of R.S. 40:4 and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Office of Public Health (DHH/OPH) has amended the Public Water System Capacity Development Regulations, LAC 48:V. 7707-7719. These amendments provide certain exceptions to the existing provisions such that those provisions do not encumber the ability of certain public agencies to expeditiously furnish financial aid to public water systems which qualify for such aid within the constraints required by these agencies, nor will they encumber the DHH/OPH in its implementation of the Capacity Development Strategy.

There are two public agencies, the USDA Rural Utilities Services (RUS) and the Louisiana Community Development Block Grant (LCDBG), which provide financial aid in the form of grants and loans to existing and new public water systems. These agencies have capacity requirements for systems requesting such grants or loans. These amendments preclude the necessity of those systems to submit a business plan (containing capacity requirements) to DHH/OPH for grants and loans from those agencies, since these systems must meet those agency capacity requirements.

This amendment further provides for more brevity and simplification in the business plan required of existing systems. Finally, there are certain clarifications and revisions regarding management training provisions in the Capacity Development Strategy.

For the reasons set forth, above, LAC 48:V.7707-7719 is amended as follows.

Title 48

PUBLIC HEALTH C GENERAL Part V. Preventive Health Services Subpart 25. Drinking Water

Chapter 77. Drinking Water Program Subchapter B. Public Water System Capacity Development

§7711. Definitions

A. The following terms used in these regulations shall have the following meanings

* * *

*Public Water System*Ca system for the provision to the public of water for potable purposes, through pipes or other constructed conveyances, if the system has at least 15 service connections or regularly serves an average of at least 25 individuals daily for at least 60 days out of the year. The term includes:

a. any collection, treatment, storage, and distribution facilities under the control of the operator of the system and used primarily in connection with the system; and

b. any collection or pre-treatment storage facilities not under such control which are used primarily in connection with the system.

* * *

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 24:1767 (September 1998), amended LR 27:1521 (September 2001), repromulgated LR 27:1691 (October 2001).

§7713. New Systems

A. Business Plan. All community and non-transient non-community public water systems wanting to commence operation after January 1, 1999 shall be required to submit a business plan to the department to aid in the department's determination of technical, managerial and financial capacity. Required information for the business plan shall be provided by the department. The Office of Public Health (OPH) will exempt from the requirement for submission of the business plan all new public water systems funded by either the United States Department of Agriculture's (USDA) Rural Utilities Service (RUS) and/or the Division of Administration's (DOA) Louisiana Community Development Block Grant (LCDBG) program, provided those public water systems are certified by RUS and/or LCDBG as meeting the respective agency's minimum capacity requirements. OPH staff will continue to review plans and specifications for all new public water systems.

B. ...

C. Management Training. As a part of meeting the managerial capacity requirements, all appropriate personnel, e.g., board members, council members, mayors, owners, etc., of new public water systems wanting to commence operation after January 1, 1999, shall attend the next scheduled training session provided by the state, its contractors or other state recognized trainers. Such arrangements shall be made upon making application to the department for approval to commence operation.

D. Financial Audit. A financial audit will be conducted on the system as one means of determining financial capacity of the public water system.

E. Approval for Operation. After January 1, 1999, written approval to commence operation, i.e., issuance of the permit to construct and operate, for such new public water systems will be given by the department only after the department is satisfied that technical, managerial, and financial capacity requirements are being met, in addition to all other applicable regulations. The Office of Public Health (OPH) will issue the permit to construct and operate a new public water system funded by the RUS and/or the LCDBG program, provided those public water systems are certified by RUS and/or LCDBG as meeting the respective funding

agency's minimum capacity requirements and the plans and specifications are reviewed and approved by OPH staff.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 24:1768 (September 1998), amended LR 27:1521 (September 2001), repromulgated LR 27:1692 (October 2001).

§7717. Existing Systems

A. Business Plan. All existing public water systems shall be required to submit a shortened and simplified business plan to the department to aid in the department's determination of technical, managerial, and financial capacity. Required information for the business plan will be provided by the department. The department and the concerned parties will revise the content of the business plan, as necessary, to adapt it to the needs of existing system capacity requirements. A grant or a loan from either RUS and/or LCDBG programs will not trigger the requirement for submission of the business plan. Prioritization for the required capacity assessment of existing systems, including submission of the business plan, will be based on whether the existing water system has been issued an administrative order, and/or is on the significant non-compliers list and/or has had primary Maximum Contaminant Level (MCL) violations during the past three years. However, the Office of Public Health (OPH) will exempt from the requirement for submission of the business plan all existing public water systems actively seeking funding by the RUS programs, provided those public water systems are certified by RUS as meeting their minimum capacity requirements. Such plan must be submitted to the department within six months after the initial visit by the designated party of the state who is providing assistance to the public water system in preparation of the business plan.

B. ...

C. Management Training. As a part of meeting the managerial capacity requirements, all appropriate staff of existing public water systems shall attend a training session provided by the state, its contractors or other state recognized trainers for board members, council members/mayors/owners, etc. Management training for all board members/council members/mayors/owners of existing public water systems will be based on whether their water system has been issued an administrative order, and/or is on the significant non-compliers list and/or has had primary MCL violations during the past three years. The department will continue to encourage attendance on a voluntary basis at management training sessions by board members/council members/mayors/owners of other public water systems. Training sessions shall be provided periodically and appropriate parties as noted above will have the opportunity to attend one of the scheduled sessions within six months after the system has been notified that it is being evaluated for technical, managerial, and financial capacity.

D. Financial Audit. A financial audit will be conducted on the system as one means of determining financial capacity of the public water system.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 24:1768

(September 1998), amended LR 27:1521 (September 2001), repromulgated LR 27:1692 (October 2001).

§7719. Miscellaneous

A. Evaluations. Evaluations to determine technical, managerial, and financial capacity will be conducted in accordance with a developed strategy prepared by the department in partnership with concerned parties and for which approval has been given by USEPA.

B. Coordination. Implementation of the strategy will be coordinated between the Department staff and contracting parties.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 24:1769 (September 1998), amended LR 27:1522 (September 2001), repromulgated LR 27:1693 (October 2001).

David W. Hood
Secretary

0110#012

RULE

**Department of Health and Hospitals
Office of Public Health**

Sanitary Code General Provisions (LAC 51:I.Chapter 1)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Office of Public Health, pursuant to the authority in R.S. 40:5, has repealed Chapter I and promulgated Part I of the Louisiana State Sanitary Code to be codified in accordance with the Administrative Procedure Act as follows.

Title 51

PUBLIC HEALTH SANITARY CODE

Part I. General Provisions

Chapter 1. General

§101. Definitions [formerly Paragraph 1:001]

A. Words not defined in any Part or Chapter of the Code shall have their common usage and meaning as stated in the *Merriam-Webster's Collegiate Dictionary-Tenth Edition*, as revised, and other similarly accepted reference texts. When the same word or term is defined in more than one Part or Chapter of the Code, the definition contained within the particular Part or Chapter in which the word is contained shall be given preference as it pertains to that Part or Chapter. When a word or term is not defined in a Part or Chapter of the Code but is cross-referenced to another Part or Chapter, it shall have the definition contained in the Part or Chapter to which it is cross-referenced.

B. Unless otherwise specifically provided in the Code, the following words and terms are defined as follows:

Code—the word “Code” means Sanitary Code.

CFR—Code of Federal Regulations.

Department—the Department of Health and Hospitals and Secretary means the Secretary thereof.

EPA—United States Environmental Protection Agency.

FDA—United States Food and Drug Administration.

Emergency Situation—any situation or condition which warrants immediate enforcement measures more expedient than normal administrative violation control and abatement

procedures due to its perceived imminent or potential danger to the public health.

Hazard—biological, chemical, or physical property that may cause an unacceptable consumer health risk.

Imminent Health Hazard—an emergency situation that is a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury or serious illness.

Law—applicable local, state, and federal statutes, regulations, and ordinances.

Person—any natural person, individual, partnership, corporation, association, governmental subdivision, receiver, tutor, curator, executor, administrator, fiduciary, or representative of another person, or public or private organization of any character.

Secretary—see department.

Shall—mandatory requirements.

Should or May—recommended or advisory procedures or equipment.

State Health Officer—the legally appointed and/or acting State Health Officer of the Department of Health and Hospitals having jurisdiction over the entire State of Louisiana, and includes his/her duly authorized representative in accordance with LSA R.S. 40:4 and 40:5.

Substantial Renovation

a. Alterations or repairs made within a 12 month period, costing in excess of 50 percent of the then physical value of the existing building; or

b. Alterations or repairs made within a 12 month period, costing in excess of \$15,000; or

c. Alterations or repairs made involving a change in “occupancy classification” or use of the property.

d. The physical value of the building in subparagraph “a” of this Paragraph may be established by an appraisal not more than three years old, provided that said appraisal was performed by a certified appraiser or by the tax assessor in the parish where the building is located.

e. The cost of alterations or repairs in subparagraph “a” or “b” of this Paragraph may be established by:

i. an estimate signed by a licensed architect or a licensed general contractor; or

ii. by copies of receipts for the actual costs.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:

§103. Severability [formerly Paragraph 1:006]

A. If any provision of this Code, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Code, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1693 (October 2001).

§105. Administrative Enforcement Procedures [formerly Paragraph 1:007-1]

A. The proper documentation of violations is an essential part of the enforcement process. When an establishment is

inspected and violations of the Code are found, they shall be noted either on a Notice of Violation(s) form or letter. The sanitarian, engineer or other representative of the State Health Officer shall describe with particularity the nature of the violation(s), including a reference to the provision(s) of the Code which have been violated. A specific date shall be set for correction and the violator shall be warned of the penalties that could ensue in the event of noncompliance.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1693 (October 2001).

§107. Notice of Violation [formerly Paragraph 1:007-2]

A. The Notice of Violation form or letter listing the violation(s) and urging correction thereof may:

1. be left with the operator, owner, manager, lessee or their agent, or person in charge of the establishment, facility, or property at the time of such inspection or monitoring; or

2. be delivered to the person in charge of the establishment, facility, or property as soon as a determination is made that there is/are violation(s).

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1694 (October 2001).

§109. Violation Notice [formerly Paragraph 1:007-4]

A. In those cases in which the State Health Officer or his/her representative determines that a violation has occurred and a decision is made to issue a notice of violation, the notice of violation shall be either sent to the owner, manager, lessee or their agent, of the establishment, facility or property involved by regular mail with a U.S. postal service certificate of mailing, or hand delivered to the owner, manager, lessee or their agent of the establishment.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28: 1694 (October 2001).

§111. Reinspection [formerly Paragraph 1:007-5]

A. If reinspection discloses that the violation(s) have not been remedied the State Health Officer or his/her representative, may issue a Compliance Order or take whatever action is authorized by law to remedy the violation(s). Any Compliance Order issued pursuant to this section shall inform the aggrieved party of his right to an administrative appeal to the Division of Administrative Law.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1694 (October 2001).

§113. Suspension/Revocation [formerly paragraph 1:007-21]

A. Pursuant to the provisions of LSA R.S. 40:4, R.S. 40:5 and LSA R.S. 40:6, the State Health Officer acting through the Office of Public Health:

1. may suspend or revoke an existing license or permit;

2. may seek injunctive relief as provided for in LSA R.S. 40:4;

3. may impose a fine for violations of Compliance Orders issued by the State Health Officer with the approval of the Secretary of the Department of Health and Hospitals. (R.S. 40:6);

4. may (in cases involving pollution of streams, rivers, lakes, bayous, or ditches which are located in public rights of way outside Lake Pontchartrain, Toledo Bend Reservoir or the Sabine River, their drainage basins or associated waterways):

a. suspend or revoke the existing license or permit; and/or

b. issue a civil compliance order and impose a fine of \$100 per day up to a maximum of \$10,000 in cases where establishments operate without a license or permit or continue to operate after revocation or suspension of their license or permit;

5. may (in cases involving pollution of Lake Pontchartrain, Toledo Bend Reservoir, the Sabine River, their drainage basins, or associated waterways and pursuant to the provisions of LSA R.S. 40:1152 and 40:1153);

a. issue a civil compliance order and/or suspend or revoke the existing license or permit; and/or

b. impose a fine of \$100 per day up to a maximum of \$10,000 in cases where establishments operate without a license or permit, or continue to operate after revocation or suspension of their license or permit.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1694 (October 2001).

§115. Emergency Situations [formerly Paragraph 1:007-21]

A. The State Health Officer may issue Emergency Orders pursuant to the authority granted in LSA R.S. 40:4.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1694 (October 2001).

§117. Employee Health

A. [formerly Paragraph 1:008-1] No person known to be a case or carrier of a communicable disease, as defined in Chapter II, Section 2:001, in an infectious stage which can be transmitted through water, milk or other food materials, shall be employed as a food handler or permitted to work in any capacity in a manufacturing, processing or packing plant; in a food, drug or cosmetic plant; in any bakery or manufacturing confectionery; in a food salvaging or repackaging area; in syrup rooms, mixing areas, filling rooms, in an artificial ice or cold storage plant, or in the delivery or distribution of ice; in a dairy farm, transfer station, receiving station or milk plant; in a marine or fresh water animal food product establishment; in a game and or small animal slaughterhouse or meat packing plant; in a water treatment plant; in a hotel, lodging house, or boarding house, in a school, day care center, residential facility (as defined in Chapter XXI) in any capacity which might bring him into contact with other employees or pupils; in a retail food store/market; or in a food establishment; except where there is no reasonable possibility of disease transmission by such person.

B. [formerly Paragraph 1:008-2] Any individual suspected of being a case or carrier of a communicable disease, as defined in Chapter II, Section 2:001, or who is a contact of or has been exposed to a communicable disease which can be transmitted through water, milk or other food or beverage materials shall submit to an examination by a licensed physician and/or to the collection of appropriate specimens as may be necessary or desirable in ascertaining the infectious status of the individual. Any such person who refuses to submit to such an examination or specimen collection shall not be permitted to work in the types of establishments listed in §117.A until he submits to such examination.

C. [formerly Paragraph 1:008-3] Routine examinations and collections of specimens shall not be required.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1694 (October 2001).

§119. Plans and Permits

A. [formerly Paragraph 1:009-1] Certain activities require submission of plans to the State Health Officer, who must approve the plans and issue a permit prior to the initiation of the activity. This includes but is not limited to the operation, construction or renovation of facilities. For details, see the appropriate Chapter (Part) of this Code.

B. [formerly Paragraph 1:009-2] In those instances in which such activities, for which submission of plans prior to initiation of the activity is required, are found to exist, and no such submittal of plans has been made, the State Health officer shall, upon submittal of the required plans and determination of compliance of such activity with this Code, offer no objection to the existence of such activity. This shall not be construed to limit in any way the State Health Officer's authority to revoke or rescind such position of no objection, just as with any other approval or permit, as per §119.C of this Code. The burden of proof of compliance shall be on the applicant.

C. [formerly Paragraph 1:009-3] The State Health Officer can revoke, and reissue permits, or issue new permits as provided in this Code. The addresses to which requests shall be submitted are set forth in the appropriate Chapters (Parts) of this Code.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1695 (October 2001).

§121. Effective Date of Code [formerly Paragraph 1:011]

A. The provisions of this Code shall have effect from the date of publication hereof as a Rule in the *Louisiana Register*, except as hereinafter otherwise specifically provided.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1695 (October 2001).

§123. Exemptions from Code [formerly Paragraph 1:011]

A. When the construction of buildings and facilities was approved by the State Health Officer pursuant to Sanitary

Code requirements then in effect, upgrading of such buildings and facilities shall not be required except where:

1. substantial renovation of such buildings or facilities is undertaken; or

2. where the ownership thereof or the business located therein changes subsequent to the effective date of the Sanitary Code; or

3. where a serious health threat exists, unless otherwise specifically provided hereinafter.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1695 (October 2001).

The following Table of Contents and Cross Reference listings (Item A. and Item B. respectively) are included as tools to assist staff and/or the public in locating provisions included in the preceding Rule which would repeal and replace Chapter I of the Sanitary Code as previously promulgated on November 20, 1992. The referenced listings are as follows:

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David W. Hood
Secretary

0110#053

RULE

Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

Medicaid Estate Recovery Program

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following Rule under the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the May 20, 1996 Rule to provide for cost effectiveness guidelines and to add regulations addressing privilege on the succession estate and reductions in recovery in consideration of reasonable and necessary expenses incurred by the decedent's heirs to maintain the homestead of the decedent. The Bureau shall seek recovery of Medicaid payments for nursing facility services, home and community-based services, and related hospital and prescription drug services from the estate of an individual who was 55 years of age or older when such services were received.

A. Definitions

Assessed Value—Assessed value shall mean the value of the homestead as assessed by the Tax Assessor in the parish in which the homestead is located.

Cost-Effectiveness—The process whereby the Medicaid agency balances and weighs that which it may reasonably expect to recover, against the time and expense of recovery. Application of the provision will be deemed to be cost-effective when the amount reasonably expected to be recovered exceeds the cost of recovery and the amount reasonably expected to be recovered is greater than \$500.

Dependent—A dependent is defined as one who was reliant on the decedent due to a medical condition or age which rendered him/her unable to provide for his/her own support and for whom the decedent provided more than one half of his/her support during the immediate 12 months prior to the death of the decedent and is the decedent's:

1. son, daughter, step-son, step-daughter or a descendent thereof;
2. brother or sister, whether by blood or marriage, or a descendent thereof;
3. father, mother, step-father, step-mother, or sibling of ancestor thereof;
4. son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the decedent.

Estate—The estate shall be understood to be the gross estate of the deceased as determined by Louisiana succession law.

Homestead—A homestead shall be defined as a tract of land or two or more tracts of land with a residence on one tract and a field, pasture, or garden on the other tract or tracts, not exceeding 160 acres, buildings and appurtenances, whether rural or urban, owned and occupied by the decedent or a residence, including a mobile home, owned and occupied by the decedent, regardless of whether the

homeowner owns the land upon which the home or mobile home is sited. This same homestead shall be the primary residence which served as a bona fide home and which was occupied by the recipient immediately prior to the recipient's admission to a nursing facility or when the recipient began receiving home and community-based services.

Undue Hardship—An undue hardship exists when application of the provision would result in placing an unreasonable burden on a dependent. An undue hardship may exist when:

1. the estate is the sole income producing asset of a dependent, and income from the estate is limited;
2. recovery would result in a dependent becoming eligible to receive public assistance, including but not limited to Medicaid;
3. any other compelling circumstances that would result in placing an unreasonable financial burden on a dependent.

An undue hardship does not exist if the circumstances giving rise to the hardship were created by or are the result of estate planning methods under which assets were sheltered or divested in order to avoid estate recovery.

B. General Provisions

1. Medicaid estate recovery is not a condition of eligibility. The applicant/recipient shall be informed at the time of application/redetermination that federal law and regulations mandate estate recovery action by the states and that medical assistance claims paid by the Bureau of Health Services Financing may be subject to estate recovery.

2. Recovery Limitations

a. Recovery can only be made after the death of the individual's surviving spouse, if any, and only at the time when the individual has no surviving child under age 21, or a child blind or disabled as defined in Section 1614 of the Social Security Act.

b. Recovery from the homestead as defined in Section I.E., can only be made when there is no dependent of the individual as defined in Section I.D., residing in the home, who resided there for at least two years immediately before the date of the individual's admission to the institution (or the beginning of home and community-based services), and has resided there on a continuous basis since that time.

c. Recovery from the homestead as defined in Section I.E., can only be made when there is no sibling of the individual residing in the home, who has resided there for at least one year immediately before the date of the individual's admission to the institution (or the beginning of home and community-based services), and has resided there on a continuous basis since that time.

3. Recovery Adjustments

a. Recovery may be waived in cases in which it is not cost-effective for the state to recover from the individual's estate.

b. Recovery from the homestead shall be determined as not cost-effective when the recipient's interest in an otherwise seizable homestead is less than one half of the assessed value of property exempt from ad valorem taxes under Article VII, Section 20 of the Constitution of Louisiana.

c. The Department's percentage of recovery will be as follows.

i. If the Medicaid recipient's interest in the homestead is \$37,500 or less the Department will not seek recovery of its Estate Recovery lien from the homestead.

ii. If the Medicaid recipient's interest in the homestead is \$37,501 to \$50,000, the Department will recover 25% of its Estate Recovery lien from the homestead.

iii. If the Medicaid recipient's interest in the homestead is \$50,001 to \$75,000, the Department will recover 50 percent of its Estate Recovery lien from the homestead.

iv. If the Medicaid recipient's interest in the homestead is \$75,001 to \$100,000, the Department will recover 75 percent of its Estate Recovery lien from the homestead.

v. If the Medicaid recipient's interest in the homestead is \$100,001 or greater, the Department will recover 100 percent of its Estate Recovery lien from the homestead.

d. Recovery may be reduced in consideration of reasonable and necessary documented expenses incurred and documented by the decedent's heirs, to maintain the homestead of the decedent during the recipient's period in an institution while receiving Medicaid benefits, if the homestead is part of the succession estate;

4. Recovery Notice. The Bureau will seek recovery for medical assistance from the decedent's estate. The family or the heirs will be given advance notice of the proposed action and the time frame in which they have the opportunity to apply for an undue hardship waiver.

The notice will be served on the executor, legally authorized representative or succession attorney of the individual's estate. If there is no executor, legally authorized representative or succession attorney, the notice will be sent to the family or the heirs. The notice shall also specify the following information:

a. the affected recipient's name, social security number and recipient medicaid number;

b. the action the state intends to take;

c. the reason for the action;

d. the dates of service associated with the recovery action and the amount of the department's claim, i.e. amount to be recovered against the recipient's estate;

e. the right to and procedure for applying for a hardship waiver;

f. the individual's right to a hearing;

g. the method by which the individual may obtain such a hearing;

h. the time periods involved in requesting a hearing or in exercising any procedural requirements under the Medicaid Estate Recovery Program.

The notice will request that the following information be provided to the Bureau:

i. copies of all state and federal estate tax returns prepared and/or filed in connection with the succession of the decedent;

ii. copies of all succession pleadings filed in connection with the succession of the decedent, including any judgement or judgements of possession;

iii. original document or verification from the Assessor in the parish in which the homestead is situated as to the assessed value of the homestead at the time of the decedent's death;

iv. in the event that no state or federal estate tax return has been filed or prepared and no succession has been judicially opened, the Bureau is to be advised as to when such documents will be available and/or when the succession is expected to be opened.

5. Recovery Privilege. The claim of the Department of Health and Hospitals shall be considered a privilege on the succession and shall have a priority equivalent to an expense of last illness as prescribed in Civil Code Article 3252 et seq.

C. Administrative Review of Agency Decisions. Any aggrieved party may request that the agency review and reconsider any or all aspects of the particular recovery matter in which they are involved. This request must be made within 20 days of the receipt of the certified notice of the agency's claim for recovery. If such a request is timely made, the agency shall review the matter and shall review and consider any facts or documentation presented or forwarded in connection with the matter. In addition to this informal reconsideration, any aggrieved party shall have the administrative appeal rights available pursuant to the Administrative Procedure Act.

David W. Hood
Secretary

0110#063

RULE

Department of Natural Resources Office of Conservation

Class V Motor Vehicle Waste Disposal Wells and Large-Capacity Cesspool Requirements (LAC 43:XVII.101, 105, 107, and 109)

The Louisiana Office of Conservation has amended LAC 43:XVII.Chapter 1 in accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., and pursuant to power delegated under the laws of the State of Louisiana and particularly Title 30 of the Louisiana Revised Statutes of 1950, Sections 30:4.C.(1), (2), (3), (6), (8), (9), (10), (14), (16) and I. This rule primarily adds new requirements for Class V motor vehicle waste disposal wells and large-capacity cesspools. These revisions are mandated by the Environmental Protection Agency (EPA) underground injection control (UIC) program in 40 CFR Parts 9, 144, 145 and 146 as published on pages 68546 - 68573 of Vol. 64, No 234 of the Federal Register dated December 7, 1999. They also clarify requirements applicable to owners/operators of any type of Class V well. In particular, these amended rules prohibit the permitting and construction of new motor vehicle waste disposal wells and new large-capacity cesspools. They also require the permanent closure of any existing motor vehicle waste disposal wells and any existing large-capacity cesspools by January 1, 2005, and April 5, 2005, respectively. The amendments also correct typographical and other errors contained within the existing Statewide Order No. 29-N-1 (LAC 43:XVII.Chapter 1).

Title 43

NATURAL RESOURCES

Part XVII. Office Of Conservation Injection and Mining

Subpart 1. Statewide Order No. 29-N-1

Chapter 1. Class I, III, IV and V Injection Wells

§101. Definitions

A. ...

Area of Review Cthe area surrounding an "injection well" as described in §109.A.2 for Class I and §109.B.2 for Class III.

Cesspool Ca drywell that receives untreated sanitary waste containing human excreta, and which sometimes has an open bottom and/or perforated sides.

Drywell Ca well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids.

Improved Sinkhole Ca naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings which have been modified by man for the purpose of directing and emplacing fluids into the subsurface.

Point of Injection Cthe last accessible sampling point prior to waste fluids being released into the subsurface environment through a Class V injection well. For example, the point of injection of a Class V septic system might be the distribution box - the last accessible sampling point before the waste fluids drain into the underlying soils. For a dry well, it is likely to be the well bore itself.

Sanitary Waste Cliquid or solid wastes originating solely from humans and human activities, such as wastes collected from toilets, showers, wash basins, sinks used for cleaning domestic areas, sinks used for food preparation, clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses, and utensils are cleaned. Sources of these wastes may include single or multiple residences, hotels and motels, restaurants, bunkhouses, schools, ranger stations, crew quarters, guard stations, campgrounds, picnic grounds, day-use recreation areas, other commercial facilities, and industrial facilities provided the waste is not mixed with industrial waste.

Septic System Ca well that is used to emplace sanitary waste below the surface and is typically comprised of a septic tank and subsurface fluid distribution system or disposal system.

Subsurface Fluid Distribution System Can assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground.

Well Ca bored, drilled, or driven shaft whose depth is greater than the largest surface dimension; or, a dug hole whose depth is greater than the largest surface dimension; or, an improved sinkhole; or, a subsurface fluid distribution system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:ID and 4C(16), and 4.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 8:83 (February 1982), amended LR 12:26 (January 1986), LR 27:1698 (October 2001).

§103. General Provisions

A. Applicability. These rules and regulations apply to all owners and operators of proposed and existing Class I, III, IV, and V injection wells in the State of Louisiana. For Class I wells, these rules shall only apply to nonhazardous waste disposal as described in §103.C.1.b. and c. below. Applicable rules for Class I hazardous waste disposal is in Statewide Order No. 29-N-2 (LAC 43:XVII.Chapter 2).

B. - C.1.b. ...

C. Radioactive waste disposal wells which inject fluids below the lowermost formation containing an underground source of drinking water within one quarter mile of the well bore. This classification of radioactive waste disposal wells does not affect the disposal of naturally occurring radioactive material (NORM) in Class II wells as part of oil and gas exploration and production operations. The injection of wastes associated with oil and natural gas exploration and production, including such wastes containing NORM, are regulated under the appropriate Class II regulations.

C.2. - 3.c.

4. Class IV

a. Wells used by generators of hazardous wastes or of radioactive wastes, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous wastes or radioactive wastes into a formation which within one-fourth mile of the well contains an underground source of drinking water. This includes the disposal of hazardous waste into what would otherwise be septic systems and cesspools, regardless of their capacity.

b. Wells used by generators of hazardous wastes or of radioactive wastes, by owners or operators of hazardous wastes management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous wastes or radioactive waste above a formation which within one-fourth mile of the well contains an underground source of drinking water. This includes the disposal of hazardous waste into what would otherwise be septic systems and cesspools, regardless of their capacity.

c. Wells used by generators of hazardous wastes or by owners or operators of hazardous waste management facilities, to dispose of hazardous wastes which cannot be classified under §103.C.1.a or 103.C.4.a and b (e.g., wells used to dispose of hazardous wastes into or above a formation which contains an aquifer which has been exempted pursuant to §103.H). This includes the disposal of hazardous waste into what would otherwise be septic systems and cesspools, regardless of their capacity.

5. Class V. Injection wells not included in Class I, II, III, or IV. Typically, Class V wells are shallow wells used to place a variety of fluids directly below the land surface. However, if the fluids placed in the ground qualify as a hazardous waste under the Resource Conservation and Recovery Act (RCRA), the well is either a Class I or Class IV well. Class V wells include:

a. ...

b. large-capacity cesspools, including multiple dwelling, community or regional cesspools, or other devices that receive sanitary wastes, containing human excreta, which have an open bottom and sometimes have perforated sides (see §109.D.2). The UIC requirements do not apply to single family residential cesspools or to nonresidential cesspools which receive solely sanitary waste and have the capacity to serve fewer than 20 persons a day;

c. - h. ...

i. septic system wells used to inject the waste or effluent from a multiple dwelling, business establishment, community or regional business establishment septic tank (see §103.C.6). The UIC requirements do not apply to single family residential septic system wells, or to nonresidential septic system wells which are used solely for the disposal of sanitary waste and have the capacity to serve fewer than 20 persons a day;

j. - k. ...

l. wells used for solution mining of conventional mines such as stopes leaching;

m. injection wells used for in situ recovery of lignite, coal, tar, sands, and oil shale;

n. wells used to inject spent brine into the same formation from which it was withdrawn after extraction of halogens or their salts; and

o. injection wells used in experimental technologies.

p. motor vehicle waste disposal wells that receive or have received fluids from vehicular repair or maintenance activities, such as an auto body repair shop, automotive repair shop, new and used car dealership, specialty repair shop (e.g., transmission and muffler repair shop), or any facility that does any vehicular repair work. Fluids disposed in these wells may contain organic and inorganic chemicals in concentrations that exceed the maximum contaminant levels (MCLs) established by the primary drinking water regulations. These fluids also may include waste petroleum products and may contain contaminants, such as heavy metals and volatile organic compounds, which pose risks to human health.

C.6. - 6.b. ...

c. any dug hole, drilled hole, or bored shaft which is not used for emplacement of fluids underground;

D. - E.1.b.ii. ...

iii. notwithstanding the requirements of clauses (i) and (ii) above, wells used to inject contaminated ground water that has been treated and is being injected into the same formation from which it was drawn are authorized by rule for the life of the well if such subsurface emplacement of fluids is approved by appropriate state or federal agencies pursuant to provisions for cleanup of releases under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) or pursuant to requirements and provisions under the Resource Conservation and Recovery Act (RCRA).

c. Injection into Class V wells may be authorized by rule until requirements under future regulations become applicable to the specific type of Class V well. However, the owner or operator of a Class V well authorized by rule shall provide an inventory of the Class V well(s) to the Commissioner. At a minimum, the inventory shall include the following information for each Class V well:

- i. well and/or facility name and location;
- ii. name and address of legal contact;
- iii. ownership of well and/or facility;
- iv. date of well installation/completion;
- v. nature and type of injection well(s);
- vi. depth and operating status of injection well(s);

and

vii. any additional information required by the Commissioner.

d. Class V well authorization by rule shall expire upon the effective date of a permit issued pursuant to these rules or upon proper closure of the well.

e. An owner or operator of a Class V well which is authorized by rule is prohibited from injecting into the well:

i. upon the effective date of an applicable permit denial;

ii. upon failure to submit inventory information pursuant to §103.E.1.c. above;

iii. upon failure to submit a permit application pursuant to §103.E.2.b. below; or

iv. upon failure to comply with the Commissioner's request for any additional information.

E.2. - E.2.c. ...

d. A Class V well satisfying any of the requirements of clauses (i) through (iv) below is no longer authorized by rule; therefore, the owner or operator of the well shall apply for and obtain a UIC permit or permanently close the well:

i. the Class V well does not comply with the prohibition of fluid movement standard in §103.D;

ii. the Class V well is an existing large-capacity cesspool (in which case, the well shall be permanently closed by April 5, 2005) or an existing Class V motor vehicle waste disposal well (in which case, the well shall be permanently closed by January 1, 2005). These rules prohibit the permitting and construction start-up of new motor vehicle waste disposal wells and new large-capacity cesspools on and after April 5, 2000;

iii. the Commissioner specifically requires the Class V well be permitted (in which case, rule authorization expires upon the effective date of the permit, or you are prohibited from injecting into your well upon failure to submit a permit application in a timely manner as specified by the Commissioner; or upon the effective date of permit denial);

iv. the owner or operator of the Class V well failed to submit inventory information as described in §103.E.1.c (in which case, injection into the well is prohibited until the inventory requirements are met).

F. - H.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:ID, 4C(16), and 4.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 8:83 (February 1982), Amended LR 11:640 (June 1985), LR 27:1698 (October 2001).

§105. Permit Application Requirements

A. Applicability. The rules and regulations of this Section apply to all Class I and III injection wells or project applications required to be filed with the Department of Natural Resources (Office of Conservation) for authorization under La. R.S. 1950 Title 30.

B. - H.1.b. ...

I. Filing Fee. Each application shall be accompanied by a per well, nonrefundable filing fee as required by Statewide Order No. 29-R-00/01 (LAC XIX.Chapter 7) or successor document.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:ID, 4C(16), and 4.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 8:83 (February 1982), LR 27:1699 (October 2001).

§107. Legal Permit Conditions

A. - L.5. ...

6. Twenty-Four Hour Reporting

a. The permittee shall report to the Commissioner any noncompliance which may endanger health or the environment. Any information pertinent to the noncompliance shall be reported by telephone at (225) 342-5515 within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances and shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the non-compliance.

L.6.b. - M.1. ...

2. The term of a permit shall not be extended by modification beyond the maximum duration specified in this Section, except as provided in §107.M.4 below.

3. ...

4. The conditions of an expired permit may continue in force until the effective date of a new permit if the permittee has submitted a timely and a complete application for a new permit, and the Commissioner, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit (e.g., when issuance is impracticable due to time or resource constraints).

a. Permits continued under this Section remain fully effective and enforceable.

b. When the permittee is not in compliance with the conditions of the expiring or expired permit, the Commissioner may choose to do any or all of the following:

i. initiate enforcement action based upon the permit which has been continued;

ii. issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

iii. issue a new permit under the requirements of these rules for issuing a new permit with appropriate conditions; or

iv. take other actions authorized by these regulations.

N. - O. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:ID, 4C(16), and 4.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 8:83 (February 1982), Amended LR 11:640 (June 1985), LR 27:1700 (October 2001).

§109. Technical Criteria and Standards

A. - A.8.b. ...

i. Notification of Workover. The permittee shall notify the commissioner by telephone at (225) 342-5515 before commencing any workover operation which requires the use of a rig. In addition, the operator must obtain a work permit prior to any workover operation such as plug and abandon, deepen, perforate, squeeze, plugback, side-track, pull casing, pull tubing, or change zone of completion (disposal).

A.8.b.ii. - B.3. ...

a. Coverage. Applicants for class III injection well permits shall identify the location of all known wells within the injection well's area of review which penetrate the injection zone. For such wells which are improperly sealed, completed, or abandoned, the applicant shall also submit a plan consisting of such steps or modifications as are necessary to prevent movement of fluid into underground sources of drinking water corrective action. Where the plan is adequate, the commissioner shall incorporate it into the permit as a condition. Where the Commissioner's review of an application indicates that the permittee's plan is inadequate (based on the factors in subparagraph c. below) the commissioner shall require the applicant to revise the plan, prescribe a plan for corrective action as a condition of the permit or deny the application.

B.3.b. - D.1.b. ...

2. Large-Capacity Cesspools

a. The permitting and construction start-up of new or converted large-capacity cesspools are prohibited on and after April 5, 2000.

b. Existing large-capacity cesspools that were in operation or were under construction before April 5, 2000, shall be permanently close by April 5, 2005.

3. Motor Vehicle Waste Disposal Wells

a. The permitting and construction start-up of new or converted motor vehicle waste disposal wells are prohibited on and after April 5, 2000.

b. Existing motor vehicle waste disposal wells that were in operation or were under construction before April 5, 2000, shall be permanently closed by January 1, 2005.

4. Well Abandonment (Closure). Before permanently closing a Class V well, the owner or operator shall submit to the commissioner a plan detailing the method and procedure for closure. The commissioner may either approve the plan or require the applicant to revise the plan. The closure plan shall include conditions to ensure that permanent closure will comply with the prohibition of fluid movement standard in §103.D by not allowing the movement of additional fluids into an underground source of drinking water or from one USDW to another.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:ID, 4C(16), and 4.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 8:83 (February 1982), Amended LR 11:640 (June 1985), Amended LR 12:26 (January 1986), LR 27:1700 (October 2001).

Philip N. Asproditos
Commissioner

0110#037

RULE

Port Commissions Board of River Port Pilot Commissioners

Continuing Education

In accordance with the Administrative Procedure Act R.S. 49:950 et seq. and R.S. 34:991(B)(3), the Board of River Port Pilot Commissioners has adopted Section 5 as follows.

Section 5. Continuing Education

Rule 1

A pilot must attend 40 hours of professional education classes and programs every five years. In addition a pilot must attend a ship simulator training program every five years. This requirement will be effective January 1, 2001.

Rule 2

The professional education classes and programs approved by the Board include but are not limited to:

- a. electronic ship simulation training;
- b. small scale ship simulation training;
- c. ARPA training;
- d. VTS/VTIS simulator training;
- e. bridge resource management training for pilots;
- f. any other courses or programs that the board deems appropriate.

Rule 3

Any pilot who fails to attend the required professional education classes and programs may be reprimanded, fined, and/or suspended until the pilot complies with this section.

Rule 4

It shall be the responsibility of the pilot to file with the board proof that the pilot attended the professional education classes and programs.

Rule 5

It shall be the responsibility of the pilot to attend professional education classes and programs approved by the board.

Rule 6

The cost of attending professional education classes shall not be at the expense of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991 et seq.

HISTORICAL NOTE: Promulgated by the Port Commissions, Board of River Port Pilot Commissioners, LR 27:1701 (October 2001).

Capt. Donald J. Short
President

0110#014

RULE

Department of Public Safety and Corrections Office of State Police

Collection of DNA Samples for Convicted Offenders (LAC 55:I.Chapter 27)

Editor's Note: This Rule is being repromulgated to correct a codification error. The original Rule may be viewed in its entirety on pages 205-207 of the February 2001 edition of the *Louisiana Register*.

Pursuant to R.S. 15:601 et seq. and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Public Safety and Corrections, Public Safety Service, Office of State Police adopts LAC 55:I.Chapter 27. Notice is further given that the department adopts the following rules and regulations which establish guidelines for the collection, submission, receipt, identification, storage and disposal of DNA samples for convicted offenders as defined in R.S. 15:601 et seq.

Title 55

PUBLIC SAFETY

Part I. State Police

Chapter 27. Collection, Submission, Receipt, Identification, Storage and Disposal of DNA Samples

§2701. Scope, Purpose and Application

A. Scope, Purpose, and Application. To provide rules and regulations governing the collection, submission, receipt, identification, storage and/or disposal of DNA samples for convicted offenders for a state database/CODIS pursuant to R.S. 15:601 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:611.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 27:205 (February 2001), repromulgated LR 27:1701 (October 2001).

§2702. Definitions

AFIS the Automated Fingerprint Identification System operated by the Department of Public Safety and Corrections, Public Safety Services.

CAJUN the Corrections and Justice Unified Network operated by the Department of Public Safety and Corrections.

CODIS or Combined DNA Index System the Federal Bureau of Investigation's national DNA identification index system which facilitates the storage and exchange of DNA records submitted by state and local criminal justice and law enforcement agencies.

Crime Laboratory Louisiana State Police Crime Laboratory of the Department of Public Safety and Corrections, Public Safety Services.

Convicted Offender a person convicted of a felony sex offense, other specified offense or any other offense for which a DNA sample must be obtained pursuant to R.S. 15:601 et seq.

Department Department of Public Safety and Corrections, Public Safety Services.

Director the Director of the Louisiana State Police Crime Laboratory.

DNA deoxyribonucleic acid.

DNA Analysis DNA typing tests that generate numerical identification information and are obtained from a DNA sample.

DNA Database the DNA identification record system maintained and administered by the director.

DNA Database Blood Collection Kit or Kit the kit provided by the Department for the collection of DNA samples.

DNA Record DNA information that is derived from a DNA sample and DNA analysis and is stored in the state

DNA database or in CODIS, including all records pertaining to DNA analysis.

DNA Sample Biological evidence of any nature that is utilized to conduct DNA analysis.

DPS & CC Department of Public Safety and Corrections.

Evidence Technician Individual authorized by the Director to perform the duties set forth in LAC 55:I:2301 et seq.

FBIC Federal Bureau of Investigation within the United States Department of Justice.

FTA Specialized paper that binds DNA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:611.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 27:205 (February 2001), repromulgated LR 27:1701 (October 2001).

§2703. Collection, Submission, and Identification of DNA Samples for Convicted Offenders

A. All DNA samples obtained for DNA Analysis from a convicted offender shall be collected using an approved Louisiana State Police Crime Laboratory DNA Database Collection kit as supplied by the department.

1. Each DNA Database Blood Collection Kit shall contain all necessary materials for blood collection via finger stick and for proper identification of the offender.

2. Each kit shall be numbered sequentially from one kit to the next so that each kit number shall serve as a unique identifier. Any DNA Database Collection Kit Envelope, Kit Shipping Envelope, DNA Database Information Card, DNA Database Collection Card or AFIS or CAJUN Printout identifying the convicted offender that may be used as part of the kit shall have the same number as the kit used for collection.

3. For blood collection, all DNA samples shall be collected by individuals trained and approved to serve as collectors by the Louisiana State Police Crime Laboratory.

4. The collector shall complete the DNA Database Information Card or utilize an AFIS or CAJUN Printout which contains the identifying information of the collected offender when obtaining a sample.

a. In the event a DNA Database Information Card is used, the collector shall fill in all requested information as completely as possible. This information shall include the offenders name in full, current address, social security number, date of birth, sex, race, state identification number, submitting agency, name and signature and agency of person obtaining the blood sample, date, and form of positive identification shown by the offender.

b. If an AFIS or CAJUN printout is used, identifying information of the offender will be contained on the printout.

c. A DNA Blood Collection Card or a space on the AFIS or CAJUN printout utilized for all necessary collection information shall be filled out as completely as possible and shall include the following information: race, sex, name of blood collector, signature of blood collector, date and time of sample collection, signature of person taking offender's fingerprint, date and time of fingerprint application.

d. The state identification number or Department of Corrections number and name of the offender shall be written on the FTA Blood Collection Paper in the information space provided.

5. Finger stick blood samples shall be obtained using recognized and approved medical procedures, and the following guidelines shall be followed.

a. Prior to each individual blood collection procedure, personnel performing the collection shall put on barrier gloves. The FTA Blood Collection Paper contained within the kit shall not be touched unless the individual collecting the offender's blood is wearing barrier gloves.

b. The tip of the offender's finger shall be wiped with an absorbent alcohol pad.

c. The offender's finger shall be pricked using a sterile, fixed depth lancet.

d. The offender's finger shall be positioned over one of the four circles printed on the FTA Blood Collection Paper, and the finger shall be milked, allowing two drops of blood to fall onto the FTA paper, within the circle. This procedure will be repeated for the remaining three circles if possible.

e. A sterile gauze pad shall be used to wipe off any remaining blood from the offender's finger, and an adhesive bandage shall be affixed to the offender's finger.

f. All medical supplies (lancet, absorbent alcohol pad, gauze pad, barrier gloves) shall be discarded in compliance with standard medical procedures.

g. The blood on the FTA Blood Collection Paper shall be allowed to air dry for approximately 30 minutes. The FTA Blood Collection Paper shall not be touched, nor shall it be allowed to come in contact with any other FTA Blood Collection Paper during the drying and packaging stages.

h. The FTA Blood Collection Paper shall be placed in the protective envelope provided in the kit and sealed. The sealed protective envelope shall be stapled to the DNA Database Collection Card or the Completed AFIS or CAJUN printout which shall then be placed in the kit envelope. The kit envelope flap shall be moistened and the envelope sealed. An evidence or security seal shall then be placed over the envelope seal, and the seal shall be dated and initialed.

i. The sealed kit envelope shall be placed in a pre-addressed mailing envelope which shall be conspicuously marked as containing dried blood specimens with a biohazard label.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:611.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 27:206 (February 2001), repromulgated LR 27:1702 (October 2001).

§2704 Shipping of DNA Samples for Convicted Offenders

A. DNA samples collected in accordance with these procedures shall be submitted to the Crime Laboratory in person by approved personnel or via delivery service, such as U.S. mail in accordance with the Crime Laboratory's Quality Manual. The mailing envelope shall be mailed or delivered to the Crime Laboratory after collection to the following address:

Louisiana State Police Crime Laboratory
376 East Airport Drive
Baton Rouge, LA 70806

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:611.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 27:207 (February 2001), repromulgated LR 27:1702 (October 2001).

§2705. Record Keeping of DNA Samples for Convicted Offenders

A. The individual who collects each DNA sample shall provide an accurate, up-to-date list of every DNA sample collected each day of collection. Any failed attempts to collect blood from an offender and the reason for the failure (e.g. refusal of offender to submit, failure to keep scheduled appointment) shall also be indicated. The list will include the following information: the kit number, the offender's name, the name of the person collecting the sample and the submitting agency together with any additional data which the director deems necessary. This information shall be forwarded in the form of an audit sheet to the director on a daily basis, via both facsimile and U.S. mail. If the mailing envelopes are hand delivered to the Crime Laboratory the audit sheet shall accompany the mailing envelopes being delivered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:611.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 27:207 (February 2001), repromulgated LR 27:1703 (October 2001).

§2706. Storage of DNA Samples for Convicted Offenders

A. The sealed kits containing DNA samples shall be stored in a dedicated storage area within the Crime Laboratory. Access to the sealed kits and to the storage area shall be limited to authorized personnel. Any access to or removal/return of the sealed kit or specimen bags shall be performed in accordance with Crime Lab Evidence and Handling Policies and Procedures. Only authorized personnel shall open a sealed kit or specimen bag and shall initial and date the broken seal and shall reseal the kit or specimen bag in accordance with standard forensic operating procedures.

B. DNA samples on FTA Blood Collection Paper, DNA Database Collection Cards, DNA Database Identification Cards, and AFIS or CAJUN printouts shall be stored indefinitely in a secure storage area unless otherwise required in accordance with R.S. 15:614.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:611.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 27:207 (February 2001), repromulgated LR 27:1703 (October 2001).

§2707. Severability

A. If any article, section, subsection, sentence, clause or phrase of LAC 55:I:2301 et seq. is for any reason determined to be unconstitutional, contrary to statute, in excess of authority, or otherwise inoperative, such determination shall not affect the validity of any other article, section, subsection, sentence, clause or phrase of LAC 55:I:2301 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:611

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 27:207 (February 2001), repromulgated LR 27:1703 (October 2001).

Jerry W. Jones
Undersecretary

0110#039

RULE

**Department of Revenue
Policy Services Division**

Definition of Sales Price (LAC 61:I.4301)

Under the authority of R.S. 47:301 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, has amended LAC 61:I.4301 relative to the definition of *sales price* for sales tax purposes.

These amendments provide guidance concerning the definition of *sales price* in R.S. 47:301(13). They contain descriptions of items included and excluded from that definition. Some items included in the price of a transaction and subject to sales tax are material, labor and overhead costs. Some items excluded from the taxable base are costs for shipping the product to the customer and federal retailers' excise tax that must be collected from the customer.

These amendments also provide guidance on items specifically excluded from the taxable sales price by R.S. 47:301(13). Charges excluded by definition are trade-ins, interest charges, service charges, cash discounts, installation charges, etc. Exclusions are also provided for manufacturer buy downs, the first \$50,000 paid for farm equipment used in poultry production, and funeral directing services. An explanation is also provided on the alternative valuation method of refinery gas and other petroleum products.

Title 61

DEPARTMENT OF REVENUE

**Part I. Taxes Collected and Administered by the
Secretary of Revenue**

Chapter 43. Sales and Use Tax

§4301. Definitions

A. - C. ...

Sales PriceC

a. R.S. 47:301(13)(a) defines *sales price* as the total amount, including cash, credit, property, or services, that is received or paid for the sale of tangible personal property. Any part of the *sales price* that is related to costs incurred by the vendor to bring the product to market or make the product available to customers becomes part of the tax base and is subject to sales tax even if a separate charge is made on the invoice.

i. Costs included in the *sales price* are:

- (a). materials used;
- (b). resale inventory;
- (c). freight or shipping costs from the supplier to

the vendor, or from the vendor to the customer where the transportation by the vendor is an essential or necessary

element of the agreement of sale, as would normally be true in transactions for the sale and delivery of ready-mixed concrete or similar products:

(i). these transportation expenses are incurred by a seller in acquiring tangible personal property for sale or in transporting tangible personal property to the place of sale and form part of the seller's overhead, and

(ii). cannot be excluded from the taxable *sales price* even when separately stated to the purchaser;

(d). utilities;

(e). insurance;

(f). financing for business operations;

(g). labor;

(h). overhead;

(i). service costs:

(i). handling charges are considered service costs; and

(ii). are distinguishable from charges for transportation under the definition of *sales price* and related court decisions;

(j). costs incurred by a vendor that are charged for the procurement, or purchasing, of tangible personal property on behalf of the customer; and

(k). excise taxes imposed on the producer, processor, manufacturer or importer, as these taxes become a part of the dealer's cost.

ii. The following are examples of charges not considered part of the *sales price* because they are not related to costs incurred by the vendor to bring the product to market:

(a). freight, shipping, or delivery charges from the vendor or the vendor's agent directly to the customer after the sale has taken place when the following two conditions are met.

(i). The seller of the tangible personal property separately states the charges for the actual delivery or transportation of the sold property from the place of the sale to the destination designated by the purchaser.

(ii). On the invoices for the sale and transportation of tangible personal property, the place of the sale of the property, and the fact that the transportation is rendered subsequent to the sale and purchase and for the buyer's account, must be clearly determinable.

(b). federal retailers' excise tax that must be collected from the consumer or user.

(i). If these taxes are billed to the user or customer separately, they should be excluded from the tax base.

(ii). However, if the retailers' excise tax is not billed separately, the total selling price, including the excise tax, is taxable.

iii. R.S. 47:301(13)(a) specifically excludes the following charges from the definition of *sales price* provided they are separately stated:

(a). the market value of an item traded in on the sale, as specified in R.S. 47:301(13)(a):

(i). the trade-in item must be one the vendor would normally accept in the course of business and must be similar to the item being purchased. An example of this is trading in a motorcycle on the purchase of a pickup truck;

(ii). exchanging an item that is not similar to the item being purchased will be treated as a barter or exchange agreement as described in R.S. 47:301(12). An example of this would be the owner of a clothing store providing suits to the owner of an appliance store in return for a dishwasher. In this instance, each selling party must report the transaction on his sales tax return;

(iii). the transfer of ownership of the trade-in must occur simultaneously with the sales transaction;

(iv). the trade-in value must be established prior to the sale;

(b). interest charges not exceeding the legal interest rate to finance the sale;

(c). service charges for financing, up to six percent of the amount financed;

(d). cash discounts allowed by the vendor if the customer takes advantage of the discount;

(e). labor to install the tangible personal property;

(f). charges by a seller for installing property that he has sold;

(i). installing includes the charge by the seller of movable property for setting up that property on or the attachment of that property to other movable or immovable property that is already owned or possessed by the purchaser;

(ii). examples of the types of installation charges that are excludable from *sales price* under this provision are the charges for setting up an appliance in a home or business, or the first-time attachment of a new mobile telephone, new radio, or new speakers to a customer-owned vehicle that previously was without such property;

(iii). exclusion is not intended, however, for the charges for removal and replacement of worn or malfunctioning components of movables, such as the removal and replacement of tires and batteries in vehicles. These types of services constitute repairs to movables that are defined in R.S. 47:301(14)(g) as taxable "sales of services;"

(g). charges to set up the property on the taxpayer's premises;

(h). charges for remodeling or repairing the property sold if:

(i). these services are provided prior to the sale;

(ii). the vendor sends the property to another dealer or service provider for remodeling or repair and pays sales taxes on these taxable services; and

(iii). the services are separately itemized and identified in the billing to the customer;

(iv). if the remodeling or repairing is performed by the vendor either:

[a]. prior to the sale; or

[b]. after the sale but before the customer takes possession of the item;

[c]. then these would be costs of the vendor incurred to bring the product to market or make a product available to customers and would become part of the tax base;

(v). any services performed after the property is in the possession of the customer are taxable under R.S. 47:301(14).

iv. In all instances where an expense is required to be separately stated, the effect of combining the charge with another taxable item included in the *sales price* will subject the entire amount to sales tax.

v. R.S. 47:301(13)(b) provides an exclusion from *sales price* for the amounts of cash discounts and rebates that manufacturers and vendors of new vehicles offer to purchasers of vehicles.

(a). The exclusion will apply both to the discounts and rebates that are based on vehicle make and model, as well as to the discounts and rebates that are based on customer usage of manufacturer-issued credit cards.

(b). In order for this exclusion to apply, the customer must assign the discount or rebate to the selling dealer of the vehicle, so that the discount or rebate results directly in a reduction of the price to be paid for the vehicle.

(c). In cases where a customer accepts a rebate or discount in cash, and does not assign the amount to the selling dealer as a deduction from the listed retail price of the vehicle, the exclusion from *sales price* will not apply.

vi. R.S. 47:301(13)(c) excludes from taxable *sales price* the first \$50,000 paid for new farm equipment used in poultry production.

(a). This exclusion applies only to the price of property that is identifiable at the time of sale as being for use in poultry production.

(b). The exemption is available only to commercial producers who sell poultry or the products of poultry in commercial quantities.

(c). The portion of the sales price of any item of commercial farm equipment in excess of \$50,000 will be included in the taxable *sales price*.

vii. R.S. 47:301(13)(e) excludes the value of payments made directly to retail dealers by manufacturers seeking a reduction in the price retail dealers charge for the manufacturers' products. These payments, often called *buy downs*, are applied by the retail dealer to the selling prices of the manufacturer's products. Retail dealers must collect the tax on the discounted *sales price* after applying the manufacturers' payments.

viii. In cases where all or a part of the purchase price of tangible personal property is paid to the selling dealer by the presentation of a coupon, the determination of the taxable *sales price* will depend on the type of coupon that is presented.

(a). Manufacturer's coupons that the selling dealer accepts from the customer and can be redeemed through a manufacturer or coupon agent are not allowed as a reduction of the *sales price*. Because the retailer's total compensation includes the amount paid by the customer after presenting the coupon and the amount reimbursed by the manufacturer for the coupon's face value, the tax is based on the actual selling price of the item before the discount for the coupon.

(b). The retailer's own coupons, which the selling dealer is unable to redeem through another party, provides a cash discount that can be excluded from the *sales price*. The sales tax on a sale involving this type of coupon will be computed on the price paid after an allowance for the selling dealer's coupon discount.

ix. R.S. 47:301(13)(f) provides that *sales price* excludes any consideration received, given, or paid for the

performance of funeral directing services. The term *funeral directing services* is defined and further discussed at R.S. 47:301(10)(s).

(a). No exclusion from taxation is allowed on the sale, lease, or rental, of tangible personal property by funeral directors to customers, or

(b) on the purchase, lease, use, consumption, distribution, or storage for use of tangible personal property by funeral directors in connection with their performance of professional services.

b. R.S. 47:301(13)(d) provides that, in the case of the sale by a manufacturer of refinery gas or other petroleum byproducts that are to be used by the purchasers as other than feedstock, the taxable *sales price* shall be the greater of:

i. the actual sales price of the byproducts; or

ii. the average monthly spot market price per thousand cubic feet of natural gas delivered into pipelines in Louisiana, as reported by the Natural Gas Clearing House at the time of such sale.

* * *

AUTHORITY NOTE: Promulgated in Accordance with R.S. 47:301.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue and Taxation, Sales Tax Division, LR 21:957 (September 1995), LR 22:855 (September 1996), amended by the Department of Revenue, Policy Services Division, LR 28:1703 (October 2001).

Raymond E. Tangney
Senior Policy Consultant

0110#085

RULE

Department of Revenue Policy Services Division

Inventory Tax Credit (LAC 61:I.1902)

Under the authority of R.S. 47:6006 and R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 47:950 et seq., the Department of Revenue, Policy Services Division, has adopted LAC 61:I.1902 relative to the application of inventory tax credits to different business associations.

Act 153 of the 1991 Regular Session of the Louisiana Legislature enacted R.S. 47:6005 to allow a credit against the corporate and personal income taxes and the corporation franchise tax for ad valorem taxes paid to political subdivisions on inventory held by manufacturers, distributors, and retailers. The section was redesignated as R.S. 47:6006 pursuant to the statutory revision authority of the Louisiana State Law Institute. This rule clarifies the application of inventory tax credits to different business associations.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 19. Miscellaneous Tax Exemptions

§ 1902. Inventory Tax Credits

A. Tax Credits for Local Inventory Taxes Paid. R.S. 47:6006 allows a credit for ad valorem taxes paid to local

governments on inventory held by manufacturers, distributors, and retailers.

B. Application to Corporations. All entities taxed as corporations for Louisiana income or corporation franchise tax purposes shall claim any credit allowable for inventory taxes paid by them on their corporation income and corporation franchise tax return. This includes, but is not limited to:

1. S corporations;
2. partnerships taxed as corporations for income tax purposes;
3. limited liability companies (LLC's) taxed as corporations for income tax purposes.

C. Application to Individuals, Estates, and Trusts

1. All individuals shall claim on their individual income tax returns any credit allowable for inventory taxes paid by them.

2. Estates or trusts shall claim on their fiduciary income tax returns any credit allowable for inventory taxes paid by them.

D. Application to Partnerships. Any credit allowable for inventory taxes paid by partnerships not taxed as corporations shall be claimed on the returns of the partners as follows.

1. Corporation partners shall claim the credit on their corporation income or corporation franchise tax returns.

2. Individual partners shall claim the credit on their individual income tax returns.

3. Partners that are estates or trusts shall claim the credit on their fiduciary income tax returns.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6006 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 27:1705 (October 2001).

Cynthia Bridges
Secretary

0110#028

RULE

Department of Treasury Bond Commission

Fee Schedule and Fee Rebate (LAC 71:III.301, 1301, and 1901)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 39:1405.1, the Bond Commission has amended LAC Title 71, Part III in accordance with R.S. 39:1405.1(B) as amended by Act 431 of the 2001 Regular Session of the Legislature. This Act, in effect, removes the rebate of excess fees attributable to private purpose bonds.

Title 71 TREASURY

Part III. Bond Commission

Chapter 3. Non-Traditional Tax-Exempt Projects

§301. General

A. - A.13.k. ...

14. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Bond Commission, LR 5:365 (November 1979), amended LR 9:254 (April 1983), LR 10:409 (May 1984), LR 10:948 (November 1984), LR 12:538 (August 1986), LR 15:630 (August 1989), LR 27:1706 (October 2001).

Chapter 13. Disclosure

§1301. Disclosure of Agreements between Financial Professionals for Negotiated Transactions

A. - B. ...

C. In order to insure the integrity of the structure of the financing team which the commission is charged with the responsibility of choosing and/or approving for handling bond issues, the commission hereby amends the following rule regarding agreements by and between such financial professionals as to the sale of such bonds.

C.1. - C.4.b. ...

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

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Bond Commission, LR 20:320 (March 1994), amended LR 27:1706 (October 2001).

Chapter 19. Fee Schedule

§1901. Fee Schedule

A. Pursuant to R.S. 30:1405.1(B), the treasurer is authorized after such appropriation, to rebate, on a pro rata basis, the amount of such excess fees attributable to general government agencies, as defined in the State Bond Commission's fee schedule, and otherwise in its rules and regulations, to the issuers of such general government issues paying closing fees for such issues in the fiscal year during which the fees were imposed. In no event, however, shall this rebate provision apply to application fees. The provisions of this rule apply to the Bond Commission fee schedule listed herein.

B. General Government Issues*

General Government Application Fee		\$100.00**
Closing Fees	Par	Percentage
First	\$500,000	0.065%
Next	\$4,500,000	0.060%
Next	\$5,000,000	0.055%
Next	\$10,000,000	0.050%
Next	\$30,000,000	0.045%
Next	\$50,000,000	0.035%
Certified Copy Fee		No charge for one copy \$5 for each additional copy

C. Private Purpose Bonds***

Private Purpose Application Fee		\$1,500.00**
Closing Fees	Par	Percentage
First	\$5,000,000	0.125%
Next	\$20,000,000	0.110%
Next	\$25,000,000	0.105%
Next	\$50,000,000	0.100%
Over	\$100,000,000	0.090%
Annual Agenda Subscription Fee		\$100.00 Private Sector \$50.00 Public Sector

* To be levied on debt instruments with maturities in excess of 12 months excluding budgetary loans made under the provisions of R.S. 39:745, 17:89, 33:9901.

**Application fee will be credited toward the closing fee when bonds are issued, sold or delivered.

*** Private purpose bonds are defined as bonds the proceeds of which are used primarily for the benefit of a private company or enterprise or the payment on such bonds, are paid from revenues derived from private enterprise or concern, regardless of the issuer or the tax exempt status of the debt.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1405.1.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Bond Commission, LR 27:1706 (October 2001).

Ron J. Henson
First Assistant State Treasurer

0110#036

Notices of Intent

NOTICE OF INTENT

Department of Agriculture and Forestry Office of Forestry

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

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

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

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

Title 7

AGRICULTURE AND ANIMALS

Part XXXIX. Forestry

Chapter 13. Forestry Productivity Program

§1307. Extent of State Participation

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

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

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

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

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

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

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

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

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

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

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

§1315. Forestry Practice Implementation Period

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

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

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

Family Impact Statement

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

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

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

Bob Odom
Commissioner

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

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

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

NOTICE OF INTENT

Department of Civil Service Division of Administrative Law

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

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

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

Title 4

ADMINISTRATION

Part III. Division of Administrative Law

Chapter 1. General Rules

§101. Purpose

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

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

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

§103. Definitions

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

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

Division the Division of Administrative Law.

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

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

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

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

§105. Conflicts

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

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

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

§107. Severability

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

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

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

§109. Computation of Time

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

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

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

Chapter 3. Filing and Notices

§301. Administrative Hearings Clerk

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

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

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

§303. Docket Number

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

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

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

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

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

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

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

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

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

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

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

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

§307. Filing of Pleadings and Documents

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

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

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

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

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

§309. Notices

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

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

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

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

§311. Pleadings Form and Content

A. Unless otherwise required by law, pleadings should:

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

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

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

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

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

STATE OF LOUISIANA
DIVISION OF ADMINISTRATIVE LAW

DEPARTMENT OF _____ *

*

*

IN THE MATTER OF _____ * DOCKET NO. :

*

*

(TITLE OF PLEADING)

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

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

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

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

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

§313. Service of Pleadings

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

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

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

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

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

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

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

Chapter 5. Adjudications

§ 501. Administrative Law Judge: Regulating Adjudications

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

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

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

§503. Commencement of Adjudications

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

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

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

§505. Location of Hearings

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

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

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

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

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

§507. Telephone Hearings

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

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

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

§509. Representation

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

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

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

§511. Consolidation

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

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

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

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

§513. Separation of Actions

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

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

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

§515. Continuances

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

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

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

§517. Motions

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

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

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

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

§519. Subpoenas

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

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

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

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

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

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

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

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

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

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

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

§521. Discovery

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

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

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

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

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

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

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

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

§523. Exhibits

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

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

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

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

§525. Confidentiality

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

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

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

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

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

§527. Prehearing Order

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

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

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

ADMINISTRATIVE LAW JUDGE

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

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

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

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

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

§529. Rehearing, Reopening, Reconsideration

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

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

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

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

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

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

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

C. Abandonment

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

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

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

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

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

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

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

Chapter 7. Mediation

§701. Mediation

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

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

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

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

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

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

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

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

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

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

Family Impact Statement

Promulgation of DAL Procedural Rules has the following effect upon:

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

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

Ann Wise
Director

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

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

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

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

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

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect upon competition and employment.

Ann Wise
Director
0110#064

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

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

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

Title 28 EDUCATION

Part I. Board of Elementary and Secondary Education

Chapter 1. Organization

§103. Board Committees

A. ...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

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

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

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

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

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

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This action will have no effect on competition and employment.

Weegie Peabody
Executive Director
0110#041

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Education Board of Elementary and Secondary Education

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

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

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

Title 28 EDUCATION

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

Subchapter A. Bulletins and Regulations

§901. School Approval Standards and Regulations

A. Bulletin 741

Board of Elementary and Secondary Education
Test Security Policy

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

Test Security

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

each point at which test materials are distributed and returned.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE:

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

Marlyn J. Langley
Deputy Superintendent
0110#045

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

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

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

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

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

Title 28

EDUCATION

Part XXI. Bulletin 1934

Starting Points Preschool Regulations

Chapter 1. General Provisions

§101. Purpose

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

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

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

§103. Program Philosophy

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

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

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

Chapter 3. Eligibility

§301. Eligibility Criteria

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

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

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

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

§303. Eligibility Verification

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

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

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

§305. Screening

Repealed.

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

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

§307. Income Verification

Repealed.

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

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

§309. Employment Verification

Repealed.

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

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

§311. Job Training/ Educational Program Verification

Repealed.

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

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

§313. Changes in Eligibility Requirements

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

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

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

Chapter 5. Program Structure

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

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

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

B. The class size may not exceed 20 students.

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

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

§503. Teacher Qualifications

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

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

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

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

§505. Length of School Day and School Year

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

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

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

§507. Program Location

Repealed.

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

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

§509. Health Requirements

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

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

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

§511. Curriculum

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

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

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

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

§513. Yearly Report

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

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

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

§515. Monitoring

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

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

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

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

§517. Religious Activities

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

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

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

§519. Adherence to Regulations

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

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

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

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

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 1943C Starting Points Preschool Regulations

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

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

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

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

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no effect on competition and employment.

Marlyn Langley
Deputy Superintendent
Management and Finance
0110#025

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

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

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

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

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

Title 28

EDUCATION

Part XXXVII. Bulletin 1943C Policies and Procedures for Louisiana Teacher Assistance and Assessment

Chapter 1. Philosophy

§101. Goals of the Program

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

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

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

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

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

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

§103. Beliefs and Principles

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

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

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

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

§105. The Program

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

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

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

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

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

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

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

§107. The Teacher

A. Teachers want to be competent professionals.

B. All teachers can improve performance.

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

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

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

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

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

§109. The Mentor Teacher

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

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

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

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

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

§111. The Assessor

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

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

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

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

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

§113. The Process

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

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

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

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

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

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

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

§115. The Assessment Instruments

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

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

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

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

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

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

Chapter 3. Purpose

§301. Purposes of the Program

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

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

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

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

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

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

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

Chapter 5. Assessment

§501. Meeting Assessment Standards

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

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

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

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

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

§503. Teachers Subject to the Program

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

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

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

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

§505. Definitions

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

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

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

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

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

§507. Procedures to Request Exclusion

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

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

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

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

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

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

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

§509. Timely Implementation of the Program

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

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

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

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

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

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

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

§511. Timelines for Activities

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

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

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

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

Chapter 7. Glossary

§701. Assessment Terminology

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 9. Responsibilities

§901. Duties and Responsibilities of Each Party

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

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

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

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

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

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

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

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

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

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

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

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

2. Responsibilities of the Louisiana Department of Education:

a. oversee implementation of the assistance and assessment program;

b. prepare training and orientation materials;

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

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

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

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

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

h. recommend assessment standards for certification to the Board.

3. Responsibilities of Local Education Agencies:

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

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

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

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

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

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

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

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

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

4. Responsibilities of Mentor Teachers or Mentor Support Teams:

a. coach:

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

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

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

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

b. model:

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

ii. guide management of professional responsibilities;

iii. provide encouragement and support;

c. Professional Development Specialist:

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

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

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

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

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

5. Responsibilities of Principals or Principal Designees:

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

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

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

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

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

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

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

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

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

6. Responsibilities of Assessors:

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

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

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

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

7. Responsibilities of New Teachers:

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

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

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

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

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

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

§1101. Qualifications for Selection as a Mentor

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 13. Procedures for Selection of Assessment Teams

§1301. Qualifications for Assessment Team Member

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

1. Immediate Supervisor

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

2. External Assessor

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

v. Other educators as deemed appropriate.

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

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

Chapter 15. Compensation

§1501. Persons Eligible for Compensation

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

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

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

Chapter 17. Assessment Criteria

§1701. Louisiana Components of Effective Teaching

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

1. Definitions

a. In the Louisiana Components of Effective Teaching:

Domain is defined as a major area of teaching responsibilities;

Component is a critical function within a Domain;

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

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

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

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

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

Chapter 19. Assessment Standards for Certification

§1901. Standards for Certification

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

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

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

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

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

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

§1903. Reapplication for Entry into the Program

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

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

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

§1905. Loss of State Funding

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

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

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

§1907. Previous Requirements

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

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

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

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

§2101. Due Process

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§2103. Grievance

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

1. Step 1

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

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

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

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

2. Step 2

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

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

- (a) the name of the assessed teacher and the LEA in which the teacher is employed;
- (b) the name and position of each member of the assessment team;¹

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

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

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

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

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

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

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

(b) a copy of the original grievance;

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

(d) any other pertinent documents or relevant information.

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

(a) dismiss the appeal for failing to have the official Request for Formal Hearing and/or the attachments required above¹;

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

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

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

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

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

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

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

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

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

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

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

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

3. Step 3

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

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

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

b. The State Hearing Officer at his discretion may:

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

ii. require an appeal through briefs;

iii. grant a new formal hearing;

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

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

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

i. be reprimed of the assessment process and procedures;

ii. be retrained;

iii. have his assessment certification revoke;

iv. be reassigned to another assessment team.

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

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

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

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

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

§2105. Glossary of Terminology

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 23. Assistance Program Procedures

§2301. Period of Mentor Assignment

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

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

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

§2303. Mentor/New Teacher Activities

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

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

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

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

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

§2305. Second Semester Mentor/New Teacher Activities

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

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

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

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

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

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

Chapter 25. Assessment Procedures

§2501. Semester of Assessment

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

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

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

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

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

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

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

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

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

the new teacher a new or modified professional development plan.

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

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

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

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

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

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

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

§2503. Extenuating Circumstances in the Assessment Process

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

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

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

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

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

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

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

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

Chapter 27. Relations to Other Existing Policies and Laws

§2701. Right to Evaluate Employees or Make Employment Decisions

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

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

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

§2703. Program Relationship to Entitlement to All Benefits

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

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

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

Chapter 29. Monitoring Guidelines

§2901. Monitoring Procedures

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

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

2. review a premonitoring report prepared by the LDE;

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

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

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

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

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

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

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

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

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

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

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

Chapter 31. Revisions; Policy Manuals

§3101. Review and Revisions

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

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

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

§3103. Additional Materials for Educators

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

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

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

Chapter 33. Appendix A

§3301. Assessor and Mentor Code of Ethics

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 35. Appendix B

§3501. New Teacher Code of Ethics

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

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

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

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

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

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

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

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

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

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

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

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

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

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

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

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

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

Marlyn Langley
Deputy Superintendent
Management and Finance
0110#046

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of Environmental Assessment

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

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

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

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

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

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

**Title 33
ENVIRONMENTAL QUALITY**

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

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

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

§3931. Reportable Quantity List for Pollutants

[See Prior Text in A]

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

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

[See Prior Text in B-Note @]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:183 (February 1994), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:944 (September 1995), LR 22:341 (May 1996), amended by the Office of the Secretary, LR 24:1288 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:

**Title 33
ENVIRONMENTAL QUALITY**

Part III. Air

Chapter 5. Permit Procedures

§507. Part 70 Operating Permits Program

[See Prior Text in A-B.1]

2. No Part 70 source may operate after the time that the owner or operator of such source is required to submit a permit application under Subsection C of this Section, unless an application has been submitted by the submittal deadline and such application provides information addressing all

applicable sections of the application form and has been certified as complete in accordance with LAC 33:III.517.B.1. No Part 70 source may operate after the deadline provided for supplying additional information requested by the permitting authority under LAC 33:III.519, unless such additional information has been submitted within the time specified by the permitting authority. Permits issued to the Part 70 source under this Section shall include the elements required by 40 CFR 70.6. The Louisiana Department of Environmental Quality hereby adopts and incorporates by reference the provisions of 40 CFR 70.6(a), as in effect on October 22, 1997. Upon issuance of the permit, the Part 70 source shall be operated in compliance with all terms and conditions of the permit. Noncompliance with any federally applicable term or condition of the permit shall constitute a violation of the Clean Air Act and shall be grounds for enforcement action; for permit termination, revocation and reissuance, or revision; or for denial of a permit renewal application.

[See Prior Text in C-J.5]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011, 2023, 2024 and 2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), LR 20:1375 (December 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:

Chapter 14. Confor mity

Subchapter B. Conformity to State or Federal

**Implementation Plans of Transportation
Plans, Programs, and Projects Developed,
Funded, or Approved Under Title 23**

U.S.C. or the Federal Transit Act

§1432. Incorporation by Reference

A. 40 CFR part 93, subpart A, July 1, 2000, is hereby incorporated by reference with the exclusion of section 105.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 24:1280 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:

**Chapter 30. Standards of Performance for New
Stationary Sources (NSPS)**

Subchapter A. Incorporation by Reference (IBR)

**§3003. IBR 40 Code of Federal Regulations (CFR) Part
60**

A. Except as modified in this Section, regulations at 40 CFR part 60, as revised July 1, 2000, and specified below in Tables 1 and 1.A are hereby incorporated by reference as they apply to the state of Louisiana.

Table 1 40 CFR Part 60	
40 CFR Part 60 Subpart	Subpart Headings

[See Prior Text in A – Cb]	
Cc	Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills
See Prior Text in Cd - WWW	

* * *

[See Prior Text in Table 1.A]

B. Reserved.

* * *

[See Prior Text in C – D]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 22:1212 (December 1996), amended LR 23:1681 (December 1997), LR 24:1287 (July 1998), LR 24:2238 (December 1998), LR 25:1239 (July 1999), LR 25:1797 (October 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1607 (August 2000), LR 26:2460 (November 2000), LR 26:2608 (November 2000), LR 27:

Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program

Subchapter B. Incorporation by Reference of 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants)

§5116. Incorporation by Reference of 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants)

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants published in the *Code of Federal Regulations* at 40 CFR part 61, revised as of July 1, 2000, and specifically listed in the following table are hereby incorporated by reference as they apply to sources in the State of Louisiana.

40 CFR 61	Subpart/Appendix Heading
Subpart A	General Provisions
Subpart C	National Emission Standard for Beryllium
Subpart D	National Emission Standard for Beryllium Rocket Motor Firing
Subpart E	National Emission Standard for Mercury
Subpart F	National Emission Standard for Vinyl Chloride
Subpart J	National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene
Subpart L	National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants
Subpart N	National Emission Standard for Inorganic Arsenic Emissions from Glass Manufacturing Plants
Subpart O	National Emission Standard for Inorganic Arsenic Emissions for Primary Copper Smelters
Subpart P	National Emission Standard for Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities
Subpart V	National Emission Standard for Equipment Leaks (Fugitive Emission Sources)
Subpart Y	National Emission Standard for Benzene Emissions from Benzene Storage Vessels
Subpart BB	National Emission Standard for Benzene Emissions from Benzene Transfer Operations
Subpart FF	National Emission Standard for Benzene Waste Operations
Appendix A	National Emission Standards for Hazardous Air Pollutants, Compliance Status Information
Appendix B	Test Methods
Appendix C	Quality Assurance Procedures

* * *

[See Prior Text in B - C]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:61 (January 1997), LR 23:1658 (December 1997), amended LR 24:1278 (July 1998), LR 25:1464 (August 1999), LR 25:1797 (October 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2271 (October 2000), LR 27:

Subchapter C. Incorporation by Reference of 40 CFR Part 63 (National Standards for Hazardous Air Pollutants for Source Categories) as it Applies to Major Sources

§5122. Incorporation by Reference of 40 CFR Part 63 (National Standards for Hazardous Air Pollutants for Source Categories) as it Applies to Major Sources

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants for Source Categories published in the *Code of Federal Regulations* at 40 CFR part 63, revised as of July 1, 2000, and specifically listed in the following table are hereby incorporated by reference as they apply to major sources in the state of Louisiana.

40 CFR 63	Subpart/Appendix Heading
* * *	
[See Prior Text in Subpart A – Subpart NNN]	
Subpart OOO	National Emission Standards for Hazardous Air Pollutant Emission: Manufacture of Amino/Phenolic Resins
* * *	
[See Prior Text in Subpart PPP]	
Subpart RRR	National Emission Standard for Hazardous Air Pollutants for Secondary Aluminum Production
* * *	
[See Prior Text in Subpart TTT]	
Subpart VVV	National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works
* * *	
[See Prior Text in Subpart XXX – Appendix D]	

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:61 (January 1997), amended LR 23:1659 (December 1997), LR 24:1278 (July 1998), LR 24:2240 (December 1998), LR 25:1464 (August 1999) LR 25:1798 (October 1999), LR 26:690 (April 2000), LR 26:2271 (October 2000), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:

Chapter 53. Area Sources of Toxic Air Pollutants
Subchapter B. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as it Applies to Area Sources

§5311. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as it Applies to Area Sources

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants for Source Categories published in the *Code of Federal Regulations* at 40 CFR part 63, revised as of July 1, 2000, and specifically listed in the following table are hereby incorporated by reference as they apply to area sources in the State of Louisiana.

40 CFR 63	Subpart/Appendix Heading
Subpart A	General Provisions
Subpart M	National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities
Subpart X	National Emission Standards for Hazardous Air Pollutants From Secondary Lead Smelting

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:63 (January 1997), amended LR 23:1660 (December 1997), LR 24:1279 (July 1998), LR 25:1464 (August 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental

Quality Hazardous Waste

Chapter 30. Hazardous Waste Burned in Boilers and Industrial Furnaces

Appendices

Appendix A. Tier I and Tier II Feed Rate and Emissions Screening Limits For Metals

40 CFR 266, appendix I, July 1, 2000, is hereby incorporated by reference.

Appendix B. Tier I Feed Rate Screening Limits for Total Chlorine

40 CFR 266, appendix II, July 1, 2000, is hereby incorporated by reference.

Appendix C. Tier II Emission Rate Screening Limits for Free Chlorine and Hydrogen Chloride

40 CFR 266, appendix III, July 1, 2000, is hereby incorporated by reference.

Appendix D. Reference Air Concentrations

40 CFR 266, appendix IV, July 1, 2000, is hereby incorporated by reference, except that in regulations incorporated thereby, references to 40 CFR 261, appendix VIII and 266, appendix V shall mean LAC 33:V.3105.Table 1 and Appendix E of this Chapter, respectively.

Appendix E. Risk Specific Doses (10⁻⁵)

40 CFR 266, appendix V, July 1, 2000, is hereby incorporated by reference.

Appendix F. Stack Plume Rise [Estimated Plume Rise (in Meters) Based on Stack Exit Flow Rate and Gas Temperature]

40 CFR 266, appendix VI, July 1, 2000, is hereby incorporated by reference.

Appendix G. Health-Based Limits for Exclusion of Waste-Derived Residues

40 CFR 266, appendix VII, July 1, 2000, is hereby incorporated by reference, except that in regulations incorporated thereby, 40 CFR 261, appendix VIII, 266.112(b)(1) and (b)(2)(i), and 268.43 shall mean LAC 33:V.3105.Table 1, 3025.B.1 and B.2.a, and Chapter 22.Table 2, respectively.

Appendix H. Organic Compounds for Which Residues Must be Analyzed

40 CFR 266, appendix VIII, July 1, 2000, is hereby incorporated by reference.

Appendix I. Methods Manual for Compliance with the BIF Regulations

A. 40 CFR 266, appendix IX, July 1, 2000, is hereby incorporated by reference, except as follows:

1. 40 CFR 261, appendix VIII, 266.103, 266.103(b), 266.103(b)(3), 266.103(c), 266.103(c)(1), 266.103(c)(3)(ii), 266.103(c)(7), 266.103(d), 266.106, 266.112, 266.112(b)(1) and (b)(2)(i), 268.43, and 266.subpart H shall mean LAC 33:V.3105.Table 1, 3007, 3007.B, 3007.B.3, 3007.C, 3007.C.1, 3007.C.3.b, 3007.C.7, 3007.D, 3013, 3025, 3025.B.1 and B.2.a, Chapter 22.Table 2, and Chapter 30, respectively.

2. Terms within the incorporated Appendix shall be the terms adopted by reference except that "director," "administrator," "EPA regional office," and "EPA regional office or the appropriate enforcement agency" shall mean "administrative authority."

3. "Environmental Protection Agency" and "EPA" shall mean "administrative authority," except when referring to an EPA method, protocol, file, performance audit sample, handbook, manual, document, program, default value, or default assumption.

4. Equation (7) of appendix A to 40 CFR 266, appendix IX shall be corrected to read:

$$s_p = \left(\frac{(n_1 - 1)s_1^2 + (n_2 - 1)s_2^2}{n_1 + n_2 - 2} \right)^{1/2}$$

B. Federal statutes and regulations that are cited in 40 CFR 266, appendix IX that are not specifically adopted by reference shall be used as guidance in interpreting the federal regulations in 40 CFR 266, appendix IX.

Appendix J. Reserved

Appendix K. Lead-bearing Materials That May Be Processed in Exempt Lead Smelters

40 CFR 266, appendix XI, July 1, 2000, is hereby incorporated by reference.

Appendix L. Nickel or Chromium-Bearing Materials That May Be Processed in Exempt Nickel-Chromium Recovery Furnaces

40 CFR 266, appendix XII, July 1, 2000, is hereby incorporated by reference, except that the footnote should be deleted.

Appendix M. Mercury-Bearing Wastes That May Be Processed in Exempt Mercury Recovery Units

40 CFR 266, appendix XIII, July 1, 2000, is hereby incorporated by reference, except that in regulations incorporated thereby, 40 CFR 261, appendix VIII shall mean LAC 33:V.3105.Table 1.

Title 33

ENVIRONMENTAL QUALITY

Part IX. Water Quality

Chapter 23. The LPDES Program

Subchapter A. Definitions and General Program Requirements

§2301. General Conditions

[See Prior Text in A-E]

F. All references to the *Code of Federal Regulations* (CFR) contained in this Chapter (e.g., 40 CFR 122.29) shall refer to those regulations published in the July 2000 *Code of Federal Regulations*, unless otherwise noted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:199 (February 1997), LR 23:722 (June 1997), LR 25:1467 (August 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1609 (August 2000), LR 27:

§2531. 40 CFR Part 136

A. Title 40 (Protection of the Environment) *Code of Federal Regulations* (CFR) part 136, Guidelines Establishing Test Procedures for the Analysis of Pollutants, revised July 1, 2000, in its entirety.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:958 (August 1997), LR 25:1467 (August 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1609 (August 2000), LR 27:

§2533. 40 CFR Chapter I, Subchapter N

A. Title 40 (Protection of the Environment) CFR, chapter I, subchapter N (Effluent Guidelines and Standards), revised July 1, 2000, parts 401 and parts 405 - 471 in their entirety. (Note: General Pretreatment Regulations for Existing and New Sources of Pollution found in part 403 of subchapter N have been included in these regulations as Subchapter T.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:958 (August 1997), LR 25:1467 (August 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1609 (August 2000), LR 27:

Subchapter T. General Pretreatment Regulations for Existing and New Sources of Pollution

§2709. National Pretreatment Standards: Prohibited Discharges

* * *

[See Prior Text in A.1-C]

1. Each POTW developing a POTW pretreatment program pursuant to LAC 33:IX.2715 shall develop and enforce specific limits to implement the prohibitions listed in Subsections A.1 and B of this Section. Each POTW with an approved pretreatment program shall continue to develop these limits as necessary and effectively enforce such limits. In addition, the POTW may establish such limits as necessary to address the land disposal restrictions at 40 CFR 268.40.

* * *

[See Prior Text in C.2-3]

D. Local Limits. Where specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with Subsection C of this Section, including those standards established to address land disposal restrictions at 40 CFR 268.40, such limits shall be deemed pretreatment standards for the purposes of Section 307(d) of the Act.

* * *

[See Prior Text in E]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945

(September 1995), amended LR 23:958 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:

Title 33

Environmental Quality

Part XI. Underground Storage Tanks

Chapter 11. Financial Responsibility

§1111. Financial Test of Self-Insurance

* * *

[See Prior Text in A-B.2.a.ii]

iii. the sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR 144.63;

* * *

[See Prior Text in B.2.b-G]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2560 (November 2000), amended, LR 27:

Title 33

ENVIRONMENTAL QUALITY

Part XV. Radiation Protection

Chapter 15. Transportation of Radioactive Material

§1517. Incorporation by Reference

A. The department incorporates by reference 10 CFR part 71, appendix A (July 1, 2000).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 and 2113

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:1270 (June 2000), LR 27:

A public hearing will be held on November 26, 2001, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Persons commenting should reference this proposed regulation by OS040*. Such comments must be received no later than November 26, 2001, at 4:30 p.m., and should be sent to Patsy Deville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0389. The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of OS040*.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123;

James H. Brent, Ph.D.
Assistant Secretary

0110#088

NOTICE OF INTENT

Board of Examiners of Bar Pilots for the Port of New Orleans

Bar Pilot Regulations
(LAC 46:LXXVI.Chapters 11-16)

The Louisiana Legislature formed the Board of Examiners of Bar Pilots for the Port of New Orleans for the purpose of establishing rules, regulations and requirements for holding examinations for all applicants who have registered with them for the posts of bar pilots; to establish standards for recommendation by the Board of Examiners of bar pilots for the Port of New Orleans to the Governor of the state of Louisiana for appointment as bar pilots who, pursuant to R.S. 34:941 et seq., have the duty to pilot sea-going vessels into and out of the entrances of the Mississippi River and into and out of the entrances of all other waterways connecting the Port of New Orleans with the outside waterways of the Gulf of Mexico; to establish procedures in conformity with the requirements of the Administrative Procedure Act for investigating and conducting hearings relative to incidents and/or complaints of pilot misconduct; to establish certain minimum standards of conduct, including conduct relative to neglect of duty, drunkenness, carelessness, habitual intemperance, substance abuse, incompetency, unreasonable absence from duty, and general bad conduct of bar pilots; to provide a uniform set of rules and regulations for the proper and safe pilotage of sea-going vessels upon the waterways under the jurisdiction of the Associated Branch Pilots for the Port of New Orleans; and to insure compliance by the Board of Examiners with the Public Meetings Law. These Rules and Regulations are enacted to accomplish those purposes required by the Legislature and to protect the public by ensuring available, safe and competent pilotage of vessels on the waterways under the jurisdiction of this board of examiners.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXXVI. Steamship Pilots

Subpart 3. Bar Pilots of the Port of New Orleans

Chapter 11. General Provisions

§1101. Authority

A. As mandated by R.S. 34:945.C.1, these rules and regulations are issued by the Board of Examiners of bar pilots for the Port of New Orleans in accordance with the Administrative Procedure Act under R.S. 49:950, et seq. for the purpose of adopting rules, regulations and requirements for holding examinations for all applicants who have registered with them for the posts of bar pilots.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

§1102. Purpose

A. The purposes of these rules and regulations are as follows:

1. to establish standards for recommendation by the Board of Examiners of Bar Pilots for the Port of New Orleans to the Governor of the State of Louisiana for appointment as bar pilots who, pursuant to R.S. 34:941 et seq., have the duty to pilot sea-going vessels into and out of the entrances of the Mississippi River and into and out of the entrances of all other waterways connecting the Port of New Orleans with the outside waterways of the Gulf of Mexico.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

§1103. Definitions

A. The following terms as used in these rules and regulations, unless the context otherwise requires or unless redefined by a particular part hereof, shall have the following meanings.

Administrative Procedure Act the Louisiana Administrative Procedure Act under R.S. 49:950 et seq.

Application the written application supplied by the Board of Examiners to an applicant who desires to become a bar pilot for the Port of New Orleans.

Board of Examiners or *Board* the Board of Examiners of Bar Pilots for the Port of New Orleans, established in R.S. 34:942.

Bar Pilot or *Pilot* a bar Pilot for the Port of New Orleans, as designated in R.S. 34:943.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

§1104. Severability

A. If any provision of these rules and regulations is held to be invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to this end, provisions of these rules and regulations are declared to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

§1105. Effective Date

A. These rules and regulations shall be in full force and effective 90 days after final publication in the *Louisiana Register*. All bar pilots and bar pilot candidates shall be provided with a copy of these rules and regulations as well as any amendments, after the rules and regulations are adopted by the Board of Examiners.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

§1106. Qualifications of Pilots

A. No person shall be recommended to the governor for appointment as a Bar Pilot unless the applicant:

1. is a qualified elector of the State of Louisiana;
2. has served at least 12 months next preceding the date of his application in a pilot boat at the mouth of the

Mississippi River or other entrances into the Gulf of Mexico or other outside waters from the Port of New Orleans;

3. has successfully passed the examination given by the board of examiners, as required by R.S. 34:948;

4. owns or has made a binding legal agreement to acquired as owner or part owner of at least one decked pilot boat of not less than 50 tons burden, which is used and employed exclusively as a pilot boat, as required by L.R.S. 34:930;

5. is a high school graduate or, in lieu thereof, holds a third mate's license;

6. has served at least 1 year at sea on a sea-going vessel of not less than 1600 gross tons in the deck department;

7. has successfully passed a physical examination which in the judgment of the Board of Examiners includes those standards, such as vision, color perception and hearing tests, to perform duties as a bar pilot;

8. is of good moral character; and

9. shall have completed satisfactorily an apprenticeship program which culminates in a cubbing period of not less than 9 months duration handling vessels over the routes of the bar pilots under the supervision of not less than 25 licensed state bar pilots.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

§1107. Minimum Requirements

A. The Board of Examiners shall review, and if found satisfactory, approve the apprenticeship program of the applicant, the minimum requirements of which shall be as follows: the applicant must set forth in detail the names of the vessels handled, dates handled, the direction of travel, size, draft, and type of vessel, and the name of the supervising bar pilot. During the period of apprenticeship the applicant shall handle vessels on not less than 650 occasions, two-thirds of which shall be at night.

B. The board of examiners will review the number and times of vessels handled, the size, draft, and type of vessels and the conditions under which the applicant has performed the apprenticeship in order to determine if the applicant has had sufficient exposure as to enable the board of examiners to make a determination of the applicant's competence and ability to perform the duties of a bar pilot.

C. The Board of Examiners shall prescribe the form of the application and required documentary proof of the applicant's eligibility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

§1108. Bond

A. No person shall assume the position of bar pilot until he shall have first taken the oath prescribed by law and has furnished a bond in favor of the Governor in the amount of Two Thousand \$2,000.00 conditioned on the faithful performance of his duties imposed upon him as a bar pilot. This bond shall be approved by the Board of Commissioners of the Port of New Orleans.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

Chapter 13. Pilots

Subchapter A. General Provisions

§1301. Authority

A. As mandated by R.S. 34:945.c.1, these rules and regulations are issued in accordance with the Administrative Procedure Act under R.S. 49:950 et seq. for the purpose of establishing minimum standards of conduct for bar pilots and for the proper and safe pilotage of sea-going vessels into and out of the entrance of the Mississippi River and into and out of the entrances of all other waterways connecting the Port of New Orleans with outside waters of the Gulf of Mexico, including the entrance of the New Orleans Tidewater Channel at the western shore of the Chandeleur Sound off Point Chicot.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

§1302. Purpose

A. The purposes of these rules and regulations are as follows:

1. to establish certain minimum standards of conduct, including conduct relative to neglect of duty, drunkenness, carelessness, habitual intemperance, substance abuse, incompetency, unreasonable absence from duty, and general bad conduct of bar pilots;

2. to provide a uniform set of rules and regulations for the proper and safe pilotage of sea-going vessels upon the waterways referred to in §1101.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

§1303. Definitions

A. The following terms as used in these rules and regulations, unless the context otherwise requires or unless redefined by a particular part hereof, shall have the following meanings.

Administrative Procedure Act The Louisiana Administrative Procedure Act under R.S. 49:950 et seq.

Board of Examiners or *Board* The Board of Examiners of Bar Pilots for the Port of New Orleans, established in R.S. 34:942.

Bar Pilot or *Pilot* A bar pilot for the Port of New Orleans, as designated in R.S. 34:943.

Services of a Bar Pilot Any advice or assistance with respect to pilotage by the commissioned bar pilot or by his authorized representative, including but not limited to advice concerning weather, channel conditions, or other navigational conditions.

Waterways The entrance into and out of the Mississippi River and into and out of the entrances of all other waterways connecting the Port of New Orleans with the outside waters of the Gulf of Mexico, including the entrance of the New Orleans Tidewater Channel at the western shore of the Chandeleur sound off Point Chicot.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

§1304. Investigations And Enforcement

A. All complaints reported to the board shall be considered for investigation. A complaint under the provisions of §1304.A through §1304.F is defined as:

1. any written complaint involving a bar pilot commissioned for the Port of New Orleans;

2. any reported incident involving a bar pilot commissioned for the Port of New Orleans while piloting a vessel; or

3. any other event involving a bar pilot commissioned for the Port of New Orleans that, in the discretion of any member of the board, justifies further investigation.

B. The board may appoint an investigating officer to investigate the complaint and report to the board.

C. If the board, or its designated investigating officer, is of the opinion that the complaint, if true, is sufficient to justify a further investigation, it shall appoint an investigating officer, or authorize its designated investigating officer to conduct a full investigation of the complaint.

D. Once authorized under §1304.C, the investigating officer, who may be an active or retired member of the Associated Branch Pilots of the Port of New Orleans, Louisiana, and who may be a member of the Board, shall make a full and complete investigation of the complaint. He shall be assisted by an attorney, named as independent prosecutor by the board. In the event that the Investigating Officer, as contemplated by either §1304.B or §1304.C, is an active member of the board, he shall be recused from any participation in the decision of the case.

E. If the investigating officer is of the opinion that the conduct in question is not sufficient to justify further proceedings, he shall make a reasoned report to the board, which may accept or reject his recommendation.

F. If the investigating officer is of the opinion that the conduct complained of is sufficient to justify further proceedings and the board has accepted his recommendations, or if the board has rejected his recommendation to dismiss the complaint, he shall give notice to the respondent, by registered mail, of the facts or conduct on which the complaint is based, and offer the respondent an opportunity to show compliance with the laws or regulations allegedly violated. If, in the opinion of the investigating officer, the respondent is able to demonstrate such compliance, then the investigating officer shall make a report to the board, recommending to the board that the complaint be dismissed. The board may accept or reject the recommendation of the investigating officer.

G. If the respondent is unable to demonstrate such compliance, or if the board rejects the recommendation of the investigating officer to dismiss the complaint, the investigating officer shall initiate proceedings by filing a written administrative complaint with the board, which shall be signed by the investigating officer.

H. The administrative complaint shall name the accused bar pilot as respondent in the proceedings. It shall also set forth, in separately numbered paragraphs, the following:

1. a concise statement of material facts and matters alleged and to be proven by the investigating officer, including the facts giving rise to the board's jurisdiction over the respondent;

2. the facts constituting legal cause under law for administrative action against the respondent;

3. the statutory or regulatory provisions alleged to have been violated by respondent.

I. The administrative complaint shall conclude with a request for the administrative sanction sought by the investigating officer, and shall state the name, address, and telephone number of administrative complaint counsel engaged by the board to present the case at the evidentiary hearing before the board.

J. The board may either accept or reject the administrative complaint.

K. If it rejects the administrative complaint, the case may be either dismissed or referred back to the investigating officer for further investigation.

L. If the board accepts the administrative complaint, the board shall docket the administrative complaint and schedule the administrative complaint for hearing before the board not less than 45 days nor more than 180 days thereafter; provided, however, that such time may be lengthened or shortened as the board determines may be necessary or appropriate to protect the public interest or upon motion of the investigating officer or respondent pursuant to a showing of proper grounds. In the event the respondent's commission as a bar pilot for the port of New Orleans has been suspended by the board pending hearing, the evidentiary hearing on the administrative complaint shall be noticed and scheduled not more than 45 days after the filing of the administrative complaint.

M. A written notice of the administrative complaint and the time, date and place of the scheduled hearing thereon shall be served upon the respondent by registered, return receipt requested mail, as well as by regular first class mail, at the most current address for the respondent reflected in the official records of the board, or by personal delivery of the administrative complaint to the respondent. The notice shall include a statement of the legal authority and jurisdiction under which the hearing is to be held, and shall be accompanied by a certified copy of the administrative complaint.

N. The case shall be prosecuted by the independent prosecutor, also referred to administrative complaint counsel, who shall handle the case to its conclusion. He shall be entirely independent of the authority of the board in going forward with the matter, and may conduct such further investigation, and prepare and try the case in such manner as he may deem appropriate.

O. Within 15 days of service of the administrative complaint, or such longer time as the board, on motion of the respondent, may permit, the respondent may answer the administrative complaint, admitting or denying each of the separate allegations of fact and law set forth therein. Any matters admitted by respondent shall be deemed proven and established for purposes of adjudication. In the event that the respondent does not file a response to the administrative complaint, all matters asserted therein shall be deemed denied.

P. Any respondent may be represented in an adjudication proceeding before the board by an attorney at law duly admitted to practice in the state of Louisiana. Upon receipt of service of an administrative complaint pursuant to these rules, or thereafter, a respondent who is represented by legal counsel with respect to the proceeding shall, personally or through such counsel, give written notice to the board of

the name, address, and telephone number of such counsel. Following receipt of proper notice of such representation, all further notices, administrative complaints, subpoenas or other process related to the proceeding shall be served on respondent through his or her designated counsel of record.

Q. All pleadings, motions or other papers permitted or required to be filed with the board in connection with a pending adjudication proceeding shall be filed by personal delivery at or by mail to the office of the board and shall by the same method of delivery be concurrently served upon administrative complaint counsel designated by the administrative complaint, if filed by or on behalf of the respondent, or upon respondent, through counsel of record, if any, if filed by administrative complaint counsel.

2. All such pleadings, motions or other papers shall be submitted on plain white letter-size (8 1/2 x 11") bond, with margins of at least one inch on all sides, and double spaced except as to quotations and other matters customarily single spaced, shall bear the caption and docket number of the case as it appears on the administrative complaint, and shall include the certificate of the attorney or person making the filing that service of a copy of the same has been effected in the manner prescribed by Subsection A of this Section.

3. The Board may refuse to accept for filing any pleading, motion or other paper not conforming to the requirements of this section.

R. Motions for continuance of hearing, for dismissal of the proceeding and all other prehearing motions shall be filed not later than 30 days following service of the Administrative Complaint on the respondent or 15 days prior to the hearing, whichever is earlier. Each prehearing motion shall be accompanied by a memorandum which shall set forth a concise statement of the grounds upon which the relief sought is based and the legal authority therefor. A motion may be accompanied by an affidavit as necessary to establish facts alleged in support of the motion. Within 10 days of the filing of any such motion and memorandum or such shorter time as the board may order, the investigating officer, through administrative complaint counsel, may file a memorandum in opposition to or otherwise setting forth the investigating officer's position with respect to the motion.

S.1. A motion for continuance of hearing shall be filed within the delay prescribed by ' 1304.R of these rules, provided that the Board may accept the filing of a motion for continuance at any time prior to hearing upon a showing of good cause not discoverable within the time otherwise provided for the filing of prehearing motions.

2. A scheduled hearing may be continued by the board only upon a showing by respondent or administrative complaint counsel that there are substantial legitimate grounds that the hearing should be continued, balancing the right of the respondent to a reasonable opportunity to prepare and present a defense to the complaint and the board's responsibility to protect the public health, welfare and safety. Except in extraordinary circumstances evidenced by verified motion or accompanying affidavit, the board will not ordinarily grant a motion to continue a hearing that has been previously continued upon motion of the same party.

3. If an initial motion for continuance is not opposed, it may be granted by the presiding officer.

T.1. Any prehearing motion, other than an unopposed initial motion for continuance of hearing which may be

granted by the chairman of the board, shall be referred for decision to the board member designated by the board as the presiding officer of the board designated with respect to the proceeding for ruling. The presiding officer, who shall be a member of the board designated as presiding officer by the board in each matter before the board, in his discretion, may refer any prehearing motion to the board for disposition, and any party aggrieved by the decision of a presiding officer on a prehearing motion may request that the motion be reconsidered by the entire panel.

2. Prehearing motions shall ordinarily be ruled upon by the presiding officer or the board, as the case may be, on the papers filed, without hearing. On the written request of respondent or of administrative complaint counsel, however, and on demonstration that there are good grounds therefor, the presiding officer may grant opportunity for hearing by oral argument, on any prehearing motion.

U.1. Upon request of the respondent or administrative complaint counsel and compliance with the requirements of this Section, any board member shall sign and issue subpoenas in the name of the board requiring the attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence at an adjudication hearing.

2. No subpoena shall be issued unless and until the party who wishes to subpoena the witness first deposits with the board a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to R.S. 13:3661 and R.S. 13:3671. Witnesses subpoenaed to testify before the board only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examination, and to state the results thereof, shall receive such additional compensation from the party who wishes to subpoena such witnesses as may be fixed by the board with reference to the value of time employed and the degree of learning or skill required.

V.1. In any case of adjudication noticed and docketed for hearing, counsel for respondent and administrative complaint counsel may agree, or the presiding officer may require, that a prehearing conference be held among such counsel, or together with the board's independent counsel appointed pursuant to ' 1304.W hereof, for the purpose of simplifying the issues for hearing and promoting stipulations as to facts and proposed evidentiary offerings which will not be disputed at hearing.

2. Following such prehearing conference the parties shall, and without such conference the parties may by agreement, agree in writing on a prehearing stipulation which should include:

a. a brief statement by administrative complaint counsel as to what such counsel expects the evidence to be presented against respondent to show;

b. a brief statement by respondent as to what the evidence and arguments in defense are expected to show;

c. a list of the witnesses to be called by administrative complaint counsel and by respondent, together with a brief general statement of the nature of the testimony each such witness is expected to give;

d. any stipulations which the parties may be able to agree upon concerning undisputed claims, facts, testimony, documents or issues; and

e. an estimate of the time required for the hearing.

W.1. Unless otherwise requested by the respondent, adjudication hearings, being the hearing conducted on the merits of the administrative complaint, shall be conducted in closed session.

2. At an adjudication hearing, opportunity shall be afforded to administrative complaint counsel and respondent to present evidence on all issues of fact and argument on all issues of law and policy involved, to call, examine and cross-examine witnesses, and to offer and introduce documentary evidence and exhibits as may be required for full and true disclosure of the facts and disposition of the administrative complaint.

3. Unless stipulation is made between the parties and approved by the board, providing for other means of recordation, all testimony and other proceedings of an adjudication shall be recorded by a certified stenographer who shall be retained by the board to prepare a written transcript of such proceedings.

4. During evidentiary hearing, the presiding officer shall rule upon all evidentiary objections and other procedural questions, but in his discretion may consult with the entire panel in executive session. At any such hearing, the board may be assisted by legal counsel retained by the board for such purpose, who is independent of administrative complaint counsel and who has not participated in the investigation or prosecution of the case. If the board or panel is attended by such counsel, the presiding officer may delegate to such counsel ruling on evidentiary objections and other procedural issues raised during the hearing.

5. The record in a case of adjudication shall include:

a. the administrative complaint and notice of hearing, respondent's response to the complaint, if any, subpoenas issued in connection with discovery, and all pleadings, motions, and intermediate rulings;

b. evidence received or considered at the hearing;

c. a statement of matters officially noticed except matter so obvious that statement of them would serve no useful purpose;

d. offers of proof, objections, and rulings thereon;

e. proposed findings and exceptions, if any;

f. the decision, opinion, report or other disposition of the case made by the board.

6. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

X.1. In an adjudication hearing, the board may give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. Effect shall be given to the rules of privilege recognized by law. The board or panel may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

2. All evidence, including records and documents in the possession of the board which administrative complaint counsel desires the board to consider, shall be offered and made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts,

or by incorporation by reference, the materials so incorporated shall be available for examination by the respondent before being received in evidence.

3. Notice may be taken of judicially cognizable facts and generally recognized technical or scientific facts within the board's knowledge. Parties shall be notified either before or during the hearing of the material noticed or sought by a party to be noticed, and they shall be afforded an opportunity to contest the material so noticed. The board's experience, technical competence and knowledge may be utilized in the evaluation of the evidence.

4. Any member of the board serving as presiding officer in an adjudication hearing shall have the power to and shall administer oaths or affirmations to all witnesses appearing to give testimony, shall regulate the course of the hearing, set the time and place of continued hearings, fix the time for the filing of briefs and other documents, if they are required or requested, and may direct the parties to appear and confer to consider simplification of the issues.

5. Except as otherwise governed by the provision of these rules, adjudication hearings before the board shall be governed by the Louisiana Code of Evidence, insofar as the same may be applied.

Y. The board may make informal disposition, by default, consent order, agreement, settlement or otherwise of any adjudication pending before it. A consent order shall be considered by the board only upon the recommendation of the investigating officer.

Z.1. The final decision of the board in an adjudication proceeding shall, if adverse to the respondent, and otherwise may be, in writing, shall include findings of fact and conclusions of law, and shall be signed by the presiding officer of the hearing panel on behalf and in the name of the board.

2. Upon issuance of a final decision, a certified copy thereof shall promptly be served upon respondent's counsel of record, or upon respondent personally in the absence of counsel, in the same manner of service prescribed with respect to service of administrative complaints.

AA.1. A decision by the board in a case of adjudication shall be subject to rehearing, reopening, or reconsideration by the board pursuant to written motion filed with the board within ten days from service of the decision on respondent or on its own motion. A motion for rehearing, reopening, or reconsideration shall be made and served in the form and manner prescribed by §1304.Q and shall set forth the grounds upon which such motion is based, as provided by Subsection B of this Section.

2. The board may grant rehearing, reopening, or reconsideration if it is shown that:

a. the decision is clearly contrary to the law and the evidence;

b. the respondent has discovered since the hearing evidence important to the issues which he or she could not have with due diligence obtained before or during the hearing;

c. other issues not previously considered ought to be examined in order to properly dispose of the matter; or

d. there exists other good grounds for further consideration of the issues and the evidence in the public interest.

BB. Pursuant to R.S. 34:945(C)(3), the board of Examiners shall have the authority to impose a fine of not more than \$500 on any bar pilot, to reprimand or remove from a vessel any bar pilot, or to recommend to the Governor that the commission of any bar pilot be suspended or revoked, if after a hearing conducted in accordance with these rules and regulations and the administrative procedure act a bar pilot is found in violation of any rule or regulation adopted by the board of examiners.

CC. The authority established in these rules is in addition to and in no way limits the authority of the board to seek to remove or to remove a pilot from a vessel pursuant to the provisions of R.S. 34: 947 and R.S. 49:961(C).

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

§1305. Severability

A. If any provision of these rules and regulations is held to be invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to this end, provisions of these rules and regulations are declared to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

§1306. Effective Date

A. These rules and regulations shall be in full force and effective 90 days after final publication in the *Louisiana Register*. All bar pilots and bar pilot candidates shall be provided with a copy of these rules and regulations, as well as any amendments, after the rules and regulations are adopted by the board of examiners.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

Chapter 14. Standards of Conduct: Proper and Safe Pilotage

§1401. Adoption of Inland Navigational Rules

A. For those waters on which the Inland Rules apply within the jurisdiction of the bar pilots, the board of Examiners hereby adopts, by reference and in its entirety, the Inland Navigational Rules at 33 U.S.C. Section 2001, et seq. The Board of Examiners also adopts the navigation safety standards set forth in Title 33 CFR part 164 (p). All bar pilots and bar pilot applicants shall be subject to these Inland Navigational Rules and safety standards as adopted herein by reference.

Title 33 CFR Part 164 (P)

- (p) The person directing the movement of the vessel sets the vessel's speed with consideration for
- (1) The prevailing visibility and weather conditions;
 - (2) The proximity of the vessel to fixed shore and marine structures;
 - (3) The tendency of the vessel underway to squat and suffer impairment of maneuverability when there is small underkeel clearance;
 - (4) The comparative proportions of the vessel and the channel;
 - (5) The density of marine traffic;
 - (6) The damage that might be caused by the vessel's wake;
 - (7) The strength and direction of the current; and
 - (8) Any local vessel speed limit;

NOTE: These rules CFR 110.195 and 161.402 have not been adopted but should be reviewed by all pilots and applicants.

Title 33 CFR 110.195

- (a) The Anchorage Grounds. Unless otherwise specified, all anchorage widths are measured from the average low water plane (ALWP).
- (1) Pilottown Anchorage. An area 5.2 miles in length along the right descending bank of the river from mile 1.5 to mile 6.7 above Head of Passes, extending in width to 1600 feet from the left descending bank of the river.

Title 33 CFR 161.402

- (c) Navigation of South and Southwest Passes.
- (1) No vessel, except small craft and towboats and tugs without tows, shall enter either South Pass or southwest Pass from the Gulf until after any descending vessel which has approached within two and one-half (2 ½) miles of the outer end of the jettles and visible to the ascending vessel shall have passed to sea.
 - (2) No vessel having a speed of less than ten mph shall enter South Pass from the Gulf when the state of the Mississippi Rive exceeds 15 feet on the Carrollton Gage at New Orleans. This paragraph does not apply when Southwest Pass is closed to navigation.
 - (3) No vessel, except small craft and towboats and tugs without tows, ascending South Pass shall pass Franks Crossing Light until after a descending vessel shall have passed Depot Point Light.
 - (4) No vessel, except small craft and towboats and tugs without tows, shall enter the channel at the head of South Pass until after an ascending vessel which has reached Franks Crossing Light shall have passed through into the river.
 - (5) When navigating South Pass during periods of darkness no tow shall consist of more than one towed vessel other than small craft, and during daylight hours no tow shall consist of more than two towed vessels other than small craft. Tows may be in any formation, When towing on a hawser, the hawser shall be as short as practicable to provide full control at all times.
 - (6) When towing in Southwest Pass during periods of darkness no tow shall consist of more than two towed vessels other than small craft, and during daylight hours no tow shall consist of more than three towed vessels other than small craft.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

§1402. Ships Required To Take Pilots

A. All ships and vessels inward or outward bound throughout the entrances of the Mississippi River or other inland waterway connecting the Port of New Orleans with the Gulf of Mexico, or other outside waters, except those of 100 tons or less lawfully engaged in the coasting trade of the United States, shall take a bar pilot when one is offered; and any ship or vessel refusing or failing to take a pilot shall be liable to the pilot thus offering for pilotage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

§1403. Pilots' Duty of Remain on Board Ship until Crossing Bar

A. When boarding an outward bound ship or vessel at the boarding stations bar pilots shall remain on board the ship until she crosses the bar, unless permission is given by the master for the pilot to absent himself from the ship or vessel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

§1404. Acting as Pilot without License; Penalty

A. No person who is not commissioned a bar pilot shall board any ship or vessel required to take a bar pilot, for the purpose of piloting, or to pilot or attempt to pilot the same; and no person or pilot shall board any such ship or vessel for the purpose of piloting, except from the pilot boats on the bar pilot stations. Whoever violates the provisions of this Section shall be fined not less than \$1,500 nor more than \$5,000, or may be imprisoned for not more than six months, or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

§1405. Pilot's Duty to Exhibit License

A. Whoever offers to pilot a ship or other vessel shall, if required, exhibit to the commander thereof this identification card as a bar pilot, attested to by the chairman of the board of examiners; and if he refuses or neglects to do so, he shall not be entitled to any remuneration for any service he may render as pilot.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

§1406. Employing Pilot without Licenses; Liability of Vessel, Master or Owner

A. When a vessel, inward or outward bound to or from the Port of New Orleans employs as a pilot a person who is not a state commissioned bar pilot, when a bar pilot offers his services, the vessel, her captain and owners, shall be liable for a civil penalty of and shall forfeit to the state of Louisiana the sum of \$15,000 with privilege on the vessel, to be recovered before any court of competent jurisdiction. An action for forfeiture under this Section may be brought by the attorney general of Louisiana or by the Associated Branch Pilots of the Port of New Orleans. If the Associated Branch Pilots of the Port of New Orleans obtains a judgement hereunder, the court shall include in its judgement a reasonable attorney's fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

§1407. Employing Pilot without a State Commission; Penalties

A. No master, owner, or agent of a vessel required under R.S. 34:953 to take a state commissioned bar pilot shall, when a state commissioned bar pilot offers his services, employ as a pilot a person who is not a state commissioned bar pilot.

B. Whoever violated this Section shall be subject to a fine of not less than \$1,500 nor more than \$5,000, or imprisoned for not more than 6 months, or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

§1408. Offering of Services

A. As used in this Subpart, reference to the offering of a bar pilot or the offering of services by a bar pilot shall mean any offering of any advice or assistance with respect to

pilotage by the commissioned bar pilot or by his authorized representative, including but not limited to advice concerning weather, channel conditions, and other navigational conditions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

§1409. Prohibition of Interest of Members of Board of Commissioners of Port of New Orleans, in Pilot Boat or Pilotage

A. The members of the Board of Commissioners of the Port of New Orleans shall not be interested, directly or indirectly, in any bar pilot boat or pilotage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

§1410. Report by Pilot

A. In any case where a vessel being piloted by a bar pilot shall go aground, or shall collide with any object, or shall meet with any casualty, which causes injury to persons or damage to property, the pilot shall, as soon as possible report such incident to the Board.

B. The board, with or without complaint made against said pilot, shall investigate the incident.

C. The pilot shall make a complete report to the board within 10 days after the incident. This report may either be an oral or a written report as the board deems necessary.

D. These rules shall apply to any bar pilot engaged in piloting within the operating territory as defined by R.S. 34:941 et seq., whether the vessel be subject to compulsory pilotage or elective pilotage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

§1411. Pilots Duty to Report

A. Pilots, when notified, shall report in person to the board at the time and place so designated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

§1412. Pilots Summoned to Testify

A. Any bar pilot summoned to testify before the board shall appear in accordance with such summons and shall make answer under oath to any question put to him, touching any matter connected with the pilot's service or of the pilot grounds over which he is commissioned to pilot.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

Chapter 15. Drug And Alcohol Policy

§1501. Application

A. The board of examiners hereby adopts the following rules and regulations relating to a drug and alcohol abuse policy applicable to all State licensed bar pilots pursuant to the provisions of R.S. 34:941 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

§1502. Statement of Findings and Purposes

A. The Board of Examiners of Bar Pilots for the Port of New Orleans, Louisiana, (hereinafter "board") has always had a strong commitment to the pilot members of the Associated Branch Pilots for the Port of New Orleans to provide a safe work place and to establish programs promoting high standards of bar pilot health. Consistent with the spirit and intent of this commitment, the board has established this policy regarding drug and alcohol abuse. Its goal will continue to be one of establishing and maintaining a work environment that is free from the effects of alcohol and drug abuse.

B. While the board has no intention of intruding into the private lives of bar pilots, the board does expect bar pilots to report for work in a condition to perform their duties. The board recognizes that off-the-job, as well as on-the-job, involvement with alcohol and drugs can have an impact on the work place and on a bar pilot's ability to accomplish our goal of an alcohol and drug-free work environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

§1503. Bar Pilots' Assistance Program

A. Establishment. The board has designed a Bar Pilots' Assistance Program (BPAP) to provide help for any bar pilot whose personal alcohol or drug abuse problems may seriously affect his or her ability to function on the job, at home and in society.

B. Eligibility. The BPAP is available to all bar pilots and their spouses because an alcohol or drug abuse problem of a spouse may also affect a bar pilot's work and general well-being.

C. Procedure

1. At times, people find the solution to their own problems. When this cannot be accomplished, a BPAP staff person will discuss the bar pilot's problem with him and put him in touch with appropriate professional sources.

2. The bar pilot or spouse will then be advised of available alternatives for treatment, counseling or help, and assisted in arranging an appointment. When an eligible person requests assistance, that person decides whether or not he or she wants to pursue the recommendation.

3. The BPAP will either provide assistance by telephone or will arrange for a confidential consultation in their private offices.

D. Costs. If the counseled person needs to be referred to resources outside the BPAP, then he or she is responsible for all fees.

E. Confidentiality. A bar pilot's right to confidentiality and privacy in the BPAP is recognized. All information regarding referral, evaluation, and treatment will be maintained in a confidential manner and no BPAP matters will be entered in a bar pilot's personal file except as is mandated by law. A request for evaluation, diagnosis, information, or treatment will not affect this board's actions or recommendations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

§1504. Definitions

A. As used in this Chapter:

Alcoholic Beverage Any fluid, or solid capable of being converted into fluid, suitable for human consumption, which contains ethanol.

Drug All controlled dangerous substances as defined in R.S. 40:961.7. Some of the drugs which are illegal under Federal, State, or local laws include, among others, marijuana, heroin, hashish, cocaine, hallucinogens, and depressants and stimulants not prescribed for current personal treatment by an accredited physician.

Prescription Medication Any medication distributed by the authorization of a licensed physician as defined in R.S. 40:961.30.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

§1505. Prohibitions and Requirements of the Policy

A. A bar pilot who is under the influence of alcohol or drugs, or who possesses or uses alcohol or drugs on the job, has the potential for interfering with his own safety as well as that of the ship he is piloting and other vessels in the area, property, and personnel. Consistent with existing board practices, such conditions shall be proper cause for disciplinary action up to and including loss of state license as a bar pilot.

B.1. Off-the-job drug or alcohol abuse use that could adversely affect a bar pilot's job performance or could jeopardize the safety of others shall be proper cause for administrative or disciplinary action up to and including recommendation for revocation of a bar pilot's license.

2. bar pilots who are arrested for off-the-job drug or alcohol activity may be considered to be in violation of this policy. In deciding what action to take, the board will take into consideration the nature of the charges, the bar pilot's overall job performance as a pilot, and other factors relative to the impact of the bar pilot's arrest upon the conduct of bar pilotage and the safety threat posed to the public by the specific activity.

C.1. A pilot shall be free of use of any drug as defined in '1504.A.*Drug*, but excluding prescription medication as defined in §1504.A.*Prescription Medication*, so long as such use of prescription medication does not impair the competence of the pilot to discharge his duties.

2. bar pilots undergoing prescribed medical treatment with a controlled substance should report this treatment to the president of the board and to the Associated Branch Pilots doctor. The use of controlled substances as part of a prescribed medical treatment program is naturally not grounds for disciplinary action, although it is important for the board to know such use is occurring.

D. A bar pilot who voluntarily requests assistance in dealing with a personal drug or alcohol abuse problem may participate in the BPAP without the board taking action to fine or recommend action against a bar pilot, provided he stops any and all involvement with alcohol or drugs. Volunteering to participate in the BPAP will not prevent disciplinary action for a violation of this policy which has already occurred.

E.1. Narcotics or any other controlled dangerous substance made illegal by the laws of the United States or the state of Louisiana shall not be brought aboard or caused to be brought aboard any vessel no matter by whom owned, or property owned or leased by the Associated Branch Pilots.

2. Persons, or property, coming aboard any such vessel or property will be subject to inspection.

3. The board will cooperate fully with appropriate law enforcement agencies by reporting information with respect to the violation of laws regarding illegal substances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

§1506. Drug Testing

A. Drug Investigated. All bar pilots shall be subject to testing for the presence of marijuana, opiates, cocaine, amphetamines, and phencyclidine.

B. Types of Testing

1. All bar pilots shall submit to reasonable scientific testing for drugs when directed by the board. All procedures and activities conducted in connection with such testing shall comply with R.S. 49:1001 - 1015, as those provisions may be amended from time to time.

2. A bar pilot shall be required to submit a urine specimen to be tested for the presence of drugs under the following circumstances:

a. prior to recommendation for appointment, as a part of the physical exam required in §1106.A.7 of these Rules and Regulations;

b. after recommendation, whenever the pilot is required by the board to undergo a physical examination;

c. upon written complaint signed by the complainant in accordance with Chapter 16 of the Board of Review of Bar Pilots for the Port of New Orleans;

d. when the pilot is reasonably suspected of using drugs in violation of this policy;

e. at random at the discretion of the board; and

f. when the pilot is determined to be directly involved in a marine casualty or accident during the course of his activities as a pilot that results in:

i. one or more deaths;

ii. injury to any person which requires professional medical treatment beyond first aid;

iii. damage to property in excess of \$100,000; or

iv. actual or constructive loss of any vessel.

C. The board may designate a testing agency to perform any scientific test(s) necessary to detect the presence of drugs or their metabolites in a pilot's system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

§1507. Alcohol Testing

A. The board of examiners may require a pilot to submit to a blood alcohol test under the following circumstances:

1. upon written complaint signed by the complainant in accordance with Chapter 16 of the rules and regulations of the Board of Review of Bar Pilots of the Port of New Orleans;

2. when there exists reasonable suspicion that a pilot is performing his duties while under the influence of alcohol; or

3. when the pilot is determined to be directly involved in a marine casualty or accident of the type described in Section 806(B)(2)(d).

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

§1508. Violations of the Policy

A. Any Pilot found to be in violation of this policy may be reprimanded, fined, evaluated, and treated for drug use and have his commission suspended or revoked as provided by R.S. 34:945 and 962.

B. Any bar pilot reasonably suspected of bringing on board any vessel, no matter by whom owned, or property owned or leased by the Association, or causing to bring on board a vessel or property owned or leased by the Association, any narcotic or any other controlled dangerous substance made illegal by the laws of the United States of the State of Louisiana will be subject to disciplinary action either by the board or, upon recommendation of the board, by the Governor of the Louisiana.

C. A pilot shall be suspended from performing the duties of a pilot pending a hearing pursuant to R.S. 34:945 and 962 if:

1. he tests positive for any drug listed in §1506.A;

2. he uses any drug in violation of §1505.C;

3. he refuses to submit to reasonable scientific testing for drugs, fails to cooperate fully with the testing procedures, or in any way tries to alter the test results;

4. tests positive for alcohol; or

5. refuses to submit to a blood alcohol test, fails to cooperate fully with the testing procedure, or in any way tries to alter the test results.

D. Any pilot who is required to undergo evaluation or treatment for alcoholism or drug abuse shall do so at his own personal expense and responsibility; the physician, as well as the evaluation and treatment facility, must be approved by the board.

E. Any pilot who believes he would be in violation of these Rules if he were to perform his duties as a bar pilot is obligated to remove himself from duty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

§1509. Test Results

A. All drug test results shall be reviewed by a medical review officer in accordance with R.S. 49:1007.

B. Any pilot, confirmed positive, upon his written request, shall have the right of access, within seven working days of actual notice to him of his test results, to records relating to his drug tests and any records relating to the results of any relevant certification, review, or suspension/revocation-of-certification proceedings.

C. The results of the drug testing conducted pursuant to this policy and all information, interviews, reports, statements and memoranda relating to the drug testing shall, in accordance with R.S. 49:1012, be confidential and disclosed only to the board of examiners and the pilot tested, except that:

1. the board of examiners may report the results to the governor; and

2. in the event that the board of examiners determines that a hearing is required pursuant to R.S. 34:991 or 1001, there shall be no requirement of confidentiality in connection with such hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

Chapter 16. Administrative Policy

§1601. Application

A. The purpose of this section is to ensure compliance by the Board of Examiners of Bar Pilots for the Port of New Orleans with the provisions of the Louisiana Public Meeting Law and the records maintenance requirements of the provisions of R.S. 49:950, et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

§1602. Meetings of Examiners

A. All meetings and notices thereof of the board of examiners shall be conducted in accordance with the Open Meetings Law (R.S. 42.4 et seq.). The board shall meet at least once each quarter and meetings shall be called in accordance with R.S. 42:7.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

§1603. Record Keeping

A. The board of examiners shall maintain records and conduct its hearings in accordance with R.S. 49:950, et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 28:

Family Impact Statement

Although the family of a pilot subject to the disciplinary process set forth in the proposed Rules and Regulations for the Board of Examiners of Bar Pilots for the Port of New Orleans could potentially be impacted by the process and the possible discipline against the pilot, the proposed rules and regulations should not have any known or foreseeable impact on the family as defined by R.S. 49:972.D in terms of the general public, or on family formation, stability and autonomy.

1. What effect will this rule have on the stability of the family? The proposed rule will not affect the stability of the family.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? The proposed rule will not affect the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This rule will not affect the functioning of the family.

4. What effect will this have on family earnings and family budget? This rule will not affect the family earnings or family budget, unless a disciplined pilot is fined or has his license suspended after going through the disciplinary process, or is removed from a vessel.

5. What effect will this have on the behavior and personal responsibility of children? This rule will not affect the behavior or personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed rule? No, the action proposed is strictly a state enforcement function.

All interested persons are invited to submit written comments on the proposed rules and regulations for the Board of Examiners of Bar Pilots for the Port of New Orleans. Persons commenting should reference this proposed regulation by "Rules and Regulations of the Board of Examiners." Such comments must be received no later than November 20, 2001, at 4:30 p.m., and should be sent to Captain Thomas L. Ittmann, Board of Examiners of Bar Pilots for the Port of New Orleans, 3813 North Causeway Boulevard, Suite 100, Metairie, LA 70002 or to fax (504) 831-4536. Copies of this proposed regulation can be purchased at the above referenced address. Contact the board office at (504) 831-6615 for pricing information. Check or money order is required in advance for each copy.

Captain Thomas L. Ittmann
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Bar Pilot Regulations

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

The Board of Examiners of Bar Pilots for the Port of New Orleans anticipates that the additional costs associated with the implementation of the proposed rules will be \$1,500.00 for the fiscal year 2001-2002, and \$5,000.00 for the fiscal years 2002-2003 and 2003-2004. The board will formalize the procedures involved in investigating and prosecuting disciplinary complaints against Bar Pilots, thus better insuring the protection of the public, the rights of the accused Bar Pilot, and compliance with the requirements of the Louisiana Administrative Procedure Act. It is anticipated that a thorough investigation and prosecution of complaints against Bar Pilots will result in an increase in public safety.

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

The board is funded by billing all expenses, including the expenses of disciplinary procedures, to the Associated Branch Pilots of the Port of New Orleans, for whom the board serves as the examining and supervising authority. Funding will be derived from billings to the Associated Branch Pilots. Further, costs of a disciplinary proceeding may be assessed against the Bar Pilot who is the subject of the proceeding.

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

The proposed rules changes provide for legal representation for the board, together with the requirement that the legal counsel prosecuting the action be independent of the board or its counsel. Thus the current cost of the disciplinary process will increase by the cost of the legal fees. The costs of the disciplinary procedures, exclusive of attorney's fees, may be assessed against the pilot in accordance with the Administrative Procedure Act and a fine imposed according to the enabling statute for the Board of Review of Bar Pilots for the Port of New Orleans. Those costs not paid by a disciplined pilot will be billed to and paid by the Associated Branch Pilots for the Port of New Orleans.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is not anticipated that the rules changes will have any effect on competition and employment in either the public or private sector.

Thomas L. Ittmann
Chairman
0110#004

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of Financial Institutions

Collection Agency Examination
(LAC 10:XV.505)

Under the authority of the Administrative Procedure Act, R.S. 49:950 et seq., and in accordance with R.S. 9:3576.4 and Senate Concurrent Resolution 65 of the 2001 Regular Session of the Louisiana Legislature, the Commissioner of the Office of Financial Institutions gives Notice of Intent to adopt a rule which establishes the parameters of collection agency examinations by the Office of Financial Institutions.

If any provision or item of this regulation, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of the regulation which can be given effect without the invalid provisions, item, or application.

The proposed rule will have no adverse fiscal or economic impact, nor will it adversely impact family formation, stability, and autonomy.

Title 10

FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES, AND UCC

Part XV. Other Regulated Entities

Chapter 5. Debt Collection Agencies

Subchapter A. Examinations

§505. Parameters

A. Section 3576.2 of the Collection Agency Regulation Act, ("CARA"), R.S. 9:3576.1 et seq., empowers the Commissioner of Financial Institutions ("Commissioner") to regulate the licensing, operations, and practices of collection agencies and debt collectors to protect the welfare of the citizens of the State of Louisiana. R.S. 9:3576.5.D authorizes the Commissioner to examine the books, records, and accounts of all persons regulated by CARA. The Commissioner possesses the power to clarify, by rule, the parameters of the examinations performed by the Office of Financial Institutions. Those parameters include the examination of any and all of the records required to determine compliance with the CARA. Licensees are to maintain records in compliance with rules promulgated by the Commissioner. The Commissioner is further authorized to establish policies and procedures for the examination of in-state and out-of-state collection agencies and debt collectors; such policies and procedures may be modified from time to time to assure compliance with CARA.

AUTHORITY NOTE: Promulgated in accordance with R. S. 9:3576.4 and Senate Concurrent Resolution 65 of the 2001 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Office of Financial Institutions, LR 28:

All interested persons are invited to submit written comments on this proposed Rule no later than 4:30 p.m., November 21, 2001 to Gary L Newport, Chief Attorney, Office of Financial Institutions, P.O. Box 94095, Baton Rouge, LA 70804-9095, or by hand delivery to the Office of Financial Institutions, 8660 United Plaza Boulevard, Second Floor, Baton Rouge, LA 70809-7024.

John D. Travis
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Collection Agency Examination

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

There will be no additional cost associated with the implementation of this rule.

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

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

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

The proposed Rule will not cost or have any economic benefits to licensees or any other non-government units.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

John D. Travis
Commissioner
0110#047

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor
Division of Administration
Racing Commission

Pick Four (LAC 35:XIII.Chapter 116)

The Louisiana State Racing Commission hereby gives notice that it intends to adopt LAC 35:XIII.Chapter 116 APick Four,@ in order to attract more bettors by offering a new form of wagering. This Chapter is modeled after the APick Four@ rules of Pennsylvania, and is consistent with other major racing jurisdictions.

Title 35

HORSE RACING

Part XIII. Wagering

Chapter 116. Pick Four

§11601. Description; Selection; Principle

A. The pick four is a form of pari-mutuel wagering. Bettors select the first horse in each of four consecutive races designated as the pick four by the permit holder. The principle of a pick four is in effect a contract by the purchaser of a pick four ticket to select the winners of each of the four races designated as the pick four. The sale of pick four tickets other than from pari-mutuel machines shall be deemed illegal and is prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Division of Administration, Racing Commission LR 28:

§11603. Wagering Pool

A. The pick four pool shall be held entirely separate from all other pools and is no part of a daily double, exacta, trifecta, quinella or any other wagering pool. The pick four pool is a pool wherein the bettor is required to select four consecutive winning horses and is not a parlay.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Division of Administration, Racing Commission LR 28:

§11605. Denominations

A. Pick four tickets shall be sold in not less than \$1 denominations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Division of Administration, Racing Commission LR 28:

§11607. Approval; Notation

A. Races in which pick four pools are conducted shall be approved by the Commission and clearly designated in the program, and pick four tickets will be clearly marked as pick four tickets.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Division of Administration, Racing Commission LR 28:

§11609. Procedure

A. After the wagering closes for the first race of the four designated pick four races, the commission will be deducted from the pari-mutuel pool in accordance with Louisiana law. The remaining net pool, subject to distribution among winning ticket holders shall be distributed among the holders of tickets which correctly designate the winner in all four races comprising the pick four and the aggregate number of winning tickets shall be divided into the net pool and be paid the same payoff price.

1. In the event no ticket is sold combining winners of the four races comprising the pick four, the holders of tickets which include the winners of any three of the four races shall be deemed winning ticket holders, and the aggregate number of winning tickets shall be divided into the net pool and be paid the same payoff price.

2. In the event no ticket is sold combining the winners of three of the four races comprising the pick four, the holders of tickets which include the winners of any two of the four races shall be deemed winning ticket holders, and the aggregate number of winning tickets shall be divided into the net pool and be paid the same payoff price.

3. In the event no ticket is sold combining the winners of two of the four races comprising the pick four, the holders of tickets which include the winner(s) of any one of the four races shall be deemed winning ticket holders, and the aggregate number of winning tickets shall be divided into the net pool and be paid the same payoff price.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Division of Administration, Racing Commission LR 28:

§11611. No Winning Ticket

A. In the event no winning ticket is sold that would require the distribution of the pick four pool as mentioned in §11609, the association shall make a complete refund of the pick four pool.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Division of Administration, Racing Commission LR 28:

§11613. Cancelled Races

A. If for any reason one or more of the races comprising the pick four is/are cancelled or declared "no race," the net pool shall be distributed as provided in §11609.

B. In the event the pick four pool is opened and wagers accepted, and all four races comprising the pick four are cancelled for any reason, the association shall make a complete refund of the pick four pool.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Division of Administration, Racing Commission LR 28:

§11615. Dead Heats

A. In the event of a dead heat for win between two or more horses in any pick four race, all such horses in the dead heat for win shall be considered as winning horses in the race for the purpose of calculating the pool.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Division of Administration, Racing Commission LR 28:

§11617. Closing Time; Disclosure

A. No pari-mutuel ticket for the pick four pool shall be sold, exchanged or cancelled after the time of the closing of wagering in the first of the four races comprising the pick four except for such refunds on pick four tickets as required by this regulation, and no person shall disclose the number of tickets sold in the pick four pool or the number or amount of tickets selecting winners of pick four races until such time as the stewards have determined the last race comprising the pick four to be official. At the conclusion of the third of the four races comprising the pick four, the association may display potential distributions to ticket holders depending upon the outcome of the fourth race of the pick four.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Division of Administration, Racing Commission LR 28:

§11619. Entry or Field

A. Those horses constituting an entry or a field as defined within the rules of racing shall race in any pick four race as a single wagering interest for the purpose of the pick four pari-mutuel pool calculations and payouts to the public. A scratch after wagering has begun of any part of an entry or field selection in such race shall have no effect with respect to the status of such entry and/or field as a viable wagering interest.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Division of Administration, Racing Commission LR 28:

§11621. Scratches and Non-Starters

A. At anytime after wagering begins on the pick four pool should a horse, entire betting entry or field be scratched, excused or declared a non-starter in any pick four race, no further tickets selecting such horse, betting entry or field shall be issued, and wagers upon such horse, betting entry or field, for purposes of the pick four pool shall be deemed wagers upon the horse, betting entry or field upon which the most money has been wagered in the win pool at the close of win pool betting for such race. In the event of a money tie in the win pool, the tied horse, betting entry or field with the lowest running number, as designated by the official racing program, shall be designated as the favorite for substitution purposes. For the purpose of this Section, when horses are prevented from starting by any malfunction of the starting gate itself they shall be considered as having been excused by the stewards. After close of betting, there shall be no refund, except as provided in §11611 or §11613.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Division of Administration, Racing Commission LR 28:

§11623. Display

A. These rules shall be prominently displayed in the betting area of the association conducting the pick four.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Division of Administration, Racing Commission LR 28:

§11625. Unforeseen Circumstances

A. Should circumstances occur which are not foreseen in these rules, questions arising thereby shall be resolved by the association and/or commission in accordance with general pari-mutuel practices. Decisions regarding distribution of the pick four pools shall be final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Division of Administration, Racing Commission LR 28:

This proposed rule has no known impact on family formation, stability, and/or autonomy as described in R.S. 49:972.

The domicile office of the Louisiana State Racing Commission is open from 8:30 a.m. to 5 p.m., and interested parties may contact Charles A. Gardiner III, executive director, or C. A. Rieger, assistant director, at (504) 483-4000 (holidays and weekends excluded), or by fax (504) 483-4898, for more information. All interested persons may submit written comments relative to this proposed rule through November 12, 2001, to 320 North Carrollton Avenue, Suite 2-B, New Orleans, LA 70119-5100.

Charles A. Gardiner III
Executive Director

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

RULE TITLE: Pick Four

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

There are no anticipated costs or savings to state or local governmental units associated with these rules, other than those

one-time costs directly associated with the publication of these rules.

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

The effect on revenue collections is anticipated to be positive (however not measurable at this time) due to the potential of increased handle, which in turn could generate additional revenue collections for state and local governmental units.

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

This action primarily benefits race track patrons, racing associations and horsemen by generating an added interest in betting due to a new form of exotic wagering.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment as a result of the proposed rule.

Charles A. Gardiner III
Executive Director
0109#013

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Board of Nursing**

Authorized Practice
(LAC 46:XLVII.4513)

Notice is hereby given, in accordance with the provisions of the Administrative Procedure Act, R.S.49:950 et seq., that the Board of Nursing (board) pursuant to the authority vested in the board by R.S.37:918, R.S.37:919 intends to adopt rules amending the Professional and Occupational Standards pertaining to the authorized practice of Advanced Practice Registered Nurses. The proposed amendments of the rules are set forth below.

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XLVII. Nurses

Subpart 2. Registered Nurses

Chapter 45. Advanced Practice Registered Nurses

§4513. Authorized Practice

A. - C.2 y

3. Definitions as used in this Part:

* * *

*Collaborating Physician*Ca physician in active practice with whom the APRN has developed and signed a collaborative practice agreement for limited prescriptive and distributing authority and who holds a current, unencumbered, unrestricted and valid medical license issued or recognized by the Louisiana State Board of Medical Examiners and is in good standing with no pending disciplinary proceedings, and practices in accordance with rules of the Louisiana State Board of Medical Examiners. A collaborating physician shall have current hospital privileges prior to an APRN seeking hospital privileges at the same institution.

* * *

*Joint Administration Committee or Committee*Cthe joint committee comprised of five members designated by

the board and five members designated by the Louisiana State Board of Medical Examiners as follows:

- i. one APRN practicing in a rural area, appointed by the board from a list submitted by the Louisiana Association of Nurse Practitioners;
- ii. one APRN practicing in an urban area appointed by the board from a list submitted by Louisiana State Nurses Association;
- iii. three registered nurses on the board appointed by the board;
- iv. two physicians on the Louisiana State Board of Medical Examiners appointed by the Louisiana State Board of Medical Examiners;
- v. one physician that collaborates with an APRN practicing in a rural area appointed by the Louisiana State Board of Medical Examiners from a list submitted by the Louisiana State Medical Society;
- vi. one physician that collaborates with an APRN practicing in an urban area appointed by the Louisiana State Board of Medical Examiners from a list submitted by the Louisiana State Medical Society;
- vii. one physician that collaborates with an APRN appointed by the Louisiana State Board of Medical Examiners from a list submitted by the Louisiana Medical Association.

* * *

Under Physician Direction the limited prescriptive authority as approved by the Joint Administration Committee and demonstrated in the collaborative practice agreement as provided for in R.S. 37:913(9). Physician direction of the APRN is essential and implies that there is informed concurrence of the limited prescriptive authority actions of the APRN, in accordance with written clinical practice guidelines in existence between the collaborating physician and the APRN. Although physician direction shall not be construed in every case to require the physical presence of the collaborating physician, he shall be within a reasonable distance to provide timely response to medical emergencies and he and the APRN must have the capability to be in contact with each other by telephone or other telecommunications devices. Reasonable distance implies that the collaborating physician is within the local area of the APRN's practice site or sites and is not attending an educational program or on vacation in another state or country.

* * *

4.a. - d. ¶

- i. 500 hours of clinical practice as a licensed APRN within the last 6 months in the clinical specialty for which the applicant was educationally prepared as an APRN immediately prior to applying for limited prescriptive and distributing authority; practice in another state as a licensed APRN may be accepted to meet this requirement;
- ii. successful completion of a minimum of 36 contact hours of education in advanced pharmacotherapeutics obtained as a component of a formal educational program preparing registered nurses for advanced practice or continuing education programs for advanced practice, approved by the board, within the 4-year time period immediately prior to the date of initial application for prescriptive and distributing authority with at least 12 hours having been obtained within two years prior

to application. The APRN shall submit the continuing education advanced pharmacotherapeutics curriculum to the board for review and approval. The APRN shall obtain at least 2/3 of the required pharmacotherapeutic hours by attending continuing education programs and may obtain 1/3 of the required pharmacotherapeutic hours by non-lecture programs, such as computer assisted instruction and/or self-study accredited by a national professional accrediting organization approved by the board. Continuing Medical Units may be used as continuing education provided that the offering documents the number of advanced pharmacotherapeutic hours in the educational offering. In order for the continuing education course to be approved by the board, the course shall include:

4.d.i.(a). - v.(c). ¶

(i). is available by telephone or direct telecommunications for consultation, assistance with medical emergencies, or patient referral; in the absence of the collaborating physician the following shall apply:

[a]. the back-up physician or physicians shall be in good standing and approved by the medical board and review and sign the collaborative practice agreement;

[b]. in the event that the collaborating physician fails to name a back-up physician, the collaborative practice agreement shall clearly state that the APRN will not prescribe in the absence of the collaborating physician;

4.d.v.(c).(ii). - (e). ¶

vi. the committee shall develop guidelines extending or modifying the requirements of "under physician direction", as defined in LAC 46: XLVII.4513.C.3, as well as the requirements of LAC 46:XLVII.4513.C.4.d.v. (c), for an APRN who is employed by or who contracts with the Louisiana Department of Health and Hospitals' Office of Public Health to specifically provide family planning, Human Immunodeficiency Virus ("HIV") infection or sexually transmitted disease treatment or services and Rural Health Clinics.

4.d.vii. - b. ¶

c. An APRN who is granted limited prescriptive authority shall not prescribe or distribute any controlled substance as defined, enumerated or included in federal or state statutes or regulations, 21 CFR 1308.11-15., R.S. 40:964, or any substance which may hereafter be designated a controlled substance by amendment or supplementation of the cited regulations and statute. The committee may authorize an APRN with limited prescriptive authority to prescribe or distribute controlled substances on an individual practice basis. An APRN who is so authorized shall provide their Drug Enforcement Administration registration number on all written prescriptions and be furnished on all oral prescriptions and shall comply with all scheduled drug prescription requirements in accordance with LAC 46:LIII.3531, Schedule Drug Prescription Requirements.

i. An APRN who is granted limited prescriptive authority may request approval of the Joint Administration Committee to prescribe and distribute controlled substances to the extent expressly authorized by the APRN's collaborating physician provided that:

(a). the APRN has been approved by the Joint Administration Committee to prescribe and distribute noncontrolled substances;

(b). the APRN has been approved by the board to prescribe and distribute noncontrolled substances;

(c). the APRN has practiced with limited prescriptive and distributing authority with the same collaborating physician in the APRN's licensed category and area of specialization for 500 hours immediately preceding the initial request and 160 hours of collaborative practice for each additional request;

(d). the APRN's application, provides to the satisfaction of the Joint Administration Committee, an identified need for controlled substances within the patient population served by the collaborative practice;

(e). controlled substances utilization is expressly contained in the collaborative practice agreement, which specifies the circumstances, limitations and extent to which such substances may be prescribed or distributed; and

(f). the collaborative practice agreement contains acknowledgment of responsibility by the collaborating physician to ensure that the controlled substance authority of an APRN is utilized in a manner that is consistent with any rule or regulation imposed upon his practice.

ii. Controlled substances which may be prescribed or distributed by an APRN shall be limited to Schedule III, IV and V and shall be limited to, consistent with, and exclusively within the parameters of the practice specialty of the collaborating physician and the APRN's licensed category and area of specialization. The committee may approve an APRN to prescribe certain drugs to treat Attention Deficit Disorder (ADD).

iii. An APRN granted authority to prescribe or distribute controlled substances shall not utilize such substances in connection with the treatment of:

(a). chronic or intractable pain, as defined in LAC 46:XLV.6515 - 6923;

(b). obesity, as defined in LAC 46:XLV.6901 - 6913; or

(c). oneself, a spouse, child or any other family member.

iv. Any APRN authorized to prescribe controlled substances shall provide to the Board a copy of his or her Louisiana Controlled Dangerous Substance permit and Drug Enforcement Administration registration number prior to prescribing or distributing controlled substances. A place for an APRN to write their DEA number, as well as the name, address and telephone number of the collaborating physician, shall be pre-printed on the prescription pad and a sample of the prescription shall be submitted to the board for approval prior to prescribing or distributing controlled substances.

d. ÿ

e. Each year an APRN with limited prescriptive authority shall obtain six contact hours of continuing education in pharmacotherapeutics in their category and area of specialization. Documentation of completion of the continuing education contact hours required for prescriptive authority shall be submitted at the time of the APRN's license renewal. The APRN shall obtain at least 2/3 of the required advanced pharmacotherapeutic hours by attending continuing education and may obtain 1/3 of the required advanced pharmacotherapeutic hours by non-lecture offerings or Continuing Medical Education Units (CMEs) provided that the offering documents the number of

advanced pharmacotherapeutic hours in the educational offering. In order for the continuing education program to be approved by the board, the program shall:

i. be provided by a board approved national certifying organization or provider approved by the board;

5.e.ii. - f. ÿ

g. Prior to changes with the collaborating physician, or physicians or coverage physician, when applicable, the APRN shall notify the board in writing requesting approval of such changes. The board may approve changes in the practice site or sites when both the collaborating physician(s) and APRN has been previously approved by the Committee and all other requirements are met as set forth in these rules. The APRN shall notify the board in writing within thirty days of all changes regarding practice sites.

5.h. - 6. ÿ

a. Receive and distribute free drug samples and other gratuitous medications supplied by drug manufacturers, other than controlled substances, that shall:

6.a.i. - 10. ÿ

11. Reinstatement. AN APRN who has been approved by the Joint Administration Committee for limited prescriptive and distributive authority and who has ceased practicing limited prescriptive authority for more than 12 months may apply for reinstatement of such authority.

a. In the event that the time period is greater than 12 months but less than 4 years the APRN shall:

i. meet the requirements as set forth in LAC 46:XLVII.4513.4.a, b, and c.

ii. provide evidence of 6 contact hours of continuing education in pharmacotherapeutics for each 12-month period of non-prescribing in their category and area of specialization. The APRN shall obtain at least 2/3 of the required advanced pharmacotherapeutic hours by attending continuing education and may obtain 1/3 of the required advanced pharmacotherapeutic hours by non-lecture offerings or Continuing Medical Education Units (CMEs) provided that the offering documents the number of advanced pharmacotherapeutic hours in the educational offering. In order for the continuing education program to be approved by the Board, the program shall:

(a). be provided by a board approved national certifying organization or provider approved by the board;

(b). include content relevant to advanced practice nursing and the use of pharmacological agents in the prevention of illness, and the restoration and maintenance of health.

b. In the event that the time period is greater than four years the APRN shall meet the requirements as set forth in LAC 46:XLVII.4513.4.a., b., c., and d.ii.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.K, and R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 22:981 (October, 1996), amended by the Board of Nursing and Board of Medical Examiners, LR 23:1245 (June 1999), amended by the Board of Nursing, LR 27:727 (May 2001), LR 28:

Family Impact Statement

The Louisiana State Board of Nursing hereby issues this Family Impact Statement: the proposed rule related to the Board's appointing authority will have no known impact on family formation, stability, and autonomy, as set forth in R.S.49:972.

Interested persons may submit written comments on the proposed rules to Barbara L. Morvant, Executive Director, Louisiana State Board of Nursing, 3510 North Causeway Boulevard, Suite 501, Metairie, LA, 70002. The deadline for receipt of all written comments is 4:30 p.m. on November 9, 2001.

Barbara L. Morvant
Executive Director

However, it is anticipated that 50 percent of the 327 APRNs who have Limited Prescriptive and Distributing Authority will apply for the privileges. It is assumed that the expanded scope of practice for these persons will result in an increase in the numbers and medical conditions of clients they can treat; thereby resulting in increased employment and job security for those persons with Controlled Substance privileges.

Barbara L. Morvant
Executive Director
0110#096

H. Gordon Monk
Staff Director
Legislative Fiscal Office

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Authorized Practice**

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

It is anticipated that no additional staff will be needed to implement these rule changes, although the changes will increase the current staff workload. Additional operating expenses including printing and postage will be required, as well as the addition of two members to the Joint Administration Committee.

The anticipated costs for the FY 2001/2002 will be \$4,992 (\$600 for postage and printing and estimated travel for flight costing \$250 x 6 approximate meetings per year x 2 additional members of JAC = \$3,000 + meals @ \$36/day x 6 meetings per year x 2 additional members = \$432 + lodging @ \$80/day x 6 meetings per year x 2 additional JAC members = \$960/year, with a total of \$4,992 for FY 2001/2002). At an estimated addition of \$100/year for inflation of travel costs, the estimated total cost for FY 2002/2003 is \$5,092 and \$5,192 for FY 2003/2004.

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

The number of advance practice registered nurses who requested a change in practice site average six each meeting. With six meetings per year, this equals to 36 APRNs who request a change in practice site. With the deletion of the \$25 Change of Site fee for APRNs who have collaborating physicians who are previously approved, this would equal to \$900 the first year. Taking into account the increasing numbers of APRNs who request Limited Prescribing and Distributing Authority, the amount was increased by \$100 per year.

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

Those individuals with limited prescriptive and distributive authority who request and are granted privileges to prescribe controlled substances within their collaborative practice agreement with their physician will expand their scope of practice, thus benefiting these individuals. Furthermore, the deletion of the \$25 fee for a change in practice site will decrease these individuals operating costs.

The public will also benefit from the increased scope of the advanced practice registered nurse with prescriptive privileges who can prescribe controlled substances within their collaborative practice agreement with their physician by decreased wait time for the physician and availability of the advanced practice registered nurse.

These applicants will be required to demonstrate meeting the same educational requirements and certification requirements as accepted by the Board for limited prescribing and distributing authority and will have to be approved by the Joint Administrative Committee on an individual basis.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

An estimate of the impact of the proposed action on competition and employment is unknown at this time.

NOTICE OF INTENT

**Department of Health and Hospitals
Office of Public Health**

**Emergency Medical Technician Training
Fee Schedule (LAC 48:XI.3501)**

The Department of Health and Hospitals, Office of Public Health, in accordance with R.S. 40:1232.1, R.S. 40:5 and the Administrative Procedure Act, R.S. 49:950 et seq., proposes to amend LAC 48 XI.3501, Fee Schedule. This text is being amended to establish a fee schedule for emergency medical services personnel, to provide exceptions, and to provide for related matters. These fees were legislated to offset the operating costs as incurred in the required examination, certification or recertification of emergency medical services personnel.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed rule on the family has been considered. The proposed rule does not appear to have any significant impact on the family functioning, stability or autonomy as described in R.S. 49:972.

Title 48

PUBLIC HEALTH GENERAL

Part XI. Hospitals

**Chapter 35. Emergency Medical Technician Training
§3501. Fee Schedule**

A. - B. ...

C. The Bureau of Emergency Medical Services shall set fees for emergency medical personnel under the following conditions.

1. Volunteers. The bureau shall not require or collect any fee or charges for certification or recertification of emergency medical personnel who:

- a. serve as such on a voluntary basis; and
- b. receive no compensation of any kind for such services.

2. Public Exceptions. The bureau shall not set the fee for certification of an emergency medical technician basic to exceed \$15 for any individual who:

- a. is an employee of a municipal law enforcement agency; or
- b. fire service; or
- c. fire protection district, who does not perform emergency medical services outside of the individual's official governmental responsibilities for any form of compensation.

3. The bureau shall not set the fee for recertification of an emergency medical technician-basic to exceed \$10 for any individual who:

- a. is an employee of a municipal law enforcement agency; or
- b. fire service; or
- c. fire protection district, who does not perform emergency medical services outside of the individual's official governmental responsibilities for any form of compensation.

4. The bureau shall assess fees for testing and certification based on the following schedule:

- a. test fees:
 - i. first responderCwritten only: \$15;
 - ii. first responderCwritten only (out-of-state): \$15;
 - iii. basic initial written and practical: \$60;
 - iv. basic entire practical exam: \$30;
 - v. basic partial practical: \$15;
 - vi. basic testing/retestingCwritten only: \$15;
 - vii. basic testing/retestingCwritten only (out-of-state): \$15;
 - viii. intermediate initial written and practical: \$75;
 - ix. intermediate initial written and practical (out-of-state): \$100;
 - x. intermediate retest entire practical: \$50;
 - xi. intermediate retest entire practical (out-of-state): \$65;
 - xii. intermediate retest partial practical: \$30;
 - xiii. intermediate retest partial practical (out-of-state): \$30;
 - xiv. intermediate testing/retestingCwritten exam only: \$15;
 - xv. intermediate testing/retestingCwritten exam only (out-of-state): \$15;
 - xvi. paramedic initial written and practical: \$90;
 - xvii. paramedic initial written and practical (out-of-state): \$125;
 - xviii. paramedic retesting entire practical: \$60;
 - xix. paramedic retesting entire practical (out-of-state): \$75;
 - xx. paramedic retesting partial practical: \$35;
 - xxi. paramedic retesting partial practical (out-of-state): \$40;
 - xxii. paramedic testing/retesting written: \$15;
 - xxiii. paramedic testing/retesting written (out-of-state): \$15.
- b. Certification fees are charged as follows:
 - i. first responder initial certification: \$10;
 - ii. basic emergency medical technician initial certification: \$30;
 - iii. intermediate initial certification: \$40;
 - iv. paramedic initial certification: \$50;
 - v. first responder recertification: \$5;
 - vi. basic emergency medical technician recertification: \$25;
 - vii. intermediate recertification: \$35;
 - viii. paramedic recertification: \$45;
 - ix. basic EMT reciprocity: \$60;
 - x. intermediate reciprocity: \$80;
 - xi. paramedic reciprocity: \$100.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1232.1 (Act 515 of the 2001 Louisiana Legislature).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Hospitals, LR 13:246

(April 1987), amended by the Department of Health and Hospitals, Office of Public Health, LR 15:478, 512 (June 1989), LR 28:

Interested persons may submit written comments to Nancy Bourgeois, Bureau of EMS, at 161 Third Street, Baton Rouge, LA 70801. She is responsible for responding to inquiries regarding this proposed rule. A public hearing on this proposed rule is scheduled for November 27, 2001, 1 p.m. at the Bureau of Emergency Medical Services Office, 161 Third Street, Baton Rouge, LA. At that time, all interested persons will be afforded an opportunity to submit verbal and written comments or any other information pertinent to this proposed rule. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**
**RULE TITLE: Emergency Medical Technician Training
Fee Schedule**

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

It is anticipated that the agency will incur a one-time implementation cost of approximately \$160 during FY 01-02 for publication of the required notices in the *Louisiana Register*.

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

Based upon the legislatively authorized revised fee structure as contained in the proposed rule, the agency could increase self-generated fees by approximately \$180,000 annually beginning FY 01-02. These projected self generated fees will offset federal funding for the emergency medical services program beginning FY 01-02

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

Emergency medical services personnel working for fire, rescue, ambulance, industrial, casinos settings, etc. would be directly affected by the proposed fee schedule. The proposed rule exempts volunteer emergency medical services personnel from the proposed fees if they meet criteria as listed in the proposed rule.

In the proposed rule, non-exempt individuals seeking the required testing prior to their emergency medical services certification would incur a testing cost ranging from \$15 for the first responder written examination up to a cost of \$125 for the paramedic initial written and practical examination (out of state). Required individual emergency medical services certification cost could range from \$5 for the first responder recertification up to a cost of \$100 for a paramedic reciprocity certification. However, if an emergency medical service agency/employer from the private or public sector chooses to pay the proposed fees for staff, then the amount paid by that agency/employer will increase commensurate with the number of staff examinations required and the desired certification levels being requested.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule should not have a significant impact on competition or employment.

Madeline W. McAndrew
Assistant Secretary
0110#052

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Office of the Secretary Bureau of Community Supports and Services

Home and Community Based Services Waiver Program Mentally Retarded/Developmentally Disabled Waiver Allocation of Waiver Slots

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services proposes to adopt the following rule under the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This proposed rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the allocation of slots in the Mentally Retarded/Developmentally Disabled (MR/DD) Waiver in a rule published June 20, 1997 (*Louisiana Register*, Volume 23, Number 6). The June 20, 1997 rule was subsequently amended to include Hammond Developmental Center residents or their alternates in the allocation of waiver slots previously reserved for residents of the Pinecrest Developmental Center (*Louisiana Register*, Volume 24, Number 3). The March 20, 1998 rule was later amended to increase the waiver slots allocated for foster children in the custody of the Office of Community Services and residents of public developmental centers and private ICF-MR facilities (*Louisiana Register*, Volume 25, Number 9). The Bureau of Community Supports and Services amended the September 20, 1999 rule to update the methodology of slot allocation to better meet the needs of citizens with disabilities in the state of Louisiana (*Louisiana Register*, Volume 27, Number 9). The bureau now proposes to adopt a rule to continue the provisions contained in the October 1, 2001 emergency rule.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed rule on the family has been considered. This proposed rule has no known impact on family functioning, stability, and autonomy as described in R.S. 49:972.

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services amends the provisions contained in the September 20, 1999 rule governing the programmatic allocation of waiver slots for the Mentally Retarded/Developmentally Disabled (MR/DD) Waiver as follows.

Programmatic Allocation of Slots for MR/DD Waiver

The Bureau of Community Supports and Services (BCSS) request for services registry, formerly the MR/DD waiver waiting list, shall be used to evaluate individuals for waiver eligibility. This request for services registry will be used to fill all waiver slots administered by the BCSS for persons with mental retardation or developmental disabilities. BCSS shall notify the next individual on the request for services registry, in writing, that a slot is available and that he/she is next in line to be evaluated for possible waiver slot assignment. The individual then chooses a case manager who will assist in the gathering of the documents needed for

both the financial and medical certification eligibility process. If the individual is determined to be ineligible, either financially or medically, that individual is notified in writing. The next person on the request for services registry is notified as stated above and the process continues until an eligible person accepts a waiver slot. A waiver slot is assigned to an individual when eligibility is established and the individual is certified. Before placing a person in an appropriate slot, the person must consent to the removal of their name from the request for services registry. Utilizing these procedures, waiver slots shall be allocated to the targeted groups cited as follows:

1. A minimum of 90 slots shall be available for allocation to foster children in the custody of the Office of Community Services (OCS), who successfully complete the financial and medical certification eligibility process and are certified for the waiver. OCS is the guardian for children who have been placed in their custody by court order. OCS shall be responsible for assisting the individual in gathering the documents needed in the eligibility determination process, preparing the comprehensive plan of care, and submitting the plan of care document to Medicaid.

2. A minimum of 160 slots shall be available for residents of Pinecrest and Hammond Developmental Centers, or their alternates, who have chosen to be deinstitutionalized, who successfully complete the financial and medical certification eligibility process, and are certified for the waiver. In situations where alternates are used, an alternate shall be defined as a resident of an ICF/MR facility who chooses to apply for waiver participation, is eligible for the waiver, and vacates a bed in the ICF/MR facility for an individual being discharged from a publicly operated ICF/MR developmental center. A Pinecrest or Hammond Developmental Center resident must be given freedom of choice in selecting a private ICF-MR facility placement in the area of the resident's choice in order to designate the resident being discharged from the ICF-MR facility as an alternate. The bed being vacated in the ICF/MR facility is reserved for placement of a resident of a publicly operated ICF/MR developmental center for 120 days.

3. Any slots vacated during the waiver year shall be available to residents leaving any publicly operated ICF/MR or their alternates. In situations where alternates are used, an alternate shall be defined as a resident of an ICF/MR facility who chooses to apply for waiver participation, is eligible for the waiver, and vacates a bed in the ICF/MR facility for an individual being discharged from a publicly operated ICF/MR developmental center. The bed being vacated in the ICF/MR is reserved for placement of a resident of a publicly operated ICF/MR developmental center for 120 days.

4. For those individuals who do not complete the transition process and move from either a publicly operated developmental center or an ICF/MR facility during the 120-day reservation period, the waiver slot will be converted to a community slot for processing. Justification to exceed the 120-day reservation period may be granted by the BCSS as needed.

5. Ten waiver slots shall be used for qualifying persons with developmental disabilities who are clients of the Developmental Neuropsychiatric Program (DNP) administered by Southeast Louisiana State Hospital, for a pilot project between the BCSS, the Office for Citizens with

Developmental Disabilities (OCDD), and the Office of Mental Health (OMH) in the development of coordinated wrap around services for individuals choosing to participate in the waiver and who meet the financial and medical eligibility requirements for the waiver.

6. Funded slots, not addressed above, shall be available for allocation to the next individual on the BCSS request for services registry who successfully completes the financial and medical certification eligibility process and is certified for the waiver.

The Bureau of Community Supports and Services has the responsibility to monitor the utilization of waiver slots. At the discretion of the BCSS, specifically allocated slots may be reallocated to better meet the needs of citizens with disabilities in the state of Louisiana.

Interested persons may submit written comments to Barbara Dodge, Bureau of Community Supports and Services, 446 North Twelfth Street, Baton Rouge, LA 70802-4613. She is responsible for responding to inquiries regarding this proposed rule. A public hearing on this proposed rule is scheduled for Tuesday, November 27, 2001 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Home and Community Based Services Waiver ProgramC Mently Retarded/Developmentally Disabled WaiverC Allocation of Waiver Slots

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

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact for SFY 2001-02, 2002-03, and 2003-04. It is anticipated that \$240 (\$120 SGF and \$120 FED) will be expended in SFY 2001-2002 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will not impact federal revenue collections.

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

Implementation of this proposed rule should allow additional individuals to be served in the MR/DD Waiver, specifically the dually diagnosed and individuals in the custody of Department of Social Services, Office of Community Support, as there will be an increase in the number of slots allocated to these individuals.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Ben A. Bearden
Agency Head or Designee
0110#061

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Office of the Secretary Bureau of Community Supports and Services

Home and Community Based Services Waiver Program Mentally Retarded/Developmentally Disabled Waiver Service Definitions

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services proposes to adopt the following rule under the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This proposed rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule implementing a Home and Community Based Services waiver designed as an alternative to institutionalization for Medicaid eligible individuals who would otherwise require an ICF-MR level of care (*Louisiana Register*, Volume 16, Number 7). The Mentally Retarded/Developmental Disabled (MR/DD) Waiver was designed to meet the needs of these individuals by providing an array of community and family support services. The July 1990 rule contained service definitions and provisions governing provider qualifications, service delivery and extent of services. The Bureau of Community Supports and Services (BCSS) now proposes to adopt a rule to amend the service definitions contained in the July 20, 1990 rule and to clarify service restrictions and documentation requirements. In addition, BCSS proposes to establish policy clarifying the provision of transportation by waiver service providers.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed rule on the family has been considered. This proposed rule has no known impact on family functioning, stability, and autonomy as described in R.S. 49:972.

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services (BCSS) amends the definitions for the Mentally Retarded/Developmental Disabled (MR/DD) Waiver services contained in July 20, 1990 rule and clarifies service restrictions, documentation requirements and the provision of transportation by waiver service providers.

I. General Provisions

A. Licensure. All providers of MR/DD waiver services shall meet the applicable State and local licensing standards for these services.

B. Documentation. The following documentation requirements apply to all MR/DD waiver services. The necessity for all services must be documented on the approved comprehensive plan of care (CPOC). It is the responsibility of the service provider to provide detailed documentation of services offered to waiver recipients for the purposes of continuity of care/support for the individual and the need for effective monitoring of progress toward outcomes and services received. This documentation is an on-going chronology of the activities undertaken on behalf of the recipient. Progress notes must be of sufficient content

to accurately describe activities and cannot be so general that a complete picture of the services and progress cannot be drawn from the content of the note. General terms (i.e. "called the recipient," "supported recipient," or "assisted recipient") are not sufficient and do not reflect adequate content. Check lists alone are not adequate documentation.

C. Transportation

Emergency and non-emergency medical transportation is available to all waiver recipients as a Medicaid State Plan service. Non-medical transportation is not a component of personal care attendant, respite or substitute family care services. However, waiver providers may opt to furnish transportation for recipients during the course of providing these waiver services. Medicaid will not provide additional reimbursement for transportation to access services which are documented on the approved CPOC.

In the case of habilitation services, transportation is considered to be a component of the service and shall be provided between the recipient's residence and the service site or between sites (in cases where the recipient receives services in more than one place). The components of habilitation services include supervised independent living (SIL), supported employment, pre-vocational habilitation, and day habilitation services. The cost of transportation is included in the reimbursement rate.

The provider agency must be aware that this service is being provided and accepts any liability for their employee transporting a recipient. The provider agency must also ensure that the employee has a current driver's license and automobile liability insurance.

D. Staffing Requirements. Individual workers providing personal care attendant, respite or supervised independent living companion services to MR/DD waiver recipients shall not work more than 12 hours in a 24-hour period. Workers employed by multiple waiver service agencies shall not work more than a total of 12 hours in a 24-hour period.

II. Service Definitions And Restrictions

Services must be needed on a regular basis and, with few exceptions, must be received at least once every 30 days in order for the recipient to remain eligible for the waiver program. Exceptions to the 30-day rule may be granted on a case by case basis for such things as extended hospitalizations. However, if the recipient is hospitalized or placed in an ICF-MR facility, the provider shall not bill for services during this time period.

A. Personal Care Attendant Services

Personal care attendant (PCA) services are services provided through performing, assisting or prompting waiver recipients who require assistance with eating, bathing, dressing, personal hygiene, and activities of daily living. Recipients must receive services in the most appropriate setting relative to the individual's needs and the services must be consistent with waiver requirements and licensing standards. Personal care services do not replace or supplant the recipient's natural supports. For those recipients living with their families, PCA services can be provided in the presence or absence of the family member or caregivers. The PCA worker may be a member of the recipient's family, but must meet the same standards as PCAs who are unrelated to the recipient. Supervision of PCA workers shall be furnished by the licensed personal care provider agency as required by licensing standards. The provider agency is responsible for

informing the case manager of any changes in the recipient's condition.

Restrictions. The following restrictions are applicable to all PCA services.

1. A PCA worker shall not provide care for other individuals living in the home, e.g. siblings, while caring for the waiver recipient.

2. A PCA worker shall not provide care for his/her own minor children or other non-waiver individuals while caring for the waiver recipient.

3. A PCA worker cannot be the recipient's legal guardian.

4. PCA services cannot be provided by the recipient's landlord. The landlord is defined as the person owning/leasing/renting a residence to the recipient, whether or not that person actually receives payment from the recipient, or on the recipient's behalf.

5. The recipient cannot reside in the PCA worker's home, nor can PCA services be delivered in the PCA worker's home.

6. Payment shall not be made for services furnished to a minor by the child's parent (through blood, adoption or marriage) or step-parent, or to an individual by that person's spouse.

7. PCA services are not to be used for child care purposes.

B. Respite Care Services

Respite care services are provided to recipients who are unable to care for themselves and are furnished on a short-term basis because of the absence or need of relief for the unpaid primary care giver who normally provides the care. Respite care may be provided in either the recipient's home or in a licensed respite facility. The respite care worker may be a member of the recipient's family, but must meet the same standards as respite care workers who are unrelated to the recipient. Supervision of the respite workers shall be furnished by the licensed respite care provider agency as required by licensing standards.

Restrictions. The following restrictions are applicable to respite services.

1. Respite services are not for the relief of another paid worker.

2. Payment will not be made for services furnished to a minor by the child's parent (through blood, adoption or marriage) or step-parent, or to an individual by that person's spouse.

C. Residential Habilitation/Supervised Independent Living (SIL)

Residential habilitation services include assisting the recipient in locating and equipping his/her home, implementing safeguards, and providing training in areas appropriate to the recipient's needs. This service also includes SIL training, SIL consultation, and SIL companion, which includes the following: day companion, behavior modification companion, and night companion. Residential habilitation is designed to assist individuals with acquisition, retention, or improvement of skills related to activities of daily living such as personal grooming and cleanliness, bed making and household chores, eating and the preparation of food, and the social and adaptive skills necessary to enable the individual to reside and participate in the community. Residential habilitation is available only to recipients age 18

and older who need support to live independently. The residential setting may be cluster housing, an apartment, a rented house or the recipient's own home, provided that the recipient does not reside with members of his/her immediate family. The only exception allowed is for recipients living with a disabled spouse, elderly or disabled parent(s), or siblings who receive waiver services. SIL service is comprised of no more than four people living together who are either unrelated or recipients of waiver services.

Restrictions. The following restrictions are applicable to all residential habilitation/supervised independent living services (SIL).

1. The SIL provider or their employees shall not be the landlord. The landlord is defined as the person owning/leasing/renting a residence to the recipient, whether or not that person actually receives payment from the recipient, or on the recipient's behalf. (Exceptions may be granted by the Director of BCSS prior to the services being implemented.)

2. SIL services cannot be performed by the recipient's immediate family.

3. Residential habilitation reimburses the provider for services. Payments are not made for room and board, the cost of facility maintenance, or upkeep and improvements.

4. Payment for residential habilitation does not include payments made, directly or indirectly, to members of the recipient's immediate family.

D. Substitute Family Care

Substitute family care (SFC) provides care in a family setting for children and adults who may or may not be related. Substitute families are responsible for providing guidance and training, transportation, routine activities of daily life, and community participation based in a family setting and included in an approved CPOC.

Restrictions. The following restrictions are applicable to all substitute family care services.

1. The maximum capacity for any SFC home is four recipients.

2. The cost of room and board for the recipients of SFC is not included in the waiver. Payment for room and board is met by the recipient's resources (SSI or earnings, for example), or through other arrangements outside of the waiver.

E. Habilitation/Supported Employment

Habilitative services are designed to assist individuals age 18 and older in acquiring, retaining, and improving the skills necessary to successfully acquire and retain employment in their community. Supported employment services consist of paid employment for persons for whom competitive employment at or above the minimum wage is unlikely and who need intensive ongoing support to perform in a work setting. Supported employment is conducted in a variety of settings, particularly work sites in which persons without disabilities are employed.

Restriction. The following restriction is applicable to all habilitation/supported employment services.

1. These services are not available to recipients who are eligible for other employment or training programs, including Vocational Rehabilitation.

F. Pre-Vocational Habilitation

Services are aimed at preparing an individual for paid or unpaid employment, but are not job-task oriented. Services

include teaching such concepts as compliance, attendance, task completion, problem solving and safety. Pre-vocational services are provided to persons not expected to be able to join the general work force or participate in a transitional sheltered workshop within one year (excluding supported employment programs). Activities included in this service are not primarily directed at teaching specific job skills, but at underlying habilitative goals, such as attention span and motor skills as reflected in the individual's approved CPOC. Services are directed to habilitative, rather than explicit employment objectives.

Restriction. The following restriction is applicable to all pre-vocational habilitation services.

1. These services are not available to those recipients age 18 or older who are eligible under a program funded under Section 110 of the Rehabilitation Act of 1973 or Section 602(16) and (17) of the Individuals with Disabilities Education Act.

G. Day Habilitation

Day habilitation provides regularly scheduled activities in non-residential, integrated settings to enhance community participation, relationship building, routine activities of daily life, and other activities to assist recipients who are age 18 or older to make more informed choices regarding their lives. Services for adults are typically provided four or more hours per day, five days per week.

H. Environmental Modifications

Home modification services are modifications and adaptations to a recipient's living quarters to enable them to live safely in his/her community. Necessary physical adaptations to the home are those required by the recipient's approved CPOC.

I. Personal Emergency Response Systems

A personal emergency response system (PERS) provides immediate assistance in the event of a physical, emotional, or environmental emergency through a community-based electronic communications device. The unit is connected to the telephone line and is programmed to send an electronic message to a community-based 24-hour emergency response center once a "help" button is activated. This unit may be either worn by the recipient or installed in his/her home.

J. Assistive Devices

Assistive devices are specialized medical equipment and supplies, such as adaptive and communication aids, that assist the recipient in performing activities of daily living and controlling his/her environment. Items reimbursed with waiver funds must be specified in the CPOC and be in addition to any medical equipment and supplies furnished under the State Plan. Items that do not provide direct medical or remedial benefits to the recipient shall be excluded.

Interested persons may submit written comments to Barbara Dodge, Bureau of Community Supports and Services, 446 North Twelfth Street, Baton Rouge, LA 70802-4613. She is responsible for responding to inquiries regarding this proposed rule. A public hearing on this proposed rule is scheduled for Tuesday, November 27, 2001 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or

arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

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

**RULE TITLE: Home and Community Based Services
Waiver ProgramC Mentally Retarded/Developmentally
Disabled WaiverC Service Definitions**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact for SFY 2001-02, 2002-03, and 2003-04. It is anticipated that \$560 (\$280 SGF and \$280 FED) will be expended in SFY 2001-2002 for the state's administrative expense for promulgation of this proposed rule and the final rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
It is anticipated that the implementation of this proposed rule will not impact federal revenue collections.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
Implementation of this proposed rule will not have estimable costs and/or economic benefits for directly affected persons or nongovernmental groups.
There should be no effect on families, as these MR/DD Waiver service definitions are only clarifications and not policy changes.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no known effect on competition and employment.

Ben A. Bearden
Director
0110#062

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Office of the Secretary**

Repeal of Professional and Occupational Standards,
AIDS Trust Fund (LAC 46:C.101-107)

The Department of Health and Hospitals, Office of the Secretary, proposes to repeal the following rule in its entirety, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 46:2531. This rule is being repealed because the AIDS Trust Fund Board no longer exists. The HIV Trust Fund Board was originally established in 1987, to review the eligibility of programs to receive funding for research and educating the public regarding Acquired Immune Deficiency Syndrome. Later, the HIV Commission was established by law and assumed the powers, duties, and responsibility for all HIV related issues, however, the published rule was not repealed when the commission was established. Therefore, this rule is strictly a housekeeping measure.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed rule on the family has been considered. This proposed rule has no known impact on family formation, stability, or autonomy as described in R.S. 49:972.

**Title 46
Professional and Occupational Standards
Part C. AIDS Trust Fund Board**

Chapter 1. General Provisions

§101. Purpose

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2531.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, AIDS Trust Fund Board, LR 13:239 (April 1987), repealed by the Department of Health and Hospitals, Office of the Secretary, LR 28:

§103. Powers and Duties

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2531.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, AIDS Trust Fund Board, LR 13:239 (April 1987), repealed by the Department of Health and Hospitals, Office of the Secretary, LR 28:

§105. Memberships

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2531.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, AIDS Trust Fund Board, LR 13:239 (April 1987), repealed by the Department of Health and Hospitals, Office of the Secretary, LR 28:

§107. Officers

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2531.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, AIDS Trust Fund Board, LR 13:239 (April 1987), repealed by the Department of Health and Hospitals, Office of the Secretary, LR 28:

Interested persons may submit written comments for 30 days from the date of this publication to Patricia A. Faxon, Program Manager, P.O. Box 629, Baton Rouge, LA 70821. She is the person responsible for responding to inquiries.

Family Impact Statement

1. The effect on the stability of the family. This proposed rule should have no effect on the stability of the family.
2. The effect on the authority and rights of parents regarding the education and supervision of their children. This proposed rule should have no effect on the authority of parents regarding the education and supervision of their children.
3. The effect on the functioning of the family. This proposed rule should have no effect on the functioning of the family.
4. The effect on family earnings and family budget. This proposed rule should have no effect on family earnings and family budget.
5. The effect on the behavior and personal responsibility of children. This proposed rule should have no effect on the behavior and personal responsibility of children.

6. The ability of the family or a local government to perform the function as contained in the proposed rule. This proposed rule does not relate to any function of the family or of local government.

David W. Hood
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**
**RULE TITLE: Repeal of Professional and Occupational
Standards, AIDS Trust Fund**

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

There are no estimated implementation costs to state or local governmental units, beyond the initial publication costs, which are anticipated to be \$80 in FY 01-02. There should be no implementation costs in later years.

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

Implementation of this proposed rule should have no effect on revenue collections of state or local governmental units.

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

There are no estimated costs and/or economic benefits to directly affected persons or nongovernmental groups.

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

There is no estimated effect on competition and employment from implementation of this proposed rule.

David W. Hood
Secretary
0110#051

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Insurance
Office of the Commissioner**

Rule 10C Continuing Education
(LAC 37:XI.717 and 723)

Under the authority of the Louisiana Insurance Code, R.S. 22.1 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the commissioner hereby gives notice that the Department's Rule Number 10, Continuing Education Programs, will be amended as required to bring it into compliance with R.S. 22:1193.J, which was enacted by Act 290 during the 2001 Regular Session of the Louisiana Legislature and made effective August 15, 2001. The amendments will affect Rule 10, Sections 10.G and 13.B, deleting those provisions that allowed granting of partial continuing education credits to those "self-study" participants who failed an examination required to obtain a national designation such as CPCU, CLU, CIC, etc.

**Title 37
INSURANCE
Part XI. Rules**

**Chapter 7. Rule Number 10—Continuing Education
§717. Rule 10.10. Measurement of Credit**

A. – F. ...

G. Qualified continuing education programs earning a graduate level professional designation such as CPCU, CLU, ChFC, etc., will be subject to special rules as contained in this paragraph. Licensees which successfully pass a qualified graduate level national designation program examination shall earn 24 continuing education credit hours for property-casualty courses and 16 continuing education credit hours for life-health courses.

AUTHORITY NOTE: Promulgated in accordance with Act 428 of the 1989 Louisiana Regular Legislative Session, R.S. 22:1193, and the Louisiana Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of Licensing and Compliance, LR 16:855 (October 1990), amended LR 28:

**§723. Rule 10.13. Credit for Individual Study
Programs**

A. ...

B. Insurance companies admitted to do business in the state of Louisiana, insurance trade associations as recognized by the commissioner, and accredited public or private colleges or universities may be recognized as providers of independent study courses. Other organizations recommended by the council and authorized by the commissioner may be approved as providers of independent study courses if they meet one of the following qualifications:

1. five years or more experience as a recognized insurance education provider of independent study courses;

2. accreditation by a national education organization. All individual study programs must be submitted for approval by the organization which compiles or publishes the course materials. All individual study courses must be approved prior to being offered to licensees for continuing education credit. Any such course approval is not transferable to any other entity.

C. Continuing education credit for individual study programs must be applied to the current license renewal and may not be carried over to subsequent license renewals. No individual study program will be certified for more than 24 continuing education credit hours for property-casualty courses or 16 continuing credit hours for life-health courses.

D. Qualified individual study program providers (example: national publishing companies) may not contract their provider status to other CE providers. The integrity of materials and testing are the responsibility of the approved provider and must be maintained under their direct control. Local CE providers may act as vendors or marketing agents of approved individual study program providers as long as the provider controls the materials and testing.

AUTHORITY NOTE: Promulgated in accordance with Act 428 of the 1989 Louisiana Regular Legislative Session, R.S. 22:1193, and the Louisiana Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of Licensing and Compliance, LR 16:855 (October 1990), amended LR 28:

On November 28, 2001, beginning at 10 a.m., the Department of Insurance will hold a public hearing in the Insurance Building Plaza Hearing Room located at 950 North Fifth Street, Baton Rouge, Louisiana, 70804 to allow for public commentary concerning the proposed amendments to its existing Rule 10 as set forth below. It should be noted that this hearing is a mere formality since the governing statute has already been enacted by the legislature.

Persons interested in obtaining copies of the Rule or in making comments relative to these proposals may do so at the public hearing or by writing to Barry E. Ward, Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214. Comments will be accepted through the close of business at 4:30 p.m. November 29, 2001.

J. Robert Wooley
Acting Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Rule 10C Continuing Education**

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

It is not anticipated that the amendments to Rule 10 would result in any implementation costs or savings to local or state governmental units.

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

The proposed amendments to Rule 10 should have no effect on revenue collections of local or state governmental units.

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

There may be some additional costs to persons participating in self-study programs who fail the required examinations; they may be required to pay an examination fee to retake the examinations in order to obtain credit for the courses. It is impossible for the department to know or to estimate the number of persons who may incur these costs or what the costs would be, per person. Course providers and national organizations testing for the titles CPCU, CLU, CIC, etc., set their own examination rates.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed amendments to Rule 10 should have no impact on competition and employment.

Chad Brown
Deputy Commissioner
0110#049

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Natural Resources
Office of Coastal Restoration and Management**

**Coastal Use Permit Fee Schedule
(LAC 43:I.Chapter 7)**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Natural Resources, Office of Coastal Restoration and Management, hereby proposes to amend regulations regarding Coastal Use Permit fees.

The Department of Natural Resources, Office of Coastal Restoration and Management, intends to amend the fee schedule for Coastal Use Permits by establishing different fee rates for residential and non-residential coastal uses. The proposed amended regulations will define the term "residential coastal use," establish that the fees for residential uses will not change, and establish that the fees for non-residential uses will increase. The changes in the regulations will allow the Louisiana Coastal Resources Program to modify its fee schedule for the first time since the original fee regulations were established in 1982.

Title 43

NATURAL RESOURCES

Part I. Office of the Secretary

Chapter 7. Coastal Management

Subchapter A. Definitions

§700. Definitions

* * *

Residential Coastal Use Any coastal use associated with the construction or modification of one single-family, duplex, or triplex residence or camp. It shall also include the construction or modification to any outbuilding, bulkhead, pier, or appurtenance on a lot on which there exists a single-family, duplex, or triplex residence or camp or on a water body which is immediately adjacent to such lot.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.21 - 49:214.41.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 21:835 (August 1995), amended by the Office of Coastal Restoration and Management, LR 28:

Subchapter C. Coastal Use Permits and Mitigation

§723. Rules and Procedures for Coastal Use Permits

A. - C.2 ...

3. Fee Schedule

a. Effective May 1, 2002, the fee schedule of Coastal Use Permits of state concern will be divided into the two categories of residential uses and nonresidential uses.

b. The following schedule of fees will be charged for the processing and evaluation of Coastal Use Permits of state concern in the residential coastal use category.

i. A non-refundable fee shall accompany each application or request for determination submitted to the Coastal Management Division. The fee shall be \$20 for each application and \$20 for each request for determination.

ii. In addition to the non-refundable application fee, the following fees will be assessed according to the total volume of material disturbed for each permit issued.

(a). Proposed projects which involve fewer than 125 cubic yards of dredging or fill volume shall not be assessed additional fees.

(b). Proposed projects which involve 125 cubic yards of dredging and/or filling but less than 50,000 cubic yards shall be assessed at the rate of \$0.04 per cubic yard.

(c). Proposed projects which involve 50,000 cubic yards or more of dredging and/or filling shall be assessed the maximum volume disturbed fee of \$2,000.

c. The following schedule of fees will be charged for the processing and evaluation of Coastal Use Permits of state concern in the non-residential coastal use category.

i. A non-refundable fee shall accompany each application or request for determination submitted to the Coastal Management Division. The fee shall be \$100 for each application and \$100 for each request for determination.

ii. In addition to the non-refundable application fee, the following fees will be assessed according to the total volume of material disturbed for each permit issued.

(a). Proposed projects which involve more than 0 and fewer than 500 cubic yards of dredging or fill volume shall be assessed a fee of \$25.

(b). Proposed projects which involve 501 cubic yards of dredging and/or filling but less than 100,001 cubic yards shall be assessed at the rate of \$0.05 per cubic yard.

(c). Proposed projects which involve 100,001 cubic yards or more of dredging and/or filling shall be assessed the maximum volume disturbed fee of \$5,000.

d. If the appropriate fees are not included along with the coastal use permit application, the application will be considered incomplete, and returned to the applicant. The application fee and additional fees, if any, should be paid separately.

e. A coastal use permit application which has been returned to the applicant by the Coastal Management Division or withdrawn by the applicant and is subsequently resubmitted shall be subject to an additional processing fee which will consist of an application fee and a permit fee if the application has undergone substantial revisions, pursuant to Subsection D.1.a of this Section.

f. Nothing contained in Paragraph 3.a-e shall affect the right of local government and parishes with approved programs to assess fees for processing and evaluating coastal use permit applications.

g. In addition to the fees identified at §723.C.3.a, the following fees related to compensatory mitigation shall be charged when appropriate pursuant to §724:

i. compensatory mitigation processing fee (§724.D);

ii. mitigation bank initial evaluation fee, mitigation bank habitat evaluation fee, mitigation bank establishment fee, and mitigation bank periodic review fee (§724.F.3);

iii. advanced mitigation project initial evaluation fee, advanced mitigation project establishment fee, advanced mitigation post-implementation habitat evaluation fee, advanced mitigation periodic review fee (§724.G.5);

iv. compensatory mitigation variance request fee (§724.K.2.h).

C.4. - G.4.b ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.21 - 49:214.41.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980), amended LR 8:519 (October 1982), amended by the Office of Coastal Restoration and Management, LR 16:625 (July 1990), amended by the Office of the Secretary, LR 21:835 (August 1995), amended by the Office of Coastal Restoration and Management, LR 28:

Family Impact Statement

The proposed amendments to LAC 43:I.Chapter 7 regarding Coastal Use Permit fees should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on:

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

Interested persons should submit written comments on this proposed rule through the close of business on November 28, 2001 to Jim Rives, Coastal Management Division, P.O. Box 44487, Baton Rouge, LA 70804. A public hearing on this proposed rule change is scheduled for Wednesday, November 28, 2001 at 10 a.m., in the Mineral Board Hearing Room located on the first floor, State Lands and Natural Resources Building, 625 North Fourth Street, Baton Rouge, LA.

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. The following summary statements, based on the attached worksheets, will be published in the *Louisiana Register* with the proposed agency rule.

James R. Hanchey
Assistant Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Coastal Use Permit Fee Schedule

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

There are no implementation costs (savings) to the Department of Natural Resources, because the existing fee processing system will implement this proposed change. There may be additional costs to state or local governmental units which perform uses subject to coastal use permitting in the form of increased fees (an estimated 52 coastal use permit applications from public bodies per year would be subject to the fee increase).

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

State and/or local governmental units will not be affected, except that it is estimated that Coastal Use Permit fees revenues of the Coastal Resources Trust Fund will increase by \$37,522 in FY 01 - 02 and \$225,137 in FY 02 - 03.

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

Coastal Use Permit fees will increase by an average of \$223 per non-residential permit application.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition and employment.

Robert D. Harper
Undersecretary
0110#067

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Natural Resources
Office of Conservation
Injection and Mining Division**

**Amendment to Statewide Order No. 29-B
(LAC 43:XIX.315)**

In accordance with the provisions of R.S. 49:950 et seq. and R.S. 30:4, notice is hereby given that the Commissioner of Conservation intends to again consider promulgation of an amendment to Statewide Order No. 29-B, LAC 43:XIX.315 concerning disposal of reserve pit fluids and other exploration and production (E&P) waste by subsurface injection. A notice of intent, a copy of the initially proposed regulations, and a fiscal impact statement were published in the *Louisiana Register* on January 20, 2001. In the February 20, 2001 edition of the *Louisiana Register* a notice was published for a scheduled hearing on March 28, 2001. The hearing was cancelled.

Subsequent to the cancelled hearing, changes were made to the proposed regulations and a second notice of intent to conduct a public hearing on the amended rule was published in the *Louisiana Register*, on May 20, 2001. Although the Office of Conservation had placed a copy of the proposed regulation on the Department of Natural Resources web site and mailed or e-mailed copies of the proposed rule to oil and gas trade organizations and other interested parties, the amended rule was not published in the *Louisiana Register*. Several comments were received at the hearing conducted on June 28, 2001.

Accordingly, in this third Notice of Intent, the Office of Conservation is hereby informing interested parties that another public hearing will be conducted at 10 am, Thursday, November 15, 2001 in the Conservation Auditorium located on the First Floor, State Land and Natural Resources Building, 625 North Fourth Street, Baton Rouge, Louisiana. At such hearing, the Commissioner of Conservation will again provide interested parties the opportunity to provide comments on the proposed regulations for LAC 43:XIX.315. Such draft regulations will provide for the onsite disposal of exploration and production

waste into newly drilled wells which are to be plugged and abandoned or into the casing annulus of a well being drilled, a recently completed well, or a well which has been worked over.

Title 43

NATURAL RESOURCES

Part XIX. Office of ConservationC General Operations

Subpart 1. Statewide Order No. 29-B

**Chapter 3. Pollution ControlC Onsite Storage,
Treatment and Disposal of Nonhazardous
Oilfield Waste (NOW) Generated from
the Drilling and Production of Oil and
Gas Wells (Oilfield Pit Regulations)**

**§315. Disposal of Drilling and Workover Waste Fluids
by Subsurface Injection**

A. General Provisions

1. The onsite disposal (subsurface injection) of drilling and workover waste fluids (including reserve pit fluids) into a newly drilled well which is to be plugged and abandoned or into the casing annulus of a well being drilled, a recently completed well, or a well which has been worked over is prohibited, except when such injection is conducted in accordance with the requirements of this Section.

2. Injection of drilling and workover waste fluids shall not commence until an approved disposal permit has been granted by the Office of Conservation, Injection and Mining Division. Operators may apply for approval when applying for a drilling permit. Approval for injection of fluids generated through subsequent workovers will require the submission of a new application.

3. Injection of drilling and workover waste fluids (including reserve pit fluids) shall be limited to injection of only those fluids generated in the drilling, stimulation or workover of the specific well for which authorization is requested. Reserve pit fluids may not be transported from one well location to another for injection purposes.

4. The disposal zone shall be defined as that interval extending from the top of the first sand zone open to the annulus immediately below the shoe of the surface casing to the cement top of the next cemented casing string or cement plug.

5. Injection of drilling and workover waste pit fluids into zones that have produced hydrocarbons or are capable of hydrocarbon production is prohibited, except as otherwise provided by the commissioner.

6. The disposal zone shall not include any zone that has produced or is capable of hydrocarbon production from an offset well located within a one-quarter mile Area of Review (AOR).

7. Approval for disposal of drilling and workover wastes shall not be granted for any well for which there is an offset well located within a one-quarter-mile Area of Review (AOR) that lacks cement isolation of the top of the equivalent injection zone from the base of the underground source of drinking water (USDW).

8. Pump pressure and injection rate shall be limited so that vertical fractures will not extend into the confining layer beneath the base of the USDW and/or groundwater aquifer.

9. A drilling and workover waste fluids injection site may be inspected by a duly authorized representative of the commissioner prior to approval.

10. Drilling and workover waste fluids to be injected pursuant to the provisions of this Section are not exempt from the testing requirements of §311.C.

11. Approval of an application for annular disposal shall be limited to the specific disposal operation indicated (permitted waste batch). Approval shall be valid for a period not to exceed 180 days from the approval date. Subsurface disposal beyond the expiration date shall be a violation of the permit and regulations. Any subsequent injection after the expiration date of an approved application will require submission and review of a new application.

B. Application Requirements

1. Prior to the onsite injection of drilling and workover waste fluids, an application shall be filed by the well operator on the Form UIC-14 (Application for Annular Disposal of Reserve Pit Fluids) or the latest revision. The original application (with attachments) shall be submitted to the Office of Conservation for review and approval. If the application is submitted when applying for the permit to drill, an AOR and production review specified in §315.A.6 and 7 will be conducted and the applicant notified of the findings.

2. An application for approval of drilling and workover waste fluid injection shall include, but not be limited to, the following:

- a. schematic diagram of well showing:
 - i. total depth of well;
 - ii. drilled hole diameters, depths of top and bottom of all casing strings, and the calculated top of cement on each;
 - iii. size of casing;
 - iv. depth of the base of the lowermost USDW;
 - v. interval targeted for injection; and
 - vi. a certified well location plat;
- b. operating data:
 - i. maximum anticipated injection rate;
 - ii. maximum anticipated injection pressure; and
 - iii. estimated volume of fluids to be injected;
- c. an induction/spontaneous potential log of the surface section of hole showing the base of the lowermost USDW. A log of an offset well, which is located within one mile (5,280 feet) of the well for which the permit is requested, may be substituted provided the top of the disposal zone and base of the lowermost USDW were logged;
- d. a copy of the electric log run on the lower section of the well which must demonstrate that a confining layer isolates the lowermost USDW from the disposal zone;
- e. a list of all wells within the AOR (one-quarter mile) which penetrate the disposal zone that includes a description of the casing and cementing program for each well;
- f. a cement bond log or a cement evaluation log if the injection will be conducted at pressures in excess of that which will induce fracturing of the disposal zone as specified in §315.C.2 below. The log must indicate the presence of adequate bonding to prevent fluid movement between the shoe of the surface casing and the base of the lowermost USDW;
- g. documentation of the results of an initial pressure test after setting the surface casing and a second pressure test of the surface casing after drilling has been completed, but

before the production or intermediate string is run. Both tests must indicate that the casing has mechanical integrity. A radioactive tracer survey (RTS) with a time-drive supplement run at the same pressure as the second pressure test that proves well mechanical integrity may be run instead of the second pressure test; and

h. Any additional information as the commissioner may require.

C. Criteria for Approval

1. Wells injecting at pressures below fracture pressure. Wells permitted under the provisions of this section shall be limited to a bottomhole injection pressure measured at the top of the injection zone which does not exceed a pressure gradient of 0.75 psi/ft, with the exception of wells located in the parishes of Bienville, Bossier, Caddo, Claiborne, Desoto, Jackson, Lincoln, Ouachita, Red River, Union, Webster, and Winn, which are to be limited to a gradient not to exceed 0.9 psi/ft.

a. Casing string injection may be authorized if the following conditions are met and injection will not endanger underground sources of drinking water:

i. surface casing annular injection may be authorized provided the surface casing is set at least 200 feet below the base of the lowermost USDW and cemented to surface, except as otherwise provided by the commissioner; or

ii. injection through perforations in the intermediate or production casing may be authorized provided that surface casing is set at least 200 feet below the base of the lowermost USDW and cemented to surface. The top of the perforated interval shall be located a minimum of 200 feet below the base of the lowermost USDW, with perforations through the surface casing being strictly prohibited.

b. Surface casing open hole injection may be approved provided the surface casing is set at least 200 feet below the lowermost USDW and cemented to the surface and a cement plug of at least 100 feet has been placed across the uppermost potential hydrocarbon bearing zone.

c. Surface casing annular injection/surface casing open hole injection shall not be permitted through any string of surface casing which has failed a pressure test. An exception may be granted for surface casing open hole injection in which disposal is through drill pipe or injection tubing and a mud packer set within 50 feet of the casing shoe.

d. At no time shall injection be permitted at a pressure in excess of the pressure at which the second surface casing test is performed.

e. Operational Requirements

i. The disposal pump discharge line shall at all times be equipped with instruments to continuously record the surface pressure.

ii. A pressure release or pop-off valve shall be installed in the injection line between the injection pump discharge valve and the wellhead which is set to release at a pressure below the maximum surface pressure permitted.

iii. If the surface pressure increases to more than the maximum allowed surface injection pressure, the operator must cease injection and immediately notify Office of Conservation of this situation. If the surface pressure decreases substantially while injecting at a constant rate, the

operator is to cease injection and notify the Office of Conservation.

iv. If, at any time during the disposal operation, there is any indication that the injected waste is not being confined in the approved disposal zone, the disposal operation is to be immediately discontinued and the Office of Conservation notified.

v. All documentation of the disposal operation, including the print-outs of the injection pressures, are to be maintained in the operator's files for a minimum of three years. Copies of the documentation are to be submitted to Office of Conservation only upon request.

2. Wells injecting above the fracture pressure of the disposal zone. Wells permitted under the provisions of this section are those in which the bottom hole pressures measured at the top of the injection zone during disposal operations will be in excess of a gradient of 0.75 psi/ft., with the exception of the parishes of Bossier, Caddo, Claiborne, DeSoto, Jackson, Lincoln, Ouachita, Red River, Union, Webster, and Winn, for which a 0.9 psi/ft gradient will apply.

a. Casing string injection may be authorized if the following conditions are met and injection will not endanger underground sources of drinking water:

i. Surface casing annular injection may be authorized provided the surface casing is set at least 500 feet below the base of the lowermost USDW and cemented to surface, except as otherwise provided by the Commissioner; or

ii. Injection through perforations in the intermediate or production casing may be authorized provided that surface casing is set at least 200 feet below the base of the lowermost USDW and cemented to surface. The top of the perforated interval shall be located a minimum of 500 feet below the base of the lowermost USDW, with perforations through the surface casing being strictly prohibited. In the event the base of the lowermost USDW is not protected by at least 500 feet of surface casing, sufficient cement above the perforations is required to isolate the top of the disposal zone.

b. Surface casing open hole injection may be approved provided the surface casing is set at least 500 feet below the lowermost USDW and cemented to the surface and a cement plug of at least 100 feet has been placed across the uppermost potential hydrocarbon bearing zone.

c. Surface casing annular injection/surface casing open hole injection shall not be permitted through any string of surface casing which has failed a pressure test. An exception may be granted for surface casing open hole injection in which disposal is through drill pipe or injection tubing and a mud packer set within 50 feet of the casing shoe.

d. At no time shall injection be permitted at a pressure in excess of the pressure at which the second surface casing test is performed.

e. Operational Requirements

i. The disposal pump discharge line shall at all times be equipped with instruments to continuously record the surface pressure, injection rate of the pump, and cumulative volume pumped. Readings are to be recorded to a hard copy print-out and are to be synchronized in time so that the actual pressure, rate, and volume pumped at a given instant can be determined from the print-outs.

ii. Upon approval of the application, the operator shall conduct a pump-in test to determine the injection rate and corresponding surface pressure at such rate. Duration and volume injected during such test shall be limited to the time and volume needed to obtain stabilized results. These results shall be reported to the Office of Conservation and operations shall be suspended until final permit approval. The permit shall specify a maximum allowed surface injection pressure and a minimum allowed surface injection pressure at a permitted injection rate.

iii. Density measurements are to be gathered throughout the disposal operation in order to adjust the maximum and minimum surface injection pressures for changes in fluid properties. These measurements are to be recorded on Form UIC-14-A, Waste Disposal Operations Log, or the latest revision. Adjustments to the maximum and minimum surface injection pressures are to be made by the procedure prescribed on Form UIC-14-A.

iv. Injection may be performed provided the stabilized pressure (at rates not exceeding the maximum allowed rate) stays at a value between the maximum and minimum allowed surface injection pressures (P_{max} and P_{min}). During fracture initiation or fracture re-opening after shut-in, the injection pressure is temporarily allowed to exceed the maximum allowed surface injection pressures (P_{max}) while pumping the first 100 barrels of the current batch, provided that this pressure does not exceed the second casing test pressure.

v. If the surface pressure increases to more than the maximum allowed surface injection pressure (P_{max}) the operator must cease injection and immediately notify Office of Conservation of this situation. If the surface injection pressure decreases to less than the minimum allowed surface injection pressure (P_{min}) the operator is to immediately cease injection and notify Office of Conservation. Do not resume disposal until authorization has been granted by Office of Conservation.

vi. If, at any time during the disposal operation, there is any indication that the injected waste is not being confined in the approved disposal zone, the disposal operation is to be immediately discontinued and the Office of Conservation notified.

vii. The injection data gathered during the first 48 hours of operations must be forwarded to the Office of Conservation for review immediately upon acquisition (e.g; fax, overnight mail, etc.).

viii. Within 20 days of completion of disposal operations, return to Office of Conservation the completed Form UIC-14-A. All other documentation of the disposal operation, including the print-outs of the injection pressures, pump rates and total volumes pumped, are to be maintained in the operator's files for a minimum of three years. Copies of the documentation are to be submitted to Office of Conservation only upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Adopted by the Department of Conservation (August 1943), promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986), amended LR 16:855 (October 1990), LR 27:141 (January 2001), LR 28:

Family Impact Statement

In accordance with RS. 49:972, the following statements are submitted after consideration of the impact of the proposed rule on family as defined therein.

1. The proposed rules will have no effect on the stability of the family.

2. The proposed rules will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The proposed rules will have no effect on the functioning of the family.

4. The proposed rules will have no effect on family earnings and family budget.

5. The proposed rules will have no effect on the behavior and personal responsibility of children.

6. Family or local government are not required to perform any function contained in the proposed rules.

A copy of the proposed amendments to Statewide Order No. 29-B may be obtained by writing Carroll Wascom, Office of Conservation, Injection and Mining Division, P. O. Box 94275, Baton Rouge, Louisiana 70804-9275, by accessing the Office of Conservation website at www.dnr.state.la.us, by contacting the Injection and Mining Division by phone at 225/342-5515, or in person at the Injection and Mining Division, Room 253, on the second floor of the State Land and Natural Resources Building, 625 North Fourth Street, Baton Rouge, Louisiana.

All interested parties will be afforded the opportunity to submit data, views, or arguments, orally or in writing at said public hearing in accordance with R.S. 49:953. Written comments will be accepted until 4:30 pm, Monday, November 26, 2001, at the Office of Conservation, Injection and Mining Division, P.O. Box 94275, Baton Rouge, Louisiana, 70804-9275, Re: Docket No. IMD 01-15.

Philip N. Asprodites
Commissioner of Conservation

0110#095

NOTICE OF INTENT

Department of Natural Resources Office of Conservation Pipeline Division

Amendments to Pipeline Safety Regulations
(LAC 33:V.30105, 30112, 30129, 30135,
30149, 30292 - 30296, 30298, and 30351)

The Louisiana Office of Conservation proposes to amend LAC 33:V.30101 et seq. in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to power delegated under the laws of the state of Louisiana and particularly Title 30 of the Louisiana Revised Statutes of 1950, Section 30:501 et seq. These proposed rules amend the minimum pipeline safety requirements for hazardous liquids pipelines and add new requirements for pipeline integrity management in high consequence areas and areas unusually sensitive to environmental damage.

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials Subpart 3. Natural Resources

Chapter 301. Transportation of Hazardous Liquids by Pipeline

Subchapter A. General

§30105. Definitions

* * *

Unusually Sensitive Area (USA) Ca drinking water or ecological resource area that is unusually sensitive to environmental damage from a hazardous liquid pipeline release, as identified under §30112.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 18:861 (August 1992), LR 21:815 (August 1995), LR 28:

§30112. Unusually Sensitive Areas (USAs)

A. As used in this part, a USA means a drinking water or ecological resource area that is unusually sensitive to environmental damage from a hazardous liquid pipeline release.

1. A USA drinking water resource is:

a. the water intake for a Community Water System (CWS) or a Non-Transient Non-Community Water System (NTNCWS) that obtains its water supply primarily from a surface water source and does not have an adequate alternative drinking water source;

b. the Source Water Protection Area (SWPA) for a CWS or a NTNCWS that obtains its water supply from a Class I or Class IIA aquifer and does not have an adequate alternative drinking water source. Where a state has not yet identified the SWPA, the Wellhead Protection Area (WHPA) will be used until the state has identified the SWPA; or

c. the sole source aquifer recharge area where the sole source aquifer is a karst aquifer in nature.

2. An USA ecological resource is:

a. an area containing a critically imperiled species or ecological community;

b. a multi-species assemblage area;

c. a migratory waterbird concentration area;

d. an area containing an imperiled species, threatened or endangered species, depleted marine mammal species, or an imperiled ecological community where the species or community is aquatic, aquatic dependent, or terrestrial with a limited range; or

e. an area containing an imperiled species, threatened or endangered species, depleted marine mammal species, or an imperiled ecological community where the species or community occurrence is considered to be one of the most viable, highest quality, or in the best condition as identified by an element occurrence ranking (EORANK) of A (excellent quality) or B (good quality).

3. As used in this part:

Adequate Alternative Drinking Water Source Ca source of water that currently exists, can be used almost immediately with a minimal amount of effort and cost,

involves no decline in water quality, and will meet the consumptive, hygiene, and fire fighting requirements of the existing population of impacted customers for at least one month for a surface water source of water and at least six months for a groundwater source.

Aquatic or Aquatic Dependent Species or CommunityCa species or community that primarily occurs in aquatic, marine, or wetland habitats, as well as species that may use terrestrial habitats during all or some portion of their life cycle, but that are still closely associated with or dependent upon aquatic, marine, or wetland habitats for some critical component or portion of their life-history (i.e., reproduction, rearing and development, feeding, etc).

Class I AquiferCan aquifer that is surficial or shallow, permeable, and is highly vulnerable to contamination. Class I aquifers include:

i. **Unconsolidated Aquifers (Class Ia)**Cthat consist of surficial, unconsolidated, and permeable alluvial, terrace, outwash, beach, dune and other similar deposits. These aquifers generally contain layers of sand and gravel that, commonly, are interbedded to some degree with silt and clay. Not all Class Ia aquifers are important water-bearing units, but they are likely to be both permeable and vulnerable. The only natural protection of these aquifers is the thickness of the unsaturated zone and the presence of fine-grained material;

ii. **Soluble and Fractured Bedrock Aquifers (Class Ib)**CLithologies in this class include limestone, dolomite, and, locally, evaporitic units that contain documented karst features or solution channels, regardless of size. Generally these aquifers have a wide range of permeability. Also included in this class are sedimentary strata, and metamorphic and igneous (intrusive and extrusive) rocks that are significantly faulted, fractured, or jointed. In all cases groundwater movement is largely controlled by secondary openings. Well yields range widely, but the important feature is the potential for rapid vertical and lateral ground water movement along preferred pathways, which result in a high degree of vulnerability;

iii. **Semiconsolidated Aquifers (Class Ic)**Cthat generally contain poorly to moderately indurated sand and gravel that is interbedded with clay and silt. This group is intermediate to the unconsolidated and consolidated end members. These systems are common in the Tertiary age rocks that are exposed throughout the Gulf and Atlantic coastal states. Semiconsolidated conditions also arise from the presence of intercalated clay and caliche within primarily unconsolidated to poorly consolidated units, such as occurs in parts of the High Plains Aquifer; or

iv. **Covered Aquifers (Class Id)**Cthat are any Class I aquifer overlain by less than 50 feet of low permeability, unconsolidated material, such as glacial till, lacustrine, and loess deposits.

Class IIa AquiferCa Higher Yield Bedrock Aquifer that is consolidated and is moderately vulnerable to contamination. These aquifers generally consist of fairly permeable sandstone or conglomerate that contain lesser amounts of interbedded fine grained clastics (shale, siltstone, mudstone) and occasionally carbonate units. In general, well yields must exceed 50 gallons per minute to be included in this class. Local fracturing may contribute to the dominant primary porosity and permeability of these systems.

Community Water System (CWS)Ca public water system that serves at least 15 service connections used by year-round residents of the area or regularly serves at least 25 year-round residents.

Critically Imperiled Species or Ecological Community (Habitat)Can animal or plant species or an ecological community of extreme rarity, based on The Nature Conservancy's Global Conservation Status Rank. There are generally five or fewer occurrences, or very few remaining individuals (less than 1,000) or acres (less than 2,000). These species and ecological communities are extremely vulnerable to extinction due to some natural or man-made factor.

Depleted Marine Mammal SpeciesCa species that has been identified and is protected under the Marine Mammal Protection Act of 1972, as amended (MMPA) (16 U.S.C. 1361 et seq.). The term "depleted" refers to marine mammal species that are listed as threatened or endangered, or are below their optimum sustainable populations (16 U.S.C. 1362). The term "marine mammal" means "any mammal which is morphologically adapted to the marine environment (including sea otters and members of the orders Sirenia, Pinnipedia, and Cetacea), or primarily inhabits the marine environment (such as the polar bear)" (16 U.S.C. 1362). The order Sirenia includes manatees, the order Pinnipedia includes seals, sea lions, and walruses, and the order Cetacea includes dolphins, porpoises, and whales.

Ecological CommunityCmeans an interacting assemblage of plants and animals that recur under similar environmental conditions across the landscape.

Element Occurrence Rank (EORANK)Cmeans the condition or viability of a species or ecological community occurrence, based on a population's size, condition, and landscape context. EORANKs are assigned by the Natural Heritage Programs. An EORANK of A means an excellent quality and an EORANK of B means good quality.

Imperiled Species or Ecological Community (Habitat)Cmeans a rare species or ecological community, based on The Nature Conservancy's Global Conservation Status Rank. There are generally six to 20 occurrences, or few remaining individuals (1,000 to 3,000) or acres (2,000 to 10,000). These species and ecological communities are vulnerable to extinction due to some natural or man-made factor.

Karst AquiferCmeans an aquifer that is composed of limestone or dolomite where the porosity is derived from connected solution cavities. Karst aquifers are often cavernous with high rates of flow.

Migratory Waterbird Concentration AreaCa designated Ramsar site or a Western Hemisphere Shorebird Reserve Network site.

Multi Species Assemblage AreaCan area where three or more different critically imperiled or imperiled species or ecological communities, threatened or endangered species, depleted marine mammals, or migratory waterbird concentrations co-occur.

Non-transient Non-community Water System (NTNCWS)Cmeans a public water system that regularly serves at least 25 of the same persons over six months per year. Examples of these systems include schools, factories, and hospitals that have their own water supplies.

Public Water System (PWS) Ca system that provides the public water for human consumption through pipes or other constructed conveyances, if such systems has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. These systems include the sources of the water supplies, i.e., surface or ground. PWS can be community, non-transient non-community, or transient non-community systems.

Ramsar Site Ca site that has been designated under The Convention on Wetlands of International Importance Especially as Waterfowl Habitat program. Ramsar sites are globally critical wetland areas that support migratory waterfowl. These include wetland areas that regularly support 20,000 waterfowl; wetland areas that regularly support substantial numbers of individuals from particular groups of waterfowl, indicative of wetland values, productivity, or diversity; and wetland areas that regularly support 1 percent of the individuals in a population of one species or subspecies of waterfowl.

Sole Source Aquifer (SSA) Can area designated by the U.S. Environmental Protection Agency under the Sole Source Aquifer program as the "sole or principal" source of drinking water for an area. Such designations are made if the aquifer's ground water supplies 50 percent or more of the drinking water for an area, and if that aquifer were to become contaminated, it would pose a public health hazard. A sole source aquifer that is karst in nature is one composed of limestone where the porosity is derived from connected solution cavities. They are often cavernous, with high rates of flow.

Source Water Protection Area (SWPA) Cthat the area delineated by the state for a public water supply system (PWS) or including numerous PWSs, whether the source is ground water or surface water or both, as part of the state source water assessment program (SWAP) approved by EPA under §1453 of the Safe Drinking Water Act.

Species Cspecies, subspecies, population stocks, or distinct vertebrate populations.

Terrestrial Ecological Community with a Limited Range Ca non-aquatic or non-aquatic dependent ecological community that covers less than five acres.

Terrestrial Species with a Limited Range Ca non-aquatic dependent animal or plant species that has a range of no more than five acres.

Threatened and Endangered Species (T&E) Can animal or plant species that has been listed and is protected under the Endangered Species Act of 1973, as amended (ESA73) (16 U.S.C. 1531 et seq.).

i. *Endangered Species* Cany species which is in danger of extinction throughout all or a significant portion of its range (16 U.S.C. 1532).

ii. *Threatened Species* Cany species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532).

Transient Non-community Water System (TNCW) Cmeans a public water system that does not regularly serve at least 25 of the same persons over six months per year. This type of water system serves a transient population found at rest stops, campgrounds, restaurants, and parks with their own source of water.

Wellhead Protection Area (WHPA) Cthe surface and subsurface area surrounding a well or well field that supplies a public water system through which contaminants are likely to pass and eventually reach the water well or well field.

Western Hemisphere Shorebird Reserve Network (WHSRN) Site Can area that contains migratory shorebirds concentrations and has been designated as a hemispheric reserve, international reserve, regional reserve, or endangered species reserve. Hemispheric reserves host at least 500,000 shorebirds annually or 30 percent of a species flyway population. International reserves host 100,000 shorebirds annually or 15 percent of a species flyway population. Regional reserves host 20,000 shorebirds annually or 5 percent of a species flyway population. Endangered species reserves are critical to the survival of endangered species and no minimum number of birds is required.

AUTHORITY NOTE: Promulgated in accordance with R.S.30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 28:

Subchapter B. Reporting Accidents and Safety-Related Conditions

§30129. Addressee for Written Reports

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), repealed LR 28:

§30135. Filing Safety-Related Condition Report

A. Each report of a safety-related condition under §30133.A must be filed (received by the commissioner) in writing within five working days (not including Saturday, Sunday, or state holidays) after the day a representative of the operator first determines that the condition exists, but not later than 10 working days after the day a representative of the operator discovers the condition. Separate conditions may be described in a single report if they are closely related. To file a report by telefacsimile (FAX), dial (202) 366-7128 and for Louisiana (225) 342-5529.

AUTHORITY NOTE: Promulgated in accordance with R.S.30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 28:

§30149. Address for Written Reports

A. Each written report required by this subchapter must be made to the Information Resources Manager, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 2335, 400 Seventh Street SW, Washington, DC 20590 and concurrently to Office of Conservation, Pipeline Safety, P.O. Box 94275, Baton Rouge, LA 70804-9275. However, accident reports for intrastate pipelines subject to the jurisdiction of a state agency pursuant to a certification under the pipeline safety laws (49 U.S.C. 60101 et seq.) may be submitted in duplicate to that state agency if the regulations of that agency require submission of these reports and provide for further transmittal of one copy within 10 days of receipt to the Information Resource Manager. Safety-related condition reports required by §30133 for

intrastate pipelines must be submitted concurrently to the state agency, and if that agency acts as an agent of the secretary with respect to interstate pipelines, safety related condition reports for these pipelines must be submitted concurrently to that agency.

AUTHORITY NOTE: Promulgated in accordance with R.S.30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 28:

Subchapter F. Operation and Maintenance

§30292. Smoking or Open Flames

A. Each operator shall prohibit smoking and open flames in each pump station area and each breakout tank area where there is a possibility of the leakage of a flammable hazardous liquid or of the presence of flammable vapors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629(August 1989), amended LR 28:

§30293. Public Education

A. Each operator shall establish a continuing educational program to enable the public, appropriate government organizations and persons engaged in excavation-related activities to recognize a hazardous liquid or a carbon dioxide pipeline emergency and to report it to the operator or the fire, police, or other appropriate public officials. The program must be conducted in English or in other languages commonly understood by a significant number and concentration of non-English speaking population in the operator's operating areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 18:866 (August 1992), LR 28:

§30294. Damage Prevention Program

A. Except as provided in Subsection C of this Section, each operator of a buried pipeline must carry out, in accordance with this section, a written program to prevent damage to that pipeline from excavation activities. For the purpose of this section, the term *excavation activities* includes excavation, blasting, boring, tunneling, backfilling, the removal of aboveground structures by either explosive or mechanical means, and other earthmoving operations.

B. An operator may comply with any of the requirements of Subsection C of this Section through participation in a public service program, such as a one-call system, but such participation does not relieve the operator of the responsibility for compliance with this section. However, an operator must perform the duties of Paragraph C.3 of this Section through participation in a one-call system, if that one-call system is a qualified one-call-system. In areas that are covered by more than one qualified one-call system, an operator need only join one of the qualified one-call systems if there is a central telephone number for excavators to call for excavation activities, or if the one-call systems in those areas communicate with one another. An operator's pipeline system must be covered by a qualified one-call system where there is one in place. For the purpose of the Section, a one-call system is considered a "qualified one-call system" if it meets the requirements of Paragraphs B.1 or B.2 of this Section:

1. the state has adopted a one-call damage prevention program under 49 CFR 198.37; or

2. the one-call system:

i. is operated in accordance with 49 CFR 198.39;

ii. provides a pipeline operator an opportunity similar to a voluntary participant to have a part in management responsibilities; and

iii. assesses a participating pipeline operator a fee that is proportionate to the costs of the one-call system's coverage of the operator's pipeline.

C. The damage prevention program required by Subsection A of this Section must, at a minimum:

1. include the identity, on a current basis, of persons who normally engage in excavation activities in the area in which the pipeline is located;

2. provides for notification of the public in the vicinity of the pipeline and actual notification of persons identified in Paragraph C.1. of this Section of the following as often as needed to make them aware of the damage prevention program:

i. the program's existence and purpose; and

ii. how to learn the location of underground pipelines before excavation activities are begun;

3. provide a means of receiving and recording notification of planned excavation activities;

4. if the operator has buried pipelines in the area of excavation activity, provide for actual notification of persons who give notice of their intent to excavate of the type of temporary marking to be provided and how to identify the markings;

5. provide for temporary marking of buried pipelines in the area of excavation activity before, as far as practical, the activity begins;

6. provide as follows for inspection of pipelines that an operator has reason to believe could be damaged by excavation activities:

i. the inspection must be done as frequently as necessary during and after the activities to verify the integrity of the pipeline; and

ii. in the case of blasting, any inspection must include leakage surveys.

D. A damage prevention program under this section is not required for the following pipelines:

1. pipelines located offshore;

2. pipelines to which access is physically controlled by the operator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 24:1315 (July 1998), amended LR 28:

§30295. CPM Leak Detection

A. Each computational pipeline monitoring (CPM) leak detection system installed on a hazardous liquid pipeline transporting liquid in single phase (without gas in the liquid) must comply with API 1130 in operating, maintaining, testing, record keeping, and dispatcher training of the system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 28:

§30296. High Consequence Areas Definitions

A. The following definitions apply to this section and §30297.

Emergency Flow Restricting Device or EFRDC a check valve or remote control valve as follows.

a. *Check valve* a valve that permits fluid to flow freely in one direction and contains a mechanism to automatically prevent flow in the other direction.

b. *Remote Control Valve or RCV* any valve that is operated from a location remote from where the valve is installed. The RCV is usually operated by the supervisory control and data acquisition (SCADA) system. The linkage between the pipeline control center and the RCV may be by fiber optics, microwave, telephone lines, or satellite.

High Consequence Area

a. *Commercially Navigable Waterway* a waterway where a substantial likelihood of commercial navigation exists;

b. *High Population Area* an urbanized area, as defined and delineated by the Census Bureau, that contains 50,000 or more people and has a population density of at least 1,000 people per square mile;

c. *Other Populated Area* a place, as defined and delineated by the Census Bureau, that contains a concentrated population, such as an incorporated or unincorporated city, town, village, or other designated residential or commercial area;

d. *Unusually Sensitive Area*, as defined in §30112.

AUTHORITY NOTE: Promulgated in accordance with R.S.30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 28:

§30298. Pipeline Integrity Management in High Consequence Areas

A. Which operators must comply? This Section applies to each operator who owns or operates a total of 500 or more miles of hazardous liquid pipeline subject to this Part.

B. What must an operator do?

1. No later than March 31, 2002, an operator must develop a written integrity management program that addresses the risks on each pipeline segment that could affect a high consequence area. An operator must include in the program:

a. an identification of all pipeline segments that could affect a high consequence area. A pipeline segment in a high consequence area is presumed to affect that area unless the operator's risk assessment effectively demonstrates otherwise. (See Appendix C of this Part for guidance on identifying pipeline segments.) An operator must complete this identification no later than December 31, 2001;

b. a plan for baseline assessment of the line pipe (see Subsection C of this Section);

c. a framework addressing each element of the integrity management program, including continual integrity assessment and evaluation (see Subsections F and J of this Section). The framework must initially indicate how decisions will be made to implement each element.

2. An operator must implement and follow the program it develops.

3. In carrying out this Section, an operator must follow recognized industry practices unless the section specifies otherwise or the operator demonstrates that an alternative practice is supported by a reliable engineering evaluation and provides an equivalent level of public safety and environmental protection.

C. What must be in the baseline assessment plan?

1. An operator must include each of the following elements in its written baseline assessment plan:

a. the methods selected to assess the integrity of the line pipe. For low frequency electric resistance welded pipe or lap welded pipe susceptible to longitudinal seam failure, an operator must select integrity assessment methods capable of assessing seam integrity and of detecting corrosion and deformation anomalies. An operator must assess the integrity of the line pipe by:

i. internal inspection tool or tools capable of detecting corrosion and deformation anomalies including dents, gouges and grooves;

ii. pressure test conducted in accordance with Subchapter E of this Chapter; or

iii. other technology that the operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator choosing this option must notify the Office of Pipeline Safety (OPS) 90 days before conducting the assessment, by sending a notice to the address specified in §30147;

b. a schedule for completing the integrity assessment;

c. an explanation of the assessment methods selected and evaluation of risk factors considered in establishing the assessment schedule.

2. An operator must document, prior to implementing any changes to the plan, any modification to the plan, and reasons for the modification.

D. When must the baseline assessment be completed?

1. Time Period. An operator must establish a baseline assessment schedule to determine the priority for assessing the pipeline segments. An operator must complete the baseline assessment by March 31, 2008. An operator must assess at least 50 percent of the pipe subject to the requirements of this section, beginning with the highest risk pipe, by September 30, 2004.

2. Prior assessment. To satisfy the requirements of Subparagraph C.1.a of this Section, an operator may use an integrity assessment conducted after January 1, 1996, if the integrity assessment method meets the requirements of this section. However, if an operator uses this prior assessment as its baseline assessment, the operator must re-assess the line pipe according to the requirements of Paragraph J.3 of this Section.

3. Newly-Identified Areas

a. When information is available from the information analysis (See Subsection G of this Section), or from Census Bureau maps, that the population density around a pipeline segment has changed so as to fall within the definition in §30296 of a high population area or other populated area, the operator must incorporate the area into its baseline assessment plan as a high consequence area within one year from the date the area is identified. An operator must complete the baseline assessment of any line

pipe that could affect the newly-identified high consequence area within five years from the date the area is identified.

b. An operator must incorporate a new unusually sensitive area into its baseline assessment plan within one year from the date the area is identified. An operator must complete the baseline assessment of any line pipe that could affect the newly-identified high consequence area within five years from the date the area is identified.

E. What are the risk factors for establishing an assessment schedule (for both the baseline and continual integrity assessments)?

1. An operator must establish an integrity assessment schedule that prioritizes pipeline segments for assessment (see Paragraphs D.1 and J.3 of this Section). An operator must base the assessment schedule on all risk factors that reflect the risk conditions on the pipeline segment. The factors an operator must consider include, but are not limited to:

a. results of the previous integrity assessment, defect type and size that the assessment method can detect, and defect growth rate;

b. pipe size, material, manufacturing information, coating type and condition, and seam type;

c. leak history, repair history and cathodic protection history;

d. product transported;

e. operating stress level;

f. existing or projected activities in the area;

g. local environmental factors that could affect the pipeline (e.g., corrosivity of soil, subsidence, climatic);

h. geo-technical hazards; and

i. physical support of the segment such as by a cable suspension bridge.

2. Appendix C of this Part provides further guidance on risk factors.

F. What are the elements of an integrity management program? An integrity management program begins with the initial framework. An operator must continually change the program to reflect operating experience, conclusions drawn from results of the integrity assessments, and other maintenance and surveillance data, and evaluation of consequences of a failure on the high consequence area. An operator must include, at a minimum, each of the following elements in its written integrity management program:

1. a process for identifying which pipeline segments could affect a high consequence area;

2. a baseline assessment plan meeting the requirements of Subsection C of this Section;

3. an analysis that integrates all available information about the integrity of the entire pipeline and the consequences of a failure (See Subsection G of this Section);

4. criteria for repair actions to address integrity issues raised by the assessment methods and information analysis (See Subsection H of this Section);

5. a continual process of assessment and evaluation to maintain a pipeline's integrity (See Subsection J of this Section);

6. identification of preventive and mitigative measures to protect the high consequence area (See Subsection I of this Section);

7. methods to measure the program's effectiveness (See Subsection K of this Section);

8. a process for review of integrity assessment results and information analysis by a person qualified to evaluate the results and information (see Paragraph H.2 of this Section).

G. What is an information analysis? In periodically evaluating the integrity of each pipeline segment (Subsection J of this Section), an operator must analyze all available information about the integrity of the entire pipeline and the consequences of a failure. This information includes:

1. information critical to determining the potential for, and preventing, damage due to excavation, including current and planned damage prevention activities, and development or planned development along the pipeline segment;

2. data gathered through the integrity assessment required under this section;

3. data gathered in conjunction with other inspections, tests, surveillance and patrols required by this Part, including, corrosion control monitoring and cathodic protection surveys; and

4. information about how a failure would affect the high consequence area, such as location of the water intake.

H. What actions must be taken to address integrity issues?

1. General Requirements. An operator must take prompt action to address all pipeline integrity issues raised by the assessment and information analysis. An operator must evaluate all anomalies and repair those anomalies that could reduce a pipeline's integrity. An operator must comply with §30281 in making a repair.

2. Discovery of a Condition. Discovery of a condition occurs when an operator has adequate information about the condition to determine the need for repair. Depending on circumstances, an operator may have adequate information when the operator receives the preliminary internal inspection report, gathers and integrates information from the other inspections or the periodic evaluation, excavates the anomaly, or when an operator receives the final internal inspection report. The date of discovery can be no later than the date of the integrity assessment results or the final report.

3. Review of Integrity Assessment. An operator must include in its schedule for evaluation and repair (as required by Paragraph H.4 of this Section), a schedule for promptly reviewing and analyzing the integrity assessment results. After March 31, 2004, an operator's schedule must provide for review of the integrity assessment results within 120 days of conducting each assessment. The operator must obtain and assess a final report within an additional 90 days.

4. Schedule for Repairs. An operator must complete repairs according to a schedule that prioritizes the conditions for evaluation and repair. An operator must base the schedule on the risk factors listed in Paragraph E.1 of this Section and any pipeline-specific risk factors the operator develops. If an operator cannot meet the schedule for any of the conditions addressed in Subparagraphs H.5.a through d of this Section, the operator must justify the reasons why the schedule cannot be met and that the changed schedule will not jeopardize public safety or environmental protection. An operator must notify OPS if the operator cannot meet the schedule and cannot provide safely though a temporary reduction in operating pressure until a permanent repair is made. An operator must send a notice to the address

specified in §30147 or to the facsimile number specified in §30135.

5. Special Requirements for Scheduling Repairs

a. Immediate Repair Conditions. An operator's evaluation and repair schedule must provide for immediate repair conditions. To maintain safety, an operator will need to temporarily reduce operating pressure or shut down the pipeline until the operator can complete the repair of these conditions. An operator must base the temporary operating pressure reduction on remaining wall thickness. An operator must treat the following conditions as immediate repair conditions:

- i. metal loss greater than 80 percent of nominal wall regardless of dimensions;
- ii. predicted burst pressure less than the maximum operating pressure at the location of the anomaly. Burst pressure has been calculated from the remaining strength of the pipe, using a suitable metal loss strength calculation, e.g., ASME/ANSI B31G ("Manual for Determining the Remaining Strength of Corroded Pipelines" (1991)) or AGA Pipeline Research Committee Project PR-3-805 ("A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe" (December 1989)). These documents are available at the addresses listed at §30107;
- iii. dents on the top of the pipeline (above 4 and 8 o'clock position) with any indicated metal loss;
- iv. significant anomaly that in the judgment of the person evaluating the assessment results requires immediate action.

b. Sixty-Day Conditions. Except for conditions listed in Subparagraph H.5.a of this Section, an operator must schedule for evaluation and repair all dents, regardless of size, located on the top of the pipeline (above the 4 and 8 o'clock position) within 60 days of discovery of the condition:

c. Six-Month Conditions. Except for conditions listed in Subparagraphs H.5.a or b of this Section, an operator must schedule evaluation and repair of the following within six months of discovery of the condition:

- i. dents with metal loss or dents that affect pipe curvature at the girth or seam weld;
- ii. dents with reported depths greater than 6 percent of the pipe diameter;
- iii. remaining strength of the pipe results in a safe operating pressure that is less than the current established MOP at the location of the anomaly using a suitable safe operating pressure calculation method (e.g., ASME/ANSI B31G ("Manual for Determining the Remaining Strength of Corroded Pipelines" (1991)) or AGA Pipeline Research Committee Project PR-3-805 ("A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe" (December 1989)). These documents are available at the addresses listed at §30107;
- iv. areas of general corrosion with a predicted metal loss of >50 percent of nominal wall;
- v. predicted metal loss of >50 percent of nominal wall at crossings of another pipeline;
- vi. weld anomalies with a predicted metal loss >50 percent of nominal wall;
- vii. potential crack indications that when excavated are determined to be cracks;
- viii. corrosion of or along seam welds;

ix. gouges or grooves greater than 12.5 percent of nominal wall.

d. Other Conditions. An operator must schedule evaluation and repair of the following conditions:

- i. data that reflect a change since last assessed;
- ii. data that indicates mechanical damage that is located on the top half of the pipe;
- iii. data that indicate anomalies abrupt in nature;
- iv. data that indicate anomalies longitudinal in orientation;
- v. data that indicate anomalies over a large area;
- vi. anomalies located in or near casings, crossings of another pipeline, and areas with suspect cathodic protection.

I. What preventive and mitigative measure must an operator take to protect the high consequence area?

1. General Requirements. An operator must take measures to prevent and mitigate the consequences of a pipeline failure that could affect a high consequence area. Those measures include conducting a risk analysis of the pipeline segment to identify additional actions to enhance public safety or environmental protection. Such actions may include, but are not limited to, implementing damage prevention best practices, better monitoring of cathodic protection where corrosion is a concern, establishing shorter inspection intervals, installing EFRDs on the pipeline segment, modifying the systems that monitor pressure and detect leaks, providing additional training to personnel on response procedures, conducting drills with local emergency responders and adopting other management controls.

2. Risk Analysis Criteria. In identifying the need for additional preventive and mitigative measures, an operator must evaluate the likelihood of a pipeline release occurring and how a release could affect the high consequence area. This determination must consider all relevant risk factors, including, but not limited to:

- a. terrain surrounding the pipeline segment, including drainage systems such as small streams and other smaller waterways that could act as a conduit to the high consequence area;
- b. elevation profile;
- c. characteristics of the product transported;
- d. amount of product that could be released;
- e. possibility of a spillage in a farm field following the drain tile into a waterway;
- f. ditches along side a roadway the pipeline crosses;
- g. physical support of the pipeline segment such as by a cable suspension bridge;
- h. exposure of the pipeline to operating pressure exceeding established maximum operating pressure.

3. Leak Detection. An operator must have a means to detect leaks on its pipeline system. An operator must evaluate the capability of its leak detection means and modify, as necessary, to protect the high consequence area. An operator's evaluation must, at least, consider, the following factors-length and size of the pipeline, type of product carried, the pipeline's proximity to the high consequence area, the swiftness of leak detection, location of nearest response personnel, leak history, and risk assessment results.

4. Emergency Flow Restricting Devices (EFRD). If an operator determines that an EFRD is needed on a pipeline

segment to protect a high consequence area in the event of a hazardous liquid pipeline release, an operator must install the EFRD. In making this determination, an operator must, at least, consider the following factors: the swiftness of leak detection and pipeline shutdown capabilities, the type of commodity carried, the rate of potential leakage, the volume that can be released, topography or pipeline profile, the potential for ignition, proximity to power sources, location of nearest response personnel, specific terrain between the pipeline segment and the high consequence area, and benefits expected by reducing the spill size.

J. What is a continual process of evaluation and assessment to maintain a pipeline's integrity?

1. General. After completing the baseline integrity assessment, an operator must continue to assess the line pipe at specified intervals and periodically evaluate the integrity of each pipeline segment that could affect a high consequence area.

2. Evaluation. An operator must conduct a periodic evaluation as frequently as needed to assure pipeline integrity. An operator must base the frequency of evaluation on risk factors specific to its pipeline, including the factors specified in Subsection E of this Section. The evaluation must consider the past and present integrity assessment results, information analysis (Subsection G of this Section), and decisions about repair, and preventive and mitigative actions (Subsections H and I of this Section).

3. Assessment Intervals. An operator must establish intervals not to exceed five years for continually assessing the line pipe's integrity. An operator must base the assessment intervals on the risk the line pipe poses to the high consequence area to determine the priority for assessing the pipeline segments. An operator must establish the assessment intervals based on the factors specified in Subsection E of this Section, the analysis of the results from the last integrity assessment, and the information analysis required by Subsection G of this Section.

4. Variance from the Five-Year Intervals in Limited Situations

a. Engineering Basis. An operator may be able to justify an engineering basis for a longer assessment interval on a segment of line pipe. The justification must be supported by a reliable engineering evaluation combined with the use of other technology, such as external monitoring technology, that provides an understanding of the condition of the line pipe equivalent to that which is obtainable under Paragraph J.2 of this Section. An operator must notify OPS nine months before the end of the intervals of five years or less of the reason why the operator intends to justify a longer interval. An operator must send a notice to the address specified in §30147 or to the facsimile number specified in §30135. The notice must state a proposed alternative interval.

b. Unavailable Technology. An operator may require a longer assessment period for a segment of line pipe (for example, because sophisticated internal inspection technology is not available). An operator must justify the reasons why it cannot comply with the required assessment period and must also demonstrate the actions it is taking to evaluate the integrity of the pipeline segment in the interim. An operator must notify OPS 180 days before the end of the intervals of the five years or less that the operator may

requires a longer assessment interval. An operator must send a notice to the address specified in §30147 or to the facsimile number specified in §30135. The operator may have up to an additional 180 days to complete the assessment.

5. Assessment Methods. An operator must assess the integrity of the line pipe by:

a. internal inspection tool or tools capable of detecting corrosion and deformation anomalies including dents, gouges and grooves;

b. pressure test conducted in accordance with Subchapter E of this Chapter; or

c. other technology that the operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator choosing this option must notify OPS 60 days before conducting the assessment, by sending a notice to the address specified in §30147 or to the facsimile number specified in §30135.

6. However, for low frequency electric resistance welded pipe or lap welded pipe susceptible to longitudinal seam failure, an operator must select integrity assessment methods capable of assessing seam integrity and of detecting corrosion and deformation anomalies.

K. What methods to measure program effectiveness must be used? An operator's program must include methods to measure whether the program is effective in assessing and evaluating the integrity of each pipeline segment and in protecting the high consequence areas. See Appendix C of this Part for guidance on methods that can be used to evaluate a program's effectiveness.

1. What records must be kept? An operator must maintain for review during an inspection:

a. a written integrity management program in accordance with Subsection B of this Section;

b. documents to support the decisions and analyses, including any modifications, justifications, variances, deviations, and determinations made, and actions taken, to implement and evaluate each element of the integrity management program listed in Subsection F of this Section.

2. See Appendix C of this Part for examples of records an operator would be required to keep.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 28:

§30351. Appendix C to Part VC Guidance for Implementation of Integrity Management Program

A. This Appendix gives guidance to help an operator implement the requirements of the integrity management program rule in §§30296 and 30298. Guidance is provided on:

1. information on operator may use to identify a high consequence area and factors an operator can use to consider the potential impacts of a release on an area;

2. risk factors an operator can use to determine an integrity assessment schedule;

3. safety risk indicator tables for leak history, volume or line size, age of pipeline, and product transported, an operator may use to determine if a pipeline segment falls into a high, medium or low risk category;

4. types of internal inspection tools an operator could use to find pipeline anomalies;

5. measure an operator could use to measure an integrity management program's performance; and

6. types of records an operator will have to maintain.

B. Identifying a high consequence area and factors for considering a pipeline segment's potential impact on a high consequence area.

1. The rule defines High Consequence Area as a high population area, an other populated area, an unusually sensitive area, or a commercially navigable waterway. The Office of Pipeline Safety (OPS) will map these areas on the National Pipeline Mapping Service (NPMS). An operator, member of the public, or other government agency may view and download the data from the NPMS home page <http://www.npms.rspa.dot.gov>. OPS will maintain the NPMS and update it periodically. However, it is an operator's responsibility to ensure that it has identified all high consequence areas that could be affected by a pipeline segment. An operator is also responsible for periodically evaluating its pipeline segments to look for population or environmental changes that may have occurred around the pipeline and to keep its program current with this information. (Refer to §30298.D.3) For more information to help in identifying high consequence areas, an operator may refer to:

a. Digital Data on populated areas available on U.S. Census Bureau maps;

b. Geographic Database on the commercial navigable waterways available on <http://www.bts.gov/gis/ntatlas/networks.html> ;

c. the Bureau of Transportation Statistics database that includes commercially navigable waterways and non-commercially navigable waterways. The database can be downloaded from the BTS website at <http://www.bts.gov/gis/ntatlas/networks/html>.

d. the Rule requires an operator to include a process in its program for identifying which pipeline segments could affect a high consequence area and to take measures to prevent and mitigate the consequences of a pipeline failure that could affect a high consequence area. (See §30298.F and I) Thus, an operator will need to consider how each pipeline segment could affect a high consequence area. The primary source for the listed risk factors is a US DOT study on instrumental Internal Inspection devices (November 1992). Other sources include the National Transportation Safety Board, the Environmental Protection Agency and the Technical Hazardous Liquid Pipeline Safety Standards, Committee. The following list provides guidance to an operator on both the mandatory and additional factor:

1. terrain surrounding the pipeline. An operator should consider the contour of the land profile and if it could allow the liquid from a release to enter a high consequence area. An operator can get this information from topographical maps such as U.S. Geological Survey quadrangle maps;

2. drainage systems such as small streams and other smaller waterways that could serve as a conduit to a high consequence area;

3. crossing of farm tile fields. An operator should consider the possibility of a spillage in the field following the drain tile into a waterway;

4. crossing of roadways with ditches along the side. The ditches could carry a spillage to a waterway;

5. the nature and characteristics of the product the pipeline is transporting (refined products, crude oils, highly volatile liquids, etc.) Highly volatile liquids becomes gaseous when exposed to the atmosphere. A spillage could create a vapor cloud that could settle into the lower elevation of the ground profile;

6. physical support of the pipeline segment such as by a cable suspension bridge. An operator should look for stress indicators on the pipeline (strained supports, inadequate support at towers), atmospheric corrosion, vandalism, and other obvious signs of improper maintenance;

7. operating condition of pipeline (pressure, flow rate, etc.) Exposure of the pipeline to operating pressure exceeding established maximum operating pressure;

8. the hydraulic gradient of pipeline;

9. the diameter of pipeline, the potential release volume, and the distance between the isolation points;

10. potential physical pathways between the pipeline and the high consequence area;

11. response capability (time to respond, nature of response);

12. potential natural forces inherent in the area (flood zones, earthquakes, subsidence areas, etc.).

C. Risk factors for Establishing Frequency of Assessment

1. By assigning weights or values to the risk factors, and using the risk indicator tables, an operator can determine the priority for assessing pipeline segments, beginning with those segments that are of highest risk, that have not previously been assessed. This list provides some guidance on some of the risk factors to consider (See §30298.E). An operator should also develop factors specific to each pipeline segment it is assessing, including:

a. populated areas, unusually sensitive environmental areas, National Fish Hatcheries, commercially navigable waters, areas where people congregate;

b. results from previous testing/inspection. (See §30298.H);

c. leak history. (See leak history risk table.)

d. known corrosion or condition of pipeline. (See §30298.G)

e. cathodic protection history;

f. type and quality of pipe coating (disbonded coating results in corrosion);

g. age of pipe (older pipe shows more corrosion-may be uncoated or have an ineffective coating) and type of pipe seam (See Age of Pipe risk table);

h. product transported (highly volatile, highly flammable and toxic liquids present a greater threat for both people and the environment) (See Product Transported risk table);

i. pipe wall thickness (thicker walls give a better safety margin);

j. size of pipe (higher volume release if the pipe ruptures);

k. location related to potential ground movement (e.g., seismic faults, rock quarries, and coal mines); climatic (permafrost causes settlement-Alaska); geologic (landslides or subsidence);

- l. security of throughput (effects on customers if there is failure requiring shutdown);
- m. time since the last internal inspection/pressure testing;
- n. with respect to previously discovered defects/anomalies, the type, growth rate, and size;
- o. operating stress levels in the pipeline;
- p. location of the pipeline segment as it relates to the ability of the operator to detect and respond to a leak. (e.g., pipelines deep underground, or in locations that make leak detection difficult without specific sectional monitoring and/or significantly impede access for spill response or any other purpose);
- q. physical support of the segment such as by a cable suspension bridge;
- r. non-standard or other than recognized industry practice on pipeline installation (e.g., horizontal directional drilling).

2. Example. This example illustrates a hypothetical model used to establish an integrity assessment schedule for a hypothetical pipeline segment. After we determine the risk factors applicable to the pipeline segment, we then assign values or numbers to each factor, such as, high (5), moderate (3), or low (1). We can determine an overall risk classification (A, B, C) for the segment using the risk tables and a sliding scale (values 5 to 1) for risk factors for which tables are not provided. We could classify a segment as C if it fell above 2/3 of maximum value (highest overall risk value for any one segment when compared with other segments of a pipeline), a segment B if it fell between 1/3 to 2/3 of maximum value, and the remaining segments as A.

a. For the baseline assessment schedule, we would plan to assess 50 percent of all pipeline segments covered by the rule, beginning with the highest risk segments, within the first 3 1/2 years and the remaining segments within the seven-year period. For the continuing integrity assessments, we could plan to assess the C segments within the first two years of the schedule, the segments classified as moderate risk no later than year three or four and the remaining lowest risk segments no later than year five.

b. For our hypothetical pipeline segment, we have chosen the following risk factors and obtained risk factor values from the appropriate table. The values assigned to the risk factors are for illustration only.

Age of Pipeline:	Assume 30 years old (refer to AAge of Pipeline@risk table)	Risk Value = 5
Pressure Tested:	Tested once during construction	Risk Value = 5
Coated:	(yes/no) - yes	
Coating Condition:	Recent excavation of suspected areas showed holidays in coating (potential corrosion risk)	Risk Value = 5
Cathodically Protected:	(yes/no) - yes	Risk Value = 1
Date Cathodic Protection Installed:	Five years after pipeline was constructed (Cathodic protection installed within one year of the pipeline's construction is generally considered low risk.)	Risk Value = 3
Close Interval Survey:	(yes/no) - no	Risk Value = 5
Interval Inspection	(yes/no) - yes	

Tool Used:		
Date of Pig Run?	In last five years	Risk Value = 1
Anomalies Found:	(yes/no) - yes, but do not pose an immediate safety risk or environment hazard	Risk Value = 3
Leak History:	yes, one spill in last 10 years. (refer to ALeak History@risk table)	Risk Value = 2
Product Transported:	Diesel fuel. Product low risk. (refer to AProduct@risk table)	Risk Value = 1
Pipe Size:	16 inches. Size presents moderate risk (refer to ALine Size@risk table)	Risk Value = 3

c. Overall risk value for this hypothetical segment of pipe is 34. Assume we have two other pipeline segments for which we conduct similar risk rankings. The second pipeline segment has an overall risk value of 20, and the third segment, 11. For the baseline assessment we would establish a schedule where we assess the first segment (highest risk segment) within two years, the second segment within five years and the third segment within seven years. Similarly, for the continuing integrity assessment, we could establish an assessment schedule where we assess the highest risk segment no later than the second year, the second segment no later than the third year, and the third segment no later than the fifth year.

D. Safety risk indicator tables for leak history, volume or line size, age of pipeline, and product transported.

Leak History	
Safety Risk Indicator Leak History (Time-dependent defects)	
High	>3 Spills in last 10 years
Low	<3 Spills in last 10 years
0Time-dependent defects are those that result in spills due to corrosion, gouges, or problems developed during manufacture, construction or operation, etc.	

Line Size Or Volume Transported	
Safety Risk Indicator	Line Size
High	18"
Moderate	10" -16" nominal diameters
Low	8" nominal diameter

Age Of Pipeline	
Safety Risk Indicator	Age Pipeline Condition Dependent
High	25 years
Low	25 years
0Depends on pipeline's coating and corrosion condition, and steel quality, toughness, welding.	

Product Transported		
Safety Risk Indicator	Considerations ⁰	Product Examples
High	(Highly volatile and flammable)	(Propane, butane, Natural Gas Liquid [NGL], ammonia)
	Highly toxic	(Benzene, high Hydrogen Sulfide content crude oils).
Medium	Flammable-flashpoint <100F	(Gasoline, JP4, low flashpointcrude oils.
Low	Non-flammable-flashpoint 100+ F	(Diesel, fuel oil, kerosene, JP5, most crude oils.

The degree of acute and chronic toxicity to humans, wildlife and aquatic life; reactivity; and, volatility, flammability, and water solubility determine the Product Indicator. Comprehensive Environmental Response, Compensation and Liability Act Reportable Quantity values may be used as an indication of chronic toxicity. National Fire Protection Association health factors may be used for rating acute hazards.

E. Types of Internal Inspection Tools to Use. An operator should consider at least two types of internal inspection tools for the integrity assessment from the following list. The type of tool or tools an operator selects will depend on the results from previous internal inspection runs, information analysis and risk factors specific to pipeline segment:

1. geometry internal inspection tools for detecting changes to ovality, e.g., bends, dents, buckles or wrinkles, due to construction flaws or soil movement, or other outside force damage;

2. metal loss tools (ultrasonic and magnetic flux leakage) for determining pipe wall anomalies, e.g., wall loss due to corrosion;

3. crack detection tools for detecting cracks and crack-like features, e.g., stress corrosion cracking (SCC), fatigue cracks, narrow axial corrosion, toe cracks, hook cracks, etc.

F. Methods to Measure Performance

1. General

a. This guidance is to help an operator establish measures to evaluate the effectiveness of its integrity management program. The performance measures required will depend on the details of each integrity management program and will be based on an understanding and analysis of the failure mechanisms or threats to integrity of each pipeline segment.

b. An operator should select a set of measurements to judge how well its program is performing. An operator's objectives for its program to ensure public safety, prevent or minimize leaks and spills and prevent property and environmental damage. A typical integrity management program will be an ongoing program and it may contain many elements. Therefore, several performance measures are likely to be needed to measure the effectiveness of an ongoing program.

2. Performance Measures. These measures show how a program to control risk on pipeline segments that could affect a high consequence area is progressing under the integrity management requirements. Performance measures generally fall into three categories.

a. Selected Activity Measures. Measures that monitor the surveillance and preventive activities the operator has implemented. These measures indicate how well an operator is implementing the various elements of its integrity management program.

b. Deterioration Measures. Operation and maintenance trends that indicate when the integrity of the system is weakening despite preventive measures. This category of performance measure may indicate that the system condition is deteriorating despite well executed preventive activities.

c. Failure Measures. Leak History, incident response, product loss, etc. These measures will indicate progress towards fewer spills and less damage.

3. Internal vs. External comparisons. These comparisons show how a pipeline segment that could affect a high consequence area is progressing in comparison to the

operator's other pipeline segment that are not covered by the integrity management requirements and how that pipeline segment compares to other operator's pipeline segments.

a. Internal. Comparing data from the pipeline segment that could affect the high consequence area with data from pipeline in other areas of the system may indicate the effects from the attention given to the high consequence area.

b. External. Comparing data external to the pipeline segment (e.g., OPS incident data) may provide measures on the frequency and size of leaks in relation to other companies.

4. Examples. Some examples of performance measures an operator could use include:

a. a performance measurement goal to reduce the total volume from unintended releases by ___% (percent to be determined by operator) with an ultimate goal of zero;

b. a performance measurement goal to reduce the total number of unintended releases (based on a threshold of five gallons) by ___% (percent to be determined by operator) with an ultimate goal of zero;

c. a performance measurement goal to document the percentage of integrity management activities completed during the calendar year;

d. a performance measurement goal to track and evaluate the effectiveness of the operator's community outreach activities;

e. a narrative description of pipeline system integrity, including a summary of performance improvements, both qualitative and quantitative, to an operator's integrity management program prepared periodically;

f. a performance measure based on internal audits of the operator's pipeline system per LAC 33:V;

g. a performance measure based on external audits of the operator's pipeline system per LAC 33:V;

h. a performance measure based on operational events (for example: relief occurrences, unplanned valve closure, SCADA outages, etc.) that have the potential to adversely affect pipeline integrity;

i. a performance measure to demonstrate that the operator's integrity management program reduces risk over time with a focus on high risk items;

j. a performance measure to demonstrate that the operator's integrity management program for pipeline stations and terminals reduces risk over time with a focus on high risk items.

G Examples of Types of Records an Operator Must Maintain. The rules requires an operator to maintain certain records. (See §30298.L) This Section provides examples of some records that an operator would have to maintain for inspection to comply with the requirement. This is not an exhaustive list:

1. a process for identifying which pipeline segments that could affect a high consequence area and a document identifying all pipeline segments that could affect a high consequence area;

2. a plan for baseline assessment of the line pipe that includes each required plan element;

3. modifications to the baseline plan and reasons for the modification;

4. use of and support for an alternative practice;

5. a framework addressing each required element of the integrity management program, updates and changes to the initial framework and eventual program;

6. a process for identifying a new high consequence area and incorporating it into the baseline plan, particularly, a process for identifying population changes around a pipeline segment;

7. an explanation of methods selected to assess the integrity of line pipe;

8. a process for review of integrity assessment results and data analysis by a person qualified to evaluate the results and data;

9. the process and risk factors for determining the baseline assessment interval;

10. the results of the baseline integrity assessment;

11. the process used for continual evaluation, and risk factors used for determining the frequency of evaluation.

12. process for integrating and analyzing information about the integrity of a pipeline, information and data used for the information analysis;

13. results of the information analyses and periodic evaluations;

14. the process and risk factors for establishing continual re-assessment intervals;

15. justification to support any variance from the required re-assessment intervals;

16. integrity assessment results and anomalies found, process for evaluating and repairing anomalies criteria for repair actions and actions taken to evaluate and repair the anomalies;

17. other remedial actions planned or taken;

18. schedule for reviewing and analyzing integrity assessment results;

19. schedule for evaluation and repair of anomalies, justification to support deviation from required repair times.

20. risk analysis used to identify additional preventive or mitigative measures, records of preventive and mitigative actions planned or taken.

21. criteria for determining EFRD installation;

22. criteria for evaluating and modifying leak detection capability;

23. methods used to measure the program's effectiveness.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 28:

Family Impact Statement

1. The Effect of These Rules on the Stability of the Family. These rules will have no effect on the stability of the family.

2. The Effect of These Rules on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. These rules will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect of These Rules on the Functioning of the Family. These rules will have no effect on the functioning of the family.

4. The Effect of These Rules on Family Earnings and Family Budget. These rules will have no effect on family earnings and family budget.

5. The Effect of These Rules on Family Earnings and Family Budget. These rules will have no effect on the functioning of the family.

6. The Effect of These Rules on the Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rules. These rules will have no effect on the ability of the family or local government to perform the function as contained in the proposed rules.

A public hearing will be held on this matter on November 29, 2001. Interested persons may contact Mariano Hinojosa, Director, Pipeline Division, Office of Conservation, P.O. Box 94275, Baton Rouge, LA 70804-9275 or by calling (225) 342-5505.

Philip N. Asproditos
Commissioner of Conservation

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Amendments to Pipeline Safety Regulations

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There should be no additional costs or savings regarding the amendment of this rule. This action adopts federal amendments to pipeline safety regulations.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There should be no effect on revenue or costs as the Department was previously enforcing similar rules.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There should be no significant costs or economic benefits to any person or group.

All of the requirements of this rule have already been implemented by federal laws. Any costs associated with compliance with the safety regulations has long ago been absorbed by the regulated companies. Therefore, adoption of this rule will not affect costs.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no effect on competition or employment.

Philip N. Asproditos
Commissioner
0110#013

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections Corrections Services

Disciplinary Rules for Adult Offenders CPenalty Schedule C Disciplinary Report (LAC 22:I.359)

In accordance with the Administrative Procedure Act, R.S. 49:953(A), the Department of Public Safety and Corrections, Corrections Services, hereby gives notice of its intent to amend regulations dealing with the Disciplinary Rules for Adult Offenders.

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW
ENFORCEMENT
Part I. Corrections

Chapter 3. Adult and Juvenile Services
Subchapter B. Disciplinary Rules for Adult Offenders
§ 359. Penalty ScheduleC Disciplinary Report (Heard by Disciplinary Board)

A.1. - A.2.k. ...

1. loss of incentive wages for up to one year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823, Wolff v. McDonnell, 94 S.Ct. 2963 (1974), Ralph v. Dees, C.A. 71-94, USDC (Md. La.) and Sandin v. Conner, 115 S.Ct. 2293 (1995).

HISTORICAL NOTE: Promulgated by the Department of Corrections, Corrections Services, LR 7:6 (January 1981), repromulgated by Corrections Services, LR 17:605 (June 1991), LR 17:670 (July 1991), amended LR 19:653 (May 1993), LR 25:1876 (October 1999), LR 28:

Family Impact Statement

In accordance with the Administrative Procedure Act, R.S. 49:953(A)(1)(a)(viii) and R.S. 49:972, the Department of Public Safety and Corrections, Corrections Services, hereby provides the Family Impact Statement.

Adoption of these disciplinary rules and procedures for adult inmates will have no effect on the stability of the family, on the authority and rights of parents regarding the education and supervision of their children, on the functioning of the family, on family earnings and family budget, on the behavior and personal responsibility of children or on the ability of the family or a local government to perform the function as contained in the proposed rule amendment.

Interested persons may submit oral or written comments to Richard L. Stalder, Secretary, Department of Public Safety and Corrections, P.O. Box 94304, Capitol Station, Baton Rouge, LA 70804-9304, (225) 342-6741. Comments will be accepted through the close of business at 4:30 p.m., November 20, 2001.

Richard L. Stalder
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Disciplinary Rules for Adult
OffendersC Penalty ScheduleC Disciplinary Report

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be no estimated costs associated with this amendment.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

No reasonable estimate can be provided for the possible cost to affected inmates who lose incentive wages as the result of disciplinary rule infractions. The proposed penalty is only one of many that may be utilized. The total numbers are uncertain, but due to the extent that inmates do lose wages, the impact will be minimal.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact on competition and employment.

Robert B. Barbor
Executive Counsel
0110#099

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections
Corrections Services

Louisiana Risk Review Panel (LAC 22:I.107)

In accordance with the Administrative Procedure Act, R.S. 49:953.A and B, and in order to comply with the legislative mandate of Act 403 of the 2001 Regular Session of the Louisiana Legislature, the Department of Public Safety and Corrections, Corrections Services, hereby gives notice of its intent to promulgate rules and regulations for the operation of the Louisiana Risk Review Panel. This Rule is also being promulgated as an Emergency Rule pursuant to the provisions of R.S. 49:953.B of the Administrative Procedure Act.

The text of this proposed Rule may be viewed in its entirety in the Emergency Rule section of this issue of the *Louisiana Register*.

Interested persons may submit oral or written comments to Richard L. Stalder, Secretary, Department of Public Safety and Corrections, P.O. Box 94304, Capitol Station, Baton Rouge, LA 70804-9304, (225) 342-6741. Comments will be accepted through the close of business at 4:30 p.m., November 20, 2001.

In accordance with the Administrative Procedure Act, R.S. 49:953.A(1)(a)(viii) and R.S. 49:972, the Department of Public Safety and Corrections, Corrections Services, hereby provides the Family Impact Statement.

Family Impact Statement

Adoption of these disciplinary rules and procedures for adult inmates will have no effect on the stability of the family, on the authority and rights of parents regarding the education and supervision of their children, on the functioning of the family, on family earnings and family budget, on the behavior and personal responsibility of children or on the ability of the family or a local government to perform the function as contained in the proposed rule amendment.

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Louisiana Risk Review Panel

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The total cost to the state for fiscal year 01-02 is \$330,764. Salaries, per diem and supply costs will be expended through the fiscal year. All costs for the fiscal year have been appropriated from the State General Fund per H.B. Number 1, 2001 Regular Session.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no additional costs or economic benefit directly affecting persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact on competition and employment, other than those hired or appointed to serve in conjunction with implementation of the program.

Robert B. Barbor
Executive Counsel
0110#100

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Board of Private Security Examiners**

Company Licensure (LAC 46:LIX.201 and 203)

Under the authority of the Private Security Regulatory and Licensing Law, R.S. 37:3270 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the executive secretary gives notice that rulemaking procedures have been initiated to amend the Louisiana State Board of Private Security Examiners Regulations, LAC 46:LIX:201 and 203, as follows.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LIX. Private Security Examiners

Chapter 2. Company Licensure

§201. Qualifications and Requirements for Company Licensure

A. - E.8. ...

F. It shall be unlawful for any individual to make an application to the board as qualifying agent unless that person intends to maintain and continues to maintain that supervisory position on a regular, full-time basis, or on a part-time basis if requested in writing by the applicant and approved by the board. A person may not be a qualifying agent for more than one licensee.

G. - L.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270 et seq.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:752 (December 1987), amended LR 15:847 (October 1989), LR 18:190 (February 1992), LR 23:588 (May 1997), LR 26:1068 (May 2000), LR 28:

§203. Application Procedure

A. - A.9. ...

10. general liability insurance:

a. the general liability policy as required by R.S. 37:3276 shall name the state of Louisiana as an additional insured and, at a minimum, shall contain coverage provisions for hiring, training and retention; errors and omissions; firearms; care, custody and control, with minimum limits equal to those set forth in R.S. 37:3276 for general liability coverage and with contractual liability

exclusive of sole negligence. The policy shall not void coverage for all insureds based upon the exclusion of one insured;

b. a copy of the entire policy shall be submitted to the board upon issuance or renewal of the policy;

c. investigators acting on behalf of the Louisiana State Board of Private Security Examiners shall be empowered to investigate and report on the financial health of insurance companies authorized to issue such policies in Louisiana;

d. all companies issuing policies as required by R.S. 37:3276 shall certify policy compliance with the provisions of this chapter;

A.11. - L. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270 et seq.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:752 (December 1987), amended LR 15:12 (January 1989), LR 15:847 (October 1989), LR 26:1070 (May 2000), LR 28:

These proposed regulations are to become effective upon publication in the *Louisiana Register*.

All interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than November 26, 2001, at 4:30 p.m. to Wayne R. Rogillio, Executive Secretary, Louisiana State Board of Private Security Examiners, 15703 Old Hammond Highway, Baton Rouge, LA 70816.

Wayne R. Rogillio
Executive Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Company Licensure**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Neither costs nor savings to state or local governmental units are involved in these rule changes.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No effect on revenue collections of state or local governmental units is anticipated from these rule changes.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

No significant costs or economic benefits to directly affected persons or governmental groups are expected from these rule changes. Only those persons in the private security industry would be directly affected by the amendment of the board's existing rule and regulations, and no additional costs, workload adjustments or paperwork will be incurred.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect on competition and employment is anticipated from these rule changes.

Wayne R. Rogillio
Executive Secretary
0110#042

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue Policy Services Division

Composite Returns (LAC 61:I.1401)

Under the authority of R.S. 47:201.1 and R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:I.1401 relative to composite returns and composite payments of tax made by a partnership or limited liability company on behalf of nonresident partners or members.

Act 21 of the 2000 Second Extraordinary Session of the Louisiana Legislature enacted R.S. 47:201.1 to require certain partnerships and limited liability companies with nonresident partners or members to file composite returns and make composite payments of tax for nonresident partners or members who do not agree to file and pay Louisiana income tax on their own behalf. This Rule will provide guidance concerning which partnerships and limited liability companies must file composite returns and make composite payments; when composite returns and payments are due; which partners or members are to be included on the composite return; and how partners or members who do not wish to be included in a composite return can enter into an agreement with the Department of Revenue to file and pay on their own behalf.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 14. Income: Partnerships

§1401. Partnership Composite Return Requirement, Composite Payment Requirement, Exceptions

A. Definitions. For the purpose of this rule, the following terms are defined.

Corporation—an entity that is treated as a corporation for state income tax purposes as set forth in R.S. 47:287.11.A.

Engaging in Activities in this State—having payroll, sales, or tangible property in this state, or intangible property with a Louisiana business situs.

Individual Return—a Louisiana personal income tax return or a Louisiana fiduciary income tax return.

Nonresident—any individual not domiciled, residing in, or having a permanent place of abode in Louisiana.

Partner—a member or partner of an association that is treated as a partnership for state income tax purposes, including but not limited to, a member in a limited liability company or a partner in a general partnership, a partnership in commendam, or a registered limited liability partnership. A partner is the ultimate owner of a partnership interest; therefore someone holding or managing a partnership interest on behalf of another, such as a broker, is not a partner for purposes of this rule.

Partnership—any association that is treated as a partnership for state income tax purposes including, but not limited to, a general partnership, partnership in commendam, a registered limited liability partnership, or a limited liability company. Because of R.S. 47:287.11.A, the above listed

business associations that do not elect to be taxed as corporations for federal income tax purposes are treated as partnerships for Louisiana income tax purposes.

B. Composite Return Requirement

1. Partnerships engaging in activities in this state that have nonresident partners are required to file a composite partnership return unless:

a. no partner is a nonresident individual; or

b. all individual nonresident partners have a valid agreement on file with the Department of Revenue in which the partner has agreed to file an individual return and pay income tax on all income derived from or attributable to sources in this state. Although the partnership does not have an obligation to file a composite return, the partnership must still file all agreements with the Department of Revenue by the composite return due date.

2. All nonresident partners, other than partners that are corporations, who were partners at any time during the taxable year and who do not have an agreement on file with the Department of Revenue must be included in the composite partnership return.

3. A schedule must be attached to the composite return that includes the following information for every nonresident partner in the partnership:

a. the name of the partner;

b. the address of the partner;

c. the taxpayer identification number of the partner;

d. the partner's distributive share; and

e. whether or not that partner has an agreement on file with the Department of Revenue to file an individual return on his or her own behalf.

4. The filing of a true, correct, and complete partnership composite return will relieve any nonresident partner included in the composite return from the duty to file an individual return, provided that the partner does not have any income from Louisiana sources other than that income reported in the composite return.

5. The due date of the composite return is the due date set forth for all income tax returns other than corporate returns.

6. Each partnership required to file a composite return will be issued an identification number by the department upon the filing of its first composite return. This identification number shall be used on all subsequent composite returns filed by that partnership.

C. Corporate partners cannot be included in composite returns filed by a partnership. Corporate partners must file all applicable Louisiana tax returns, and must report all Louisiana source income, including income from the partnership in those returns.

D. Composite Payment Requirement

1. All partnerships engaging in activities in this state that have nonresident partners that are not corporations shall make composite payments on behalf of all of their nonresident partners, other than corporate partners, who do not file an agreement to file an individual return and pay Louisiana income tax.

2. The composite payment is due on the earlier of the date of filing of the composite return or the due date of the composite return, without regard to extensions of time to file. An extension of time to file the composite return does not extend the time to pay the composite payment.

3. Each partner's share of the composite payment is the maximum tax rate for individuals multiplied by the nonresident partner's share of partnership income that was derived from or attributable to sources in this state. This computation applies whether or not the partnership income is distributed.

4. The composite payment to be made by the partnership is the sum of each nonresident partner's share of the composite payment for all nonresident partners included in the composite return.

5. For a nonresident partner whose only Louisiana income is from the partnership, amounts paid by the partnership on that partner's behalf will be treated as a payment of that partner's Louisiana individual income tax liability. If a nonresident partner has any Louisiana source income in addition to the income from the partnership, amounts paid by the partnership on that partner's behalf will be treated as a credit against the tax liability shown on that partner's individually filed return.

E. Partner's Agreement to File an Individual Return

1. No composite return or composite payment is required from a partnership on behalf of a partner who has a valid agreement on file with the Department of Revenue in which the partner has agreed to file an individual return and pay income tax on all income derived from or attributable to sources in this state.

2. The partner will execute the agreement and forward the agreement to the partnership, on or before the original due date of the composite return.

3. The partnership will file the original agreement with the composite return filed for that taxable year. The partnership must keep a copy of the agreement on file until the agreement is revoked or the partner is no longer a partner of the partnership.

4. The agreement must be in the form of an affidavit and must include all of the following:

- a. a statement that the taxpayer is a nonresident partner or member;
- b. the partner's name;
- c. the partner's address;
- d. the partner's social security number or taxpayer identification number;
- e. the name of the partnership;
- f. the address of the partnership;
- g. the partnership's taxpayer identification number;
- h. a statement that the taxpayer agrees to timely file a Louisiana individual income tax return and make payment of Louisiana individual income tax;
- i. a statement that the taxpayer understands that the Louisiana Department of Revenue is not bound by the agreement if the taxpayer fails to abide by the terms of the agreement;
- j. the statement that "under penalties of perjury, I declare that I have examined this affidavit and agreement and to the best of my knowledge, and belief, it is true correct and complete;" and
- k. the signature of the partner.

5. Once an agreement is signed by the partner, forwarded to the partnership, and the partnership has filed the agreement with the Department of Revenue, the agreement will continue in effect until the partner or the

Department of Revenue revokes the agreement, or the partner is no longer a partner in the partnership.

6. The agreement may be revoked by either the partner or the Department of Revenue as follows.

a. The partner may revoke the agreement at will. However, this revocation does not become effective until the first day of the subsequent tax year of the partnership. The partner must send notice of the revocation to the partnership. The partnership will forward the notice to the Department of Revenue. The partner may execute a new agreement, in the manner set forth in this Subsection, at any time.

b. The Department of Revenue may revoke the agreement only if the partner fails to comply with the terms of the agreement. This revocation is prospective only with respect to the partnership, and does not become effective until the first day of the subsequent tax year of the partnership. The Department of Revenue must send notice of the revocation to the partner and the partnership by certified mail, return receipt requested. If the Department of Revenue revokes an agreement, the department may refuse to accept a subsequent agreement by that partner, unless the partner can show that the revocation was in error.

F. A partnership making a composite return and payment must furnish the following information to all partners included in the composite return:

1. the partnership's taxpayer identification number;
2. the amount of the payment made on the partner's behalf;
3. a statement that the amount paid on the partner's behalf can be used as a credit against that partner's Louisiana individual income tax liability for the same tax period, if the partner files an individual income tax return with the Department of Revenue that declares the income from the partnership;
4. the mailing address of the Louisiana Department of Revenue; and
5. the internet address of the Louisiana Department of Revenue.

G. Nothing in this regulation shall restrict the Secretary's authority to otherwise provide for efficient administration of the composite return and composite payment requirements of R.S. 47:201.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:201.1 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, LR 28:

Family Impact Statement

The proposed adoption of LAC 61:I.1401, regarding partnership composite returns and composite payments of tax made by a partnership or limited liability company on behalf of nonresident partners or members should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically, the implementation of this proposed rule will have no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;

6. the ability of the family or a local government to perform this function.

Any interested person may submit written data, views, arguments or comments regarding this proposed rule to Michael D. Pearson, Senior Policy Consultant, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 15409, Baton Rouge, LA 70895-5409. All comments must be received no later than 4:30 p.m. November 27, 2001. A public hearing will be held on Wednesday, November 28, 2001, at 1:30 p.m. in the Legal Conference Room on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana.

Cynthia Bridges
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Composite Returns**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The implementation of this proposed regulation will have no impact upon any local governmental units.

The implementation of this proposed regulation, which requires certain entities taxed as partnerships to file composite returns, will have a minor impact on the agency's costs. The number of returns is expected to be small. The primary cost will be the cost of examining the returns for names of nonresident natural persons not filing individual income tax returns. There will be minimal costs associated with storing the returns and agreements signed by partners. In the future, there will be the cost of entering the information into the information data storage. These costs are expected to be minimal and will be absorbed utilizing existing resources.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There should be no effect on revenue collections of local governmental units as a result of this proposed regulation. There should be some increase in revenue collections for the state due to improved compliance of nonresident partners and members reporting income from Louisiana sources. The information provided from the composite returns will necessitate some audits that should generate additional revenue. The size of that increase cannot be determined.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Partnerships and limited liability companies with nonresident partners or members that have business activities within the state will have the cost of preparing the composite return or filing agreements from nonresident partners or members.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed regulation should have no effect on competition or employment.

Cynthia Bridges
Secretary
0110#078

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Revenue
Policy Services Division**

Corporation Franchise Tax Due Date
(LAC 61:I.309)

Under the authority of R.S. 47:609 and R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend LAC 61:I.309 to conform the regulation to the current statute.

This regulation was last amended in February 1985. Two significant changes have been made to the statute since the regulation was last amended. The date upon which the corporation franchise tax is payable, which is set forth in R.S. 47:609, was changed by Acts 1986, No. 59, §1. The statute was further amended by Acts 1991, No. 368, §1 in which the term "accrual" or "accrues" was changed to "due date" or "is due." This proposed amendment will reflect the changes in the statute made in 1986 and 1991.

Title 61

REVENUE AND TAXATION

**Part I. Taxes Collected and Administered by the
Secretary of Revenue**

Chapter 3. Corporation Franchise Tax

§309. Due Date, Payment, and Reporting of Tax

A. The corporation franchise tax becomes due on the first day of each calendar or fiscal year in which a corporation is subject to the tax, and is based on its entire issued and outstanding capital stock, surplus, and undivided profits, and borrowed capital determined as of the close of the previous calendar or fiscal year. There is no proration of the tax for a portion of the year in the case of dissolution of a domestic corporation, withdrawal from the state by a domestic corporation, or where a corporation otherwise ceases to be subject to the tax. The tax is payable to the secretary of Revenue on or before the fifteenth day of the third month following the month in which the tax becomes due; in the case of a calendar year taxpayer, the tax becomes due on January 1 and is payable to the secretary on or before April 15. If the day on which the tax is payable falls on a Saturday, Sunday, or legal holiday the tax is payable on the next business day. For purposes of this section, fiscal or calendar year shall be determined by reference to the annual accounting period regularly used by the corporation in keeping its books.

B. Payment of the tax shall be accompanied by a full, accurate, and complete report prepared on forms furnished by the secretary of Revenue, which shall be signed by a duly authorized official of the corporation.

C. Whenever the secretary has granted permission to a corporation to change its accounting period under the provisions of R.S. 47:613, the tax to be paid for the period from the end of the last period for which the tax had already become due until the end of the new accounting period shall be determined by multiplying the ratio that the number of

such months bears to 12, times the tax computed for an annual period based on the previous period's closing. All subsequent returns shall be prepared on the basis of the new accounting period.

D. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:609 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985), amended by the Department of Revenue, Policy Services Division, LR 28:

Family Impact Statement

The proposed amendment of LAC 61:I.309, regarding the due date, payment, and reporting of the corporation franchise tax, should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically, the implementation of this proposed rule will have no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform this function.

Any interested person may submit written data, views, arguments or comments regarding this proposed rule to Michael D. Pearson, Senior Policy Consultant, Policy Services Division, Office of Legal Affairs, P.O. Box 15409, Baton Rouge, LA 70895-5409. All comments must be received no later than 4:30 p.m. November 27, 2001. A public hearing will be held on Wednesday, November 28, 2001, at 9 a.m. in the Legal Conference Room, Seventh Floor, LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana.

Cynthia Bridges
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Corporation Franchise Tax Due Date

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The implementation of this proposed amendment will have no impact upon any local governmental units.

The implementation of this proposed amendment, which conforms the regulation to changes to the corporation franchise tax due date statute made in 1986 and 1991, will have no impact on the agency's costs.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections for the state as a result of this proposed amendment.

There will be no effect on revenue collections of local governmental units as a result of this proposed amendment.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

None.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed regulation will have no effect on competition or employment.

Cynthia Bridges
Secretary
0110#081

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue Policy Services Division

Income Tax Schedule Requirements for Certain Nonresident Professional Athletes and Professional Sports Franchises (LAC 61:I.1305)

Under the authority of R.S. 39:99, R.S. 47:295, and R.S. 47:1511, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:I.1305 relative to the attribution of Louisiana individual income tax from nonresident professional athletes and professional sports franchises to the Sports Facility Assistance Fund.

Act 1203 of the 2001 Regular Session of the Louisiana Legislature enacted R.S. 39:99, which creates a fund in the state treasury called the Sports Facility Assistance Fund (the Fund). Each year, the treasurer must pay into the Fund an amount equal to the income tax collected by the state from nonresident professional athletes and professional sports franchises on income earned in Louisiana. The monies in the Fund are appropriated dollar-for-dollar to the owners of the facilities at which the money that generated the income tax was earned. The purpose of this regulation is to enable the Department of Revenue to accurately attribute the income tax collected from nonresident professional athletes and professional sports franchises to the Fund.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 13. Income: Individuals

§1305. Income Tax Schedule Requirement for Certain Nonresident Professional Athletes and Professional Sports Franchises

A. If the Louisiana income tax of a nonresident professional athlete or professional sports franchise is attributable to the Sports Facility Assistance Fund, created by R.S. 39:99, the following schedule must be attached to any income tax return filed, including individual, corporate, fiduciary, trust, or composite income tax returns. Each nonresident professional athlete and professional sports franchise with Louisiana source income must attach a schedule to the required Louisiana income tax return that includes the following information:

1. the name of each facility, course, stadium, or arena at which they earned income in Louisiana;
2. the location of each facility, course, stadium, or arena at which they earned income in Louisiana; and
3. the number of duty days, as defined in LAC 61:I.1304.I, spent at each facility, course, stadium, or arena at which they earned income in Louisiana.

B. For purposes of this section only, these terms are defined as follows.

Professional Athlete—means an athlete that either plays for a professional sports franchise or who is a member of a professional sports association or league.

Professional Sports Franchise—means a member team of a professional sports association or league.

Professional Sports Association or League—means any of the following:

- a. Professional Golfers Association of America;
- b. National Football League;
- c. National Basketball Association;
- d. National Hockey League;
- e. East Coast Hockey League;
- f. Pacific Coast League.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:99, R.S. 47:295, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, LR 28:

Family Impact Statement

Rule Title: LAC 61:I.1305. Income Tax Schedule Requirement for Certain Nonresident Professional Athletes and Professional Sports Franchises Included in the Sports Facility Assistance Fund

The proposed adoption of LAC 61:I.1305, regarding the attribution of Louisiana individual income tax from nonresident professional athletes and professional sports franchises to the Sports Facility Assistance Fund, should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically, the implementation of this proposed rule will have no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform this function.

Any interested person may submit written data, views, arguments or comments regarding this proposed rule to Michael D. Pearson, Senior Policy Consultant, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 15409, Baton Rouge, LA 70895-5409. All comments must be received no later than 4:30 p.m. November 26, 2001. A public hearing will be held on Tuesday, November 27, 2001, at 9 a.m. in the First Floor Auditorium (Room 153), United Plaza Twelve Building, 8549 United Plaza Boulevard, Baton Rouge, Louisiana.

Cynthia Bridges
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Income Tax Schedule Requirements for Certain Nonresident Professional Athletes and Professional Sports Franchises

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Implementation of this proposed regulation, which requires certain nonresident professional athletes and professional sports franchises to file an additional schedule with their Louisiana income tax return listing all Louisiana locations and facilities at which they earned income and the number of duty days spent at the facility, will result in additional administrative costs for the department. Additional costs will be incurred for printing and processing special nonresident professional athlete schedules and professional sports franchise composite tax returns. Costs will also be incurred to prepare and distribute information packets to all professional teams that might be affected by this proposed regulation. The total additional costs are not known, but will be absorbed by the department's existing budget allocation. There will be no impact on local government costs.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This proposed regulation should result in an indeterminable increase in individual income tax collections for taxes paid by nonresident professional athletes and professional sports franchises, which will be allocated to the Sports Facility Assistance Fund (the fund) to be appropriated to the owners of the facilities. The amount of income that had been reported by nonresident professional athletes is not known, but this income tax, which would have been paid, will now be allocated to the fund, resulting in a loss to the general fund for these income tax collections. There will be no effect on revenue collections of local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Certain nonresident professional athletes and professional sports franchises that have earned income in Louisiana will be required to prepare a supplemental schedule for their Louisiana individual income tax return detailing the Louisiana facilities at which they earned income. The additional cost of preparing the schedule should be minimal.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed regulation should have no effect on competition or employment.

Cynthia Bridges
Secretary
0110#077

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue Policy Services Division

Nonresident Apportionment of Compensation from Personal Services Rendered (LAC 61:I.1304)

Under the authority of R.S. 47:290, R.S. 47:293, R.S. 47:295, and R.S. 47:1511, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:I.1304 relative to the collection of Louisiana individual income tax from nonresidents who perform personal services in Louisiana, including nonresident professional athletes and entertainers.

Under Subsection 47:290.B of the Louisiana Revised Statutes, nonresident individuals who have income earned within or derived from Louisiana sources are taxed on their Louisiana income. Compensation for personal services rendered within Louisiana is income earned within or derived from Louisiana sources. Nonresident professional

athletes and entertainers who perform in Louisiana are among the nonresident service providers who are taxed on their Louisiana income. House Concurrent Resolution 208 of the 2001 Regular Session of the Louisiana Legislature urged and requested the Department of Revenue to take all actions that are reasonable and necessary to collect all income taxes owed to the state by nonresident professional athletes.

The purpose of this proposed rule is to apportion to the state, in a fair and equitable manner, the income of certain nonresident personal service providers who render services in this state. This rule includes guidance that will enable nonresident professional athletes, who are members of a professional athletic team, to fairly apportion to Louisiana their compensation for services rendered as a member of a professional athletic team that was earned in this state. In addition, the rule will provide for an optional team composite return and composite payment to allow professional athletic teams to report Louisiana individual income tax on behalf of all nonresident team members.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 13. Income: Individuals

§1304. Nonresident Apportionment of Compensation from Personal Services Rendered in Louisiana

A. For purposes of this Section, nonresident means any individual not domiciled, residing in, or having a permanent place of abode in Louisiana.

B. Nonresidents are taxed on all income from sources within Louisiana. Income from sources within Louisiana includes compensation for personal services rendered within Louisiana.

C. The purpose of this rule is to apportion to Louisiana, in a fair and equitable manner, a nonresident's total compensation for personal services performed in the state. It is presumed that application of the provisions of this Rule will result in a fair and equitable apportionment of that compensation.

1. When the department demonstrates that the method provided under this Rule does not fairly and equitably apportion that compensation, the department may require the nonresident service provider to apportion that compensation under an alternative method the department prescribes, as long as the prescribed method results in a fair and equitable apportionment.

2. If a nonresident service provider demonstrates that the method provided under this rule does not fairly and equitably apportion compensation, the nonresident may submit a proposal for an alternative method to apportion compensation. If approved, the proposed method must be fully documented and explained in the nonresident service provider's nonresident personal income tax return for the state.

3. Nonresident service providers shall keep adequate records to substantiate their determination or to permit a determination by the department of the part of their adjusted gross income that was derived from or connected with sources in this state.

D. Compensation of Salaried Employees with a Constant Rate of Pay. The Louisiana income from personal services is the proportion of total compensation from services rendered,

which the total number of working days in the state bears to the total number of working days both within and without the state.

1. The total number of working days is determined by subtracting all nonworking days from the total number of days in the year or contract period, if the contract period is less than a year.

2. Nonworking days include, but are not limited to, Saturdays and Sundays not worked, holidays, days off for religious observance, days of absence due to illness or personal injury, vacation days, days of leave without pay, days off for any personal reason, and sabbatical days.

3. Days spent in travel, if the travel is at the direction of the employer, are considered working days even if the travel is on a day that would usually be considered a nonworking day.

E. Compensation Based on Volume of Business. The Louisiana income from commissions earned by a nonresident traveling salesman, agent or other employee for services performed or sales made, whose compensation depends directly on the volume of business transacted by him, includes that proportion of the compensation received which the volume of business transacted by such employee within Louisiana bears to the total volume of business transacted by him within and without the state.

F. Compensation from Continuous Employment in Louisiana for Part of the Year. If a nonresident employee (including officers of corporations, but excluding employees, mentioned in Subsection D above) is employed continuously in this state for a definite portion of any taxable year, that employee's Louisiana income includes the total compensation for the period employed in this state.

G. Compensation from Transportation Services. If a nonresident employee is employed in this state at intervals throughout the year, as would be the case if employed in operating trains, boats, planes, motor buses, trucks, etc., between this state and other states and foreign countries, and is paid on an hourly, daily, weekly or monthly basis, that employee's Louisiana income includes that portion of the total compensation for personal services which the total number of working days, as defined in Subsection C above, employed within the state bears to the total number of working days both within and without the state. If the employee is paid on a mileage basis, that employee's Louisiana income includes that portion of the total compensation for personal services which the number of miles traversed in Louisiana bears to the total number of miles traversed within and without the state. If the employee is paid on some other basis, the total compensation for personal services must be apportioned between this state and other states and foreign countries in such a manner as to allocate to Louisiana that portion of the total compensation which is reasonably attributable to personal services performed in this state. This subsection is not intended to attribute to Louisiana any income that is exempted from state taxation by federal law.

H. Compensation of Nonresident Entertainers and Athletes Who are not Members of a Professional Athletic Team. Compensation earned by a nonresident entertainer is considered earned where the services are performed, regardless of where the nonresident entertainer lives, enters into the contract, or receives payment. Entertainers include,

but are not limited to, actors, singers, musicians, performers, and professional athletes who are not members of a professional athletic team.

1. Entertainers must include the gross amount received for performances in this state in their Louisiana income.

2. Ordinary and necessary business expenses directly attributable to the income earned in Louisiana and a pro-rata share of indirect business expenses not directly attributable to income from any particular source are "adjustments to income." These "adjustments to income" are subtracted from Louisiana income to arrive at "total Louisiana income."

I. Nonresident Athletes who are Members of a Professional Athletic Team

1. The Louisiana income of a nonresident individual who is a member of a professional athletic team includes that portion of the individual's total compensation for services rendered as a member of a professional athletic team during the taxable year which, the number of duty days spent within the state rendering services for the team in any manner during the taxable year, bears to the total number of duty days spent both within and without the state during the taxable year.

2. Definitions. These terms are defined as follows. Unless otherwise indicated, these definitions apply only to this subsection.

Duty Days Call days during the taxable year from the beginning of the professional athletic team's official preseason training period through the last game in which the team competes or is scheduled to compete.

i. Duty days shall also include days on which a member of a professional athletic team renders a service for a team on a date that does not fall within the period described in the general definition of duty days above, for example, participation in instructional leagues, the Pro Bowl, or other promotional caravans. Rendering a service includes conducting training and rehabilitation activities, but only if conducted at the facilities of the team.

ii. Included within duty days shall be game days, practice days, days spent at team meetings, promotional caravans, and preseason training camps, and days served with the team through all postseason games in which the team competes or is scheduled to compete.

iii. Duty days for any person who joins a team during the season shall begin on the day that person joins the team, and for a person who leaves a team shall end on the day that person leaves the team. If a person switches teams during a taxable year, a separate duty day calculation shall be made for the period that person was with each team.

iv. Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when the member of a professional athletic team has been suspended without pay and prohibited from performing any services for the team, shall not be treated as duty days.

v. Days for which a member of a professional athletic team is on the disabled list shall be presumed not to be duty days spent in the state. They shall, however, be included in total duty days spent within and without the state.

vi. Travel days that do not involve either a game, practice, team meeting, promotional caravan or other similar

team event are not considered duty days spent in the state, but shall be considered duty days spent within and without the state.

Member of a Professional Athletic Team shall include those employees who are active players, players on the disabled list, and any other persons required to travel and who do travel with and perform services on behalf of a professional athletic team on a regular basis. This includes, but is not limited to, coaches, managers, and trainers.

Professional Athletic Team includes, but is not limited to, any professional baseball, basketball, football, soccer, or hockey team.

Total Compensation includes salaries, wages, bonuses, and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in that year.

i. Total compensation shall not include strike benefits, severance pay, termination pay, contract or option-year buyout payments, expansion or relocation payments, or any other payments not related to services rendered to the team.

ii. For purposes of this rule, "bonuses" subject to the allocation procedures described in this Subsection, are:

(a) bonuses earned as a result of play during the season, including performance bonuses, bonuses paid for championship, playoff or bowl games played by a team, or for selection to all-star league or other honorary positions; and

(b) bonuses paid for signing a contract, unless all of the following conditions are met:

(i) the payment of the signing bonus is not conditional upon the signee playing any games for the team, or performing any subsequent services for the team, or even making the team;

(ii) the signing bonus is payable separately from the salary and any other compensation; and

(iii) the signing bonus is nonrefundable.

Total Compensation for Services Rendered as a Member of a Professional Athletic Team the total compensation received during the taxable year for services rendered:

i. from the beginning of the official preseason training period through the last game in which the team competes or is scheduled to compete during that taxable year; and

ii. during the taxable year on a date that does not fall within the period in Clause i. above, for example, participation in instructional leagues, the Pro Bowl, or promotional caravans.

J. Optional team composite return for professional athletic teams. Professional athletic teams may file a composite return, on a form prescribed by the secretary, on behalf of its nonresident professional athletes.

1. Resident professional athletes may not be included on a composite return.

2. A schedule shall be included with the return, listing all nonresident professional athletes included in the composite filing. The schedule shall list all of the following information for each nonresident professional athlete:

- a. name;
- b. address;
- c. social security number;

d. Louisiana income attributable to that nonresident professional athlete.

3. Nonresidents who are members of a professional athletic team who have any other Louisiana source income may be included in the composite return, however, inclusion in the composite return does not relieve these team members of the responsibility of filing any other required Louisiana tax return. If the other Louisiana source income is properly reportable on a Louisiana income tax return, that return must include the income from compensation as a member of a professional athletic team. Any amount paid with the team composite return on a nonresident professional athlete's behalf may be used as a credit against that team member's Louisiana individual income tax liability for the same tax period.

4. Nonresidents who are included in a properly filed and accurate team composite return, and who have no Louisiana income other than compensation for services rendered as a member of a professional athletic team, will be deemed to have filed a Louisiana individual income tax return. Except that any underpayment by the team with the team composite return shall be the personal responsibility of the members of the professional athletic team included in the composite return.

5. The tax due on the composite return shall be computed using either of the following methods:

a. the sum of the actual tax liability from total compensation for services rendered as a member of a professional athletic team for each member of the team included in the composite return;

b. alternative method of computing the tax due on the composite return;

i. add the Louisiana income attributable to all nonresident professional athletes included in the composite return;

ii. subtract a deduction equal to 30 percent of the Louisiana income attributable to all nonresident professional athletes included in the composite return. This deduction is allowed in place of the combined standard deduction and personal exemption, excess itemized deductions, and federal tax deduction for the same period;

iii. the tax shall be computed using the maximum individual tax rate applied to Louisiana income after the 30-percent deduction.

6. Each professional athletic team will be issued an identification number by the department upon the filing of its first composite return. This identification number shall be used on all subsequent composite returns filed by that team.

7. A team making a composite return and payment must furnish the following information to all team members included in the composite return:

a. the team's taxpayer identification number;

b. the amount of the payment made on the team member's behalf;

c. a statement that the amount paid on the team member's behalf can be used as a credit against that team member's Louisiana individual income tax liability for the same tax period, if the team member files an individual return with the Department of Revenue that declares the income from compensation as a member of a professional athletic team;

d. the mailing address of the Louisiana Department of Revenue; and

e. the internet address of the Louisiana Department of Revenue.

K. Nothing in this regulation shall restrict the Secretary's authority to otherwise provide for efficient administration of the individual income tax.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:290, R.S. 47:293, R.S. 47:295, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Service Division LR 28:

Family Impact Statement for Administrative Rules

Rule Title: 61:I.1304. Nonresident Apportionment of Compensation from Personal Services Rendered in Louisiana

The proposed adoption of LAC 61:I.1304, regarding the collection of Louisiana individual income tax from nonresidents who perform personal services in Louisiana, should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically, the implementation of this proposed rule will have no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform this function.

Any interested person may submit written data, views, arguments or comments regarding this proposed rule to Michael D. Pearson, Senior Policy Consultant, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 15409, Baton Rouge, LA 70895-5409. All comments must be received no later than 4:30 p.m., November 26, 2001. A public hearing will be held on Tuesday, November 27, 2001, at 10:30 a.m. in the First Floor Auditorium (Room 153), United Plaza Twelve Building, 8549 United Plaza Boulevard, Baton Rouge, Louisiana.

Cynthia Bridges
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Nonresident Apportionment of Compensation from Personal Services Rendered

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This proposed regulation, which provides for a fair and equitable manner for nonresident personal service providers to apportion compensation for personal services rendered in the state, will have a minimal impact on the agency's costs. The department will incur additional costs for printing and processing special nonresident professional athlete and athletic team composite returns. Costs will also be incurred to prepare and distribute information packets to all professional teams and Louisiana venues that might be affected by this proposed regulation. The total additional costs are not known, but will be

absorbed by the department's existing budget allocation. There will be no impact on local government costs.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This proposed regulation should result in an indeterminable increase in individual income tax collections for taxes paid by nonresident personal service providers. However, all taxes paid by nonresident professional athletes and professional sports franchises will be allocated to the Sports Facility Assistance Fund to be appropriated to the owners of the facilities. The amount of income that had been reported by nonresident professional athletes and professional sports franchises is not known, but this income tax, will now be deposited into the fund, resulting in a loss to the general fund for these income tax collections. There will be no effect on revenue collections of local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Nonresident personal service providers, which include nonresident professional athletes and entertainers, who have earned income in Louisiana are already required to pay income tax on their Louisiana income. Professional athletic teams have the option of filing a composite tax return for all of their nonresident team members. The additional costs should be minimal.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed regulation should have no effect on competition or employment.

Cynthia Bridges
Secretary
0110#079

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Revenue
Policy Services Division**

**Nonresident Net Operating Losses
(LAC 61:I.1302)**

Under the authority of R.S. 47:293, R.S. 47:295, and R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:I.1302 relative to nonresident individuals and Louisiana net operating losses.

The purpose of this regulation is to inform all taxpayers that nonresident individuals are allowed to carry back and carry over their Louisiana net operating losses. This regulation will also provide guidance to taxpayers about the procedures for carrying these losses.

Title 61

REVENUE AND TAXATION

**Part I. Taxes Collected and Administered by the
Secretary of Revenue**

Chapter 13. Income: Individuals

§1302. Nonresident Net Operating Losses

A. Nonresident individuals may carry back or carry over Louisiana net operating losses. Louisiana net operating losses may be carried and used in the same manner that would be allowed for federal purposes if the nonresident individual's federal returns consisted of only the Louisiana items of income and loss.

B. Application

1. The years to which Louisiana net operating losses may be carried are the same as they are for federal personal income tax purposes.

2. Net operating loss carrybacks and carryovers are considered an adjustment to Louisiana income and must be applied against total Louisiana income before applying any deductions.

3. When a net operating loss carryback or carryover is used a schedule must be attached to the return in which it is used for each carryback or carryover showing:

a. the taxable year in which each loss that is being carried back or carried over occurred; and

b. the amount of each loss applied to each taxable year to which it was carried over or carried back.

4. A separate schedule showing how each Louisiana net operating loss was determined may also be required.

C. Limitations

1. A Louisiana net operating loss carryback or carryover cannot include any amount that has already been deducted for Louisiana purposes.

2. Nothing in this section authorizes a federal income tax deduction for income that did not bear Louisiana personal income tax.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:293, R.S. 47:295, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 28:

Family Impact Statement

The proposed adoption of LAC 61:I.1302, regarding nonresident individuals and Louisiana net operating losses should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically, the implementation of this proposed rule will have no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform this function.

Any interested person may submit written data, views, arguments or comments regarding this proposed rule to Michael D. Pearson, Senior Policy Consultant, Policy Services Division, Office of Legal Affairs, P.O. Box 15409, Baton Rouge, LA 70895-5409. All comments must be received no later than 4:30 p.m. November 27, 2001. A public hearing will be held on Wednesday, November 28, 2001, at 10:30 a.m. in the Legal Conference Room, Seventh Floor, LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana.

Cynthia Bridges
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Nonresident Net Operating Losses

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The implementation of this proposed regulation will have no impact upon any local governmental units.

The implementation of this proposed regulation, which clarifies how Louisiana net operating losses for nonresidents may be carried from one year to another, would have no impact on the agency's costs. The taxpayers who are affected by this regulation will show any effect as an adjustment to income on line 9 of the current Louisiana Nonresident and Part-year Resident form.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There may be a slight decrease in revenue collections for the state. The size of that decrease cannot be determined. However, it is expected to be small.

There will be no effect on revenue collections of local governmental units as a result of this proposed regulation.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Nonresident individuals who have Louisiana net operating losses who did not know that they were able to carry forward and carry back their losses will utilize these losses to reduce their Louisiana personal income tax liability.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed regulation will have no effect on competition or employment.

Cynthia Bridges
Secretary
0110#080

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Social Services
Office of Community Services**

**Percentage of Title IV-E Foster Children
in Care over 24 Months
(LAC 67:V.3510)**

The Department of Social Services, Office of Community Services, proposes a Rule entitled a "Percentage of Title IV-E Foster Children in Care over 24 Months" for implementation of the provisions required by 42 U.S.C. Sec. 671(A)(14) of the Social Security Act. The Emergency Rule was published in the *Louisiana Register*, Vol. 27 No. 7, July 20, 2001.

The Department of Social Services, Office of Community Services, is required by 42 U.S.C. Sec. 671(A)(14) of the Social Security Act to incorporate into the state administrative regulations a goal as to the maximum absolute number or percentage of children in foster care for over 24 continuous months. The department has selected a percentage of all children in foster care receiving assistance under a State Title IV-E program.

Title 67

SOCIAL SERVICES

Part V. Office of Community Services

Subpart 5. Foster Care

Chapter 35. Payments, Reimbursables and Expenditures

§3510. Percentage of Title IV-E Children in Foster Care over 24 Months

A. For the percentage of all children in foster care receiving assistance under the State Title IV-E program who at any given time during the fiscal year will have been in foster care over 24 months, the department will limit that percentage to 55 percent of the total foster care population.

AUTHORITY NOTE: Promulgated in accordance with 42 USC Sec. 671 (A) (14) of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 28:

Interested persons may submit written comments for 40 days from the date of this publication to Joel McLain, Section Administrator, P.O. Box 3318, Baton Rouge, LA 70821. He is responsible for responding to inquiries.

Family Impact Statement

1. The effect on the stability of the family:

Keeping the number of children who have been in foster care over 24 months and who are receiving assistance under a state Title IV-E program at any given time during the fiscal year at no more than 55 percent will have no negative impact on the stability of the family. The impact will probably be neutral. However, it has the potential to have a positive effect in that it encourages employees to reunite families when appropriate but allows deviation when it is not in the best interest of the child, and it encourages permanency for all children.

2. The effect on the authority and rights of parents regarding education and supervision of their children:

Keeping the number of children who have been in foster care over 24 months and who are receiving assistance under a state Title IV-E program at any given time during the fiscal year at no more than 55 percent will not have a negative impact on the authority and rights of parents regarding education and supervision of their children. Maintaining the percentage rate at no more than 55 percent encourages placing children with safe and permanent families and transferring custody or guardianship to these parents.

3. The effect on the functioning of the family:

Keeping the number of children who have been in foster care over 24 months and who are receiving assistance under a state Title IV-E program at any given time during the fiscal year at no more than 55 percent will have no impact on the functioning of the family. In most cases, services are provided to families prior to returning children to the home of biological parents or placement in other permanent family homes.

4. The effect on family earnings and family budget:

Keeping the number of children who have been in foster care for over 24 months and who are receiving assistance under a state Title IV-E program at any given time during the fiscal year at no more than 55 percent has no direct impact on family earnings and family budget. Indirectly, the family's expenses will increase as the result of a child being

placed in the home. Money management skills and the family's ability to meet the basic needs of the child are assessed by employees prior to placement of a child in a home.

5. The effect on the behavior and personal responsibility of children:

Keeping the number of children who have been in foster care for over 24 months and who are receiving assistance under a state Title IV-E program at any given time during the fiscal year at no more than 55 percent will have no impact on the behavior and personal responsibility of children. When necessary, therapy with children and their families is provided prior to placement and in some situations post placement services are provided.

6. The ability of the family or a local government to perform the function as contained in the proposed Rule:

The Department of Social Services, Office of Community Services has the primary responsibility to meet the goal of keeping the number of children who have been in foster care for over 24 months and who are receiving assistance under a state Title IV-E program at any given time during the fiscal year at no more than 55 percent. The agency's philosophy, policies, and practices are focused on helping children live in safe and permanent homes. Utilizing federal and state financial resources, trained agency staff, local community resources, and service providers to aid, the agency has the ability to achieve this goal.

J. Renea Austin-Duffin
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Percentage of Title IV-E Foster Children
in Care over 24 Months**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed action will cause no additional cost to the state or local government units. No definitive savings can be defined at this time.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed action will have no immediate impact on the revenue collections of state or local governmental units. An overall reduction in the number of children in the foster care system may lead to a reduction in the amount of federal benefits received to provide care to children in the system

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

No known persons or nongovernmental group would be financially impacted by the proposed action. Children entering the foster care system and their families, as well as those in the system, would be afforded the same level of services as is now provided.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

The proposed action has no foreseeable impact.

Debbie Johnson
Budget Manager
0110#073

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Social Services
Office of Family Support**

Family Independence Work Program (FIND
Work)CSupport ServicesCTransportation
(LAC 67:III.2913)

The Department of Social Services, Office of Family Support, proposes to amend LAC 67:III.2913.

Pursuant to Act 12 of the 2001 Regular Session of the Louisiana Legislature and in order to further the goals and intentions of the federal Temporary Assistance for Needy Families Block Grant to promote job preparation and to better facilitate entry into the workplace, the agency will increase the amount allowed for transportation services from \$60 to \$120 per month for participants who are or become ineligible for cash assistance due to earned income. This change was effected by Emergency Rule October 1, 2001.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

**Subpart 5. Family Independence Work Program (FIND
Work)**

Chapter 29. Organization

Subchapter C. Activities and Services

§2913. Support Services

A.1. - 2.a. ...

b. Effective October 1, 2001, participants who are or become ineligible for cash assistance due to earned income shall be eligible for a transportation payment of \$120 per month beginning with the first month of FITAP ineligibility and continuing through the twelfth month of ineligibility or through the last month of employment, whichever comes first.

3.a. - c. ...

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 17:309 (March 1991), amended LR 17:388 (April 1991), LR 18:244 (March 1992), LR 18:687 (July 1992), LR 18:748 (July 1992), LR 18:1268 (November 1992), LR 19:504 (April 1993), LR 20:793 (July 1994), LR 23:451 (April 1997), LR 24:356 (February 1998), LR 24:1135 (June 1998), LR 25:526 (March 1999), LR 25:2456 (December 1999), LR 26:1343 (June 2000), LR 28:

Family Impact Statement

1. What effect will this rule have on the stability of the family? Implementation of this rule will have a positive impact on the stability of FIND Work families by aiding the participant in his move from welfare to financial independence.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? There will be no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This rule will have no effect on the functioning of the family.

4. What effect will this have on family earnings and family budget? There will be no effect on family earnings.

However, the increase in transportation payment will favorably impact the family budget.

5. What effect will this have on the behavior and personal responsibility of children? There will be no effect on the behavior and personal responsibility of the children.

6. Is the family or local government able to perform the function as contained in this proposed rule? No, this rule concerns an increase in the amounts allowed for certain other supportive services and a change to exemptions in participation.

Interested persons may submit written comments by November 27, 2001 to Ann S. Williamson, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton Rouge, Louisiana, 70804-9065. She is the person responsible for responding to inquiries regarding this proposed rule.

A public hearing on the proposed rule will be held on November 27, 2001 at the Department of Social Services, A.Z. Young Building, Second Floor Auditorium, 755 Third Street, Baton Rouge, Louisiana beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call 225-342-4120 (Voice and TDD).

J. Renea Austin-Duffin
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Family Independence Work Program
(FIND Work)C Support Services C Transportation**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Implementation of this rule will increase state agency costs for a FIND Work participant's transportation services. This will result in increased costs estimated to be \$1,350,000 for fiscal year 01/02 and \$1,800,000 for subsequent years. These funds are available from Louisiana's Temporary Assistance for Needy Families (TANF) Block Grant. The cost of publishing the rule, printing policy, and forms revisions will also be required, and these costs will be within the normal budget constraints. There are no anticipated costs or savings to local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

FIND Work participants who become ineligible for FITAP benefits due to earned income will benefit from the monthly increase of \$60 to \$120 for transportation services. There are no costs to any persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The increase in transportation payments may facilitate a participant's entry into employment and aid with the transition from welfare to independence.

Ann S. Williamson
Assistant Secretary
0110#074

H. Gordon Monk
Staff Director
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Social Services
Office of Family Support**

FITAP/KCSP/TANF Initiatives C Energy Assistance
(LAC 67:III.1290, 5390, and 5503)

The Department of Social Services, Office of Family Support, proposes to amend the *Louisiana Administrative Code*, Title 67, Part III, Subpart 2, Family Independence Temporary Assistance Program (FITAP), and Subpart 13, Kinship Care Subsidy Program (KCSP), and adopt Subpart 15, Temporary Assistance to Needy Families (TANF) Initiatives.

In order to offset the rising costs of home energy which may be excessive in relation to the income of FITAP and KCSP households, the agency made energy assistance available to these households in August 2001 through an Emergency Rule. Additional funding for energy assistance is also made possible by Act 12 of the 2001 Regular Session of the Louisiana Legislature. (A Declaration of Emergency amending the TANF provision effective September 28 also appears in this issue.)

**Title 67
SOCIAL SERVICES**

Part III. Office of Family Support

Subpart 2. Family Independence Temporary Assistance Program (FITAP)

Chapter 12. Application, Eligibility, and Furnishing Assistance

Subchapter D. Special Initiatives

§1290. Energy Assistance

A. Based on the availability of funding and a determination of need by OFS, all households receiving a FITAP grant may also be eligible to receive an energy assistance grant effective August 20, 2001, to apply towards the cost of utility service. OFS will establish a specific date of eligibility in order to determine when households will receive a grant, and only those households certified as of that date will be eligible for energy assistance.

B. The payment process will be administered by an outside entity through a contractual agreement. Recipients will be required to provide verification of identity as well as proof of residency at the utility service address. The energy assistance payment will be paid directly to the recipient's utility company or provider.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; and Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

Subpart 13. Kinship Care Subsidy Program (KCSP)

Chapter 53. Application, Eligibility, and Furnishing Assistance

Subchapter D. Special Initiatives

§5390. Energy Assistance

A. Based on the availability of funding and a determination of need by OFS, all households receiving a KCSP grant may also be eligible to receive an energy assistance grant effective August 2001 to apply towards the cost of utility service. OFS will establish a specific date of eligibility in order to determine when households will

receive a grant, and only those households certified as of that date will be eligible for energy assistance.

B. The payment process will be administered by an outside entity through a contractual agreement. Recipients will be required to provide verification of identity as well as proof of residency at the utility service address. The energy assistance payment will be paid directly to the recipient's utility company or provider.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; and Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

Subpart 15. Temporary Assistance to Needy Families (TANF) Initiatives

Chapter 55. TANF Initiatives

§5503. Emergency Energy Assistance

A. Effective September 28, 2001, in the event of an agency-declared energy emergency based on the availability of funding and a determination of need by OFS, needy families may receive a grant to apply toward the cost of utility service.

B. Services meet the TANF goal of providing assistance to needy families so that children may be properly cared for in their own homes or in the homes of relatives by providing funds to help pay the costs of cooling and heating the homes.

C. A needy family is defined as a family in which any member receives Food Stamp benefits, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance (LaCHIP), Supplemental Security Income (SSI), or Free or Reduced School Lunch. However, any of the preceding eligibles also receiving FITAP or KCSP grants are not eligible.

D. Services are considered by the agency as non-assistance.

E. The payment process will be administered by an outside entity through a contractual agreement. Recipients will be required to provide verification of identity and eligibility as defined for a @needy family@ as well as proof of residency at the utility service address. The energy assistance payment will be paid directly to the recipient's utility company or provider.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; and Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

Family Impact Statement

1. What effect will this rule have on the stability of the family? This rule should have no effect on family stability.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? This rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This rule will have no effect on the functioning of the family.

4. What effect will this have on family earnings and family budget? There may be a slight increase in the family budget as a result of the energy assistance grant, which may benefit families in financial distress.

5. What effect will this have on the behavior and personal responsibility of children? This rule should have no effect on the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed rule? No, this program is strictly an agency function.

All interested persons may submit written comments through November 27, 2001, to Ann S. Williamson, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton Rouge, Louisiana, 70804-9065.

A public hearing on the proposed rule will be held on November 27, 2001 at the Department of Social Services, A.Z. Young Building, Second Floor Auditorium, 755 Third Street, Baton Rouge, Louisiana beginning at 9:00 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call Area Code 225-342-4120 (Voice and TDD).

J. Renea Austin-Duffin
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: FITAP/KCSP/TANF Initiatives Energy Assistance**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The Legislature appropriated a total of \$17,500,000 in FY 01/02 for energy assistance. Grants to Family Independence Temporary Assistance Program (FITAP) and Kinship Care Subsidy Program (KCSP) households in August 2001 are expected to cost \$7,604,700. Administrative costs, which are estimated at ten percent of these energy grants or \$760,470, will be paid to the Louisiana Housing Finance Agency (LHFA). The cost of programming and issuing the vouchers is estimated to be \$8,872. Funding is from the federal Temporary Assistance to Needy Families Block Grant to Louisiana.

Additional spending by the agency will be based upon energy costs and funding availability. Funds will be reserved for a possible agency-declared, energy emergency for certain recipients. The total amounts to be allotted are not determinable at this time. Costs for preparing, issuing and publishing rule changes are routinely included in the agency's annual budget. There will be no costs or savings to local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The Louisiana Housing Finance Agency (LHFA), a state agency, will be paid administrative fees not to exceed ten percent of the utility grants or approximately \$760,470. LHFA will subcontract with local community agencies to administer the program, and a majority of the administrative fee will be disbursed to these local agencies. Additional grants may be issued based upon funding availability and agency-determined need which will increase administration costs not to exceed 10 percent of the grants.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Economic benefits totaling \$7,604,700 in the form of energy assistance grants will be distributed to FITAP- and KCSP-eligible households. If funding is available and the

agency determines a need, another grant may be provided later. Funds may also be made available for an agency-declared energy emergency to certain recipients. However, neither the grants nor emergency fund amounts can be determined at this time. There are no economic benefits to nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule will have no impact on competition and employment.

Cynthia H. Douglas
Director, Special Project Division
0110#076

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Social Services
Office of Family Support**

**Food Stamp ProgramC Semi-Annual Reporting Household
(LAC 67.III.2013 and 2015)**

The Department of Social Services, Office of Family Support, proposes to amend the *Louisiana Administrative Code*, Title 67, Part III, Subpart 3, Food Stamps.

At the agency's request, a waiver has been granted by the U.S. Department of Agriculture, Food and Nutrition Service, which allows the agency to process all interim changes reported by a semi-annual reporting household, including those that result in a decrease in food stamp benefits. The approved waiver eliminates inequities that exist in current policy and provides for a more consistent application of policy. The change was effected August 7, 2001, by a Declaration of Emergency.

In addition, the agency proposes to repeal §2015 as the transition from quarterly reporting to semi-annual reporting will be complete when this Rule becomes final.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 3. Food Stamps

Chapter 19. Certification of Eligible Households

Subchapter S. Semi-Annual Reporting

§2013. Semi-Annual Reporting

A. - G ...

H. Effective August 7, 2001, other changes will be processed in accordance with §1999, Reduction or Termination of Benefits.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.12(a).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:1633 (August 2000), LR 27:867 (June 2001), LR 28:

§2015. Quarterly Reporting

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.12(a) and 273.3(c)(1)(ii).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:1633 (August 2000), amended LR 27:868 (June 2001), repealed LR 28:

Family Impact Statement

1. What effect will this rule have on the stability of the family? This rule should have no effect on family stability.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? This rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This rule will have no effect on the functioning of the family.

4. What effect will this have on family earnings and family budget? In some circumstances, this rule could decrease the monthly food stamp benefits of a family/household when a change is reported that results in a decrease in the monthly benefit allotment.

5. What effect will this have on the behavior and personal responsibility of children? This rule should have no direct effect on the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed rule? No, the Food Stamp Program is strictly a state/federal function.

Interested persons may submit written comments on the proposed rule by November 27, 2001, to the following person: Ann S. Williamson, Assistant Secretary, Office of Family Support, Post Office Box 94065, Baton Rouge, Louisiana, 70804-9065.

A public hearing on the proposed Rule will be held on November 27, 2001, at the Department of Social Services, A.Z. Young Building, Second Floor Auditorium, 755 Third Street, Baton Rouge, Louisiana beginning at 9:00 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call Area Code 225-342-4120 (Voice and TDD).

J. Renea Austin-Duffin
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Food Stamp ProgramC Semi-Annual
Reporting Households**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The estimated implementation cost to state government is the cost of publishing the rule and printing revisions to policy. This cost is minimal, and funds for such actions are included in the program's annual budget. There are no costs or savings to local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The impact on revenue resulting from possible allotment reduction as a result of reported changes cannot be projected. This is a new procedure in a newly established reporting method; that is, semi-annual reporting, and the number of households reporting changes that will result in a decrease in Food Stamp benefits cannot be anticipated. In addition, Food Stamp benefits are 100 percent federally funded, and any savings would be realized by the federal government.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There may be an impact on a small number of Food Stamp semi-annual reporting households that report changes which would result in a decrease in their monthly allotment. The agency cannot anticipate the number of cases this may affect. There are no costs or savings to non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will have no impact on competition and employment.

Ann W. Williamson
Assistant Secretary
0110#075

H. Gordon Monk
Staff Director
Legislative Fiscal Officer

NOTICE OF INTENT

**Student Financial Assistance Commission
Office of Student Financial Assistance**

Scholarship/Grant Programs
(LAC 28:IV.301 and 2103)

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its Scholarship/Grant rules (R.S. 17:3021-3026, R.S. 3041.10-3041.15, and R.S. 17:3042.1, R.S. 17:3048.1).

The full text of these proposed rules may be viewed in the Emergency Rule section of this issue of the *Louisiana Register*.

The proposed rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

Interested persons may submit written comments on the proposed changes until 4:30 p.m., November 20, 2001, to Jack L. Guinn, Executive Director, Office of the Student Financial Assistance, Box 91202, Baton Rouge, LA 70821-9202.

Mark S. Riley
Assistant Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Scholarship/Grant Programs

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

No change in cost to the program is anticipated to result from these revisions.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No impact on revenue collections is anticipated to result from these rule changes.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

These rule changes clarify the definition of a selective enrollment program and exceptional circumstances warranting exception to initial and continuous enrollment requirements. The clarifications are consistent with the agency's interpretation and enforcement of the TOPS rules since the inception of the program.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition and employment is anticipated to result from this rule.

Mark S. Riley
Assistant Executive Director
0110#043

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of Transportation and Development
Office of the Secretary
Crescent City Connection Division**

Bridge Tolls CFree Passage for
Firemen and Law Enforcement
(LAC 70:I.503, 507, and 513)

The Department of Transportation and Development, Crescent City Connection Division, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., gives notice that rulemaking procedures have been instituted to amend LAC 70:1.505 to delete obsolete provisions and to amend LAC 70:1.507 and LAC 70:1.513 to provide that the right of free passage for firemen and law enforcement personnel will be utilized using toll tags.

Title 70

TRANSPORTATION

Part I. Office of the Secretary

Chapter 5. Tolls

§505. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:25 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Crescent City Connection Division, LR 19:352 (March 1993), repealed LR 28:

§507. Crescent City Connection Exemptions C Firemen

A. Purpose. All firemen and volunteer fireman shall have free and unhampered passage on and over the Crescent City Connection bridges, the Gretna/Jackson Avenue ferry, the Algiers/Canal Street ferry and the Lower Algiers/Chalmette ferry.

B. Procedure for Firemen

1. Ferry Crossings

a. All firemen as defined in R.S. 39:191.A shall present an identification card containing a photographic picture of the fireman for inspection by the toll collector. The identification card must be issued by the municipality, parish or district as referred to in R.S. 39:191.A.

b. All firemen shall sign a register at the ferry station and provide the name of the agency, municipality, parish or district for which they are employed or engaged.

c. After compliance with §507.B.1.a and b, free unhampered passage will be granted to the fireman.

2. Bridge Crossings

a. The right of free passage on and over the Crescent City Connection Bridge at New Orleans for firemen shall be exercised only by means of automatic vehicular identification toll tags.

b. Upon the written request of the chief of a municipal or parish fire department or of a fire prevention district, and upon payment of the required deposit, the Crescent City Connection Division of the Department of Transportation and Development shall issue to such department or district the number of automatic vehicular identification toll tags requested for use in connection with the exemption from tolls.

c. A deposit of \$25 shall be charged for the issuance of each tag. The deposit shall be refunded upon the return of the tag to the Crescent City Connection Division.

d. The use of the automatic vehicular identification toll tags provided to a fire department or district shall be limited to bridge crossings made by firemen during the performance of fire fighting and related duties. The appropriate fire department or district shall be responsible for any crossing made using the automatic vehicular identification toll tag outside the scope of the exemption from tolls.

C. Procedure for Volunteer Fireman

1. All volunteer fire organizations shall apply to the Crescent City Connection Division and shall certify to the following:

a. the address of the volunteer fire organization's domicile or headquarters;

b. the general location served by the volunteer fire organization;

c. that the members of the volunteer fire organization are required to travel across the facilities, stated in §507.A pertaining to "purpose," in the performance of official fire fighting or fire prevention services;

d. the number of crossings made in one year, on the facilities stated in §507.A pertaining to "purpose," by volunteer firemen members of the volunteer fire organization.

2. The application must be signed by the chief executive officer of the volunteer fire organization.

3. Vehicle Passes

a. Upon approval of an application, the Crescent City Connection Division shall issue vehicle passes for use by the volunteer firemen members of the volunteer fire organization.

b. The vehicle passes shall be for the exclusive use of volunteer firemen members of the volunteer fire organization, while operating a motor vehicle, and are not transferable.

c. The vehicle passes shall not be used for any other purpose than crossing the bridges or ferries for the performance of official firefighting or fire prevention services by volunteer firemen.

d. Lost, stolen or damaged passes will not be replaced.

4. Loss of Privilege. Any prohibited use of vehicle passes issued to a volunteer fire organization will result in the loss of the privilege to obtain and use passes and/or action provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:1975.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Crescent City Connection Division, LR 19:1594 (December 1993), amended LR 28:

§513. Crescent City Connection Exemptions Law Enforcement Personnel

A. Free passage across the Crescent City Connection, and the ferries known as Algiers/Canal Street, Gretna/Jackson Avenue, and Lower Algiers/Chalmette shall be granted to all law enforcement personnel who are employed on a full-time basis and have law enforcement agency equipment.

B. Law enforcement agency, for purposes of R.S. 40:1392 and LAC 70:I.513 shall mean any agency of the state or its political subdivisions and the federal government, who are responsible for the prevention and detection of crime and the enforcement of the criminal, traffic, or highway laws of this state or similar federal laws and who are employed in this state. Officers who serve in a voluntary capacity or as honorary officers are not included.

C. Agencies which meet the above criteria shall include the Louisiana State Police, enforcement division agents of the Louisiana Department of Wildlife and Fisheries, sheriffs' departments of the parishes of this state, municipal police departments, levee board police departments, port police departments and the Federal Bureau of Investigation exclusively.

D.1. The right of free passage on and over the Crescent City Connection Bridge at New Orleans for the state police and law enforcement personnel shall be exercised only by means of automatic vehicular identification toll tags.

2. Upon the written request of the superintendent of state police or the head of an eligible law enforcement agency and payment of the required deposit, the Crescent City Connection Division for the Department of Transportation and Development shall issue the number of automatic vehicular identification toll tags requested for use in connection with the exemption from tolls.

3. A deposit of \$25 shall be charged for the issuance of each tag. The deposit shall be refunded upon the return of the tag to the Crescent City Connection Division.

4. The use of the automatic vehicular identification toll tags provided shall be limited to bridge crossings made by state police with state police equipment and by designated law enforcement personnel with law enforcement agency equipment. The appropriate law enforcement agency shall be responsible for any crossing made using the automatic vehicular identification toll tag outside the scope of the exemption from tolls.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1392 and R.S. 48:26.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Crescent City Connection Division, LR 23:84 (January 1997), amended 28:

Family Impact Statement

In connection with the Notice of Intent which is scheduled to appear in the October 20, 2001, *Louisiana Register*, relative to an amendment to Title 70, Chapter 5 of the *Louisiana Administrative Code*, under the Rule titles "Bridge Tolls-Sunshine Bridge Exemption," "Bridge Tolls-Crescent City Connection Exemptions-Firemen," and "Bridge Tolls-Law Crescent City Connection Exemptions-Law Enforcement Personnel" to delete obsolete provisions and to provide the right of free passage over the Crescent City Connection at New Orleans, Louisiana for firemen and law

enforcement personnel by toll tags. The Crescent City Connection Division hereby makes these written considerations, known as the Family Impact Statement, of the following factors regarding the proposed rule amendment as required by R.S. 49:972.

1. The Effect on the Stability of the Family. This proposed rule amendment has no known impact on family stability.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. This proposed rule amendment has no known effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect on the Functioning of the Family. This proposed rule amendment has no known effect on the functioning of the family.

4. The Effect on Family Earnings and Family Budget. This proposed rule amendment has no known effect on family earnings and family budget.

5. The Effect on the Behavior and Personal Responsibility of Children. This proposed rule amendment has no known effect on the behavior and personal responsibility of children.

6. The Ability of the Family or a Local Government to perform the Function as Contained in the Proposed Rule. This proposed rule amendment has no applicability to family or a local government function.

Interested persons may comment on this proposed Rule amendment through November 21, 2001, to Mr. Alan J. LeVasseur, P.O. Box 6297, New Orleans, LA 70174.

Alan J. LeVasseur
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Bridge Tolls Free Passage for
Firemen and Law Enforcement**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

Firemen and law enforcement personnel are currently granted a statutory right of free passage across the Crescent City Connection. New law requires that this right of free passage be exercised by means of toll tags.

Toll tags will be issued to eligible firemen and law enforcement personnel for free passage. Although the Crescent City Connection Division currently budgets the costs of toll tags from self-generated agency funds, it is anticipated that additional toll tags will be needed to implement the rule amendment. Less than 2,000 public safety personnel entitled to the right of free passage currently cross by means of toll tags and less than 2,000 currently cross by means of registry at toll booths. Based upon these numbers, it is anticipated that 2,000 new toll tags would need to be purchased, and at \$33 per toll tag the estimated implementation costs will be \$66,000. Additional expenditures could be required in subsequent years if the total number of public safety personnel entitled to free passage increases.

New law requires the chief of a municipal or parish fire department, or the superintendent of state police or the head of a law enforcement agency, as the case may be, to make a refundable deposit of \$25 for each toll tag requested.

Tolls on the Sunshine Bridge ceased at the end of fiscal year 2000-2001.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

The Crescent City Connection currently provides for free passage by eligible firemen and law enforcement personnel, and the proposed Rule Amendment would impact with new law requiring free passage to be made by toll tag. Accordingly, there will be no effect on revenue collections.

Tolls on the Sunshine Bridge ceased at the end of fiscal year 2000-2001. Accordingly, there will be no effect on revenue collection.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

New law requires the chief of a municipal or parish fire department, or the superintendent of state police or the head of a law enforcement agency, as the case may be, to make a refundable deposit of \$25 for each toll tag requested. The costs of such deposits to the effected fire departments and law enforcement agencies cannot be determined. However, it is not anticipated that the costs will be material.

Tolls on the Sunshine Bridge ceased at the end of the fiscal Year 2000-2001. Prior to the cessation, firemen and law enforcement personnel enjoyed a statutorily right of free passage. Accordingly, repeal of the obsolete rule governing tolls on the Sunshine Bridge will have neither costs nor benefits to affected persons.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

There will be no effect on competition or employment.

Kenneth E. Pickering
General Counsel
0110#044

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

Recreational Electronic Licensing
Outdoor Press License (LAC 76:I.327)

The Wildlife and Fisheries Commission does hereby give notice of intent to promulgate a Rule, LAC 76:I.327.P, which provides a special outdoor press license for purchase by nonresident members of the outdoor press for a fee of \$20. The license shall be valid for four consecutive days. Authority for adoption of this Rule is included in R.S. 56:647.1. Said Rule is attached to and made part of this Notice of Intent.

Title 76

WILDLIFE AND FISHERIES

**Part I. Wildlife and Fisheries Commission and Agencies
Thereunder**

**Chapter 3. Special Powers and Duties
Subchapter H. Electronic Licenses Issuance
§327. Recreational Electronic Licensing**

A. - O. ...

P. In lieu of recreational basic fishing and recreational saltwater fishing license the department may issue a special outdoor press license to nonresident members of the outdoor press which will include basic and saltwater fishing.

1. A fee of \$20 will be charged for each outdoor press license issued and the license shall be valid for four consecutive days.

2. All outdoor press licenses will be issued from the Baton Rouge headquarters location.

3. To qualify for certification an applicant must submit to the Department of Culture, Recreation and Tourism one or more of the following:

- a. recent tear sheets of published articles;
- b. letter of assignment from publication, television or radio company;
- c. a written recommendation from one of the Department of Culture, Recreation and Tourism's international offices;
- d. a written recommendation from Travel South USA, Louisiana Travel Promotion Association or similar organizations.

4. In no case will the Department of Culture, Recreational and Tourism forward an application from any individual or group not directly involved in producing stories or broadcast materials pertaining to Louisiana fishing and/or outdoor recreation opportunities.

5. Certified applications with all supporting documents and license fees shall be forwarded to the Department of Wildlife and Fisheries for approval. The license fee shall be returned to the applicant for any application not certified by the Department of Culture, Recreation and Tourism or approved by the secretary of the Department of Wildlife and Fisheries.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(21) and R.S. 56:641.1.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Office of Management and Finance, LR 24:505 (March 1998), amended by the Wildlife and Fisheries Commission, LR 26:1078 (May 2000), amended by the Office of Management and Finance, LR 27:1243 (August 2001), amended by the Wildlife and Fisheries Commission, LR 28:

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this Notice of Intent and the final rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the Notice of Intent and final rule and the preparation of reports and correspondence to other agencies in government.

Interested persons may submit comments relative to the proposed Rule to Marianne Burke, Public Information Section, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA, 70898-9000, prior to Thursday, December 6, 2001.

In accordance with Act 1183 of 1999, the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent: This Notice of Intent

will have no impact on the six criteria set out at R.S. 49:972(B).

Dr. H. Jerry Stone
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Recreational Electronic
Licensing C Outdoor Press License**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

Implementation of the proposed rule with existing staff and funding levels. An implementation cost of \$667 will be incurred by the Department of Wildlife and Fisheries to reprogram the licensing system. Local governmental units will not be impacted.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule is anticipated to reduce annual revenue collections of the Department of Wildlife and Fisheries by \$2,000. Long-term benefits through increased tourism activities from the creation of media products by members of the outdoor press could generate increased revenue collections of state and local governmental units. However, the impacts cannot be quantified at this time.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

Nonresident members of the outdoor press that qualify for a four-day outdoor press license will benefit from the proposed rule change and realize a cost savings of \$40 to fish in saltwater. They will encounter additional paperwork and increased time requirements necessary to obtain a license through this licensing process. Applicants will have to apply with the Department of Culture, Recreation and Tourism to certify that they meet certain criteria and obtain approval by the Department of Wildlife and Fisheries before an outdoor press license can be issued.

Local businesses that provide services to recreational anglers could benefit in the future from the proposed rule through increased tourism activities resulting from articles and reports produced by members of the outdoor press.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

There will be no effect on competition or employment in the public or private sector.

James L. Patton
Undersecretary
0110#048

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

Potpourri

POTPOURRI

Department of Environmental Quality Office of Environmental Assessment

Control of Emission of Organic Compounds
Calcasieu Parish Area (AQ219)

Notice is given that the Department of Environmental Quality is hereby withdrawing proposed rule, Log #AQ219, which amended the Air Quality regulations, LAC 33:III.2103, 2104, 2109, 2115, 2122, 2143, 2147, 2149, 2151, and 2153. The proposed rule, which affected the parishes of Beauregard, Calcasieu, Cameron, and Jefferson Davis, was published in the July 20, 2001, issue of the *Louisiana Register* on pages 1073 - 1078. A public hearing for the proposed rule was held on August 28, 2001, and the comment period closed September 4, 2001. Upon further evaluation of air quality monitoring data for the area and after review and consideration of comments received, the Department has chosen to withdraw this proposed rule. If you have any questions, please call Patsy Deaville at (225) 765-0399.

James H. Brent, Ph.D.
Assistant Secretary

0110#089

POTPOURRI

Department of Environmental Quality Office of Environmental Assessment

Notice of Public Hearing – Proposed Revisions to the State
Implementation Plan (SIP) for Baton Rouge

Notice is hereby given that pursuant to the requirements of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and 40 *Code of Federal Regulations*, §51.102, of the United States Environmental Protection Agency (EPA) regulations concerning SIPs, the Louisiana Department of Environmental Quality (LDEQ) will conduct a public hearing to receive testimony regarding proposed revisions to the SIP for Baton Rouge.

The proposed revisions include, but are not limited to, the following: attainment date extension request based on transport with analysis of ozone/ozone precursor transport; urban airshed modeling with control measures demonstrating ozone attainment by 2005; enforceable commitments; contingency measures; motor vehicle emissions budget for transportation conformity; rescission of section 182(b)(1) NOx exemption for transportation conformity; and revisions to the vehicle inspection/maintenance and new source review programs.

A public hearing on the proposed revisions to the SIP will be held in Baton Rouge at 1:30 p.m. on Monday, November 26, 2001 at LDEQ Headquarters, 7290 Bluebonnet Boulevard, Maynard Ketcham Building, Room 326.

Written comments regarding the proposed SIP revisions should be mailed to Vivian Aucoin, Office of Environmental Assessment, Environmental Planning Division, Box 82178, Baton Rouge, LA 70884-2178 or faxed to (225) 765-0617. Comments must be received by 4:30 p.m. December 3, 2001.

A copy of the proposed SIP revisions may be viewed from 8 a.m. to 4:30 p.m., Monday through Friday in Room 4400, the Public Records Room at LDEQ, 7290 Bluebonnet Blvd. or at the Capital Regional Office, 5222 Summa Court, Baton Rouge. A copy may be obtained by calling the Public Records Room at (225) 765-0843.

Persons with disabilities requiring accommodations for the hearing should contact Ms. Lucy Kraft at (225) 765-0402 in advance of the hearing.

James H. Brent, Ph.D.
Assistant Secretary

0110#090

POTPOURRI

Department of Insurance Office of the Commissioner

Bulletin 01-02

To: All Insurance Related Continuing Education Providers
From: J. Robert Wooley, Acting Commissioner
Re: Acts 2001; Number 290
Enactment of 22:1193.J. "Continuing Education Requirements"

Act 290 of the 2001 General Session of the Louisiana Legislature amended RS 22:1193 by adding Subsection J. The new law, which took effect on August 15, 2001, changes the manner in which continuing education credits are calculated for persons participating in qualified graduate-level national designation programs such as CLU, CPCU, and CIC. It applies to individual or "self-study" courses only.

Subsection J of §1193 provides in pertinent part as follows:

"The Department may grant continuing education credits to an individual for participating in a qualified graduate-level national designation program only if the individual passes the test required of such program and earns a certificate of completion . . ."

Enactment of this subsection supercedes the provision found in Rule 10.10.G, which allowed 50 percent credit to be given to licensees who participated but failed to pass the examination. Therefore, effective August 15, 2001, only those participants who pass the examination can be awarded CE credits.

The Department is in the process of developing internal procedures designed to implement full compliance with Act 290. We will simultaneously work with individual groups to

address any short-term concerns that may arise as a result of the law's August 15 effective date.

Inquiries regarding this issue should be made to Frieda Causey.

J. Robert Wooley
Acting Commissioner

0110#050

POTPOURRI

**Department of Insurance
Office of the Commissioner**

Bulletin 01-04

To: All Insurers And Licensees
From: J. Robert Wooley, Acting Commissioner
Re: Executive Order Blocking Property And Prohibiting Transactions With Persons Who Permit, Threaten To Commit, Or Support Terrorism

In response to the terrorist attacks in New York, Pennsylvania, and the Pentagon committed on September 11, 2001, President Bush issued an Executive Order, effective September 24, 2001, which provides that property and interests in property of those persons and entities listed in the Annex to the Executive Order (a copy of the list is attached to this Bulletin) that are either in the United States or come into the United States are blocked. This includes the making or receiving of any contribution of funds, goods, or services to or for the benefit of those persons or entities listed in the Annex to the Order or otherwise determined to be subject to the Order.

The purpose of this Bulletin is to advise all insurers and licensees to become familiar with their obligations under the Executive Order. All insurers and licensees should review their records for any information that may be relevant to the Executive Order. Insurers and licensees should also review the United States Department of the Treasury, Office of Foreign Assets Control, website, www.treas.gov/ofac, which will provide additional updated information regarding these requirements. Questions regarding the Executive Order should be directed to the Office of Foreign Assets Control. Entities found to have violated this Executive Order may be subject to sanction.

Insurers and licensees reporting information to federal authorities should also notify the Louisiana Department of Insurance.

Annex To Executive Order

Al Qaida/Islamic Army
Abu Sayyaf Group
Armed Islamic Group (GIA)
Harakat ul-Mujahidin (HUM)
Al-Jihad (Egyptian Islamic Jihad)
Islamic Movement of Uzbekistan (IMU)
Asbat al-Ansar
Salafist Group for Call and Combat (GSPC)
Libyan Islamic Fighting Group
Al-Itihaad al-Islamiya (AIAI)
Islamic Army of Aden
Usama bin Laden

Muhammad Atif (aka, Subhi Abu Sitta, Abu Hafs Al Masri)
Sayf al-Adl
Shaykh Sai'id (aka, Mustafa Muhammad Ahmad)
Abu Hafs the Mauritanian (aka, Mahfouz Ould al-Walid, Khalid Al-Shanqiti)
Ibn Al-Shaykh al-Libi
Abu Zubaydah (aka, Zayn al-Abidin Muhammad Husayn, Tariq)
Abd al-Hadi al-Iraqi (aka, Abu Abdallah)
Ayman al-Zawahiri
Thirwat Salah Shihata
Tariq Anwar al-Sayyid Ahmad (aka, Fathi, Amr al-Fatih)
Muhammad Salah (aka, Nasr Fahmi Nasr Hasanayn)
Makhtab Al-Khidamat/Al Kifah
Wafa Humanitarian Organization
Al Rashid Trust
Mamoun Darkazanli Import-Export Company

J. Robert Wooley
Acting Commissioner

0110#071

POTPOURRI

**Department of Insurance
Office of the Commissioner**

Bulletin 01-05

To: All Property And Casualty Insurance Companies Writing Motor Vehicle Insurance In Louisiana
From: J. Robert Wooley, Acting Commissioner
Re: Economic Only Uninsured/Underinsured Motorists Coverage (RS 22:1406.D)

This Bulletin is being issued by the Louisiana Commissioner of Insurance to provide assistance to insurers. It addresses important issues that have been raised by various parties.

Act 1476, the Omnibus Premium Reduction Act of the 1997 Regular Session of the Louisiana Legislature, hereinafter "OPRA," became effective September 6, 1998. (See Bulletin LIRC 98-03.) Section 3 of OPRA, amended LRS 22:1406D(1)(a) by granting insurers the option to offer "economic-only" UM coverage to their insureds.

R.S. 22:622.1 states that all automobile insurance policies issued in Louisiana must be written in language that is easy to understand. R.S. 22:620, as regards admitted insurers, requires that insurance policy forms be filed with and approved by the Commissioner of Insurance prior to being issued, delivered or used in Louisiana. Pursuant to R.S. 22:620B the Commissioner may withdraw approval of any policy at any time for cause. Additionally, R.S. 22:621 mandates the disapproval or withdrawal of any previously approved form if it does not comply with law.

R.S. 22:1406D(2)(b) defines the term "uninsured motor vehicle" to include an insured motor vehicle when the insurance coverage on such vehicle is "less than the amount

of damages suffered by an insured and/or the passengers in the insured's vehicle".

Insurance policies that define an "uninsured motor vehicle" as one where the insurance coverage on such vehicle is "less than the economic-loss" suffered by the insured are not in compliance with law and do not plainly convey to the insured the benefits to which he is entitled under the policy.

Therefore, in accordance with the statutes referenced above, the Commissioner of Insurance hereby gives notice to all insurers writing "economic-only" UM coverage in this state to review the policy language used to assure compliance with the Insurance Code. If the policy's language does not conform with the definition of "underinsured" UM coverage as provided for in R.S. 22:1406D(2)(b) then you are hereby directed to revise your forms to bring them into compliance with the law. Admitted insurers must file their revised forms with the Commissioner of Insurance on or before December 15, 2001.

No new or renewal policies providing "economic-only" UM coverage may be issued, delivered or used in Louisiana after December 31, 2001, unless they are in compliance with the Insurance Code. Any previous approval of forms with non-conforming language is hereby withdrawn, effective December 31, 2001. Failure to comply with the Insurance Code may result in the imposition of administrative sanctions as authorized by LSA-R.S.22:1262.1 or by LSA-R.S. 22:1467.

Any questions regarding this Bulletin should be directed to Kathlee Hennigan, Director of the Property and Casualty Division, at khennigan@ldi.state.la.us or by telephone at 225-342-0073.

J. Robert Wooley
Acting Commissioner

0110#070

POTPOURRI

Department of Insurance Office of the Commissioner

Directive Number 01-158

To: All Health Insurance Issuers Offering Individual Health Insurance Coverage

Purpose

It has been brought to my attention that a clarification is needed regarding proper compliance with and guidance under Louisiana Revised Statutes (R.S.) Title 22, Section 250.11, that provides for individual health insurance coverage to exclude coverage for specific preexisting medical conditions for periods longer than twelve months following the effective date of an individual person's coverage. The purpose of this directive is to clarify regulatory issues for those policies that fall under the individual market as defined in LA-R.S. 22:250.1 (5) (m). The following is intended to address those issues that have been made known to the Department of Insurance, and is not meant to limit the scope of the Department's regulatory authority over any insurance activity that may not be addressed in this directive.

Regulatory Issues

- A. Is there a maximum time period for the exclusions?
- B. How specific must the exclusion be in reference to the medical condition to be excluded?
- C. Can an insurer/HMO exclude certain benefits if an individual has full or partial creditable coverage?
- D. How should notice be given to policyholders?

Discussion

Is there a maximum time period for the exclusions? Section C of R.S. 22:250.11 provides in part, Notwithstanding the provisions of Subsections B and D of this Section, individual health insurance coverage offered to any individual may exclude coverage for medical care for specific medical conditions that existed prior to the issuance of coverage, subject to the following conditions:

- (2) The exclusion of coverage for medical care shall be for a specified period of time longer than twelve months and shall cover a specific medical condition.

The Department takes the position that as long as the period is longer than twelve months and is specified in the rider, then there is no maximum time period for the exclusion. Policies need to state specifically what the period will be for the exclusion (1, 2, 5 years, etc.).

Section C(5) further provides that offers of coverage shall not include more than two specific medical conditions being excluded from coverage per individual covered under the policy or subscriber agreement. With respect to the time periods, there can be two different time periods for the two exclusions (exclusion one-5 year exclusion, exclusion two-2 year exclusion, etc.).

How specific must the exclusion be in reference to the medical condition to be excluded? Section C(3) provides the following: "Before or at the time of issuance of the policy or subscriber agreement, the health insurance issuer shall provide the applicant with a written notice explaining the exclusion of coverage for the specific medical condition. Such exclusion of coverage shall not be applied to any other medical condition not arising directly as the result of the specific medical condition being excluded. (emphasis added)

The Department recognizes the language emphasized as a more stringent measure for determining how specific the exclusion must be in reference to the medical condition. The International Classification of Diseases Clinical Modification Code, as well as Stedman's Medical Dictionary, both provide helpful guidelines that should be referenced in labeling the specific medical conditions excluded in the policies.

Ex. Exclusion for asthma

-A subsequent diagnosis of viral pneumonia and an attempt to exclude coverage for this type of pneumonia may be impermissible as the viral pneumonia is a condition that might not arise directly from the asthma.

Ex. Exclusion for the female reproductive organs

-This exclusion would be improper, in that the organs are not a specific medical condition.

Exclusion of coverage for medical care also shall not apply to any services, benefits, or options mandated by state or federal law to be included in a policy or certificate of coverage.

Ex. Diabetes Mandate

-R.S. 22:215.21 provides coverage for the equipment, supplies, and outpatient self-management training and education, including medical nutrition therapy, for the treatment of insulin-dependent diabetes, insulin-using diabetes, gestational diabetes, and non-insulin using diabetes if prescribed by a physician, or, if applicable, the patient's primary physician.

-It is permissible to exclude a specific medical condition that is not covered by the mandate (ex. diabetic retinopathy).

Can an insurer/HMO exclude certain benefits if an individual has full or partial creditable coverage?

Even if a person has full or partial coverage, in lieu of declining an application, issuers may offer coverage with an exclusion for specified medical condition(s).

Moreover, when a person decides to move to another company, whether or not they are portable, if their existing coverage contains an exclusion, the subsequent issuer may include the same exclusion and duration or write their own exclusion and durations.

How should notice be given to policyholders?

Section C(4) provides, "The offer of coverage shall state that the applicant is receiving coverage with an exclusion of coverage for a specific medical condition. Such statement shall be printed in bold print as a separate section of the policy or subscriber agreement or on a separate form."

Along with the requirements above, the Department advises issuers of these policies to comply with the following requirements for policy forms. A signature line should be provided for applicants to sign the rider/policy such as the following example:

I hereby represent and agree that this exclusionary rider shall be considered as a part of my contract and/or original application.

Signature Of Applicant

Witness

Date

Exclusionary rider forms should also state in writing the specified time period of the exclusions followed by the provisions found in Section C(7), which states the following:

The health insurance issuer shall agree to review the underwriting basis for the exclusion from coverage upon written request by the insured no more often than once in a twelve-month period. The issuer shall remove the exclusion, effective upon renewal, if the insurer determines that the evidence of insurability is satisfactory.

Please be guided accordingly.

J. Robert Wooley
Acting Commissioner

0110#069

POTPOURRI

Department of Natural Resources Office of Conservation

Orphaned Oilfield Sites

Office of Conservation records indicate that the Oilfield Sites listed in the table below have met the requirements as set forth by Section 91 of Act 404, R.S. 30:80 et seq., and as such are being declared Orphaned Oilfield Sites.

Operator	Field	istrict	Well Name	Well Number	Serial Numb
Campbell & Morris	Bellevue	S	Campbell	001	147178
Hunter Oil & Gas, LLC	Lake Rosemound	L	Mescal Brown et al	001	216614
Hunter Oil & Gas, LLC	Lapice	L	Hawthorne Fmly Class Trust SWD	001	210172
Hunter Oil & Gas, LLC	Lapice	L	Hawthorne Heirs	001	213474
Hunter Oil & Gas, LLC	Lapice	L	D RC SUA; Hawthorne Heirs	002	214142
Tri-Par Exploration, Inc.	Grogan	S	Arnold Estate	002	177851
Tri-Par Exploration, Inc.	Grogan	S	Arnold Estate	004	182976
Tri-Par Exploration, Inc.	Grogan	S	Arnold Estate	003	182975
Tri-Par Exploration, Inc.	Grogan	S	Arnold Estate	006	184202
Tri-Par Exploration, Inc.	Grogan	S	Arnold Estate	005	184201
Tri-Par Exploration, Inc.	Grogan	S	Arnold Estate	001	176707
Tri-Par Exploration, Inc.	Grogan	S	Layton Heirs	001	199474
Westek Resources, Inc.	Converse	S	Whitehurst	001	033006
Westek Resources, Inc.	Converse	S	Bass	001	223683
Westek Resources, Inc.	Converse	S	Whitehurst	002	223444

Philip N. Asproditos
Commissioner of Conservation

0110#094

POTPOURRI

**Department of Natural Resources
Office of the Secretary**

Loran Coordinates

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 11 claims in the amount of \$37,450.65 were received for payment during the period September 1, 2001-September 30, 2001. There were 11 claims paid and 0 claims denied.

Loran coordinates of reported underwater obstructions are:

27896	46855	Terrebonne
28663	46844	Plaquemines
28985	47021	St. Bernard

Latitude/longitude coordinates of reported underwater obstructions are:

2916.073	8957.029	Jefferson
2908.150	9056.487	Terrebonne
2916.153	8957.078	Jefferson
2916.730	8957.029	Jefferson
2917.010	8956.062	Jefferson
2920.065	8959.112	St. Bernard
2925.576	9040.370	Terrebonne
2950.424	9320.782	Cameron

A list of claimants and amounts paid can be obtained from Verlie Wims, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225)342-0122.

Jack C. Caldwell
Secretary

0110#087

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