



State of Louisiana
DEPARTMENT OF NATURAL RESOURCES
OFFICE OF THE SECRETARY
November 15, 2017

Senator John A. Alario, Jr., President
Senator Norbert N. "Norby" Chabert,
Chairman-Senate Natural Resources Committee
Representative Taylor F. Barras, Speaker
Representative Stuart J. Bishop, Sr.,
Chairman-House Natural Resources and Environment Committee

via statutorily required e-mail

**RE: Proposed promulgation of LAC 43:I.133
Debts owed to the Department of Natural Resources**

Dear President Alario, Chairman Chabert, Speaker Barras, and Chairman Bishop,

The Department of Natural Resources, pursuant to the power delegated under La. R.S. 36:353, proposes to promulgate a new section 133 of Title 43, Part I, Chapter 1 of the Louisiana Administrative Code. The following report regarding the proposed promulgation of LAC 43:I.133 is submitted to you in accordance with R.S. 49:968(B) & (C).

1. Copy of the rule as it is proposed for adoption.

See the attached Notice of Intent.

2. Statement of proposed action and summary of the content of the proposed rule.

DNR proposes to promulgate a new section 133 of Title 43, Part I, Chapter 1 of the Louisiana Administrative Code. This proposed rule sets forth the process by which DNR invoices certain types of debts owed to it. Further, the proposed rule establishes a due date for applicable debts and time delays in which a person may challenge such debts by requesting a public hearing before the Division of Administrative Law. Finally, the proposed rule establishes when an applicable debt owed to DNR becomes "final" for purposes of R.S. 47:1676 and can be forwarded to the Office of Debt Recovery, Department of Revenue for debt collection activities. The proposed rule does not apply to debts owed the Commissioner of Conservation, the State Mineral and Energy Board, pursuant to federal loan or grant programs, the Fisherman's Gear Compensation Fund, or debts associated with the overpayment of active or separated DNR employees.

3. Specific citation of law authorizing promulgation of the rule.

**Proposed Promulgation of LAC 43:I.133
Debts Owed to the Department of Natural Resources**

La. R.S. 36:353.

4. Circumstances which require promulgation of the proposed rule.

La. R.S. 47:1676 requires that "final" debts owed to a State agency be forwarded to the Louisiana Office of Debt Recovery for collection activities. Existing statutes and regulations are unclear when certain debts owed DNR become final when they are neither paid nor litigated. The proposed rule establishes an administrative hearing process by which persons can challenge debts they have been invoiced. The proposal further sets forth a sixty-day deadline by which these types of debts shall either be paid or challenged. The failure of a party to either challenge or pay a debt invoiced by DNR to them within this sixty-day time period, shall result in the debt being "final" and forwarded to the Louisiana Office of Debt Recovery for debt collection activities.

5. Statement of the Fiscal and Economic Impact.

See the attached Fiscal and Economic Impact Statement.

The Notice of Intent to promulgate the proposed new rule will be published in the Louisiana Register on November 20, 2017. All interested parties will be afforded the opportunity to submit data, views, or arguments orally or in writing at a public hearing held in accordance with R.S. 49:953. The Secretary or his designee will conduct a public hearing at 1:30 p.m., December 27, 2017, in the LaBelle Room located on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana. Written comments will be accepted until noon, December 29, 2017 at the Office of the Secretary, Department of Natural Resources, P.O. Box 94396, Baton Rouge, LA 70804.

Please contact me or my executive counsel, Blake Canfield, at (225) 342-2710, if you have any questions or require additional information regarding this matter.

Yours very truly,



Thomas F. Harris
Secretary

Attachments

NOTICE OF INTENT
Department of Natural Resources
Office of the Secretary
Debts Owed to the Department of Natural Resources
(LAC 43:I.133)

The Department of Natural Resources, Office of the Secretary proposes to promulgate LAC 43:I.133 in accordance with the provisions of the Administrative Procedure Act, La. R.S. 49:950, et seq., and pursuant to the power delegated under La. R.S. 36:353 and the laws of the state of Louisiana. The proposed rule sets forth the process by which the Department of Natural Resources invoices applicable debts owed to it. Further, the proposed rule establishes a due date for applicable debts and the time delays in which a person may challenge such debts by requesting a public hearing before the Division of Administrative Law. Finally, the proposed rule establishes when an applicable debt owed to the Department of Natural Resources becomes "final" for purposes of La. R.S. 47:1676 and can be forwarded to the Louisiana Office of Debt Recovery or to the Attorney General's Office for debt collection activities. The proposed rule does not apply to debts owed the Commissioner of Conservation, the State Mineral and Energy Board, federal loan or grant programs, the Fisherman's Gear Compensation Fund, or debts associated with the overpayment of active or separated DNR employees.

Title 43

NATURAL RESOURCES

Part I. Office of the Secretary

Subpart 1. General

§101. - §131. ...

§133. Debts Owed to the Department of Natural Resources

A. **Applicability.** This section is applicable for all debts owed to the Department of Natural Resources (hereinafter referred to as "DNR"), with the following exceptions:

1. debts associated with mineral leases or operating agreements, or mineral production on State lands and water bottoms, or to any debts under the authority of the State Mineral and Energy Board;
2. debts associated with federal loans or grant programs, including but not limited to those issued, through the Home Energy Loan Program (HELP), Energy Fund, or the American Recovery and Reinvestment Act of 2009 (ARRA) Revolving Loan Fund;
3. debts other than those debts owed under the Oilfield Site Restoration Act (R.S. 30:80, et seq.) that are owed to the Office of Conservation or the Commissioner of Conservation,
4. debts owed the Fisherman's Gear Compensation Fund (R.S. 56:700.1, et seq.), or
5. debts associated with the overpayment of active or separated DNR employees.

B. **Due Date of Applicable Debt.**

1. When an applicable debt is owed to DNR, DNR shall create an invoice for that debt. Among other things the invoice shall identify the amount of the debt owed to DNR and the individual, company, or organization that owes the invoiced debt to DNR. In the event that the applicable statutes or rules establish the date on which the invoiced debt is due, the invoiced debt amount shall be due to DNR on that date. When the applicable statutes or rules do not establish a date on which the invoiced debt is due, then the invoiced debt shall be due sixty (60) days after the invoice is duly delivered to the party identified as owing the debt. In the event, the debt has been invoiced prior to the effective date of this regulation and there is no due date established by the applicable statute or regulation, then the debt amount shall be due sixty (60) days after the effective date of this regulation.

2. For purposes of this section, the invoice shall be deemed duly delivered upon:
 - a. receipt by the party identified as owing the debt if delivered in person;

- b. if properly addressed, two (2) days after deposit in the U.S. mail;
- c. if properly addressed, one (1) business day after it is sent by recognized commercial overnight courier service; or
- d. if properly addressed, upon transmission if sent via email with confirmation of receipt..

3. For purposes of this section, "properly addressed" means the invoice is addressed to the physical, mailing, or e-mail address that is:

- a. registered by the party with the department or any of its offices or programs where such registration is required by applicable law or regulation;
- b. provided by the party to the department or any of its offices or programs on an application or other agency form; or
- c. if no other address exists, then any address otherwise provided by law.

C. Dispute of an Applicable Debt. In the event the party that is invoiced disputes the debt owed to DNR said party may request an administrative hearing in writing within sixty (60) days after the invoice is duly delivered to said party. Such requests shall set forth the basis for the party's belief that it does not owe the debt to DNR. Such requests shall be addressed to "DNR-Office of the Secretary, ATTN: DNR Debt Appeal, P.O. Box 94396, Baton Rouge, LA 70804-9396."

- 1. The request for an appeal of a debt will be deemed submitted to DNR on:
 - a. the date it is actually hand delivered to DNR;
 - b. if properly addressed, two (2) days after deposit in the U.S. Mail; or
 - c. if properly addressed, one (1) business day after it is sent by recognized commercial overnight courier service.

2. The administrative hearing shall be presided over by a Division of Administrative Law hearing officer and subject to the rules and requirements established by the Division of Administrative Law Act (R.S. 49:991—999.1).

D. Final Debts. Debts owed to DNR shall become final pursuant to La. R.S. 47:1676 either the day after the deadline to request an administrative hearing as set forth in subsection C of this section has passed and no request for an administrative hearing has been made, or when a final and un-appealable decision is made that the debt is owed to DNR by a competent administrative hearing officer or a court of competent jurisdiction.

E. Cost Recovery. Pursuant to La. R.S. 47:1676, when any debt owed to DNR becomes final then the debt shall be referred to the Office of Debt Recovery, Department of Revenue or to the Attorney General's office for collection in accordance with the agency participation agreement between the Department of Natural Resources, the Louisiana Department of Revenue, and the Louisiana Attorney General's Office that is then in effect.

F. Not a Replacement of the Judicial Review Process. Creation of the right set forth in subsection C of this section to request an administrative hearing to challenge whether a specific party owes a specific invoiced debt is not intended to replace or alter the judicial review process for challenging the validity of underlying regulations, orders, civil penalties, or other decisions properly challenged under other statutory authority, including but not limited to, La. R.S. 30:12, La. R.S. 49:962.1 – 965, La. R.S. 49:968, or La. R.S. 49:214.35.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:353(A)(3).

Family Impact Statement

In accordance with Section 953 and 972 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal, or amendment. This Family Impact Statement shall be kept on file in the Office of the Secretary, Department of Natural Resources in accordance with the Louisiana Public Records Law.

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

Poverty Impact Statement

The proposed Rule does not have any known or foreseeable impact on any child, individual or family as defined by R.S. 49:973(B). In particular, there should be no known or foreseeable effect on:

1. household income, assets, and financial security;
2. early childhood development and preschool through postsecondary education development;
3. employment and workforce development;
4. taxes and tax credits; or
5. child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Provider Impact Statement

This proposed Rule has no known impact on providers as described in HCR 170 of 2014.

Public Comments

All interested parties will be afforded the opportunity to submit data, views, or arguments orally or in writing at the public hearing in accordance with R.S. 49:953. Written comments will be accepted until noon on December 29, 2017, at the Office of the Secretary, Department of Natural Resources, P.O. Box 94396, Baton Rouge, LA, 70804. All inquiries should be directed to Blake Canfield, Executive Counsel at the above address or by phone at 225-342-2017.

Public Hearing

The Secretary of DNR or his designee will conduct a public hearing at 1:30 p.m., December 27, 2017, in the LaBelle Room located on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA.

Thomas F. Harris
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

Person
Preparing
Statement: James B. Canfield Dept.: Natural Resources

Phone: 225-342-3024 Office: Secretary

Return
Address: P.O. Box 94396 Rule
Title: LAC 43:I.133 - Debts Owed to the
Baton Rouge, LA 70804-9396 Department of Natural Resources

Date Rule
Takes Effect: February 20, 2018

SUMMARY
(Use complete sentences)

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 STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

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

The proposed rule will not result in costs or savings to the state or local governmental units. The purpose of the rule is to establish a process to invoice for debt owed to the Department of Natural Resources (DNR). The proposed rule does not create a new debt but sets forth the process of when and how debts become final. The proposed rule includes the due date, process to challenge the debt, and the deadline to submit. The proposed rule is applicable to all the debts owed to DNR except for debts associated with mineral leases or operating agreements, federal loans or grants, the Office of Conservation, the Fisherman's Gear Compensation Fund, or the overpayment of active or separated employees.

La. R.S. 47:1676 requires that "final debt" owed to a State agency be forwarded to the Louisiana Office of Debt Recovery (ODR) for collection activities. There was no clear method of determining exactly when the applicable debts owed to the DNR become "final debts" if not paid or litigated. Additionally, there was no clear administrative process for persons to challenge applicable debts invoiced by DNR. The proposed rule would address both of these needs.

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

The proposed rule is anticipated to increase revenue collections to DNR and ODR by an indeterminable amount. The proposed rule is intended to increase clarity of when applicable debts become final. This may lead to additional collections of these existing debts, however, the amount of collections that will be received is too uncertain to estimate at this time.

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

The proposed rule does not create new debt obligations or entitlements, but does set a clear deadline for when debts may be forwarded to ODR. Therefore, it is anticipated entities that owe debt to DNR will be paying their debt more frequently since the proposal sets forth the appropriate process for invoicing authorized debts, challenging authorized invoiced debts, and finalizing authorized debts for collection. The amount of collections that will be paid by the entities is too uncertain to estimate at this time.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will have no impact upon competition and employment in the state.


Signature of Agency Head or Designee

Thomas F. Harris, Secretary


Legislative Fiscal Officer or Designee

Typed Name & Title of Agency Head or Designee

11/8/2017
Date of Signature

11/8/17
Date of Signature

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

The following information is required in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption, or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

This proposal adopts a new section 133 of Title 43, Part 1, of the Louisiana Administrative Code. Proposed section 133 sets forth the process for invoicing, the due date of, deadline to challenge, and the process for challenging an applicable debt owed to the Department of Natural Resources. This proposal sets forth a mechanism by which all applicable debts owed the Department of Natural Resources may become "final" as that term is used in La. R.S. 47:1676. Additionally the proposed rule creates a clear administrative process by which persons wishing to challenge the invoiced debt can do so.

- B. Summarize the circumstances, which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

La. R.S. 47:1676 requires that "final debt" owed to a State agency be forwarded to the Louisiana Office of Debt Recovery for collection activities. There was no clear method of determining exactly when the applicable debts owed to the Department of Natural Resources become "final debts" if not paid or litigated. Additionally, there was no clear administrative process for persons to challenge applicable debts invoiced by the Department of Natural Resources. The proposed rule would address both of these needs.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session

- (1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

No. The proposed rule will be administered by existing agency staff. No new expenditure of funds is contemplated. There is a chance of slight savings overall as the rule may create more efficiencies in debt collection and in how challenges to invoiced debts are handled.

- (2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase? NA

(a) _____ Yes. If yes, attach documentation.

(b) _____ NO. If no, provide justification as to why this rule change should be published at this time

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

COSTS	FY 18	FY 19	FY 20
Personal Services	0	0	0
Operating Expenses	0	0	0
Professional Services	0	0	0
Other Charges	0	0	0
Equipment	0	0	0
Major Repairs & Constr.	0	0	0
TOTAL	0	0	0
POSITIONS (#)	0	0	0

2. Provide a narrative explanation of the costs or savings shown in "A. 1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

There should be no increase or decrease in cost or savings. The new rule provides clarity as to how DNR's applicable debts become final consistent with La. R.S. 47:1676 and how someone wishing to challenge an applicable debt they have been assessed should do so. The new process outlined in the proposed rule will require: (1) a one-time revision of existing forms to include instructions on how persons can administratively challenge a debt they have been assessed, (2) revision to tracking sheets to document when deadlines set forth in the proposal have been reached, and (3) representation of the department by existing staff attorneys at public hearings held by the Div. of Administrative Law.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY 18	FY 19	FY 20
State General Fund	0	0	0
Agency Self-Generated	0	0	0
Dedicated	0	0	0
Federal Funds	0	0	0
Other (Specify)	0	0	0
TOTAL	0	0	0

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

Yes, there is no increase in funding required.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

No impacts specific to local governmental units are expected. To the extent local governmental units are invoiced by the Department of Natural Resources, these units would be included within the same process as any other person invoiced a debt by the agency. The proposed rule sets forth a clear deadline when the debt(s) will become final and forwarded to the Office of Debt Recovery for collections. While the collections process by the Office of Debt Recovery exists separate and apart from the proposed rule, by setting a clear deadline for when debts may be forwarded to the Office of Debt Recovery, it is reasonable to expect that such collection activities against any local governmental units owing debts to the agency will increase and occur more frequently. Again, however, the proposed rule is not creating a new debt to such parties. There is no increased cost to local governmental units anticipated by this proposal.

2. Indicate the sources of funding of the local governmental unit, which will be affected by these costs or savings.

Not applicable. There is no increased cost to local governmental units anticipated by this proposal.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

REVENUE INCREASE/DECREASE	FY 18	FY 19	FY 20
State General Fund	0	0	0
Agency Self-Generated	0	Indeterminable	Indeterminable
Dedicated Funds*	0	0	0
Federal Funds	0	0	0
Local Funds	0	0	0
TOTAL	0	Indeterminable	Indeterminable

*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

The proposed rule is anticipated to increase revenue collections to DNR and ODR by an indeterminable amount. While the increased clarity of when applicable debts become final may lead to additional collections of these debts pursuant to already existing statutes and rules, the amount of collections made by the Office of Debt Recovery is too uncertain to estimate at this time. At the time of this impact statement, the total debt owed to DNR is approximately \$190,000 and there are approximately 690 open accounts.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

- A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

Persons invoiced for applicable debts owed to the Department of Natural Resources are being provided a clear administrative path for challenging such debts. Without this administrative path, the only avenue for these persons to challenge applicable alleged debts is through the court system which is more costly and time consuming than the proposed administrative process. The proposed rule sets forth a clear deadline when the applicable debt(s) will become final and forwarded to the Office of Debt Recovery for collections. While the collections process of the Office of Debt Recovery exists separate and apart from the proposed rule, by setting a clear deadline for when debts may be forwarded to the Office of Debt Recovery, it is reasonable to expect that such collection activities against those owing debts to the agency will increase and occur more frequently. Again, however, the proposed rule is not creating a new debt to such parties.

No other persons or non-governmental groups should be directly affected by the proposed action.

- B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

Similarly the proposed rule should not have a quantifiable effect on the receipts or income of persons or non-governmental groups since it creates no new debt obligations or entitlements. Instead the proposal sets forth the appropriate process for invoicing authorized debts, challenging authorized invoiced debts, and finalizing authorized debts for collection.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

No impacts are estimated for the proposed action on competition or employment in the public or private sectors.