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# Executive Orders

## EXECUTIVE ORDER NO. 91

WHEREAS, it is essential to the general welfare of the State that Louisiana's system of legal justice maintain an attitude of fairness to all, regardless of their economic condition; and

WHEREAS, Section 13 of Article I of the Louisiana Constitution of 1974 provides that any person arrested or detained is entitled to counsel and shall be provided with counsel if indigent; and

WHEREAS, the Declaration of Rights of the Louisiana Constitution in Article I, Section 13 also provides that the Legislature shall provide a uniform system for securing and compensating qualified counsel for indigents; and

WHEREAS, it is of critical importance that a uniform system for securing and compensating qualified counsel for indigents be established; and

WHEREAS, it is necessary that such a uniform plan be developed, giving consideration to the practices now employed in the various areas of the State, to the funding of such a system and its organization.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of Louisiana, it is ordered as follows:

### Section 1.

(a) There is hereby established the Governor's Commission on a Uniform Indigent Defense System (hereinafter referred to as the Commission).

(b) The Commission shall be composed of 13 members including the President and President-elect of the Louisiana Bar Association and 11 other members, all attorneys at law, appointed by the Governor, in such a manner that there shall be at least one appointee who is an elector from each congressional district. The President of the Louisiana Bar Association shall be Chairman of the Commission and the President-elect shall be Secretary.

### Section 2.

The Commission shall:

(a) Conduct such research and prepare such

studies as are necessary to devise and formulate a proposed uniform indigent defense system. To this end, the Commission is authorized to hold hearings, employ necessary personnel, and do all other things necessary to accomplish the purpose for which it was created.

(b) Prepare and present to the Governor recommendations, together with the draft of proposed legislation to accomplish its recommendations, for a proposed uniform indigent defense system which will conform to Article I, Section 13 of the 1974 Constitution.

### Section 3.

The Commission is authorized to request the use of personnel, services, and facilities of the Louisiana Legislative Council, the Louisiana State Law Institute, and such counsel, assistance, personnel, facilities, and advice as may be obtained from other public and private sources, including but not necessarily restricted to business, labor, and private research agencies, individuals, or organizations.

### Section 4.

The Commission is authorized to receive grants, donations, or gifts of money or services from public or private persons and entities to be utilized to accomplish the purpose for which it is created.

### Section 5.

All who may be in a position to do so are requested to furnish the Commission information pertinent to its work and otherwise to facilitate the Commission's work.

### Section 6.

The members of the Commission shall receive the same per diem and travel allowance in the performance of their duties as are provided for members of the Legislature, and the compensation of the members and personnel of the Commission, lawful allowance therefor, and other necessary expenses arising in connection with the work of the Commission shall be paid from such moneys as may be available therefor.

### Section 7.

The Commission, at its discretion, may transmit to the Governor such preliminary or interim report, or reports, as it may deem appropriate. It shall transmit its final report and recommendations, together with the draft of proposed legislation to accomplish its recommendations, to the Governor not later than March 31,

1976. The Commission shall terminate not later than 30 days after the submission of its final report to the Governor.

mmmmmmmn IN WITNESS WHEREOF, I have here-  
unto 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 10th day of  
September, A.D., 1975.

EDWIN EDWARDS  
Governor of Louisiana

### EXECUTIVE ORDER NO. 92

**SUBJECT:** Cooperation of All State Agencies in Energy Conservation

WHEREAS, the Natural Resources and Energy Act of 1973 (Act 16) provides for the control of natural resources and energy to effect the conservation thereof by the prevention of waste, wasteful use, and wasteful utilization thereof and the resultant economic waste by providing for a comprehensive energy policy for the State of Louisiana; and

WHEREAS, for the purposes thereof to provide for the establishment of the Division of Natural Resources and Energy within the Department of Conservation in order to consolidate and merge functions exercised by the State in relation to energy into the Office of the Commissioner of Conservation; and

WHEREAS, the Commissioner of Conservation shall regulate the use, end use, production, transportation, conservation, sale, and price of the State's energy resources, and among other things, provide for the equitable distribution of energy supplies to the residents and the commercial and industrial users of these energy supplies; and

WHEREAS, the Commissioner of Conservation has formulated an Energy Conservation Program Guide for Commercial Buildings which will include the use of energy in all State-owned and State-leased buildings; and

WHEREAS, the coordination and leadership combining both public and private interests on a Statewide level is essential to assist the Commissioner of Conservation in carrying out the mandates set forth in the aforementioned Act 16 and in particular the full cooperation of the directors of all State agencies with the inclusion of all State employees;

NOW, THEREFORE, I, EDWIN EDWARDS, by virtue of the authority vested in me as Governor of the State of Louisiana, pursuant to the Constitution, and applicable statutes of the State of Louisiana, in order to promote energy conservation and assist the Commissioner of Conservation in the execution of aforementioned duties and responsibilities and to provide the necessary example for the citizens of this State to diligently pursue a program of energy conservation in all sectors of energy utilization, do order as follows:

All State agencies and employees thereof will cooperate to the fullest extent possible in the implementation of the State Energy Conservation Program Guide established by the Commissioner of Conservation for all State-owned and State-leased buildings and all other energy conservation programs established by the Commissioner of Conservation by authority granted to him under the Natural Resources and Energy Act of 1975 (Act 16), all of which are being monitored by the Office of the Commissioner of Conservation.

IN WITNESS WHEREOF, I have here-  
unto 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 the 10th day of  
September, A.D., 1975.

EDWIN EDWARDS  
Governor of Louisiana

### EXECUTIVE ORDER NO. 93

Section 1 (b) of Executive Order No. 91 issued by me on September 10, 1975, is hereby amended as follows:

Section 1.

(b) The Commission shall be composed of fifteen members including the President and President-elect of the Louisiana Bar Association and thirteen other members, all attorneys at law, appointed by the Governor, in such a manner that there shall be at least one appointee who is an elector from each Congressional district. The President of the Louisiana Bar Association shall be Chairman of the Commission and the President-elect shall be Secretary.

IN WITNESS WHEREOF, I have here-  
unto 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 26th day of September, A.D., 1975.

**EDWIN EDWARDS**

Governor of Louisiana

# Emergency Rules

## DECLARATION OF EMERGENCY

### State Board of Elementary and Secondary Education

At its meeting on September 1, 1975, the State Board of Elementary and Secondary Education adopted the following rule, effective immediately:

An applicant seeking certification under Bulletin 746 (as revised in 1964) after September 1, 1975, may have his or her records reviewed for this purpose until September 1, 1976. During this time period, certification may be granted according to the 1964 standards only if the applicant completed the appropriate requirements prior to September 1, 1975.

In such cases, the Bureau of Higher Education and Teacher Certification shall evaluate teachers' records for the specific area of certification requested.

The necessity for this rule is the urgent need for teaching personnel in the schools to compile their records of courses taken and to submit them for an evaluation to the State Department of Education. On September 1, 1975, a deadline passed for the completion of older certification requirements. The careers of numerous individuals would be vitally affected should the Board not permit a certain period of time for individuals to prove they had completed the older certification requirements by September 1, 1975.

This action was taken in accordance with the emergency provision of the Administrative Procedures Act, R. S. 49:953B.

Earl Ingram  
Director

## DECLARATION OF EMERGENCY

### Louisiana Health and Human Resources Administration

#### Division of Family Services

The Louisiana Health and Human Resources Administration, Division of Family Services has been notified by the Regional Office of the Department of Health, Education and Welfare, that Louisiana is not in compliance with Federal regulations in allowing an exclusion for the cost of divorce in an Aid to Families with Dependent Children (AFDC) recipient's grant computation when the recipient has other income. The Federal regulation citation is Section 233.20 (a) (3) (ii) (a), Part 233, Chapter II, Title 45 of the Code of Federal Regulations, as reported in the Federal Register, Wednesday, March 19, 1975, Vol. 40, No. 54, page 12507.

Because of the Federal mandate, the Louisiana Health and Human Resources Administration has deleted the above income exclusion, effective September 22, 1975, under an emergency rule. In situations where an allowance is currently being made, it shall be discontinued when the divorce is paid for or at the time of next redetermination, whichever comes first. This action was taken pursuant to R.S. 49:953B and R.S. 49:966C. Copies of the emergency rule are available for public examination at the offices of the Louisiana Health and Human Resources Administration, Division of Family Services, Room 201, 755 North Riverside, Baton Rouge, Louisiana.

William H. Stewart, M.D.  
Commissioner

## DECLARATION OF EMERGENCY

### Louisiana Real Estate Commission

#### Emergency Rules Effective September 17, 1975

1. Licenses; examination; fees
2. Remittance of fees
3. Credit report
4. Term of license
5. Renewal of license
6. Delinquent renewal of license
7. Veterans waiver
8. Transfer of salesman license
9. Broker's acknowledgment of salesman's broker application
10. Trade name restrictions

11. Broker/salesman; concurrent license prohibition
12. Termination of salesman affiliation with broker
13. Advertising
14. Escrow account
15. Salesman change of address
16. Broker change of address
17. Multiple representation
18. Disclosure of licensee ownership in property
19. Representation through listing broker
20. Substitute contract prohibition
21. Prohibition on payment to unlicensed individuals
22. Duty to report legal actions
23. Maintenance of broker records
24. Investigations
25. Duty of broker to inform salesman
26. Registration of out-of-state land development
27. Complaints
28. Broker-broker affiliation
29. Corporations and partnerships
30. Issuance of bond
31. Cancellation of bond
32. Reinstatement of bond-license cancellation
33. Definition of broker
34. Real estate school definition
35. Certification of real estate school
36. Application and renewal of Certificate of Registration
37. Exemption from Certificate of Registration
38. Instructor certification
39. Instructor qualifications
40. Course information reporting
41. Course Certificate of Completion
42. Advertising by real estate schools
43. Investigation of schools
44. Deceased broker: continuation of business

1. Applications for broker or salesman licenses, accompanied by a license fee and separate examination fee, are required to be received by the Commission at least eleven days prior to the date of examination in order to obtain the required examination admittance authorization. Official admittance authorization must be presented to the examination monitor before an examination will be administered to any applicant.

A. Salesman and broker examinations shall be held monthly excluding January and December.

B. Applicants who fail to pass the initial examination will be allowed to take a second examination at any subsequent regular examination period provided that they remit a new examination fee and obtain official examination admittance authorization.

C. Applicants who fail to pass the second examination shall have their applications and license fees returned by the Commission. Those applicants who fail to pass the second examination shall be allowed to take additional examination(s) at any subsequent regular examination period not less than six months beyond the date of their last examination failure, provided that they resubmit their application, license fee, new examination fee and obtain official examination admittance authorization.

D. Applicants who, for any reason, are disqualified on an examination may retake said examination at any subsequent regular examination period provided that they remit a new examination fee and obtain official examination admittance authorization.

E. Applicants are not allowed to possess or utilize any reference material, slide rules, protractors, tables, or computers during examinations.

F. Examinations will be administered only at designated examination centers, on the prescribed date and at the prescribed time as shown on admittance authorization, and only after all of the requirements of this section have been met.

2. Any check presented as a fee under this section which is returned unpaid by the payor's bank shall be cause for suspension, revocation, or denial of renewal of license.

A. Examination fees shall be submitted by separate remittance and shall be submitted in the form of a certified check, cashier's check, bank or U.S. postal money order payable to the Louisiana Real Estate Commission. Examination fees shall not be combined with the payment of any other fees remitted pursuant to this section.

3. Applicant for broker's license shall furnish to the Commission a current credit and character report obtained from a recognized credit reporting agency. The report required herein must be received by the Commission before the applicant's application will be processed.

4. Real estate license fees shall cover a period of one calendar year beginning January 1 and expiring December 31. Fees remitted for licenses issued for a portion of a year shall not be prorated. Credit allowances or refunds for any unlicensed portion of the license shall not be allowed.

5. All renewal applications shall be submitted for receipt by the Commission by October 15 in order for licenses to be issued in proper statutory time. The responsibility for timely submission of renewal applications rests solely with each individual licensee. Failure to timely submit applications for renewal shall be cause for suspension of license.
  - A. Salesmen's licenses shall be renewed subsequent to renewal of their sponsoring broker's license.
  - B. Salesmen's renewal applications shall be signed by the sponsoring broker and submitted to the Commission together with the renewal fee.
6. Applications for renewal of delinquent licenses shall be accepted by the Commission only during the calendar year following the last date on which applicant held a valid license. Formerly licensed brokers or salesmen who are not eligible for renewal shall apply for licenses as initial applicants.
  - A. Examination requirements shall apply to all applicants who are not eligible for renewal.
  - B. Applicants who have been previously licensed but who have not been licensed during any of the three calendar years immediately preceding their date of application are subject to all educational requirements of initial applicants.
  - C. Applicants who were previously licensed at least two consecutive years during three calendar years immediately preceding the date of application may obtain a waiver of all or part of the educational requirements at the discretion of the Commission.
7. Licensees who are inducted into military service, or those military personnel licensees who are transferred out-of-state shall, upon notifying of their honorable discharge and furnishing appropriate evidence thereof, be entitled to renewal of their licenses, without penalty, provided their request is furnished within six months following their discharge.
  - A. The provisions of this section extend to the spouses of the persons described hereinabove who were licensed at the time of such induction or transfer.
8. In accordance with R.S. 37:1442, all requests for transfer of salesmen licenses from one sponsoring broker to another shall be signed by the new sponsoring broker and forwarded to the Commission with the required transfer fee. Additionally, any broker who returns a salesman's license to the Commission for transfer or cancellation shall sign and forward to the Commission one copy of the letter by which said broker notifies a salesman that his license has been returned to the Commission.
  - A. Transfer fees are forfeited by the transferor upon receipt thereof by the Commission. Any additional or amended request for transfer shall be accompanied by a separate transfer fee.
  - B. Transfer fees are waived in the event that the transfer is due to the death of a sponsoring broker.
9. Salesmen who apply for brokers' licenses shall obtain the written acknowledgment of such action from their sponsoring broker. The acknowledgment may be submitted under separate cover or affixed to the applicant's application; in either case the application will not be processed until the acknowledgment is received by the Commission.
  - A. The subject acknowledgment shall be given by the sponsoring broker, without qualification, within ten days following broker's receipt of written request therefor.
  - B. Failure of a broker to acknowledge an application, in accordance with the provisions of this section, shall be cause for the suspension or revocation of license.
  - C. The provisions of this section shall not apply to an applicant for broker's license who is not a salesman at the time of submitting an application but otherwise meets the requirements for a broker's license.
10. Not more than one brokers license shall be issued in the same or substantially similar name.
  - A. No surname shall appear on an individual brokers license except that of the said broker.
  - B. No surname shall appear in the name of a corporation or partnership license which is to be issued unless such surname is that of an active broker who owns a substantial interest in the said corporation or partnership.
11. Broker and salesman licenses shall not be issued nor held concurrently.
12. A salesman shall, upon termination of business

relationship with a sponsoring broker, forthwith turn over to such broker any and all listing information, contracts, keys, and other property obtained during said business relationship whether such information was originally given by, or copied from the records of such broker, or otherwise acquired by the salesman during the business relationship with said broker.

- A. The requirement of this section must be complied with before a salesman's license will be transferred.
- B. Brokers who allege the failure of a salesman to comply with the requirements of this section shall furnish a detailed documented report of the alleged violation to the Commission concurrently when submitting the salesman's license to the Commission in accordance with R.S. 37:1442. Brokers who fail to comply with the requirements of this section shall be deemed to have waived the provisions thereof.

### 13. Advertising

- A. All advertising of property by real estate brokers shall be stated in the exact name as shown on their real estate broker's license.
  - 1. Brokers shall have the actual authority of the owner of any property before they represent or advertise the said property in any way.
  - 2. All advertising by real estate brokers shall be a clear, concise, true, and up-to-date representation of the thing advertised.
  - 3. All advertising, whether printed, radio, television, display or, of any other nature, must contain the name and telephone number of the advertising broker. The name and telephone number of salesmen and/or broker-affiliates may appear in advertising of the sponsoring broker, however, it must be displayed in a manner distinctively subordinate to that of the sponsoring broker.
  - 4. No advertisement shall be made by telephone number alone.
- B. A licensed broker or salesman offering property in which such licensee owns an interest shall state in any advertisement that the owner is a licensed real estate agent.

- C. No real estate broker shall offer or advertise to the public the service of "free appraisal" unless said broker is fully qualified and/or certified in the field of real estate appraisal by competent authority. Any real estate broker who, nevertheless, advertises or offers the service of "free appraisal" shall furnish a complete written copy of each appraisal that is requested in response to such offer or advertisement.

- 14. Immediately upon becoming licensed, each broker shall open and maintain an escrow (trust) account into which they shall deposit all monies, including rentals or other things of value received in trust on behalf of clients.

- A. The escrow (trust) account required by this section shall be established as a separate account in a bank in the parish in which the broker's main office is located except under circumstances where requirements of the parties dictate a different parish.

- 1. In the discretion of the broker a separate escrow (trust) account may be opened and maintained for the collection and management of rentals.

- B. Monies received in trust on behalf of clients are not assets of the broker and shall not be commingled with personal or business funds of the broker; however, a broker may deposit and keep a sum not to exceed \$100.00 in said account from his personal funds, which sum shall be specifically identified and deposited to cover bank service charges related to said escrow (trust) account. Failure to comply with the requirements of this subsection shall be construed as prima facie evidence of fraud.
- C. Applicants for brokers' licenses shall execute an affidavit authorizing and empowering the Commission or its representative to examine and/or inspect their escrow (trust) accounts.
- D. Brokers shall execute a separate escrow (trust) account affidavit upon opening any new or additional escrow (trust) account. Affidavits required by this subsection shall be submitted to and received by the Commission within ten days following the opening of such account.
- E. Monies received and deposited in escrow (trust) accounts shall be removed and/or disbursed therefrom only upon:

- B. Bond restrictions
- C. License fee
- D. Term, suspension, and posting of license
- E. Contracts
- F. Inspection of premises and books of cotton buyer

A copy of the complete rules and regulations may be obtained by writing the Louisiana Department of Agriculture, Grain Division, 2843 Victoria Drive, Baton Rouge, La. 70805.

All interested persons will be afforded a reasonable opportunity to submit data, views or arguments, orally or in writing.

Dave L. Pearce  
Commissioner

#### NOTICE OF INTENT

##### Board of Trustees for State Colleges and Universities

In accordance with the laws of the State of Louisiana and with reference to the provisions of Title 30 of the Louisiana Revised Statutes of 1950 as amended, a public hearing will be held in the Moss Library Building on the City Park Campus of Delgado College in New Orleans, Louisiana beginning at 9:00 a.m., November 14, 1975.

At such hearing, the Board will consider its bylaws and policies and procedures governing the institutions operating under the authority of the Board and specifically:

- 1. Part 1, Bylaws.
- 2. Part 2, Operating Policies and Procedures.
- 3. Part 3, Building Use, Capital Outlay and Construction.
- 4. Part 4, Educational Programs, Policies and Procedures.
- 5. Part 5, General Administration Policies and Procedures.

- 6. Part 6, Financial Policies and Procedures.
- 7. Part 7, Faculty and Staff Personnel Policies and Procedures.
- 8. Part 8, Student Personnel Policies and Procedures.
- 9. Part 9, Athletic Program, Policies and Procedures.
- 10. Part 10, Insurance, Accidents, Safety Policies and Procedures.

The Board of Trustees for State Colleges and Universities will accept written comments until 5:00 p.m., Monday, November 10, 1975, at the following address:

Board of Trustees for State  
Colleges and Universities  
P. O. Box 44307, Capitol Station  
Baton Rouge, Louisiana 70804

The public is made aware of the above proposed policies and procedures in compliance with R.S. 49:951-966.

All interested persons will be afforded reasonable opportunity to submit data, views, comments or arguments at the regular November Board meeting.

Bill Junkin  
Executive Director

#### NOTICE OF INTENT

##### Governor's Consumer Protection Division

The Director of the Governor's Consumer Protection Division hereby gives notice of his intention to amend Title 2 of the Consumer Protection Rules and Regulations to reflect changes in the Administrative Procedures Act (Act 730 of 1975), subject to the approval of the Consumer Protection Advisory Board and the Attorney General, on November 10, 1975, at 5:00 p.m. at the Division's Office in Suite 1218, Capital Bank Center, 1885 Wooddale Boulevard, Baton Rouge, Louisiana 70806.

Any interested person may submit, orally or in writing, his views, arguments, data, or reasons in support of or in opposition to this intended adoption of amendments to the rules and regulations by personally

visiting the above office during its normal office hours from 8:30 a.m. to 5:00 p.m. on any day not a legal holiday or day of the weekend, from now until the above time and date of taking the intended action, and submitting same.

Charles W. Tapp  
Director

## NOTICE OF INTENT

### State Board of Elementary and Secondary Education

Notice is hereby given that the State Board of Elementary and Secondary Education intends to consider at its regular November meeting the adoption of policy changes relative to the following areas: 1) designation of the State Board of Elementary and Secondary Education as the primary agency to receive, supervise, and control Federal funds authorized and appropriated for the purpose of comprehensive state-wide planning and evaluation under Title V of the Elementary and Secondary Education Act of 1965, 2) a resolution on special education as follows:

Resolved: that the Board of Elementary and Secondary Education's philosophy of special education is that of providing a least restrictive alternative program for all handicapped children, e.g., mainstreaming.

The removal of handicapped children from the regular education environment should occur only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Local school systems are urged and requested to design and implement flexible programs for handicapped children which will lead to both normalization and individualization, and thus avoid or minimize labeling and categorizing. Such flexible programming will insure that the child receives the special attention that he needs without disassociating him from his peers in the regular classroom.

It is to be understood that the Board's intentions are to provide sufficient resource and itinerant teachers without affecting the pupil-teacher ratio in the regular class. Keeping handicapped children in the public school and in the mainstream culture gives their "normal" peers an opportunity to learn about

and accept individual differences. Special education should be an integral part of the regular school program in order to guarantee that right by law of all handicapped children to an equal educational opportunity and enable them to become productive and functioning members of society at large.

3) the fundamental structure of the minimum foundation formula, 4) new certification requirements for school psychologists, school social workers, education specialists, and speech and hearing therapists, and 5) general policy on vocational-technical programs and Federal appropriations.

The State Board of Elementary and Secondary Education will accept written comments until 5:00 p.m. November 4 at the following address:

State Board of Elementary  
and Secondary Education  
P. O. Box 44064, Capitol Station  
Baton Rouge, Louisiana 70804

The public is made aware of the consideration of the above rule change proposal in compliance with R.S. 49:951 et seq.

All interested persons will be afforded reasonable opportunity to submit data, views, comments, or arguments at the regular November Board meeting.

Earl Ingram  
Director

## NOTICE OF INTENT

### Commission on Fire Fighting Personnel Standards and Education

The Commission on Fire Fighting Personnel Standards and Education will meet at 10:00 a.m., November 4, 1975, in the Conference Room of the Shreveport Fire Prevention Bureau, Shreveport City Hall, to consider adoption of the following proposals:

1. Rules and procedures;
2. Approved subjects for certified Fire Fighter I training;
3. Performance objective evaluation requirements for becoming a Commission-certified Fire Fighter I.

paid by the subdivider in the manner provided for initial registration.

- F. Neither the subdivider or any representative of the subdivider shall in any manner refer to the Commission or any member or employee thereof in selling, offering for sale, advertising or otherwise promoting the sale, mortgage, or lease of such real estate, nor make any representation whatsoever that such real estate has been inspected, approved, endorsed, or in any way recommended by the Commission or any Louisiana official, department, or employee.
  - G. The Commission shall have the power to withdraw any registration and/or issue a cease and desist order to any subdivider subject to these rules and regulations, upon determination that any Federal or State law or Commission rule has been or is about to be violated.
27. Complaints involving violation of the Louisiana Real Estate Licensing Law and/or the rules and regulations of the Commission shall be signed by the complainant or his legal representative before any action thereon will be taken by the Commission.
28. Brokers are permitted to become affiliated with another broker, including broker corporations or partnerships, provided that all requirements of individual broker licenses are maintained. In cases where an individual broker becomes affiliated, on an exclusive basis, with another broker, whether individual, partnership, or corporation, the provisions of Rule 29 A, B, C, and D shall nevertheless apply to such individual brokers.
29. A real estate broker's license shall not be granted to a corporation or partnership unless said corporation or partnership designates only one qualifying broker who shall own a substantial interest in and shall represent the said corporation or partnership. The qualifying broker shall sign the bond and/or continuation certificate and application for the corporation or partnership and all applications for the salesman. All directors and officers of a broker corporation or partnership who actively participate in the real estate business of said corporation or partnership shall be licensed as an individual real estate broker. Upon termination of the qualifying broker's affiliation with the broker corporation or partnership, for any reason, the qualifying broker shall immediately notify the Commission and the broker corporation or partnership shall name a new qualifying broker and notify the Commission within ten days thereof. Every person who acts as a

salesman for such corporation or partnership shall be licensed as a real estate salesman.

- A. Corporations or partnerships that elect to become licensed as a real estate broker are subject to all requirements of the Louisiana Real Estate License Law and/or rules and regulations of the Commission that are imposed upon individual broker licensees.
- B. All brokers who become affiliated with a broker corporation or partnership on an exclusive basis shall notify the Commission immediately prior to beginning or terminating such relationship and indicate the effective date of impending change. The notification required by this section shall be accompanied by delivery of the broker's license of the individual to the Commission which shall inscribe or remove the identity of the subject corporation or partnership on the said license and immediately return it to the licensee.
- C. All brokers who are affiliated with a broker corporation or partnership, on an exclusive basis, the identity of which is inscribed on the face of their license, shall be exempt from the requirement of maintaining an escrow (trust) account as otherwise required in the law or the rules and regulations of the Commission. The waiver provided herein must be specifically claimed by the broker and approved by the Commission.
- D. Pursuant to R.S. 37:1447, each corporation or partnership, through its qualifying broker, and each individual licensed broker, other than the qualifying broker, that is affiliated with said corporation or partnership, shall furnish a separate surety bond in favor of the Governor.
- E. Upon dissolution of a corporation or partnership, the qualifying broker shall return the corporation or partnership broker's license to the Commission, accompanied by all salesmen's licenses held by the broker corporation or partnership, within ten days following the date of corporation or partnership dissolution.
- F. Exemption: The provisions of this section which require a qualifying broker to own a substantial interest in the broker corporation or partnership shall be waived in those cases where ownership of stock in such corporations or partnerships, licensed prior to September 1, 1974, is precluded. The waiver outlined by this

subsection must be claimed by licensees and approved by the Commission in connection with renewal of licenses for 1975 and thereafter.

30. Companies that issue bonds required by R.S. 37:1447, shall issue same in the identical name as set forth in applicant's application. Additionally, said companies shall provide a notarized power of attorney giving specific authority for named individual(s) to execute such bonds on behalf of that company.

A. The power of attorney required by this section shall be furnished either directly to the Commission in "blanket" form or individually to the recipient of the bond. In the latter case it shall be the obligation of said recipient to attach the individual power of attorney and submit same with the appropriate application.

B. Applications which do not comply with the requirements of this section shall be returned to the sender.

31. Bonding companies shall not be permitted to cancel a broker's bond for:

A. Non-payment of premium

B. Suspension of license

32. Bonding companies shall obtain the approval of any bond cancellation from the Commission. Cancellation of broker's bond for any reason shall result in automatic indefinite suspension of the broker's license effective on the date of cancellation of the bond provided, however, that licenses subject to suspension pursuant to this section shall remain in full force and effect if a new bond is obtained and submitted by the broker and received by the Commission within ten days prior to the effective date of scheduled cancellation of bond. Notification by bonding company of approved cancellation of the bond shall be provided to the broker, by certified mail not less than ten days prior to the date that said cancellation is to become effective.

A. Informational copies of the said notification and proof of receipt by the broker shall be furnished to the Commission by the bonding company before any cancellation will be processed.

B. Reinstatement of licenses suspended under this

section shall require the approval of the Commission and shall be applied for by:

1. A petition to the Commission setting forth justification for the reinstatement.

2. New bond.

3. Current Character-Credit Report.

C. Licenses suspended under this section shall be automatically revoked if not reinstated during the license year in which the suspension became effective.

33. Real estate brokers, in accordance with R.S. 37:1431, shall include all persons, whether operating as individuals, corporations, or partnerships, who are engaged in the business of charging an advance fee in connection with any activity whereby the said persons undertake primarily to promote the rental, leasing, sale, or exchange of real estate through the listing of such real estate in a publication or list which is designed, compiled, issued and/or distributed primarily for such purpose.

34. A real estate school includes any authorized place or institution which is open to the public for the instruction or training of individuals to engage in the practice of real estate. All real estate schools shall satisfy the requirements of R.S. 37:1438.3 and R.S. 37:1438.4, and the rules and regulations of the Commission.

35. No person shall operate a real estate school from which the Commission will accept a Certificate of Completion unless he complies with the requirements of the Commission and holds a Certificate of Registration in good standing issued by the Commission.

A. No Certificate of Registration shall be issued to any broker-applicant whose courses are designed and primarily intended for instruction of that same broker-applicant's future salesman or broker affiliates.

36. An applicant for a Certificate of Registration to operate a real estate school shall file an application with the Commission in such form as the Commission may prescribe.

A. Certificates of Registration issued or renewed under this Chapter shall be valid for a maximum of one year and shall expire on June 30th next following such issue or renewal.

- B. Applications for issue or renewal of Certificates of Registration shall be submitted not later than May 15th of each year.
  - C. Failure to submit a timely application for renewal of a Certificate of Registration shall automatically suspend such Certificate on July 1 and any continued activities by a real estate school subsequent to such suspension shall be deemed a violation of these rules and regulations and penalties as provided in R.S. 37:1458 shall apply.
  - D. Any application for Certificates of Registration which is submitted subsequent to suspension under paragraph C herein, shall be treated as an initial application.
  - E. Real estate schools must conduct a minimum of two approved real estate courses per year and provide evidence thereof to the Commission with each application for renewal of Certificate of Registration.
  - F. Real estate schools shall not schedule courses which will begin during a specific Certificate of Registration period and which will terminate at a time thereafter unless renewal of the said Certificate of Registration has been applied for and approved by the Commission prior to the date that such courses are scheduled to begin.
37. The Commission will issue a Certificate of Registration for each school which complies with the Louisiana Real Estate License Law and the rules and regulations of the Commission.
- A. All Louisiana state and private colleges and universities where a real estate course is given in a regular curriculum are exempt from filing and obtaining a Certificate of Registration.
38. No person shall act as an instructor at a real estate school and no real estate school shall hire or permit any person to act as an instructor at a real estate school unless that person has obtained a Certificate of Registration from the Commission.
- A. The provisions of this rule do not extend to guest lecturers.
39. The Commission may issue a Certificate of Registration as instructor in a real estate school to a person who applies to the Commission in such form as the Commission may prescribe and possesses at least one of the following qualifications:
- A. A bachelor's degree with a major in real estate from an accredited college or university.
  - B. A bachelor's degree from an accredited college or university and at least two years experience in real estate brokerage.
  - C. A real estate broker licensed in Louisiana with a minimum of five years active experience in real estate brokerage.
  - D. Two years experience as a qualified instructor or professor in real estate at an accredited college or university.
  - E. Possess other special qualifications which in the opinion of the Commission, constitute the equivalent of one or any combination of the listed instructor qualifications.
40. Approved real estate schools, with the exception of the Louisiana colleges and universities, shall designate their courses as Real Estate I (30 hour statutory requirement for salesmen), Real Estate II and III (balance of 90 hour statutory requirement for brokers).
- A. In order to initially qualify and thereafter to maintain good standing, all schools shall furnish to the Commission:
    1. The name of each instructor and a detailed copy of each course curriculum, including allocation of hours of classroom instruction to each topic.
    2. Tuition dates, time and location for course(s) offered.
    3. Date of beginning and completion of said course(s).
    4. A notarized list certifying the name of all persons enrolling in course(s).
    5. A notarized list of those persons satisfactorily completing course(s) also certifying that the named students personally attended the minimum required statutory classroom instruction and passed a comprehensive final examination.
    6. A copy of the final examination for course(s).
  - B. The information required by subparagraphs 1,

2, 3, and 4 shall be furnished within ten days following the date of beginning course(s). The information required by subparagraphs 5 and 6 shall be furnished within ten days following the date of completion of course(s).

41. In accordance with the provisions of R.S. 37:1438.3 and 1438.4, all schools shall provide an individual Certificate of Completion to all students upon successful completion of statutory course and attendance requirements.

A. All Certificates of Completion shall bear the original signature of the head instructor of the school.

B. Certificates required by this section shall be attached by applicants to their initial or renewal application and submitted to the Commission.

1. Individuals who have undertaken course(s) approved by the Commission for university or college credit and desire to apply for a real estate license shall obtain a certified extract of their transcript from their university or college registrar indicating the title and number of the course(s), date of completion and final grade and submit same to the Commission in lieu of the required Certificate of Completion.

C. No Certificate of Completion will be accepted from any real estate school that is not in good standing with the Commission on the date that such Certificate of Completion is issued.

42. Advertising by approved real estate schools shall be clear, concise and accurately represent the facilities and charges which it offers.

A. All schools shall publish the name(s) of the course instructor(s) in advance of registration.

B. In cases where it is impossible to determine the name of course instructors in advance of registration, the school shall not collect any fee until the date on which the course actually begins or the date that the identity of the instructor is published whichever comes first.

43. In accordance with the provisions of R.S. 37:1453, the Commission may upon its own motion and shall upon receipt of a verified complaint in writing of any person, investigate the actions and records of any real estate school that holds a Certificate of Registration.

44. In accordance with R.S. 37:1460, the licensee who is selected to assume the position of a deceased broker for the purpose of completing the pending business of the broker, shall notify the Commission of said appointment with ten days.

A. In the exceptional case where 180 days is not sufficient to complete the pending business of the deceased broker, the Commission may grant an extension of time where justified.

B. In those cases where it is necessary to appoint a licensee that was not a salesman or broker-affiliate of the deceased broker, the appointee shall be a broker.

Alvin J. Unick  
Director

## Rules

### RULE

#### Louisiana Health and Human Resources Administration

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*(Editor's Note: The following rule was adopted by the Health and Human Resources Administration, on September 9, 1975, to be effective on October 20, 1975.)*

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As a result of the public hearing held at 10:00 a.m. on September 9, 1975, the following amendment was adopted to the rules and regulations for Emergency Medical Services, Medical Transportation Services Program, for the State of Louisiana by the Commissioner, Louisiana Health and Human Resources Administration.

Section VIII of the rules and regulations adopted on December 19, 1974 is amended by adding the following:

#### Section VIII

##### Exemptions

F. The use by any employer of any vehicle, aircraft, or marine craft for the purpose of transporting employees who become sick, in-

jured, wounded, or otherwise incapacitated in the course of their employment from job site to an appropriate medical facility.

William H. Stewart, M.D.  
Commissioner

## **RULES**

### **Department of Highways**

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*(Editor's Note: The following rules were adopted by the Department of Highways on September 17, 1975, to be effective on October 20, 1975.)*

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#### **Policy, Procedure, and Control of Junkyards Along Interstate and Primary Systems**

##### **General**

The rules and regulations contained in this manual shall apply to all junkyards located within 1,000 feet of the nearest edge of the right-of-way on all Interstate and Federal Aid Primary Highways in Louisiana. These rules do not apply to junkyards in zoned industrial areas, zoned by an authorized zoning commission or those which exist in an unzoned industrial area as defined by the Louisiana Department of Highways and which was approved by the Federal Highway Administration.

##### **Authority**

The applicable law authorizing the State to regulate the establishment of junkyards and authorizing the screening or removal of junkyards is R.S. 48:461 - 461.15 (Act 474 of 1966) and in particular Sections 461.9 through 461.15.

##### **Organization**

The provisions of the Beautification Act regarding junkyards will be carried out by the Traffic and Planning Division through its Beautification & Permits Unit. The Beautification sub-unit consists of one stenographer and one engineering specialist who heads up the sub-unit and is stationed in the central office. In addition, there are two engineering aids whose duties entail field investigation encompassing inventory, surveillance, site location review, and other designated duties. The Traffic and Planning Division, as the need arises, will rely on the services of other specialized sections of the Department for assistance in carrying out these provisions.

##### **Program Priorities**

Predicated on the assumption that adequate funding for initiating screening, relocation, or removal projects will be provided, the Department will attempt to first have illegal junkyards screened, relocated, or removed along the Interstate and Federal Aid Primary Highways. This will be followed by the screening, relocation, or removal of legally established non-conforming junkyards.

##### **Inventory and Control**

The Beautification and Permits Unit will have the responsibility of maintaining a current inventory of all junkyards, conducting a continuing surveillance program to discover illegally established or maintained junkyards, and to initiate procedures to obtain compliance with the Highway Beautification Act.

##### **Legally Established Non-Conforming Junkyards**

Junkyards which were in existence at the time of the passage of the State law in 1966 and which were not established in violation of any other law, ordinance, or valid regulatory standard, will be screened or removed on a site by site basis by the Department of Highways. In screening non-conforming junkyards, the Department's landscape architect in the Location and Design Section shall prepare the necessary plans which will be submitted to the Federal Highway Administration for approval.

##### **Unlawful or Illegal Junkyards**

Junkyards not lawfully established shall be screened or removed by the junk owner. If the junkyard is to be screened, detailed plans including a plan and profile view of the proposed screening in addition to a description of the materials to be used shall be submitted to the Louisiana Department of Highways, Post Office Box 44245, Capitol Station, Baton Rouge, Louisiana, 70804, Attention: Permit Section, for approval.

If the junkyard cannot be effectively screened, then the junkyard shall be removed at the junk owner's expense.

In either event a notification to the junk owner by certified mail will be sent by the Department advising him of the unlawful junkyard. The junk owner will then have thirty days in which to submit plans to the Department at the aforementioned address.

Upon written acceptance by the Department of the screening or removal plans, the junk owner will have ninety days in which to comply with the law.

## Screening

### A. Fences

1. The fencing shall be of suitable material and constructed so it will be capable of remaining erect.
2. The fencing shall be high enough to screen all junk and junked cars from view of the traveled way of the highway. Should the junk piles be increased in height, the height of the fence must also be increased.
3. The fence shall extend along the frontage of the junkyard and along the sides of the junkyard to a distance so that all junk and wrecked cars within one thousand feet will be screened from view of the traveled way of the highway. The fence shall be located on private property and will be maintained by the junkyard owner or operator. Should the fence become damaged, it must be repaired within thirty days.
4. The fence must be neat in appearance and of uniform color and height. If the fence is painted, it shall be of uniform color or neatly trimmed in another color. Distracting colors and designs will not be acceptable.
5. It is not necessary that the fence be solid. However, the open spaces must be small enough that the junk material is effectively screened.

### B. Planting

1. If plantings are to be used for screening, they must be large enough and placed close enough to screen the junk and junked cars shortly after planting.
2. All plants must be of either the evergreen variety or bamboo in order to give year-round effective screening.
3. Plants must be located with the same stipulations as fences.
4. Except for extremely fast growing plants, the planting of young or sparse plants will not be allowed with the purpose that in time the screening will be acceptable.

5. Should the plants become diseased, die, or get damaged in any way so as to cause the junk not to be screened, they must be replanted within thirty days.

### C. Natural Objects

1. Natural occurring woods, earth mounds, etc., may be utilized for screening if they are of a size such that the junk cannot be seen from the traveled way of the highway.
2. Natural objects may be used in conjunction with plantings, fences, or other appropriate objects to screen junkyards.

### D. Other Appropriate Objects for Screening

Subject to prior approval by the Louisiana Department of Highways, other objects for screening such as buildings, houses, and occupied house trailers may be used entirely or in part to screen junkyards provided the objects are neat in appearance and properly maintained so as not to mar the natural beauty of the highway and its facilities.

### Procedures Used in Determining the Practicality of Whether a Non-Conforming Junkyard Should Be Screened or Removed

An on-site inspection will be made of each location by the landscape architect of the Location and Design Section and a representative of the Right of Way Section to determine if the topography of the land will permit effective screening. If effective screening is possible, an economic survey will be conducted to determine the feasibility of screening versus removal. The final determination as to whether screening or removal will be effected is the responsibility of the Beautification and Permit engineer. After this decision has been made, the supporting data and justification shall be submitted to the Division engineer of the Federal Highway Administration on a project by project basis for review and approval.

If the Beautification and Permit engineer determines that the most feasible method for compliance with State law and policies is by the screening of a junkyard, it will then be the responsibility of a representative of the Right of Way Section to obtain permission for allowing the Department's contractor to enter land outside of highway right-of-way to effectively screen the junkyard.

## **Programming and Authorization of Screening Projects**

Whether the screening of a non-conforming junkyard is along an Interstate or a Federal Aid Primary Highway, the length of a given project will depend upon establishing terminal points of a control section with limitations to project size being imposed only by the number of, and cost of screening the junkyards.

The Beautification and Permit engineer will be responsible for determining the scope of a project. He will secure from the Project Control engineer the project number to be assigned and will provide the Location and Design Section a list of the junkyards to be screened, their inventory number, location, and validation of their legal status. The Location and Design Section will then furnish the Beautification and Permit engineer an estimated cost along with detailed plans and cross sections showing the type of screening.

The Federal Aid engineer of the Project Control Section will then request Federal participation by submitting to the Division engineer of the Federal Highway Administration the following information which will be supplied to him by the Beautification and Permit engineer.

1. The zoning and validation of the legal status of each junkyard on the project.
2. Plans or graphic displays indicating the location of the junkyard relative to the highway, the one thousand foot control lines, property ownership boundaries, the general location of the junk or scrap material, and any buildings, structures or improvements involved.
3. The type of screening, and adequately detailed plans and cross sections or other adequate graphic displays which illustrate the relationship of the motorist to the screen, and the material to be screened at critical points of view.
4. Estimated cost.

## **Relocation and/or Disposal**

### **A. Valuation**

This method of junkyard control will be used only as a last resort. Moving costs will be determined by an appraiser or consultant on the basis of information obtained from salvage yard operators, contract carriers, and any other reliable source. The junk owner will be given the opportunity to accompany the appraiser or consultant during his inspection. The maximum moving

cost will be that amount which is consistent with the most economical method of disposing of the junk material. All appraisals will be in accordance with State and Federal regulations.

### **B. Negotiations**

Negotiations with the owner of property rights involved in the junkyard will be conducted by Right of Way personnel. Negotiations will include a thorough investigation of all claims for compensation made by either the junk owner, the landowner, or any other person. Formal written offers will be made. Such letters will set out the property rights to be acquired or damaged and the amount to be paid therefor. The time allowed for the removal of the junk and other personal property will be negotiated, but the ninety day notice process will be followed. Controls will be established to insure that the junk is not moved to any location which would violate the provisions of the Beautification Act, or any other law or ordinance.

### **C. Acquisition by Expropriation**

If the written offer to any party which has a compensable interest is not accepted within a reasonable time, acquisition by expropriation to acquire the necessary property interest will be initiated by the State.

### **D. Programming and Authorization of Relocation or Disposal Projects**

When a project is to be let for the relocation or disposal of non-conforming junkyards along Interstate and Federal Aid Primary Highways, the Beautification and Permit engineer will be responsible for determining the scope of the project. The length of a given project will depend upon the number and cost of relocation or disposal of the junkyards.

After obtaining a project number from the Project Control engineer, the Beautification and Permit engineer will provide the Right of Way Section with a list of the junkyards to be relocated or disposed of, their inventory number, location and validation of their legal status. The Right of Way Section will then furnish the Beautification and Permit engineer the junkyard owner, parcel numbers, location of replacement site, if applicable and the real property interest to be acquired in order to implement the control measures.

The Federal Aid engineer of the Project Control Section will then request Federal participation by submitting to the Division engineer of the Federal Highway Administration the following information

which will be supplied to him by the Beautification and Permit engineer.

1. The zoning and validation of the legal status of each junkyard on the project.
2. The control measures proposed for each junkyard including, where applicable, information relative to permanent disposal sites to be acquired by the State.
3. The real property interest to be acquired in order to implement the control measures.
4. Project and parcel numbers.
5. Landowner.
6. Junkyard inventory number.
7. Estimated cost.

#### Documentation

Documentation for Federal participation will be as prescribed in the most current Federal publications regarding junkyards. The Department will use before and after photographs on the junkyard site and the screened or relocated site.

#### Definitions

1. **National System of Interstate and Defense Highways and Interstate System** means the system presently defined in and designated, or as may hereafter be so designated, pursuant to Subsection (d) of Section 103, Title 23, United States Code.
2. **Federal-Aid Primary Highway** means any highway within that portion of the State Highway System as designated, or as may hereafter be so designated by the State, which has been approved by the Secretary of Transportation pursuant to Subsection (b) of Section 103, Title 23, United States Code.
3. **Main-Traveled Way** means the traveled way of the highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separate roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.
4. **Centerline of the Highway** means a line equidistance from the edge of the median separating the main-

traveled ways of a divided highway, or the centerline of the main-traveled way of a nondivided highway, or the centerline of each of the main-traveled ways of a divided highway separated by more than the normal median width or constructed on independent alignment.

5. **Maintain** means allow to exist.
6. **Landscaping** means planting and related work.
7. **Visible** means capable of being seen without visual aid by a person of normal visual acuity.
8. **Effective Screening** means the planting, architectural screen barrier, earth grading, inventory reduction, shifting of the storage area on the same property, and any combination of these that eliminates the visibility of the junk.
9. **Zoned Industrial Area** means those districts established by zoning authorities as being most appropriate for industry or manufacturing. A zone which simply permits certain industrial activities as an incident to the primary land use designation is not an industrial zone.
10. **Unzoned Industrial Area** means land occupied by the regularly used building, parking lot, storage, or processing area of an industrial activity, and that land within one thousand feet thereof which is (a) located on the same side of the highway as the principal part of said activity, and (b) not predominantly used for residential or commercial purposes, and (c) not zoned by State or local law, regulation, or ordinance.
11. **Industrial Activities for Purposes of Classifying Unzoned Industrial Areas** are those permitted only in industrial zones, or in less restrictive zones by the nearest zoning authority within the State, or prohibited by said authority but generally recognized as industrial by other zoning authorities within the State, except that none of the following shall be considered industrial activities:
  - a) Outdoor advertising structures.
  - b) Agricultural, forestry, ranching, grazing, farming and related activities, including, but not limited to, wayside fresh produce stands.
  - c) Activities normally and regularly in operation less than three months of the year.
  - d) Transient or temporary activities.
  - e) Activities not visible from the traffic lanes of the main-traveled ways.

- f) Activities more than three hundred feet from the nearest edge of the main-traveled ways.
  - g) Activities conducted in a building principally used as a residence.
  - h) Railroad tracks, minor sidings, and passenger depots.
  - i) Junkyards, as defined in Section 136, Title 23, United States Code.
12. **Automobile Graveyard** means any establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts. Ten or more such dismantled vehicles will constitute an automobile graveyard.
13. **Illegal Junkyard** means one which was established and/or maintained in violation of State law or local ordinance or other valid regulatory standard.
14. **Junk** means old or scrap metal, rope, rags, batteries, paper, trash, rubber debris, waste, or junk, dismantled, or wrecked automobiles or parts thereof.
15. **Junkyard** means an establishment or place of business which is maintained, operated or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary landfills.
16. **Activities for Purposes of Classifying Junkyards Include**
- a) Scrap metal processors, auto-wrecking yards, salvage yards, scrap yards, autorecycling yards, used auto parts yards, and similar facilities.
  - b) Temporary storage of automobile bodies or parts awaiting disposal as a normal part of a business operation when the business will continually have like materials located on the premises.
17. **Activities Not Included in Classifying Junkyards Include**
- a) Litter, trash, and other debris scattered along or upon the highway;
  - b) Temporary operations and outdoor storage of limited duration not falling within subparagraph (b) above.
18. **Non-Conforming Junkyard** means one which was lawfully established, but which does not comply with the provisions of State law or State regulations passed at a later date or which later fails to comply with State regulations due to changed conditions.

19. **Sanitary Landfill** means a method of disposing of refuse on land without creating a nuisance or hazards to public health or safety by utilizing the principles of engineering to confine the refuse to the smallest practical area, to reduce it to the smallest practical volume, and to cover it with a layer of earth at the conclusion of each day's operation or at such more frequent intervals as may be necessary. Sanitary landfills which meet this definition will not be required to be screened, but will be required to be landscaped when the fill has been completed and the operations have ceased.
20. **Unzoned Area** means an area where there is no zoning in effect. It does not include areas which may have rural zoning classification or land uses established by zoning variances or special exceptions.
21. **State Law** means a State constitutional provision or statute, or an ordinance, rule, or regulation enacted or adopted by a State agency or political subdivision of a State pursuant to a State constitution or statute.
22. **1966 Inventory** means the record of the survey of junkyards in existence along Interstate and Federal Aid Primary Highways as of the date of the inventory, compiled by the State Highway Department pursuant to Federal Highway Administration Instructional Memorandum 50-1-66, dated January 7, 1966.

W. T. Taylor  
Director

## RULES

### Louisiana Offshore Terminal Authority

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*(Editor's Note: The following rules were adopted by the Louisiana Offshore Terminal Authority on September 23, 1975, to be effective October 20, 1975.)*

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#### Rules and Regulations Applicable to Licensing

##### I. Statutory Provisions

###### A. State Law

1. Section 3101A of Louisiana Act 444 of

1972, as amended by Act 358 of 1974 (hereinafter "the Act"), states that one of its objects and purposes is to "license, regulate, (and) supervise. . .offshore terminal facilities within the jurisdiction" of the Authority in order to promote the economic welfare of the citizens of Louisiana.

2. Section 3101B (6) of the Act states that a purpose of the Authority is to "assert and protect Louisiana's economic, social and environmental interests in the development of any offshore terminal facilities outside the State of Louisiana where such development may have an impact upon the State of Louisiana".
3. Section 3103A of the Act provides that "the Authority shall have exclusive jurisdiction over the authority development program within the coastal waters of Louisiana, the areas of the State extending seaward thereof to the extent of the State's rights thereto, and over such other waters, water bottoms, wetlands and lands within the territorial boundaries of the State necessary to effectuate the purposes" of the Act.
4. Section 3103C of the Act grants the Authority "exclusive power to own, operate, license, or otherwise regulate all offshore terminal facilities within its jurisdiction".
5. Section 3109A (6) of the Act empowers the Authority "to issue licenses, certificates, and permits for the construction of facilities or use of services or facilities subject to the Authority's jurisdiction, pursuant to rules and regulations promulgated by the Authority".
6. Section 3109G of the Act states that the Authority "shall have exclusive and plenary power to issue licenses, certificates and permits, and otherwise regulate all phases of the construction and operation by any person of offshore terminal facilities within the jurisdiction of the Authority".
7. Section 3114A of the Act prohibits any person from constructing or operating, or causing to be constructed or operated, offshore terminal facilities within the jurisdiction of the Authority without first obtaining a license or other appropriate authorization from the Authority.
8. Section 3114B of the Act provides that a license shall issue only if the Authority finds that the applicant "is qualified, and that the facilities or operations conform to the provisions" of the Act and "the rules and regulations of the Authority and will be consistent with the public interest" declared in the Act. It is further provided that any license so issued or transferred "shall be subject to and contain such reasonable conditions as necessary to carry out the purposes" of the Act.
9. Section 3114C of the Act directs the Authority to establish qualifications for applicants, including evidence of financial responsibility, as will insure an applicant's ability to comply with the Act and the rules and regulations of the Authority.
10. Section 3114D of the Act empowers the Authority to establish the procedures for submission of applications for the issuance of licenses and shall determine what information must be submitted by the applicant. The Authority is further authorized to "impose reasonable filing fees and may require the applicant to reimburse the Authority for all expenses incurred in processing the application".
11. Section 3114E of the Act provides that the Authority "shall determine the length of time during which a license shall be valid, and the conditions upon which it may be revoked". It is also provided that licenses "may be revoked, suspended, annulled or withdrawn in accordance with the procedures set forth in the Louisiana Administrative Procedure Act".
12. Section 3116 of the Act provides that it is the policy of the Act that the Authority development program be pursued so that there is "full coordination and cooperation between agencies and

groups that have complementing or overlapping interest and the Authority”.

## B. Federal Law

1. Section 2(a) of the Deepwater Port Act of 1974, P.L. 93-627 (33 USC 1501 et seq.) (herein called the “Deepwater Port Act”), states that its purposes are to “protect the interests of . . . adjacent coastal states in the location, construction, and operation of deepwater ports” and to “protect the rights and responsibilities of states and communities to regulate growth, determine land use, and otherwise protect the environment in accordance with law”.
2. Section 4(c) of the Deepwater Port Act allows the issuance of a Federal license by the Secretary of Transportation only if he determines, among other things, that the applicant “can and will comply with applicable laws, regulations and license conditions”.
3. Section 9(b) (1) of the Deepwater Port Act grants the governor of an adjacent coastal state the right to veto an application for a Federal license to own, construct and operate a deepwater port. It is further provided that “[i]f the governor notifies the Secretary that an application, which would otherwise be approved, . . . is inconsistent with state programs relating to environmental protection, land and water use, and coastal zone management, the Secretary shall condition the license granted so as to make it consistent with such state programs”.
4. Section 14(b) of the Deepwater Port Act prohibits the Secretary of Transportation from disclosing information in a Federal license application that concerns or relates to trade secrets or to construction contracts. However, such information may be disclosed, in a manner which is designed to maintain its confidentiality, “to other Federal and adjacent coastal state government departments and agencies for official use, upon request”.

5. Section 18(k) (1) of the Deepwater Port Act provides that Section 18 of that Act, “shall not be interpreted to preempt the field of liability or to preclude any state from imposing additional requirements or liability for any discharge of oil from a deepwater port or vessel within any safety zone”.
6. Section 19(b) of the Deepwater Port Act provides that the “law of the nearest adjacent coastal state, now in effect or hereafter adopted, amended, or repealed, is declared to be the law of the United States, and shall apply to any deepwater port” licensed pursuant to the Deepwater Port Act, to the extent applicable and not inconsistent with any provision or regulation under that Act or other Federal laws and regulations. “All such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States”.

## II. Definitions

As used in these rules and regulations:

- A. “Act” means Act 444 of 1972, as amended by Act 358 of 1974 (R.S. 34:3101 et seq.), which establishes the Offshore Terminal Authority, and any amendments thereto.
- B. “Applicant” means any person who applies for a license pursuant to these rules and regulations.
- C. “Application” means an application submitted under these rules and regulations (1) for a license to construct or operate offshore terminal facilities within the jurisdiction of the Authority; (2) for transfer or renewal of any such license; or (3) for any substantive change in any of the conditions or provisions of any such license.
- D. “Authority” means the Offshore Terminal Authority as established by the Act.
- E. “Deepwater Port Act” means P.L. 93-627 (33 USC 1501 et seq.), and any amendments thereto.
- F. “Environmental Protection Plan” has the identical meaning given that term in the Act.

- G. "Executive Director" means the Executive Director of the Authority chosen by the Board of Commissioners, as provided for in the Act.
- H. "Federal application" has the identical meaning given the term "application" in the Deepwater Port Act.
- I. "License" means a license issued by the Authority, pursuant to these rules and regulations, to any person to construct or operate offshore terminal facilities within the jurisdiction of the Authority.
- J. "Licensee" means the holder of a valid license.
- K. "Offshore terminal facilities" has the identical meaning given that term in the Act.
- L. "Person" has the identical meaning given that term in the Act.

### III. Applications

#### A. General

- 1. No person shall construct or operate, or cause to be constructed or operated, offshore terminal facilities within the jurisdiction of the Authority without first filing an application and obtaining a license from the Authority pursuant to the provisions of these rules and regulations.

#### B. Contents of Application\*

- 1. An application shall contain the following general information:
  - a. A brief summary of the entire application suitable for use by the Authority in giving the notices required by Section IV A4 of these rules and regulations.
  - b. The name, address, citizenship, and

telephone number of the applicant and of each person having an ownership interest in the applicant.

- c. The ownership interest of each person having such an interest in applicant. A description of the agreements establishing such interest shall be included in the application.
  - d. The name, address, citizenship, and telephone number of each person having an ownership interest in the applicant and any person owning a controlling interest in any person having an ownership interest in the applicant.
  - e. The name and address of the person designated by applicant to receive formal notices or documents.
  - f. A statement at the end of the application, subscribed and sworn to before a notary public, that the person who signs the application represents that he is authorized and empowered to sign the application on behalf of the applicant and that the contents of the application are true.
  - g. If the applicant is a corporation, a copy of the applicant's charter or certificate and articles of incorporation, certified by the appropriate official of the state of incorporation.
- 2. An application shall contain the following information relating to the financial responsibility of the applicant:
    - a. The applicant's most recent certified financial statements.
    - b. The most recent certified financial statements for each person having an ownership interest in the applicant.
    - c. Estimates of the minimum annual oil throughput required for the proposed offshore terminal facilities to break even financially.

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\* Unless the context clearly indicates otherwise, all information required to be furnished by this Section shall cover the term of a license. All projections and estimates required by this Section shall be uniformly expressed and shall be estimated in accordance with the best available procedures.

Throughput required to break even financially means the throughput required to cover operating, debt retirement and other costs, but shall not include throughput required to provide a reasonable return on investment.

- d. An estimate of capital expenditures and operating costs, tariffs and projected revenue based on estimated oil throughput.
  - e. Plans for financing capital expenditures and operating costs, including sources of financing, and the type, amount, and percentage of equity, short-term and long-term financing.
  - f. A general projection of the use of the proposed offshore terminal facilities during the anticipated life of the project including an analysis of the demand for imported petroleum within the geographic area to be served by the offshore terminal facilities.
  - g. A description of any guarantees, options, nominations, agreements, commitments, or representations by specific companies which are relied upon in determining that the proposed offshore terminal facilities will be economically viable at all times.
3. An application shall contain an analysis of:
- a. The extent to which the construction and/or operation of the proposed offshore terminal facilities may increase the demand on the State of Louisiana and its political subdivisions for public services and facilities, including, but not limited to, schools, parks, transportation facilities, wharves, docks, electricity, water, and sewerage facilities, flood protection, police and fire protection, and other physical and social services.
  - b. An estimate as to the direct and

indirect economic, environmental, and administrative costs attributable to the construction and operation of the proposed offshore terminal facilities. An application shall contain a separate analysis of the nature and amount of each of such costs which pertain to the State and its political subdivisions.

- c. The areas and facilities to be served by the proposed offshore terminal facilities with specific data as to amounts and types of crude oil to be transported to, and/or refined or used at, each projected destination on an annual basis. The application shall describe the system to be used to measure the distribution of the throughput.
- d. All relevant facts showing the extent to which the proposed offshore terminal facilities will contribute to the development of petroleum processing industries in Louisiana and to the availability of petrochemical products to Louisiana consumers and industries.
- e. All relevant facts showing the extent to which the construction and operation of the proposed offshore terminal facilities will contribute to increased employment and employment benefits in Louisiana.
- f. The projected temporary and permanent demographic effect of the construction and operation of the proposed offshore terminal facilities.
- g. The projected demand for support services related to the proposed offshore terminal facilities, with emphasis on the duration and location of such services. Support services as used in these rules and regulations include, but are not limited to, skilled and unskilled labor, boat services, contractors, fabricators, engineering and other professional consultants, suppliers, divers, surveyors, and repair and

maintenance services and personnel, and living accommodations.

4. An application shall contain all information required by the Environmental Protection Plan.
5. A copy of the applicant's Federal application shall be submitted with an application to this Authority; provided, however, that if an applicant files a Federal application during the pendency of a State license application, a copy of the Federal application shall promptly be submitted to the Authority.
6. Current information contained in a Federal application, the accompanying environmental assessment, or previous applications or reports submitted to the Authority, may be submitted in satisfaction of any of the requirements of these rules and regulations, if the information contained in any such document is relevant and specifically designated and cross-referenced to the rules and regulations to which the information relates.
7. An application shall contain a statement by the applicant that (i) there will be no substantial changes from the plans, operational system, and methods, procedures, and safeguards set forth in his application, as approved, without prior approval in writing from the Authority; and (ii) he will comply with any reasonable conditions the Authority may prescribe in accordance with the provisions of the Act or the Authority's rules and regulations.
8. An applicant shall designate those portions of any information submitted to the Authority as part of an application, which concern or relate to trade secrets or which are by nature confidential.
9. An applicant shall (i) furnish the Authority, as part of an application, a listing or description of all studies, reports and analyses performed by or on behalf of the applicant which were used by the applicant in preparing an application, and (ii) make such studies, reports and analyses available to the Authority upon request.

### C. Application Processing Fees

Each applicant shall pay to the Authority such application processing fees as provided in the Authority's rules and regulations applicable to fees, costs, and charges.

## IV. Filing and Processing of Applications

### A. General Procedure

1. Thirty copies of an application shall be filed with the Executive Director of the Authority.
2. An applicant shall submit to the Authority an application for a license to construct or operate offshore terminal facilities within the Authority's jurisdiction on or before the date of filing by such applicant of a Federal application.
3. After the filing of an application, the Executive Director shall determine, as promptly as reasonably possible, whether or not such application contains all of the information required by these rules and regulations.
4. If the Executive Director determines that an application appears to contain the information required by these rules and regulations, he shall publish notice of the filing of the application and a summary of the application immediately in the official journal of the Authority, the official journal of the State of Louisiana, and a newspaper of general circulation in each parish in which the proposed offshore terminal facilities are to be located. A copy of the notice and summary shall also be mailed to all interested persons who have made written request of the Authority for such information.
5. If the Executive Director determines that all the required information is not contained in the application, the Executive Director shall promptly notify the applicant and, if appropriate, take no further action with respect to the application until such deficiencies have been remedied.

## B. Processing

1. The Authority may hold such investigatory or adjudicatory hearings as it deems necessary for a proper review and consideration of an application.
2. To the extent possible, all hearings held in connection with a Federal or State application shall be consolidated.
3. The Authority's processing of State and Federal license applications shall be coordinated, so that to the extent practicable, an application will be approved or disapproved by the Authority not later than ninety days after the last public hearing on the federal license application under the Deepwater Port Act.
4. At any time during an application proceeding, the Authority may require an applicant to submit such additional information as the Authority deems necessary in order to meet the requirements of these rules and regulations and other applicable law, and to enable the Authority to carry out its responsibilities thereunder.
5. An application may be amended or withdrawn at any time before the Authority renders a final decision thereon, by submitting thirty copies of the amendment, or a written request for withdrawal, to the Executive Director. If information in an application becomes inaccurate or incomplete after it is filed but before a final decision is rendered on the application, the applicant shall promptly furnish the correct or additional information.

## C. Public Access to Applications

1. All documents filed with the Authority as part of an application shall be subject to the provisions of the Louisiana Public Records Law (R.S. 44:1, et seq.) and other applicable laws.
2. Appropriate provision will be made, in accordance with applicable law, to protect information that concerns or relates to trade secrets or which is by nature confidential. The environmental assess-

ment and data appendices filed with an application shall be held confidential by the Authority for the period of time during which other applications for the same application area may be filed under the Deepwater Port Act.

## V. Licenses

### A. Issuance of a License

1. No license shall issue authorizing unconditionally the construction or operation of offshore terminal facilities within the Authority's jurisdiction unless the applicant has obtained the environmental approvals required by the Environmental Protection Plan for such construction or operation.
2. No license shall issue unless the Authority determines that:
  - a. The construction and operation of the proposed offshore terminal facilities will promote the economic and industrial well being of the State of Louisiana, and will be consistent with the public interest as declared in the Act.
  - b. The proposed offshore terminal facilities will be constructed and operated in conformance with the Act, the rules and regulations of the Authority, other applicable law and conditions of the license.
  - c. The applicant has furnished sufficient evidence of financial responsibility as will insure his ability to comply with the Act and the rules and regulations of the Authority.
  - d. The applicant has reimbursed the Authority for all costs incurred by or on behalf of the Authority in processing the Federal and State applications and has paid to the Authority any other sums due the Authority under applicable law.

### B. Contents of a License

1. A license shall contain the name and

address of the licensee, and the licensee's agent for service of process in the State of Louisiana.

2. A license shall contain a description of the offshore terminal facilities licensed.
3. A license shall describe all activities authorized by the license.
4. A license shall be subject to and contain such reasonable conditions as the Authority deems necessary to carry out the purposes of the Act and the Authority's rules and regulations, including, but not limited to, conditions requiring that the licensee:
  - a. Comply with all applicable laws and regulations, now in effect or hereafter adopted or amended, including specifically the Environmental Protection Plan.
  - b. Construct and operate the offshore terminal facilities in accordance with the description of such construction and operation in the license.
  - c. Promptly provide the Authority with the name, address, citizenship, and telephone number of any person with whom the applicant has made, or proposes to make, a significant contract for the design, construction or operation of offshore terminal facilities within the Authority's jurisdiction, and a description of any such contract.
  - d. Notify the Authority of any substantive changes in any data submitted to the Authority.
  - e. Cooperate with the Authority in monitoring the construction and operation of the offshore terminal facilities licensed.
  - f. Submit detailed construction drawings, plans and specifications to the Authority for all components of the offshore terminal facilities sufficiently in advance of commencement of construction of

such component to enable the Authority to properly review such drawings, plans and specifications for conformance with the provisions and conditions of a license, the Authority's rules and regulations and other applicable law.

- g. Promptly provide the Authority with copies of any plans, reports, studies, or analyses of proposals approved by the licensee to make any modifications to the offshore terminal facilities which would not constitute a substantive change in the conditions or provisions of a license (See paragraph V.G.2. regarding substantive changes).
- h. Promptly provide the Authority with a copy of any documents pertaining to offshore terminal facilities licensed, which are provided to the Department of Transportation.
- i. Afford reasonable access, at reasonable times, to licensed offshore terminal facilities to representatives of the Authority for the purposes of inspection of relevant records, files, papers, processes, controls, operations, and facilities for the purpose of ascertaining the state of compliance with the license, the Act, and the rules, regulations, and orders of the Authority.

### C. Specific Undertakings of Licensee

At the time of issuance of a license by the Authority, the Authority and licensee shall enter into a written agreement which shall provide that:

1. A licensee which exercises its rights under the license shall pay to the Authority reasonable fees and charges lawfully recoverable by the Authority to compensate for costs incurred by the Authority since its inception and which pertain to offshore terminal facilities for the handling of oil; and
2. A licensee which exercises rights under

the license shall indemnify and hold harmless the Authority from and against any and all liability, loss, demands, claims, costs, damages, expenses and attorneys' fees, and any and all liability therefor, which the Authority may sustain or incur, arising from or connected with acts or omissions of the licensee, its agents, servants, employees or contractors with respect to the location, design, construction, or operation of offshore terminal facilities; provided, however, that the licensee shall not be required to indemnify the Authority for damages resulting solely from negligent acts or omissions on the part of the Authority or its agents, servants, employees or contractors.

#### **D. Term of License**

Except as otherwise provided in these rules and regulations, a license shall be for a term not to exceed twenty years.

#### **E. Suspension, Modification, or Revocation of License**

1. A license may be revoked, suspended, or modified by the Authority for the following reasons:
  - a. The willful making of a false statement or willful misrepresentation of a material fact in connection with securing or maintaining such license.
  - b. The failure of a licensee to qualify as financially responsible.
  - c. Failure to comply with, or respond to, lawful inquiries, rules, regulations, or orders of the Authority or the conditions of any license issued by the Authority.
  - d. A material change regarding a licensee or the subject matter covered by a license issued by the Authority.
2. The Authority may not revoke, suspend, annul, modify, or withdraw a license unless, prior to the institution of Authority proceedings, the Authority gives

notice by certified mail to the licensee of facts which warrant the intended action, and the licensee is given an opportunity at a hearing to show compliance with all lawful requirements for the retention of the license. If the Authority finds that public health, safety, or welfare imperatively require emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for suspension, revocation or other action. These proceedings will be promptly instituted and a decision promptly rendered. All hearings held on the suspension, revocation, annulment, or withdrawal of a license will be governed by the Authority's General Rules and Regulations concerning adjudications.

#### **F. Transfer of License**

Upon the filing of an application by a licensee, a license issued to such licensee under these rules and regulations may be transferred, if the Authority finds that such transfer will be consistent with the public interest as declared in the Act and that the transferee meets all requirements of the Act, the Authority's rules and regulations, and other applicable law.

#### **G. Changes of License Conditions or Provisions**

1. The Authority may make clerical corrections in a license upon written request by the licensee demonstrating clearly a need for such changes.
2. Before the Authority may approve any change by a licensee to the offshore terminal facilities licensed which would constitute a substantive change in any condition or provision of a license, a licensee shall file an application therefor with the Authority and the Authority shall give such application full consideration as provided in these rules and regulations.

#### **H. Renewal of License**

1. Licenses may be renewed by following the procedures prescribed herein for obtaining issuance of a license.

2. When a licensee has made timely and sufficient application for renewal of a license with reference to any activity of a continuing nature, his existing license shall not expire until the application has been determined finally by the Authority, and, in case the application is denied or the terms of the renewed license limited, until the last day for seeking review of the Authority's order, or a later date fixed by order of the reviewing court.

## VI. Coordination and Cooperation

The Authority shall coordinate, consult and cooperate with any Federal or State agencies, or political subdivisions of the State, having an interest in the construction and operation of offshore terminal facilities within the Authority's jurisdiction.

## VII. Remedies and Enforcement

Whenever enforcement of any provision of these rules and regulations is warranted, the Authority may initiate and pursue appropriate administrative procedures and may issue such orders and decrees as may be necessary and authorized by the Authority's General Rules and Regulations, and the Authority may initiate and pursue all appropriate judicial remedies to assure compliance with these rules and regulations.

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**Rules and Regulations  
of the  
Offshore Terminal Authority  
Applicable to  
Fees, Costs, and Charges**

### I. Statutory Provisions

#### A. State Law

1. Section 3101B(6) of Louisiana Act 444 of 1972, as amended by Act 358 of 1974 (hereinafter "the Act"), provides that it is the purpose of the Authority "to assert and protect Louisiana's economic, social and environmental interests in the development of any offshore terminal facilities outside the State of Louisiana where such development

may have an impact upon the State of Louisiana".

2. Section 3103A of the Act gives the Authority "exclusive jurisdiction over the Authority Development Program within the coastal waters of Louisiana, the areas of the State extending seaward thereof to the extent of the State's rights thereto, and over such other waters, water bottoms, wetlands and lands within the territory or boundaries of the State necessary to effectuate the purposes" of the Act.
3. Section 3103C of the Act gives the Authority "exclusive power to own, operate, license, or otherwise regulate all offshore terminal facilities within its jurisdiction".
4. Section 3109A(4) empowers the Authority to "take such actions, promulgate such rules and regulations, and issue such orders, as necessary or appropriate" to carry out the provisions of the Act.
5. Section 3109A(8) of the Act empowers the Authority "to fix reasonable and just rates, fares, tolls or charges for the services and facilities within the Authority's jurisdiction".
6. Section 3109C(6) of the Act empowers the Authority "to collect tolls and fees".
7. Section 3109G of the Act gives the Authority "exclusive and plenary power to issue licenses, certificates and permits, and otherwise regulate all phases of the construction and operation by any person of offshore terminal facilities within the jurisdiction of the Authority".
8. Section 3114D of the Act provides that the Authority "may impose reasonable filing fees and may require the applicant [for a license from the Authority] to reimburse the Authority for all expenses incurred in processing the application".

#### B. Federal Law

1. Section 2(a) (3) of the Deepwater Port Act of 1974, P.L. 93-627 (33 USC 1501,

et seq.) (herein called the "Deepwater Port Act") declares that it is the purpose of the Act to "protect the interests of . . . adjacent coastal states in the location, construction, and operation of deepwater ports".

2. Section 5(h) (1) of the Deepwater Port Act provides that each person applying for a license under that Act "shall also reimburse . . . the appropriate adjacent coastal state for any additional costs incurred in processing an application".
3. Section 5(h) (2) of the Deepwater Port Act provides that an adjacent coastal state may fix reasonable fees for the use of a deepwater port facility and directly related land-based facilities as compensation for any economic, administrative or environmental costs attributable to the construction and operation of such deepwater port and such land-based facilities. Such fees "shall not exceed such economic, environmental, and administrative costs of such state" and shall be subject to the approval of the Secretary of Transportation.

## II. Definitions

As used in these rules and regulations:

- A. "Act" means Act 444 of 1972, as amended by Act 358 of 1974 (R.S. 34:3101 et seq.), which establishes the Offshore Terminal Authority, and amendments thereto.
- B. "Adjacent coastal state" has the identical meaning given that term in the Deepwater Port Act.
- C. "Application processing fees" means all fees or charges imposed by the Authority pursuant to Section III of these rules and regulations.
- D. "Authority" means the Offshore Terminal Authority as established by the Act.
- E. "Deepwater port" has the identical meaning given that term in the Deepwater Port Act.
- F. "Deepwater Port Act" means P.L. 93-627 (33 USC 1501 et seq.), and any amendments thereto.

- G. "Federal application" has the identical meaning given the term "application" in the Deepwater Port Act.
- H. "Offshore terminal facilities" has the identical meaning given that term in the Act.
- I. "Person" has the identical meaning given that term in the Act.
- J. "State application" means an application submitted under the Authority's rules and regulations applicable to licensing (1) for a license to construct or operate offshore terminal facilities within the jurisdiction of the Authority; (2) for transfer or renewal of any such license; or (3) for any substantive change in any of the conditions or provisions of any such license.

## III. Application Processing Fees\*

- A. Any person who files a State application with the Authority, shall reimburse the Authority, in accordance with these rules and regulations, for all costs incurred by or on behalf of the Authority in processing any such application.
- B. Any person who files a State application with the Authority for a license to construct or operate offshore terminal facilities within the Authority's jurisdiction shall remit to the Authority at the time such application is filed an initial application processing fee of \$100,000, represented by a certified or cashier's check drawn on a bank or trust company doing business under the laws of the State of Louisiana or the United States, payable to the Board of Commissioners of the Authority.
- C. The application processing fee provided for in the preceding paragraph, and all interest accrued thereon, shall be used by the Authority to compensate the Authority for costs incurred by or on behalf of it in processing both State and Federal applications. An applicant shall also reimburse the Authority in

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\* Regulations pertaining to fees, costs and charges for the recovery by the Authority of administrative, environmental, economic, or other costs incurred by or on behalf of the Authority since its inception, or which may hereafter be incurred by or on behalf of the authority, shall be established by the Authority by amendment to these rules and regulations.

accordance with these rules and regulations for all costs incurred by or on behalf of the Authority in processing such applications, which are not covered by the initial application processing fee.

- D. Should the State and Federal applications be withdrawn by the applicant before the issuance by the Authority and Federal authorities to the applicant of licenses to construct or operate offshore terminal facilities, the Authority shall refund to the applicant any portion of the application fee remaining after payment by the Authority of all costs incurred by or on behalf of it in processing such applications through the date of such withdrawal.

#### IV. Procedure for Determination and Assessment of Application Processing Fees

- A. The Authority shall periodically make a determination of the amount of all costs incurred by or on behalf of the Authority in processing any Federal or State applications.
- B. The Authority shall assess, as application processing fees, all such costs against the person or persons whose applications have given rise to the costs incurred and sought to be recovered, and shall serve on each such person a "notice of assessment". Such person or persons shall thereafter make full payment of such fees to the Authority within thirty days from receipt of notice of assessment.
- C. Any person on whom a notice of assessment is served under these regulations shall be entitled to a hearing before the Authority on such assessment provided a written request for a hearing is filed with the Authority within thirty days after receipt of the notice of assessment.
- D. The Authority's General Rules and Regulations and the Louisiana Administrative Procedure Act (R.S. 49:951 et seq.) shall apply to any hearing held in connection with any notice of assessment under these rules and regulations.
- E. Should any person fail to pay any application processing fees when due, such person shall pay interest at the legal rate per annum on the unpaid balance of such assessment from the date the assessment is due until paid.

- F. The Authority shall maintain such records as may be necessary in order to identify, determine and recover all application processing fees pursuant to these rules and regulations, and the Authority shall make such records available to interested persons in accordance with applicable law.

- G. Application processing fees recovered by the Authority pursuant to these rules and regulations shall be limited to the amount necessary to compensate the Authority for the actual costs incurred by or on behalf of it in processing Federal and State applications.

- H. These rules and regulations shall not be interpreted to preclude the State of Louisiana or any political subdivision thereof, including the Authority, from imposing any otherwise valid fee, charge, or toll permitted under applicable law.

#### V. Remedies and Enforcement

Whenever enforcement of any provision of these rules and regulations is warranted, the Authority may initiate and pursue appropriate administrative procedures and may issue such orders and decrees as may be necessary and authorized by the Authority's General Rules and Regulations, and the Authority may initiate and pursue all appropriate judicial remedies to assure compliance with these rules and regulations.

\* \* \* \*

#### Amendment of the General Rules and Regulations of the Offshore Terminal Authority

At a meeting of the Board of Commissioners of the Offshore Terminal Authority held on Tuesday, September 30, 1975, at 2:00 p.m. in the Executive Suite, Room 2900, International Trade Mart, New Orleans, Louisiana, the General Rules and Regulations of the Offshore Terminal Authority were amended.

The amendment makes the Authority's General Rules and Regulations consistent with Act 358 of 1974, which amended Act 444 of 1972 and changed the name of the agency from Deep Draft Harbor and Terminal Authority to Offshore Terminal Authority. The amendment also changes the Authority's General Rules and Regulations in accordance with the Louisiana Administrative Procedure Act, as amended by Act 284 of 1974 and Act 730 of 1975, to require publication of notice of

proposed rule-making in the Louisiana Register and to provide that the date of notice shall be deemed to be the date of publication of the issue of the Louisiana Register in which the notice appears; to shorten the notification period from twenty-five to fifteen days; to require that a certified copy of each rule be filed with the Division of Administration; to make adopted rules effective upon publication in the Louisiana Register; to require that the reason for adoption of a rule of fewer than fifteen days' notice be stated in writing to the Governor, the Attorney General, and the Division of Administration; to provide that an emergency rule shall become effective on the date of its adoption, or on a date specified by the Authority to be not more than sixty days future from the date of its adoption, provided written notice is given within three days of the date of adoption to the Governor, the Attorney General, and the Division of Administration; to provide that an emergency rule shall not remain in effect beyond the publication date of the Louisiana Register published in the month following the month in which the emergency rule is adopted, unless such rule and the reasons for adoption thereof are published in said issue; provided, however, that any emergency rule so published shall not be effective for a period longer than 120 days; and, to delete the provisions pertaining to licensing since they are now covered by separate rules and regulations of the Authority applicable to licensing.

Copies of the Authority's General Rules and Regulations, as amended, are available and may be obtained from the Offshore Terminal Authority, 1130 International Trade Mart, New Orleans, Louisiana 70130.

The Department of the State Register has determined that the publication of these rules and regulations, as amended, would be unduly cumbersome, expensive and otherwise inexpedient, and has accordingly exercised its right to omit them from the Louisiana Register pursuant to R.S. 49:954.1C, and has published instead, this notice stating the general subject matter of the omitted rules and regulations and stating how a copy thereof may be obtained.

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#### **Amendment of the Environmental Protection Plan of the Offshore Terminal Authority**

At a meeting of the Board of Commissioners of the Offshore Terminal Authority held on Tuesday, September 30, 1975, at 2:00 p.m. in the Executive Suite, Room 2900, International Trade Mart, New Orleans, Louisiana, the Environmental Protection Plan of the Offshore

Terminal Authority (hereinafter called the "Plan") was amended. The original Plan was adopted by the Board of Commissioners of the Authority on January 15, 1974, and was filed that same date in the office of the Secretary of State. The entire text of the Plan was also published in the official journal of the State of Louisiana.

Chapter 1 of the Plan has been amended, in accordance with Act 444 of 1972, as amended by Act 358 of 1974 (hereinafter called "the Act") to change references to the name of the agency from Deep Draft Harbor and Terminal Authority to Offshore Terminal Authority, and to revise references to the text of the Act; to include appropriate references to provisions of the Deepwater Port Act of 1974 (P.L. 93-627); to revise the definition of "authority development program" to coincide with the Act; to delete the definition of "deepwater port facility" and to add the definition of the term "deepwater port" which appears in the Deepwater Port Act; to define the "Deepwater Port Act"; to revise the definition of "environmental protection plan" to coincide with the definition of that term in the Act; to delete the definition of "facility"; to add the definition of "offshore terminal facilities" which appears in the Act; to revise the definition of "oil" to mean petroleum, crude oil, and any substance refined from petroleum or crude oil; to define "platform" as a fixed structure which rests on, or is embedded in, the seabed that has floors or decks in which an activity or specific function may be carried out; to revise the definition of "spill prevention control and countermeasure plan" as a plan prepared pursuant to the Environmental Protection Agency regulations set forth in 40 CFR section 112.3 et seq., as amended by 39 FR 31602, August 29, 1974; to revise the definition of "vessel" to mean every description of watercraft or other artificial contrivance used as a means of transportation on or through water; and, to revise the footnote at the end of the Chapter to delete references to uncertainties existing at the time of initial promulgation of the Plan, and to describe the uncertainties which presently exist which may make it necessary to further amend the Plan to include additional specific provisions.

Chapter 2 of the Plan has been amended to include, in Subsection 2 of Section 2, a reference to "Louisiana Superport Studies, Report No. 4, Technical Appendices to Recommendations for the Environmental Protection Plan", Louisiana State University Center for Wetland Resources (November 1974); and, to change certain references to deepwater port and onshore facilities to offshore terminal facilities.

Chapter 3 of the Plan has been amended to replace

the footnote at the beginning of the Chapter with a more comprehensive and current footnote stating the uncertainties which presently exist, such as the absence of regulations under the Deepwater Port Act and the possibility that salt dome cavities may represent feasible receptacles for the storage of oil, and stating that such uncertainties may require further amendment to the Plan to include additional specific provisions; to change certain references to deepwater port and onshore facilities to offshore terminal facilities; to include a requirement that the economic and environmental cost information called for under Section 4 of this Chapter be included as part of a license application submitted to the Authority; to coordinate the site approval procedures in Section 5 of this Chapter with the Authority's rules and regulations applicable to licensing by requiring submission of site selection information described in this Section as part of a license application and further requiring that a site approval under that Section be granted before the Authority may issue a license for the construction and operation of offshore terminal facilities within the Authority's jurisdiction; to include a provision stating that the Authority may require submission of such additional information or supporting data as it deems necessary for a full and complete consideration of any license application; and to include a reference in footnote 8 to "Louisiana Superport Studies, Report No. 4, Technical Appendices to Recommendations for the Environmental Protection Plan", Louisiana State University Center for Wetland Resources (November 1974).

Chapter 4 of the Plan has been amended to replace the footnote at the beginning of the Chapter with a more comprehensive current footnote identical to the footnote at the beginning of Chapter 3; to delete Subsection 2 of Section 2 concerning a general description of deepwater port facilities; to provide that all oil transfer systems shall include appropriate pressure relief systems; to require that master control switches be installed at appropriate locations and permit the remote control of all oil transfer pumps and positive shut-off valves in the oil transfer system; to provide that the hose system shall be designed so that it may be filled with water or otherwise purged of oil in the event of hurricane warnings or other emergencies; to provide that the platform shall be designed so as to permit safe personnel and material transfers as required by port operations between the platform and support vessels; to provide that all offshore pipelines be constructed of steel pipe, and be coated, wrapped, weighted, buried, and provided with cathodic protection against corrosion; to require that if vessels utilizing the deepwater port facility have to be refueled and provisioned in the port area, there shall be means for refueling such vessels and providing for the disposal of their garbage, solid wastes, sanitary wastes, and bilge water, and when applicable,

ballast water; and, to coordinate the requirements of this Chapter with the Authority's rules and regulations applicable to licensing by requiring that the design of any offshore terminal facilities within the jurisdiction of the Authority be approved by the Authority prior to the issuance of a license by the Authority covering such facilities.

Chapter 5 of the Plan has been amended to replace the footnote at the beginning of the Chapter with a more comprehensive and current footnote identical to the footnote at the beginning of Chapter 3; to revise references to the text of the Act; to provide that the functions of the Environmental Director shall be performed only with respect to activities, facilities and operations falling within the jurisdiction of the State of Louisiana which are not otherwise accomplished by Federal or other State authorities under applicable law; to require that the information to be contained in an operational and contingency plan be supplied to the Authority as part of an application for a license from the Authority; to change the title of Section 3 from "Surety Bond Requirements" to "Financial Responsibility", and to cross-reference this entire section to the footnote appearing at the beginning of Chapter 6; to provide that all offshore terminal facilities within the Authority's jurisdiction shall be constructed and operated in accordance with Sections 4 and 5 of the Plan entitled respectively "Construction Guidelines" and "Operational Guidelines"; to provide that a hearing concerning action by the Executive Director in prohibiting any individual from performing further duties with respect to matters subject to the Authority's jurisdiction must be conducted, when requested, within five days thereafter; to coordinate Section 7 of this Chapter regarding approval of projects and activities, with the rules and regulations of the Authority applicable to licensing by deleting from the Plan the provisions regarding denial, revocation, suspension, or modification of an approval granted by the Authority, and requiring that the information set forth in Section 7 be included in an application to the Authority for issuance of a license; to provide that information contained in an environmental assessment may be submitted in satisfaction of the requirements of the Authority's rules and regulations if relevant and specifically designated and cross-referenced to the rules and regulations to which the information relates; to revise the inspection provisions of Section 8 of this Chapter to provide that any duly authorized representative of the Authority is authorized to enter, at all reasonable times, and inspect any offshore terminal facilities within the Authority's jurisdiction, for the purpose of inspecting or investigating conditions in order to ascertain the state of compliance with the Act, the Plan and other rules, regulations and orders of the Authority, and to provide that such representative of the

Authority may inspect, at reasonable times, relevant records, files, papers, processes, controls, operations, and facilities for the purpose of ascertaining the state of compliance with the Act, the Plan and other rules, regulations, and orders of the Authority; and to provide that whenever any violation of the Plan, the Authority's General Rules and Regulations, or any condition of a license issued by the Authority, or an approval granted by the Authority, pursuant to the Plan is threatened, or whenever such violation is occurring or has occurred, the Authority shall initiate and pursue appropriate administrative procedures and may issue orders and decrees as may be necessary and authorized by the Authority's General Rules and Regulations.

Chapter 6 of the Plan has been amended to add a footnote at the beginning of the Chapter stating the uncertainties which presently exist regarding liability for oil spill cleanup costs and damages and financial responsibility requirements under the Deepwater Port Act, and further stating that in order to avoid unnecessary duplication of environmental protection measures, the Authority finds that compliance by a licensee with the requirements of the Deepwater Port Act pertaining to financial responsibility would be deemed an adequate form of security under the Plan, but that because of the present uncertainties regarding financial responsibility and oil spill cleanup liability requirements, the Authority would subsequently amend the Plan, if appropriate, to cover such uncertainties; to delete the provisions of Section 3 of this Chapter regarding liability provisions which existed prior to the enactment of the Deepwater Port Act; and, to revise references to the text of the Act.

Chapter 7 of the Plan has been amended to replace the footnote at the beginning of the Chapter with a more comprehensive and current footnote identical to the footnote at the beginning of Chapter 3; to revise references to the text of the Act; to include appropriate references to the provisions of the Deepwater Port Act pertaining to coordination and cooperation between and among Federal, State and local authorities; and, to delete the descriptive paragraphs regarding Federal agencies other than the Department of Transportation since the role of these agencies and departments in deepwater port development is now covered by the Deepwater Port Act.

Chapter 8 of the Plan has been amended to change the reference to the Secretary of State to the Division of Administration and to include a specific reference to the Louisiana Administrative Procedure Act; and, to change the name of the agency from Deep Draft Harbor and Terminal Authority to Offshore Terminal Authority.

Copies of the Authority's Environmental Protec-

tion Plan, as amended, are available and may be obtained from the Offshore Terminal Authority, 1130 International Trade Mart, New Orleans, Louisiana 70130.

The Department of the State Register has determined that the publication of these rules and regulations, as amended, would be unduly cumbersome, expensive and otherwise inexpedient, and has accordingly exercised its right to omit them from the Louisiana Register pursuant to R.S. 49:954.1C, and has published instead, this notice stating the general subject matter of the omitted rules and stating how a copy thereof may be obtained.

Shepard F. Perrin, Jr.  
Executive Director

## RULE

### State Board of Optometry Examiners

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*(Editor's Note: The following rule was adopted by the State Board of Optometry Examiners, on September 12, 1975, to be effective on October 20, 1975.)*

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In order to be approved as an optometrist authorized to use diagnostic drugs, as set forth in Act 123 of 1975 Louisiana Legislature, an optometrist shall present to the Secretary of the Louisiana State Board of Optometry Examiners, for approval by the Board, the following:

1. Evidence that the applicant is a licensed Louisiana optometrist, holding a current license in compliance with all license renewal requirements of the Louisiana Optometry Practice Act for the year in which he applies for certification;
2. Transcript credits, in writing, evidencing that the applicant has completed a minimum of five university semester hours in pharmacology from an accredited university or college of optometry, subsequent to December 31, 1971. The pharmacology hours shall consist of a minimum of two hours in general pharmacology and a minimum of three hours in ocular pharmacology.

Upon submission of the above, the Secretary shall present same to the Board for approval at the next regular meeting. Upon approval by the Board, the Secretary shall cause to be issued to the optometrist a

certificate indicating compliance with the legislative requirement and intent.

The certificate issued by the Secretary shall be over the Secretary's signature and bear a number identical to the number on the license originally issued by the Board to the optometrist.

Gerald A. Lemoine, O.D.  
President

## RULES

### State Employees' Retirement System

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*(Editor's Note: The following rules were adopted by the Board of Trustees of the State Employees' Retirement System on September 10, 1975, to be effective on October 20, 1975.)*

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1. Transfers must first be approved by the system the member is leaving.
2. Transfers of service will not be approved for any service on which social security contributions were paid, as Act 548 opposes duplication of retirement credit for any service. However, transfers from our system to systems combined with social security will be approved.
3. Transfers of service will not be approved from any system except state, municipal, or parochial public retirement systems located within Louisiana.
4. If employee or employer contributions being transferred are less than the contributions that would have been payable had the same earnings occurred as a member of our system, the member must pay the difference plus five percent interest per annum.
5. No transferred service will be credited to the member's account until (a) all employee and employer contributions plus all applicable monies payable under Rule 4 (above) have been received by the State Employees' Retirement System, and (b) a certified statement of prior service has been received from the transferring system. (This certification must also contain earnings data in sufficient detail to permit calculation of employee and employer contributions which would have been payable had such earnings occurred as a member of the State Employees' Retirement System.)
6. When transferred service is stated in fractions other than tenths of a year, the credit shall be rounded off to the next highest tenth of a year.
7. Any member of any state municipal, or parochial public retirement system shall have the option of transferring to any other state, municipal, or parochial public retirement system for which his employment makes him eligible, regardless of age.
8. A transferred member must comply with the requirements of the system which has the highest age and years of service requirements to be eligible for a retirement benefit whether these requirements be those of the system from which he transferred or those of the system or systems to which he transferred.
9. Reciprocal transfers which have occurred under the provisions of Act 46 of 1972 may be modified at the request of the member to effect a transfer under the provisions of Act 548 of 1975 provided that the member making the request meets the requirements set forth above.
10. When transfer is approved, all contributions paid by the employer and employee will be transferred.

Roy B. Schaefer, Jr.  
Director

## Notices of Intent

### NOTICE OF INTENT

#### Department of Agriculture

#### Grain Division

Notice is hereby given that the Department of Agriculture will hold a public hearing at 10:00 a.m. on Thursday, November 6, 1975, in the conference room on the 1st floor, Watkins Building, 2843 Victoria Drive, Baton Rouge, La. to consider and give approval of the rules and regulations set forth by the Department of Agriculture under Act 627 of the 1975 legislative session concerning the bonding and licensing of cotton buyers.

The proposed rules and regulations set forth:

#### A. Application requirements