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Executive Orders

EXECUTIVE ORDER EWE-78-16

WHEREAS, the Louisiana Bureau for Women is responsible for planning for the needs and implementing programs to expand opportunities for women of the state; and,

WHEREAS, locally based groups are a valuable resource to the community in planning, coordinating, and implementing programs in accordance with the needs of that community; and

WHEREAS, a number of programs require or actively encourage the participation of areawide districts for purposes of planning, developing, and implementing programs on a regional basis;

NOW, THEREFORE, in order to facilitate the implementation of locally based groups, I hereby designate the Louisiana Bureau for Women as the official state agency to establish commissions on the needs of women in each of the eight state planning districts to provide an effective and comprehensive means of planning, developing, and implementing services responsive to the needs of women at the local level:

AND, to receive and disperse funds for the development and implementation of programs for women including, but not limited to, funds for career development, job training, displaced homemakers, domestic violence, and other programs with demonstrated need.

The commissions on the needs of women shall be composed of representatives of the community who have displayed an interest in or worked in program areas that affect the lives of women.

It shall be the duty of each commission to collect facts and statistics and make special studies of conditions to facilitate the design and implementation of programs.

The commissions shall keep informed of the latest developments in the fields of activity pertinent to women throughout the state and interpret their findings to the community.

Further, the commissions shall provide for a mutual exchange of ideas and information with other local, parish, and state entities to formulate recommendations prior to any implementation of programs designed to impact the quality of life for women.

Representatives from the commissions shall compose the State Commission for Women whose functions and duties in the planning, development, and coordination of women's programs will be carried out under the auspices of the Louisiana Bureau for Women.

IN WITNESS WHEREOF, I have hereunto 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 1st day of November, A.D. 1978.

Edwin Edwards
Governor of Louisiana

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture Office of Agricultural and Environmental Sciences

Effective October 25, 1978, the Department of Agriculture, Office of Agricultural and Environmental Sciences, has exercised those powers conferred by the emergency provisions of the Administrative Procedures Act, R.S. 49:953, to adopt the following amendments to the Sweet-potato Weevil Quarantine and Regulations. This action has been taken to prevent spread of sweet-potato weevil from infested areas, to areas not known to sustain infestations of these pests. The insect is considered to be the most destructive pest of sweet potato and its spread an imminent hazard to Louisiana. In connection with this investigation, it has become necessary to promulgate the following emergency rule, amending Section Six of the state Sweet-potato Weevil Quarantine and Regulations to read as follows:

Requirements for Sweet Potato Dealer's Certificate Permit

1. All persons commercially engaged in the handling, sale, offering for sale, and/or movement of sweet potatoes shall not store, clean, grade, pack for sale, process in any manner or move sweet potatoes unless they have a valid sweet potato dealer's permit except: this shall not apply to the movement of sweet potatoes by farmers directly from their farms to market.

2. A sweet potato dealer's certificate permit shall be issued provided:

A. A properly executed affidavit on a form furnished by the Department, setting forth the stipulations to which the applicant must agree, has been filed with the Department.

B. A bond acceptable to the Department in the amount of one thousand dollars for a sweet potato dealer's certificate permit in favor of the Commissioner has been filed with the Department as a guarantee to:

(1) Reimburse any purchaser the purchase price of sweet potatoes that have been confiscated because of sweet-potato weevil infestation or illegal movement.

(2) Agree to the destruction of any load or lot of sweet potatoes moving illegally or infested with the sweet-potato weevil, by an inspector of the Department or law enforcement officer, or return same to point of origin.

Richard Carlton, State Entomologist
Office of Agricultural and
Environmental Sciences

DECLARATION OF EMERGENCY

Department of Agriculture Office of Agricultural and Environmental Sciences

Effective November 2, 1978, the Department of Agriculture, Office of Agricultural and Environmental Sciences, has exercised those powers conferred by the emergency provision of the Administrative Procedures Act, R.S. 49:953B, to adopt amendments to the Sweet-potato Weevil Quarantine and Regulation, which were initially adopted under the provisions of Parts 2 and 3 of Chapter 12 of Title 3 of the Louisiana Revised Statutes of 1950. This action has been taken to prevent spread of sweet-potato

weevil from infested areas to areas not known to sustain infestations of these pests. This insect is considered to be the most destructive pest of sweet potato and its spread presents an imminent hazard to the sweet potato industry of Louisiana. In connection with this infestation, it has become necessary to promulgate the following emergency rule, by amending the Supplement to the Sweet-potato Weevil Quarantine and Regulation, Section III, Quarantined Areas, that portion of paragraph 2A dealing with West Carroll Parish, by adding the following properties:

... that portion consisting of a one mile radius of and including the property of Raymond Byavgeon Farms, O'Neal Brothers, section 8, R11E, T22N; which includes portions of sections 5, 6, 7, 8, 9, 17 and 18; that portion consisting of a one mile radius of and including the property of Richard Lamar Boutwell, section 27, R11E, T23N, which includes portions of sections 21, 22, 23, 26, 27 and 28; that portion consisting of a one mile radius of and including the property of J. M. Welch Farms, Roberson Brothers, section 32, R11E, T22N, which includes portions of sections 29, 30, 31, 32 and 33 and R11E, T22N, which includes portions of sections 4, 5 and 6; that portion consisting of a one mile radius of and including the property of Crowe Farms, W. M. Puckett, section 28, R10E, T21N, which includes a portion consisting of a one mile radius of and including the property of C. E. Reeks Farm, W. M. Puckett, section 1, R9E, T20N; which includes portions of sections 2 and 12, and portions of R10E, T20N sections 6 and 7, which includes portions of R9E, T22N section 31; that portion consisting of a one mile radius of and including the property of LeRoy Adams, sections 19, 20, 28 and 29, R10E, T21N; that portion consisting of a one mile radius of and including the property of E. C. Huff Farm, Roberson Brothers, section 28, T22N, R11E, which includes portions of sections 20, 21, 22, 27, 28 and 29; that portion consisting of a one mile radius of and including the property of McIntosh Farm, Richard Boutwell, section 22, T22N, R11E, which includes portions of sections 15, 16, 21, 22, 23, 26, 27 and 28.

Richard Carlton, State Entomologist
Office of Agricultural and Environmental Sciences

DECLARATION OF EMERGENCY

Department of Corrections Office of the Secretary

The Secretary of the Department of Corrections has adopted the attached rules on an emergency basis under the provisions of R.S. 49:951, et seq.

Adoption of these rules is necessary to timely implement legislative mandated changes in the department's inmate furlough regulations and procedures, particularly insofar as it relates to the exclusion of certain offenders from furlough eligibility.

These rules will be effective October 10, 1978, and remain in effect through December 20, 1978.

Regulation 30-7

Inmate Furloughs and Temporary Releases

1. Purpose. The purpose of this regulation is to establish the inmate furlough and temporary release policy of the Department of Corrections.

2. To whom this regulation applies. This regulation is applicable to wardens and correctional treatment administrators of each adult correctional institution in the Department of Corrections and the Office of Adult Services and to all inmates sentenced to the Department of Corrections, regardless of institution where they are housed.

3. Legal. The granting of inmate furloughs, or temporary releases, to adult inmates is controlled by R.S. 15:811 (C), 15:831 and 15:833.

4. General. Inmate furloughs or temporary releases from any correctional facility of the Department of Corrections may be granted only by the Secretary and shall be approved by him before they begin. The period during which the inmate will be on furlough or temporary release will be clearly indicated in the approval.

5. Definitions.

A. Furlough—A release from incarceration without security supervision for the purpose of maintaining family ties or for needed medical care.

B. Temporary Release—A release from incarceration without security supervision because of death or serious illness of a close family member or for an interview with a prospective employer.

C. Close Family Member—Means the father, mother, wife, husband, and children of the inmate and, when recommended by the warden, the grandparents, legal guardians, brothers or sisters.

D. Furlough Violation—Includes the commission of new offenses as well as any misconduct resulting in any disciplinary action while on furlough or temporary release.

6. Procedures.

A. Furlough and temporary release requests should be reviewed by the head of the unit to which the inmate is assigned to determine that the application is justified and is not in contravention of this regulation.

B. Necessary verification of furlough plans, transportation, coordination with family or medical facility are the responsibility of the warden recommending the furlough or temporary release.

C. Requests are to be forwarded to the Office of Adult Services where it shall be determined whether they are in compliance with this regulation and whether the sheriff, and if specifically requested, the district attorney and/or the chief of police of the locality where the inmate is going objects. The Office of Adult Services will notify the Warden at the originating institution of the Secretary's decision regarding the furlough.

D. When a request is received from a sheriff or warden of a nondepartmental facility, the Office of Adult Services shall certify to the Secretary that the inmate meets the same eligibility standards as those required of inmates in the custody of the Department.

E. Furlough requests for inmates in work release or maintenance status may be processed and approved for up to six months at a time.

F. All incidents of furlough violations by participating inmates shall be reported to the Office of Adult Services which shall compile a yearly report on or before April 1 of each year indicating the nature of the incident, age of offender, original offense, length of sentence, prior criminal record, and any other characteristics found to be predictive of success or failure. The Office of Adult Services will include in the report any suggested changes in eligibility standards dictated by the experiences of the previous year.

7. Eligibility. Inmates must meet the following criteria in order to be eligible for a furlough.

A. Must have been in custody for a period of not less than one year for the current offense and at least three months of the year must have been in a Department of Corrections facility, or have been approved by the sheriff, if in the sheriff's custody.

B. Must not be serving a sentence for any of the following crimes:

1. First or second degree murder or attempted murder.
2. Aggravated or attempted aggravated rape.
3. Forcible rape.
4. Aggravated kidnapping.
5. Aggravated arson.

6. Armed robbery.

7. Attempted armed robbery.

8. Producing, manufacturing, distributing or dispensing or possession with intent to produce, manufacture, distribute, or dispense a controlled dangerous substance classified in Schedule I or Schedule II or R. S. 40:964.

9. Sentenced as a habitual offender under R.S. 15:529.

Note: Subsection B does not apply to inmates within the last six months of their term of incarceration (earliest release date) or to inmates assigned to the Governor's mansion crew.

C. Must be free of detainers except those for court costs or misdemeanors.

D. Must not have been found guilty by a court or Department of Corrections disciplinary board of escape or attempted escape during the preceding three years.

E. Must be of minimum security status and have exhibited exemplary behavior.

F. Must submit a furlough or temporary release plan, stating the purpose of the furlough, the destination and the name of the person with whom the inmate will stay. A responsible member of the inmate's family or some other previously approved person must sign a statement agreeing to be responsible for the inmate and shall insure that transportation is provided for the inmate. A copy of the plan must be forwarded with the request to the Office of Adult Services.

8. Length and frequency of furloughs.

A. Furloughs and temporary releases will be approved for a definite period, not to exceed five days, except medical furloughs which shall be for such period as deemed necessary by the Secretary and appropriate medical personnel.

B. Inmates in work release or maintenance status may be recommended by the appropriate warden for monthly furloughs, not to exceed forty-eight hours in duration.

C. In lieu of a regular monthly furlough, inmates in work release or maintenance status may be granted two special holiday furloughs of up to five days coinciding with Christmas, Easter, or Independence Day (July 4); the exact dates to be determined each year by the Secretary.

D. Inmates other than those in work release or maintenance status may not be granted more than two furloughs (normally at Christmas, Easter, or Independence Day) each calendar year. There is no limit on the number of temporary releases which may be granted.

9. Administrative requirements.

A. Requests for furloughs should be submitted at least thirty days prior to the beginning date of the requested furlough or thirty days prior to the period in which the furloughs for work release and maintenance inmates are to be granted.

B. Furloughs should not be requested for inmates even though they might meet criteria established herein when it is known to the warden or responsible official that the inmate might present a danger to himself or to the public should the inmate be released from direct custody.

C. Furloughs may be approved by teletyped communication should the appropriate warden feel that the situation is of such an emergency nature that this procedure is justified.

C. Paul Phelps, Secretary
Department of Corrections

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries

Effective October 25, 1978, the Louisiana Wildlife and Fisheries Commission, exercised the power granted by the provisions of the

Administrative Procedures Act R.S. 49:953B, to suspend the enforcement of the steel shot regulations contained in the digest of the hunting regulations governing the taking of waterfowl in Louisiana during the 1978-79 hunting season and permit the taking of waterfowl in season in Louisiana with lead shot.

This action was taken after receipt of a telegram from the U. S. Fish and Wildlife Service stating that as a result of Congressional action in the Department of Interior's appropriation bill the Fish and Wildlife Service will not be allowed to further implement or enforce use of steel shot in designated areas without approval from regulatory agencies in each state affected.

Because the Louisiana waterfowl season opens November 4, it was necessary for the Commission to immediately act on this request. A public hearing was scheduled in Lafayette, Louisiana on October 23 and the Commission heard six hours of testimony from interested persons, organizations, and conservation agencies.

A special meeting was held in Baton Rouge on October 25, and after review of the testimony and comments, the Commission took the above action.

J. Burton Angelle, Secretary
Department of Wildlife and Fisheries

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries

The Louisiana Wildlife and Fisheries Commission on October 10, 1978, exercised the power granted by the provisions of the Administrative Procedures Act, and after approval by the State Department of Health, adopted the following rules and regulations, via resolution, for the Calcasieu Lake oyster season for 1978-79.

Calcasieu Lake Oyster Season

Whereas, the Department biologists and the Chief of the Seafood Division have recommended the fishing of the oysters in Calcasieu Lake with the exception of the Calcasieu River and Ship Channel, East Fork, West Fork and Oyster Bayou, and

Whereas, the State Department of Health will examine the growing oysters of this aforementioned area and approve the waters for fishing oysters if the health standards are met.

Now, therefore, be it resolved by the Louisiana Wildlife and Fisheries Commission that the Calcasieu Lake oyster season for 1978-79 be set in accordance with the following rules and regulations:

1. That the oyster season in Calcasieu Lake be fixed to extend from one half hour before sunrise on Wednesday, November 1, 1978, through one half hour after sunset on Saturday, March 31, 1979, with the right being reserved to extend said season or close it sooner if biologically justifiable.

2. That oyster fishing be limited only to the use of tongs and to daylight hours.

3. The open areas shall be confined to the area of Calcasieu Lake, with the exception of Calcasieu River and Ship Channel, East Fork, West Fork and Oyster Bayou which shall be closed.

4. The three-inch culling law shall be observed by all fishermen fishing the area and the culls shall be returned to the fishing area reefs to provide for future harvesting.

5. All oysters shall be put into sacks before leaving the oyster fishing area in Calcasieu Lake. Oysters not in sacks leaving the fishing area in Calcasieu Lake shall be confiscated and the violator subject to penalty set forth in Title 56, Section 115.

6. The taking of oysters for commercial purposes shall be limited to fifteen sacks per boat per day.

7. The taking of oysters for home consumption shall be limited to three bushels (two sacks per boat per day).

8. All commercial fishing of oysters shall be done only with proper licenses, and the sacks of oysters be properly tagged before leaving the fishing vessel.

Be it further resolved, that the Secretary be and is hereby authorized and empowered to extend or close said season, and increase or decrease limit, when biologically justified.

J. Burton Angelle, Secretary
Department of Wildlife and Fisheries

Rules

RULES

Department of Agriculture Office of Agricultural and Environmental Sciences

Supplement to the Sweet-potato Weevil Quarantine and Regulation

III. Quarantined areas.

1. In the United States.

a. The areas hereby quarantined on account of the sweet-potato weevil shall be the portions of all states in which sweet-potato weevil infestations are known to occur, and so officially designated as quarantined or regulated areas, by the sweet potato quarantines of the states of Alabama, Florida, Georgia, Louisiana, Mississippi, Texas, and South Carolina.

2. In Louisiana.

a. Quarantined areas in Louisiana are hereby declared to be the entire parishes of Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, Rapides, Sabine, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Vernon, Washington, West Baton Rouge, West Feliciana, and those parts hereinafter listed.

Bienville Parish—that portion of T17N located in R4W and 5W in Lincoln and Bienville Parishes;

Bossier Parish—that portion of R11 and 12W north of Interstate 20 located in T18 and 19N in Bossier Parish;

Caddo Parish—all of Wards 6 and 7;

Caldwell Parish—that portion consisting of a one mile radius of and including the property of Ed Hilburn, Section 28, R3N, T14N and that portion consisting of a one mile radius of and including the property of Clifton Hilburn, Section 28, R3N, T14N;

Jackson Parish—that portion of R3 and 4W in T15N and that portion consisting of a one mile radius of and including the property of Mrs. J. A. Hughes, Section 1, R4W, T14N;

Lincoln Parish—that portion consisting of a one mile radius of and including the property of James Kay, Section 13, R3W, T17N;

Natchitoches Parish—that portion west and southwest of the Red River;

Red River Parish—that portion of R10W lying north of T12N;

West Carroll Parish—Ward 4; that portion consisting of a one mile radius of and including the property of Leon Hill, Section 28, R23N, T23N; that portion consisting of a one mile radius of and including the property of Lonnie Reese, Section

21, R11E, T21N; that portion consisting of a one mile radius of and including the property of Aaron Freeman, Section 21, R11E, T21N; that portion consisting of a one mile radius of and including the property of Christina Blackman, Section 21, R11E, T21N; that portion consisting of a one mile radius of and including the property of S. L. Bush, Section 7, R12E, T23N; that portion consisting of a one mile radius of and including the property of W.W. Head, Section 22, R10E, T20N; that portion consisting of a one mile radius of and including the property of S. L. Bush, Section 35, R10E, T20N; that portion consisting of a one mile radius of and including the property of Oak Grove Gun Club, Section 6, R11E, T21N; that portion consisting of a one mile radius of and including the property of S. L. Bush, Section 1, R10E, T21N; and that portion consisting of a one mile radius of and including the property of M. Stanford, Section 21, R11E, T22N; and/or such other area or areas as may hereafter be designated as quarantined areas by notice in the Register and Journal of the State of Louisiana by the State Entomologist, with the approval of the Commissioner.

b. Non-sweet potato areas shall be: infested properties in the area north of Avoyelles and Rapides Parishes, east and northeast of the Red River line at Grant Parish, northeast of the Red River in Natchitoches Parish, north of the Natchitoches Parish line, west of the Red River and north of the Sabine Parish line, and such other area or areas as may hereafter be declared non-sweet potato areas by publication in the Official Journal and the Louisiana Register by the State Entomologist, with the approval of the Commissioner.

Richard Carlton, State Entomologist
Office of Agricultural and
Environmental Sciences

RULES

Department of Agriculture Dairy Stabilization Board

General Provisions

LAC 2-17:1 Definitions

§1.1 The definitions of the following terms contained in R.S. 40:931.2 are adopted as the definitions of these terms for the purpose of these regulations: person, distributor, processor, retailer, supplier and milk.

§1.2 The following definitions shall be applicable throughout these regulations:

“Act” means all of Subpart C of Part VII of Chapter 4 of Title 40 of the Louisiana Revised Statutes of 1950, sometimes referred to as the Dairy Stabilization Law.

“Adjudication” or “adjudicatory proceeding” means Board process for the formulation of a decision or order.

“Agent” means an employee or other person authorized by and acting on behalf of the Board.

“Board” means the Louisiana Dairy Stabilization Board.

“Centralization billing” is the procedure whereby processors and/or distributors contract with wholesale grocers or wholesale grocery cooperatives providing for billing services and/or guarantee of payment or other services to be performed by said wholesale grocers or wholesale grocery cooperatives whether for compensation or not and regardless of the method of delivery of said dairy products utilized.

“Charitable institution” means any facility operated by a non-profit organization, donations to which are deductible pursuant to federal statutes and regulations relating to income taxation.

“Cost” as used herein shall be defined as it is defined in R.S. 51:421 (F).

“Dairy product” means any of the products listed or referred to in R.S. 40:931.2 (10).

“Decision” or “order” means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of the Board, in any matter other than rulemaking, required by constitution or statute to be determined on the record after notice and opportunity for Board hearing.

“Dock pickup delivery method” means that delivery method where title and possession to dairy products passes from the seller to the buyer or the buyer’s agent at the seller’s dock.

“Drop delivery method” means that delivery method where title and possession to dairy products passes from the seller to the buyer or the buyer’s agent at the back door or refrigerated storage cooler of the buyer.

“Frozen dessert” means ice cream, fruit ice cream, nut ice cream, ice milk, malt ice milk, malt ice cream, French ice cream, milk sherbets, mellorine, olarine, sherine, and the mix from which any such product is made.

“Full service delivery method” means that delivery method where the dairy products are delivered by the seller to the buyer or the buyer’s agent at the point of ultimate sale.

“Hospital” means any facility licensed by the Department of Health and Human Resources as a hospital or nursing home.

“Institution” means the State of Louisiana, any of its political subdivisions, any religious or charitable institution, any hospital and any school.

“Licensee” means any person licensed by the Board in accordance with the provisions of the Act and with these regulations.

“Milk case” means the wood, metal, or plastic container essential for transporting or delivering cartons, bottles, jugs, or other packages of dairy products.

“Nonprocessing retailer” means a person whose processing activities are only incidental to what is primarily a retail operation.

“Parish or city school board” means any school board or other governing authority of any elementary or secondary school in this state.

“Plant dock” means a licensed processing plant where milk is regularly processed or a branch operation that has a fixed constructed facility for dairy products cold storage, an office, and where trucks are regularly loaded. All existing and new “docks” must be approved by the Board.

“Rule” means each Board statement of general applicability and future effect that implements, interprets, or prescribes substantive law or policy or prescribes the procedure or practice requirements of the agency. A rule may be of general applicability even though it may not apply to the entire state, provided the form is general and others who may qualify in the future will fall within its provisions. The term includes the amendment or repeal of a prior rule but does not include: (a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; (b) declaratory rulings or order; or (c) intra-agency memoranda.

“Rulemaking” means the process employed by the Board for the formulation of a rule. The fact that a statement of policy or an interpretation of a statute is made in the decision of a case or in a Board decision upon or disposition of a particular matter as applied to a specific set of facts involved does not render the same a rule within this definition or constitute specific adoption thereof by the Board so as to be required to be issued and filed as provided in the Administrative Procedures Act.

“Volume discount year” is hereby defined to be the period of twelve months commencing on the first day of April and ending on the last day of March in the year which immediately follows.

Procedural Provisions

LAC 2-17:2 Investigative Hearings Purpose, Powers of the Board

§2.1 Investigative hearings shall be for the purpose of investigating conditions of the dairy industry and compliance by the industry with the Act, and regulations, including monopoly practices, disruptive trade practices, price wars, and unfair methods of competition.

§2.2 Investigative hearings may be held upon the call of the Board. Such hearings may be held in any part of the state.

§2.3 The Chairman, the Vice-Chairman, a member designated by the Chairman, or a hearing officer designated by the Board who need not be a member of the Board, shall preside at investigative hearings. All witnesses shall be sworn or shall make affirmation.

§2.4 Investigative hearings conducted by the Board shall be open to the public.

§2.5 If the Board determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, it shall afford such person, upon request, an opportunity to appear as a witness; receive and dispose of requests from such persons to subpoena additional witnesses; and afford such person, or his attorney, upon request the opportunity to examine or cross-examine witnesses.

§2.6 The Director, upon approval of the Chairman or Vice-Chairman, is authorized to sign and issue subpoenas which require the attendance and giving of testimony by persons who may possess any knowledge concerning any offense under investigation at an investigative hearing or for investigative purposes. The subpoena shall set forth reasonable grounds therefor, and shall order the person to appear at a designated time and place. The Director may also order the issuance of a subpoena duces tecum as described above.

§2.7 Whenever any person summoned under this regulation neglects or refuses to obey such summons or to produce books, papers, records or other data, or to give testimony as required, the Board may apply to the judge of the district court for the district within which the person so summoned resides or is found, for an attachment against him as for a contempt.

§2.8 The Chairman, Vice-Chairman or Director may determine who shall be present during the examination and may order all persons excluded, except counsel for the person subpoenaed.

§2.9 A subpoena may be served by any person authorized by law to serve civil process, or by any agent of the Board, and the return made in writing by any such person shall be accepted as proof of service.

§2.10 The Board is the sole judge of the pertinency of testimony and evidence adduced at such hearings.

§2.11 The attorney for the Board and that of any public agency which may be participating in the investigation shall have the right to be present at all hearings and shall have the right to examine or cross-examine any witness.

§2.12 Witnesses at investigative hearings may be accompanied by their own counsel.

§2.13 A copy of this regulation shall be made available to any witness and a copy shall be delivered at the time of making service, to each person upon whom a subpoena is served; in addition thereto each person upon whom a subpoena is served shall be informed in writing that the Board suggests that he consult his attorney and that his attorney should attend the hearing to advise him.

§2.14 The Board may, in its discretion, issue a report upon the conclusion of any such investigative hearing.

§2.15 As a result of such investigations, the Board may initiate adjudicatory proceedings against licensees, may refer matters to other public agencies and may take any other appropriate action.

§2.16 Investigative hearings may be conducted jointly with other interested public agencies.

§2.17 It shall not be necessary to publish any advance notice of any investigative hearing and it shall be necessary that subpoenas disclose the general nature of the investigation.

§2.18 At all investigative hearings the testimony shall be recorded stenographically or otherwise. Upon payment of the costs thereof, and when authorized by the Board, a witness may obtain a transcript copy of his testimony given at a public session.

LAC 2-17:3 Rulemaking Proceedings Powers of the Board

§3.1 Any person may petition the Board requesting the promulgation, amendment, or repeal of a rule or a regulation. Such petitions shall be by letter and may be submitted at any time. Each such petition shall be considered by the Board within ninety days after its submission. In the event the petition is denied, the petitioner shall be notified in writing and the reasons for the denial shall be stated in writing.

§3.2 Prior to the adoption, amendment or repeal of any rule, the Board shall afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. In case of substantive rules, opportunity for oral presentation or argument must be granted if requested by twenty-five persons, by a governmental subdivision or agency, by an association having not less than twenty-five members, or by a committee of either house of the Legislature to which the proposed rule change has been referred under the provisions of the Administrative Procedures Act. The Board shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule, the Board, if requested to do so by an interested person either prior to adoption or within thirty days thereafter, shall issue a concise statement of the principal reasons for and against its adoption.

§3.3 Whenever the Board authorizes the commencement of a rulemaking proceeding the Director shall give or cause to be given notice of hearing in the following manner:

§3.3.1 By publication of the notice of hearing in the *Louisiana Register* (also see requirements of Administrative Procedures Act, R.S. 49:951 et seq.)

§3.3.2 By mailing a copy of the notice of hearing to all persons who have made timely requests to the agency in writing for advance notice of its rulemaking proceedings.

§3.4 The notice of a rulemaking hearing shall be published at least twenty days prior to the date on which such hearing is scheduled. Such notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views thereon.

§3.5 Objections to the notice of hearing are waived unless filed in writing immediately following the opening of the hearing.

§3.6 At all rulemaking hearings, the Chairman shall preside, or, in his absence, the Vice-Chairman. If both the Chairman and the Vice-Chairman are absent, the Chairman shall designate some other member of the Board to preside. The Board may designate a hearing officer, who need not be a member of the Board, to preside at any rulemaking hearing.

§3.7 At least three members of the Board shall be present at all rulemaking hearings. However, no action may be taken on matters considered at such hearings until a quorum of the Board is present and participates in such action.

§3.8 At the hearing, any interested person shall be given an opportunity to appear, either in person or through his authorized counsel or representative, and to be heard with respect to matters relevant and material to the proceeding. Any interested person who desires to be heard at any hearing shall, before proceeding to

testify, state his name, address, and occupation. If any such person is appearing through a counsel or representative, such counsel or such representative shall, before proceeding to testify or otherwise participate in the hearing, state for the record the authority to act as such counsel or representative, and the name and address of the person represented. Any such person or such counsel or representative shall give such other information respecting his appearance as the presiding officer may request.

§3.9 The presiding officer shall, at the opening of the hearing and prior to the taking of testimony, have noted as part of the record the notice of hearing as published and the certificate of the Director relative to the giving of notice of the hearing through means other than publication.

§3.10 The Board shall permit the presentation of oral arguments during the hearing but may not hear oral arguments on any proposal after the conclusion of the hearing unless notice is given in the same manner as the original notice of the hearing.

§3.11 Cross-examination shall be permitted to the extent required for a full and true disclosure of the facts.

§3.12 All written statements, charts, tabulations, or similar data offered as part of the record of the hearing shall, after identification by the proponent and upon satisfactory showing of the authenticity, relevancy, and materiality of the contents thereof, be numbered as exhibits and made a part of the record. Such exhibits shall be submitted in quadruplicate and in documentary form. In case the required number of copies is not made available, the presiding officer shall exercise his discretion as to whether said exhibits, shall, when practicable, be read in evidence or whether additional copies shall be required to be submitted within a time to be specified by the presiding officer.

§3.13 If a party objects to the admission or rejection of any offering or to any other ruling of the presiding officer during the hearing, he shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the presiding officer. The ruling of the presiding officer on any objection shall be a part of the record. Only objections made before the presiding officer may subsequently be relied upon in the proceeding.

§3.14 Portions of the record of prior hearings held by the Board may be incorporated by reference.

§3.15 The Board shall not be bound by rules of order, evidence, or procedure in rulemaking hearings except those contained in these regulations, those which it may establish, and those which may be specifically prescribed by statute.

§3.16 If any interested person fails to appear at the hearing he shall be deemed to have waived the right to be heard in the proceeding.

§3.17 The Board may act without permitting the filing of briefs and exceptions or it may elect to do one or both of the following things prior to taking final action:

§3.17.1 Permit the filing of briefs by interested persons.

§3.17.2 Notify interested parties of the action which the Board proposes to take and permit the filing of exceptions.

§3.18 If the Board elects to permit the filing of briefs, the presiding officer shall announce at a hearing the deadline for filing such briefs with the Board or mailing such briefs to the Board. Such briefs may contain proposed findings and conclusions and written arguments.

§3.19 If the Board elects to permit the filing of exceptions, notification of the Board's proposed action shall be given in the same manner as the notice of hearing. The said notice shall set forth the deadline for the filing of exceptions by interested parties. Such exceptions shall be in writing and may suggest appropriate changes in the Board's proposed action.

LAC 2-17:4 Adjudicatory Proceedings Complaints, Hearings, Powers of the Board

§4.1 Whenever the Director has reason to believe that a licensee has violated the Act or any regulation, he shall mail to the licensee a written notice in compliance with R.S. 49:955.

§4.2 Within eight days after the date on which the licensee receives such a written complaint, such licensee shall mail to the Director a written statement in response to the said complaint. In such written statement, the licensee shall plead "guilty," "nolo contendere" or "not guilty" to each violation charged in the complaint. The Chairman may extend the period during which such licensee may submit a plea in response to such a complaint whenever good cause for such an extension is shown.

§4.3 If the licensee fails to respond to the complaint within the period prescribed in Section 4.2 hereinabove, the Board may suspend or revoke the license of such person without holding a hearing or complying with other formalities. Whenever a licensee submits a plea of "not guilty" in response to a complaint, the Director shall mail to such licensee a notice of the time, date and place of the hearing at which the Board will consider evidence presented by the Board staff in support of the charges made in the said complaint and evidence presented by or on behalf of the licensee in his defense. Such notice shall contain a statement that the Board may either suspend or revoke the licensee's license upon a finding of "guilty." The date on which the hearing is held shall be at least twelve days after the date on which such notice is mailed to the licensee.

§4.4 In those cases where the Director has reason to believe that the violation is continuing beyond the date on which the licensee received the complaint, he may notify the licensee of the date, time and place of a hearing at which the Board will consider only the suspension of the licensee's license for a period of ten days or less. Such hearings may be scheduled for the third day following the date on which the licensee actually receives such notice, or for any subsequent date.

§4.5 The Chairman, the Vice-Chairman and the Director are each authorized to sign and issue subpoenas in the name of the Board, requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence. No subpoena shall issue until the party requesting it first deposits with the Board the fees and expenses required by R.S. 13:3661 and R.S. 13:3671. A subpoena may be served by any person authorized by law to serve civil process or by any agent of the Board, and the return made in writing by any such person shall be accepted as proof of service.

§4.6 The Chairman, some member designated by the Chairman, or a hearing officer designated by the Board, who need not be a member of the Board, shall preside. All witnesses shall be sworn by the presiding officer. The licensee, his representative, or his attorney, may cross-examine witnesses testifying against the licensee. Likewise, the Board's counsel may cross-examine witnesses testifying for defense. All exhibits introduced at such hearings shall be in duplicate.

§4.7 At all such hearings the testimony shall be recorded stenographically or otherwise. At the request of any party or person, and upon payment of the cost thereof by such party or person, the Board shall cause a full transcript of the proceedings to be prepared and shall furnish a copy thereof to such party or person. In cases where no request for a full transcript is made, the Board shall prepare a resume of the evidence.

§4.8 Whenever the Board enters a finding of guilty and orders the suspension of a license or whenever the Board accepts a plea of "guilty" or "nolo contendere" and orders a suspension of a license, it may include in the order a provision making it possible for the licensee to pay a penalty in lieu of the suspension. In addition, the Board may authorize the Director to advise any

licensee desiring to enter a plea of "guilty" or "nolo contendere" of the amount of the penalty which such licensee would be permitted to pay in lieu of suspension of his license. The Board shall be bound by written statements by the Director relating to the amount of the penalty, but may set a lesser amount than that specified by such officer.

§4.9 In fixing the amount of a penalty, the Board shall take into consideration the following factors: the severity of the offense, the extent to which the guilty party attempted to conceal the offense, and the damage to competitors which resulted from the offense.

§4.10 No suspension or revocation shall be ordered in those cases where the Board concludes that a person having average intelligence and having read the Act, and these rules and regulations, would not have known that the act committed was a violation of the Act, and these rules and regulations.

LAC 2-17:5 Declaratory Orders and Rulings Petitioning the Board

§5.1 Any person desiring a ruling by the Board concerning the applicability of the Act or these rules and regulations, or of any order issued by the Board may obtain such a declaratory ruling or order by filing with the Board a petition which must be typewritten, must be on legal size paper, and must be in quadruplicate. Each such petition shall set forth the name and address of the petitioner, shall state fully, clearly and concisely the statutory provision, the regulation, or the order involved or affected, shall state the facts which give rise to the need for the requested ruling or order, and shall be signed by the petitioner.

§5.2 Each such petition shall be considered by the Board within fifty days after receipt and the petitioner shall be notified in writing of the Board's ruling or order within five days after the Board meeting at which such petition is considered by the Board. The petitioner shall be notified at least five days prior to such Board meeting and shall be given an opportunity to be present in person or through counsel and to present such evidence and arguments as are appropriate under all the circumstances.

§5.3 The Board may refuse to entertain any such petition if it determines that good cause exists for such refusal.

LAC 2-17:6-10 Reserved

Substantive Provisions

LAC 2-17:11 Volume Discounts

§11.1 The volume discounts herein established shall remain in effect, unless modified, amended or repealed by the Board.

Fluid Milk Products

§11.2 Licensed processors and licensed distributors are authorized to give discounts to licensed nonprocessing retailers in accordance with the volume discount eligibility certificate for fluid milk products issued to each eligible nonprocessing retailer by the Board.

Volume discount eligibility certificates for fluid milk products shall be issued annually, shall become effective on the first day of April, and shall not be effective beyond the last day of March of the following year. Nonprocessing retailers who desire to receive such volume discounts from suppliers shall file an application for a volume discount eligibility certificate for fluid milk products on an application form to be supplied by the Board. Such applicants shall supply the Board with the information requested by the Board on such application forms including specifically the total value of purchases of fluid milk products by the applicant from each supplier during the months of August, September, and October of the year preceding the year during which the certificate becomes effective.

§11.3 The application submitted by a nonprocessing retailer for the volume discount year during which such retailer commences business shall include the total value of purchases of fluid milk

products from each supplier during any calendar month of that volume discount year selected by the nonprocessing retailer.

§11.4 The calendar month selected by such nonprocessing retailer shall be the base period for the volume discount year during which such nonprocessing retailer commences business and, if the nonprocessing retailer commences business subsequent to the first day of August of that volume discount year, the calendar month selected shall also be the base period for the succeeding volume discount year. However, the volume discount eligibility certificate issued by the Board for the volume discount year during which such nonprocessing retailer commences business shall list the effective date of such certificate as the first day of the calendar month selected by such nonprocessing retailer; provided, that if the calendar month selected by such nonprocessing retailer is the calendar month that immediately follows the month during which such nonprocessing retailer commences business, and if the nonprocessing retailer commenced business subsequent to the first day of the month, the effective date of such certificate shall be the date on which business was commenced.

§11.5 No discounts may be given on sales to nonprocessing retailers which take place prior to the effective date shown on the nonprocessing retailer's volume discount eligibility certificate for fluid milk products. The effective date to be shown on such certificates shall be (a) the first day of the volume discount year (except as set forth in the preceding paragraph) or (b) any date authorized by the Board's rules and regulations.

§11.6 In the event of a change of ownership in the retail establishment to which any such certificate is issued, the said certificate shall be automatically suspended until such time as the Director, in response to an application from the new owner, authorizes the transfer of the certificate from the previous owner to the new owner.

§11.7 The Board shall issue a volume discount eligibility certificate for fluid milk products to each nonprocessing retailer whose purchases of fluid milk products from all suppliers fall into one of the categories set forth hereinafter. Such certificates shall authorize the nonprocessing retailer to receive, and processors and distributors to give, volume discounts at not more than the following rate:

Average Monthly Purchases of Fluid Milk Products from all Suppliers During the Base Period	Discount Rate
\$1,000.00 to \$1,500.00	3%
\$1,500.01 to \$2,500.00	4%
\$2,500.01 to \$3,500.00	5%
\$3,500.01 to \$4,500.00	6%
\$4,500.01 and over	7%

§11.8 Volume discount eligibility certificates for fluid milk products shall remain in effect throughout the volume discount year for which issued regardless of changes in volume purchased.

Frozen Desserts

§11.9 Licensed processors and licensed distributors are authorized to give discounts on frozen desserts to nonprocessing retailers in accordance with the volume discount eligibility certificate for frozen desserts issued to each eligible nonprocessing retailer by the Dairy Stabilization Board.

§11.10 Nonprocessing retailers who desire to receive such discounts from suppliers shall file an application for a volume discount eligibility certificate for frozen desserts on an application form to be supplied by the Board. Each such applicant shall supply the Board with the information requested by the Board on such application forms including specifically the total value of purchases of frozen desserts by the applicant from each supplier during the twelve-month period which ends on the 30th day of September which

immediately precedes the calendar year during which the volume discount eligibility certificate for frozen desserts is in effect.

§11.11 Any applicant who commences business less than fifteen months prior to the beginning of the volume discount year for which such certificate is sought shall supply the Board with information showing the total purchases of frozen desserts by such applicant from each supplier during the twelve calendar months commencing with the first day of the first full month during which such applicant is in business. This twelve-month base period shall be the base period for such applicant for both the calendar year during which such applicant commences business and for the following calendar year.

§11.12 In the event of a change of ownership in the retail establishment to which any such certificate is issued, the said certificate shall be automatically suspended until such time as the Director, in response to an application from the new owner, authorizes the transfer of the certificate from the previous owner to the new owner.

§11.13 The Board shall issue a volume discount eligibility certificate for frozen desserts to each nonprocessing retailer whose purchases of frozen desserts from all suppliers fall into one of the categories set forth below. Such certificate shall authorize the nonprocessing retailer to receive, and processors and distributors to give, volume discounts at not more than the rate shown below:

Annual Purchases of Frozen Desserts from all Suppliers During Base Period	Discount Rate
\$4,000.00-\$6,000.00	3%
\$6,000.01-\$8,000.00	4%
\$8,000.01-\$11,000.00	5%
\$11,000.01-\$15,000.00	6%
\$15,000.01 and over	7%

Volume discount eligibility certificates for frozen desserts will remain in effect throughout the year for which issued regardless of changes in volume purchased.

LAC 2-17:12 Licensing, Assessments and Records Issuance of Licenses

§12.1 Before applying for a license from the Board, each applicant shall obtain the necessary permit(s) from the Louisiana Department of Health and Human Resources, Office of Health Services and Environmental Quality.

§12.2 Each application for license must be on a form approved by the Board.

§12.3 When issued, each license shall continue to be effective without renewal until suspended or revoked or until the licensee discontinues operating the business for which the license was obtained.

The license of any licensee who fails to comply with the provisions of the Act or rules and regulations issued by the Board may be suspended or revoked.

§12.4 Whenever the Director has reason to believe that an applicant for a license is ineligible for that license because of noncompliance with the Act, the regulations, or for any other reason, the Director shall mail to such applicant a notice of the time, date and place of a hearing at which the Board will consider evidence presented by the Board staff and by or on behalf of the applicant relative to the eligibility of the applicant for the license sought. All such hearings shall be conducted in accordance with the provisions of general regulations and the Administrative Procedures Act.

§12.5 A new license is required whenever there is a change of ownership, a change of location, or a change in the name or trade name of the licensee.

Obligations of Licensees Delinquent Accounts

§12.6 Each processor and each distributor shall report to the Board on or before the 25th of each month, the names and addresses of all nonprocessing retailers who, on the 20th day of that month, were delinquent in the payment of their accounts to such processor or distributor. (Cross Reference: Section 13.1.18)

§12.7 Each processor shall report to the Board on or before the 25th day of each month, the names and addresses of all distributors who, on the 20th day of that month were delinquent in the payment of their accounts to such processor.

§12.8 An account is delinquent on the date specified by the seller, but the date specified by the seller may not be later than the 15th day of the month following the close of the month during which delivery of the fluid milk products or the frozen desserts takes place. In the event the seller fails to specify the due date, the account shall be due on the 15th day of the month following the close of the month during which delivery of the fluid milk products or the frozen desserts takes place. An account will not be considered delinquent if the purchaser is billed once each week and if payment is received by the seller within thirty days of the last day of the week for which the statement was rendered.

Assessments

§12.9 Each processor shall pay his assessment when due under the Act. Processors who are delinquent in the payment of their assessment shall add to the amount due a sum equal to one percent of the amount due for each day of delinquency. In computing the amount of the assessment, frozen desserts shall be converted to milk equivalents as follows: Total milk solids non-fat times 5.79 plus total pounds of fat times 12.5. In the case of dairy products processed by one processor and transferred to a second processor for resale, the assessment due in connection with Class II items is to be paid by the transferor and the assessment due in connection with Class I items is to be paid by the transferee. No processor shall be required to pay assessments on products sold outside of this state. Processors whose total annual assessments amount to less than twenty-five dollars shall be permitted to pay their assessments annually.

Purchasing of Stock

§12.10 Any licensee shall notify the Board thirty days prior to the acquisition of all or a part interest in any other licensee or entity holding a license from this Board.

Books and Records

§12.11 Each licensee shall maintain such books and records as are customary in the industry and as are necessary for a determination by the Board or its staff as to whether the licensee has complied with the Act, rules and regulations.

§12.12 All records required by these regulations to be kept by licensees shall be kept on file by the licensees for at least twenty-four months. All such records shall be so organized and located as to facilitate examination by representatives of the Board.

§12.13 All records of transactions relating to dairy products sold to licensed nonprocessing retailers or to residents of the State of Louisiana shall be maintained in an office located within the State of Louisiana; provided, that the Director may authorize a licensee to keep such records in an office located outside the State of Louisiana if such licensee demonstrates that the keeping of such records inside the State of Louisiana would cause an unnecessary hardship on such licensee and that the auditing activities of the Board staff would not be made substantially more difficult or expensive as a result of the arrangement proposed.

LAC 2-17:13 Sales Practices

Disruptive Trade Practices

§13.1 "Unfair methods of competition, unfair or deceptive acts or practices and disruptive trade practices are hereby declared unlawful with respect to the sale of milk and milk products." (R.S.

40:931.8A) The following trade practices are hereby declared to be disruptive trade practices:

Pricing of Dairy Products

§13.1.1 The selling or offering to sell by a retailer of any dairy products at a price which is so different from the price charged by such retailer for other competing dairy products of the same type, quality or grade that the result is to substantially lessen competition or tend to create a monopoly unless such price differential is equal to the difference in the prices paid by the retailer for the products in question.

Discrimination

§13.1.2 It shall be prohibited for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the State of Louisiana and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: Provided, that nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered. Provided, that nothing herein contained shall prevent price changes from time to time where in response to changed conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

§13.1.3 It shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

§13.1.4 It shall be unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale or offering for sale of any products or commodities manufactured, sold or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

§13.1.5 It shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchases of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

§13.1.6 It shall be unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or

receive a discrimination in price which is prohibited by this Section.

§13.1.7 Upon proof being made, at any hearing on a complaint that there has been discrimination in price or services or facilities furnished, the burden of rebutting the prima facie case thus made shall be upon the person charged with a violation of this Section. Provided, however, that nothing herein contained shall prevent a seller rebutting the prima facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

§13.1.8 It shall be unlawful for any person engaged in commerce, in the course of such commerce, to be a party to, or assist in, any transaction of sale, or contract to sell, which discriminates to his knowledge against competitors of the purchaser, in that, any discount, allowance, or advertising service charge is granted to the purchaser over and above any discount, rebate, allowance, or advertising service charge available at the time of such transaction to said competitors in respect of a sale of goods of like grade, quality, and quantity; to sell, or contract to sell, goods in any part of Louisiana at prices lower than those exacted by said person elsewhere in Louisiana for the purpose of destroying competition, or eliminating a competitor in such part of Louisiana or, to sell, or contract to sell, goods at unreasonably low prices for the purpose of destroying competition or eliminating a competitor.

§13.1.9 Nothing in this rule shall prevent a cooperative association from returning to its members, producers, or consumers the whole, or any part of the net earnings or surplus resulting from its trading operations, in proportion to their purchases or sales from, to, or through the association.

Sales at Less Than Cost

§13.1.10 Any advertising, offer to sell, or sale of any merchandise, either by retailer or wholesalers, at less than cost plus any state, county or municipal sales tax that is then payable under any existing law or ordinance, with the intent or effect of inducing the purchase of other merchandise or of unfairly diverting trade from a competitor or impairing fair competition and thus injuring public welfare, is unfair competition and contrary to and violative of public policy as expressed in Louisiana law, where the result of such advertising, offer or sale is to tend to deceive any purchaser or prospective purchaser, or to substantially lessen competition, or to unreasonably restrain trade, or to tend to create monopoly in any line of commerce.

Discounts, Gifts, Loans, Etc.

§13.1.11 No processor, distributor or any agent thereof shall give or offer to give directly or indirectly and no processor, distributor, or retailer or any agent thereof shall receive or offer to receive directly or indirectly anything of apparent present or prospective value with the intent or the effect of influencing the recipient in his business relationship with the donor or offeror.

§13.1.12 Upon proof being made at any hearing on a complaint of the giving or offering to give directly or indirectly, or receiving or offering to receive directly or indirectly anything of apparent present or prospective value, the burden of rebutting the prima facie case thus made shall be upon the person charged with a violation of this regulation.

Equipment

§13.1.13 No equipment furnished to a retailer by a frozen dessert processor or distributor shall be used for the storage or display of frozen desserts other than those sold to such retailer by such frozen dessert processors or distributors. The storage or display of products other than frozen desserts received from such processors or distributors, in such storage or display cabinet by a nonprocessing retailer shall constitute prima facie evidence of the violation of this regulation.

Signs

§13.1.14 No processor or distributor shall furnish, give, lend, sell or rent and no retailer shall accept, receive, buy or rent any signs and display materials except those advertising only the supplier's own products. Such signs and display materials shall not contain the name or product of any retailer.

Miscellaneous

§13.1.15 The selling or buying of any fluid milk product or frozen dessert by a processor, distributor or retailer in commerce to or from any person who is unlicensed or whose license has been suspended or revoked by the Board.

§13.1.16 The advertising by a processor or a distributor in a publication owned or published exclusively by one or more retailers or published exclusively for one or more retailers.

§13.1.17 Submitting false information to the Board.

§13.1.18 Extending any credit to a retailer by any processor where the retailer is more than thirty days delinquent in the payment of any account with any processor after written notice by the Board.

§13.1.19 The using, shipping, lending, borrowing or in any way the possessing of milk cases by a processor or distributor of milk cases belonging to any other processor or distributor.

§13.1.20 The giving away, throwing away, donating or the disposing in any way by a retailer of milk cases belonging to and other processor or distributor.

Permissible Practices

§13.2 The following trade practices are hereby declared not to be disruptive trade practices.

Advertising Novelties

§13.2.1 No person shall be deemed to be in violation of the Act or of these regulations on account of giving to any other person advertising novelties unless the nature and value of the advertising novelty is such as to justify the belief that the giver intended to use such gift to induce a nonprocessing retailer to divert business from a competitor to the giver.

Entertainment

§13.2.2 Nothing contained in either the Act or these regulations is to be interpreted as prohibiting the normal social activities of any person or the entertainment by any processor or distributor (or any processor's or distributor's officers and employees) of any customer unless the expenditure involved in such entertainment is excessive or unreasonable.

Donations

§13.2.3 Processors and distributors may make gifts of cash or equipment to hospitals, schools, and charitable institutions if, prior to the making of such gift, the donor makes written application to the Board for permission to make such a gift and obtains the written approval of the Board. A gift of cash to an institution in the amount of ten dollars or less may be made once in each calendar year without the necessity for compliance with this Section.

Samples

§13.2.4 Processors and distributors may give samples of dairy products to consumers if the following requirements are observed:

A. In the case of fluid milk products, the quantity must be limited to three fluid ounces.

B. In the case of frozen desserts, the quantity must be limited to one fluid ounce.

C. The retailer on whose premises such sampling activity takes place must have been in operation at that location for at least sixty days prior to the date on which such activity takes place.

D. Prior to engaging in sampling activities on the premises of a retailer, the processor or distributor shall notify the Board of the planned sampling activity. If such notification is by mail, it shall be given at least ten days prior to the date of the

planned sampling activity; and if such notification is by telephone, it shall be given at least three days prior to such activity.

E. Notwithstanding the above provisions, processors may give homogenized milk, low fat milk, skim milk, or chocolate milk in half-pint containers or a frozen dessert sample weighing no more than three fluid ounces to persons participating in plant tours, if such products are consumed on the premises where given.

F. The giving of such samples by a processor or distributor shall not extend over a period of more than two consecutive days for each retailer and shall not occur more frequently than once per calendar quarter; provided that the giving of such samples during the month of December shall not be considered in determining whether there has been compliance with the provisions of this Subsection limiting frequency of demonstrations to one per calendar quarter.

Milk Dispensers

§13.2.5 A processor or a distributor may furnish a milk dispenser to a retailer provided the following requirements are observed:

A. The processor or distributor must have been engaged in selling dispenser milk to the retailer for at least sixty days prior to the date on which the dispenser is furnished.

B. The period during which the dispenser is furnished must not exceed thirty days.

C. The processor or distributor must report to the Board within ten days after the date on which the dispenser is furnished to the retailer the make and serial number of the dispenser, the name and address of the retailer and the date on which the dispenser was installed.

Distribution Systems: Drop, Dock Pickup and Full Service Methods

§13.2.6 There shall be only three authorized methods of delivery in Louisiana for dairy products and they are the drop delivery method, dock pickup delivery method, and the full service delivery method (for definition of delivery methods see Section 1.2). In addition to the regulations contained in this Section, the drop delivery method, the dock pickup delivery method and the full service delivery method are subject to all other rules and regulations of this Act.

Drop Delivery Method

§13.2.7 Delivery by the processor shall be limited to the back door or refrigerated storage cooler of each retailer licensee.

§13.2.8 The retailer licensee shall assume all responsibility for servicing the dairy case and rotating the stock and no in-store service shall be allowed by the processor or independent wholesale distributor. The retailer must do his own price stamping as well as all other in-store services.

§13.2.9 The retailer licensee shall assume all responsibility for product losses. No returns shall be allowed except in the case of off-flavored milk and manufacturing defects. Authority for such replacement must be obtained from the Dairy Stabilization Board by the processor or wholesale distributor within twenty-four hours of delivery.

Dock Pickup Delivery Method

§13.2.10 Retailer licensees shall not receive credit for any returns brought back to the plant for milk picked up at the platform except in the case of off-flavored milk and manufacturing defects. Authority for such replacement must be obtained from the Dairy Stabilization Board by the processor or wholesale distributor within twenty-four hours of delivery.

§13.2.11 The retailer licensee shall receive no in-store service from the processor or wholesale distributor for milk picked up at the "dock."

Miscellaneous

§13.2.12 In the case of frozen desserts nothing contained in this Section shall prevent a processor or distributor from providing to a retailer storage cabinets and display cabinets with restriction for the storage and display of only such processor's or distributor's products, and nothing herein shall be construed to prohibit the operation of a retail outlet by a processor, or to prohibit the use by such processor, in such retail outlet of any equipment or advertising or miscellaneous property owned by such processor when such retail outlet is under the direct ownership, control and management of such processor.

§13.2.13 No person shall be deemed to be in violation of these regulations when fluid milk products are sold upon final liquidation of any business; such items are sold by an officer acting under the direction of any court; or in the case of a processor or distributor who sells or disposes of frozen desserts to a retailer who owns and provides his own refrigerated equipment for the display or storage of the products of such processor, or distributor, a differential from the list prices of such frozen desserts to such retailer is allowed, provided that in no case shall such differential exceed five percent of the applicable list price for such frozen desserts. The price(s) of similar or comparable products are made in good faith to meet competition.

LAC 2-17:14 Board Action on Contracts and Transactions Centralization Billing Prohibited

§14.1 Processors and distributors are prohibited from entering into contracts with wholesale grocers relating to centralized billing, guaranteeing payment of accounts, advertising, and other services to be performed by the wholesale grocery for the processor or distributor unless the processor or distributor has made written application to the Board for approval of such contract and has obtained the written approval of the Board.

§14.2 Upon receipt of an application for approval of such a contract, the Board may hold a hearing for the purpose of receiving evidence concerning the purpose and effect of the proposed contract. The Board shall approve the proposed contract if it finds that the contract does not violate the Act or any regulation.

C. James Gelpi, Director-Attorney
Dairy Stabilization Board

RULE

Board of Elementary and Secondary Education

Rule 1.00.30D

Board appointed advisory councils shall elect officers annually, unless specified otherwise by law and the councils shall report election results to the Board.

Rule 3.01.51o

Amendment to page 22, Bulletin 741, *Handbook for School Administrators*, Vocational Agriculture Section, to read as follows: After completing Agriculture I, students will be permitted to participate in the Cooperative Agriculture Education (CAE) program (1) if they attend high schools in which vocational agriculture is offered only in the tenth, eleventh, and twelfth grades, or (2) if they attended junior high schools in which vocational agriculture is not offered and provided they are in the eleventh grade. This amendment was approved in lieu of both Agriculture I and II being prerequisites to the Cooperative Agriculture Education Program.

Rule 3.01.70u(9)

Certification Requirements for Second Language Specialists and Bilingual Specialists—"Second Language Specialist" (French, Spanish, et al.) or "Bilingual Specialist" may be added to the certificate of any certified elementary teacher who has successfully completed the pre-stage and the twenty-four hour in-service

program of study as approved by the State Board of Elementary and Secondary Education. "Second Language Specialist" may be added to the certificate of any certified secondary foreign language teacher who has successfully completed the program. The twenty-four hour in-service program will consist of:

A. Proficiency in the second language—Pre-stage and fifteen semester hours (six undergraduate, nine graduate) to include:

Oral-aural skills: The sound system, structures, and vocabulary; (phonology, morphology, and syntax); fluency in conversational topics.

Reading and writing skills: Those skills geared to the needs of teaching a second language at the elementary level (grades 1-8).

B. Professional preparation—six semester hours—graduate level.

1. Second Language Specialist.

a. Analysis of the linguistic and cultural content of the materials available for the instructional program at the elementary level. Practical training with these materials. Three semester hours.

b. Children's literature in the second language—study of the cultural heritage of Louisiana in stories, songs, rhymes, games, etc. Three semester hours.

2. Bilingual Specialist

a. Bilingual Methods I—practical training in the teaching of language arts and social studies in a bilingual-bicultural setting.

b. Bilingual Methods II—practical training in the teaching of science and math in a bilingual-bicultural setting.

C. Culture and civilization—three semester hours, graduate level. Extensive contact with the culture and civilization of the second language in both North America and the country of origin. The introduction of culture and civilization in second language classes at the elementary level.

Additional Requirements: 1. Each teacher must present a statement from the institution granting the twenty-four semester hours that he or she is competent in both the use and the teaching of the second language. 2. Inactive Second Language Specialist teachers, i.e., those teachers who are not teaching the second language part-time, full-time, or in a bilingual program, will be required, after five years to re-pass the Level III Proficiency Test in order to maintain their Second Language Specialist certification. 3. Secondary foreign language teachers certified as Second Language Specialists may teach the second language only as either language arts or as enrichment subjects in the elementary grades.

Bilingual Specialist Certification—A person seeking this certification must have met all the requirements for the Bilingual Specialist. Certified Second Language Specialists may also receive Bilingual Specialist certification after having successfully completed the additional six hours in Bilingual Methods I and II. Elementary teachers certified as Second Language Specialists may teach the content areas in the second language in the elementary grades until such time as certified Bilingual Specialist teachers are available.

Rule 4.00.73 (Addition to present policy)

Revision to page 29, Bulletin 1213, *Minimum Standards for School Buses in Louisiana*, to read as follows: Waive Standard 1-b, Special Equipment for Vehicles Transporting Handicapped Children, to allow the installation of lifts with single panel doors on special education buses. This revision was approved because the lift is more economical to purchase and install than the two panel door lift and is just as safe, and because installation by a dealer does not affect the structural design of the bus.

James V. Soileau, Executive Director
Board of Elementary and Secondary Education

RULES

Board of Elementary and Secondary Education

(Editor's Note: These rules became effective September 20, 1978.)

Rule 4.00.04

Part 100. Responsibilities of the Board of Elementary and Secondary Education

§101 General Authority. The Louisiana State Board of Elementary and Secondary Education (the State Board) exercises supervision and control over public elementary and secondary schools including Special School District Number 1, vocational-technical, and post-secondary vocational-technical schools and programs (except in colleges and universities), and special schools placed under its jurisdiction.

§102 Issuance of regulations.

A. The State Board has the authority to adopt, amend or repeal rules, regulations and policies necessary or proper for the conduct of the business of the Board.

B. The State Board has the responsibility to approve regulations developed by the Department pursuant to Section 1944 of the Act.

C. The State Board has the responsibility to comply with rules and regulations governing grants for educational purposes from the federal government or from any other person or agency, which are not in contravention of the Constitution and laws, and the authority to take all action necessary to achieve compliance.

§103-104 Reserved.

§105 Approval of annual state program plan. The State Board will review and approve the annual state program plan described in Subpart 330 of this Regulation before its submission to the U. S. Commissioner of Education.

§106-119 Reserved.

§120 Review of hearing decisions.

A. Any party to a hearing conducted pursuant to Subpart 476-477 of this Regulation may, within thirty calendar days after receipt of the hearing decision, request a formal review of the decision by the State Board.

B. A written request for review must be sent by the party seeking review by certified mail to the State Board. A copy of the request must also be sent to all other parties and the hearing officer.

C. The written request must state the grounds, if any, on which the State Board is requested to overturn the hearing decision.

D. The State Board may on its own authority initiate a review of any hearing decision. In such instance, it must provide full and effective notice to parent(s), the affected school board or special school district, and the hearing officer.

§121 Appointment of review panel.

A. Upon receiving a formal written request for a review, the State Board shall within ten operational days designate a review panel to evaluate the hearing decisions, the hearing record and other appropriate information.

B. The review panel will include at least three persons. One or more of the persons designated as the review panel will be a current member of the State Board and all panel members will be knowledgeable about the educational and legal issues involved.

§122 Conduct of review.

A. The review will be completed within twenty operational days from the date a review panel is designated by the State Board at which time the panel will recommend to the State

Board whether to affirm the hearing decision; overrule the hearing decision and enter its own decision; or order a new hearing.

B. The review panel will file with the State Board within five operational days after completion of the review, a written report and recommendation for formal State Board action.

C. The review must include a careful examination of the hearing record and the review panel, at its discretion, may permit the presentation of additional evidence by either or both parties consistent with the rules governing the presentation of evidence during the hearing issued by the State Board.

D. All parties must be afforded a reasonable opportunity to present written argument to the review panel which, at its discretion, may also provide an opportunity for all parties to present oral argument.

E. The review panel may direct that a child be provided a medical assessment or be entered in an initial screening process as part of the review. Formal parental approval must be given for the medical assessment.

§123 Review decision.

A. On or before the date of the next regular meeting following receipt of the written report and recommendation, the State Board will issue a formal written review decision which either affirms the decision, overrules the hearing decision and substitutes a decision approved by the State Board or orders the initiation of a new hearing.

B. The review decision by the State Board will be a final decision unless appealed by either party to a court having jurisdiction, within the time prescribed by state or federal law.

§124-129 Reserved.

§130 Function of State Advisory Panel. The State Advisory Panel appointed by the Governor of the State of Louisiana pursuant to the requirements of 45 CFR 121a. 650-651 shall:

A. Advise the State Board and the State Superintendent of unmet needs within the state in the education of exceptional children;

B. Comment publicly on the state annual program plan and rules and regulations proposed for issuance by the State Board regarding the education of exceptional children and the procedure for distributing EHA funds;

C. Submit a report of its activities to the State Board and the State Superintendent by July 1 of each year together with suggestions for improvement in the provision of services to exceptional children; and

D. Assist the State Board and the State Superintendent in developing and reporting information and evaluation.

§131-199 Reserved.

Part 200. Responsibilities of the Superintendent of Public Elementary and Secondary Education and the Department of Education

§201 General Responsibilities and Authorities. The State Superintendent of Public Elementary and Secondary Education (the State Superintendent) and the State Department of Education (the Department) shall execute and implement those educational policies and programs which are under the supervision and control of the State Board. Responsibilities of the State Superintendent and the Department include:

A. Approving each school program in accordance with minimum standards approved by the State Board;

B. Implementing the policies and programs of the State Board and the laws affecting schools under its jurisdiction by, among other things, serving subject to State Board oversight, as the state education agency with respect to federal funds for those programs under the jurisdiction of the Department and under the jurisdiction of, and approved by, the State Board;

C. Receiving, administering, supervising and directing distribution of federal funds, except those received directly by local school boards;

D. Preparing or obtaining all reports required by the State Board;

E. Reporting to the State Board any apparent irregularity on the part of a school board, of any parish or city superintendent of schools, or of any affected agency.

F. Providing, upon request, advice, explanations, instructions, or information to members of school boards, parish or city superintendents of schools and citizens concerning: (1) the public school law; (2) the duties of public school officers; (3) the rights and duties of parents, guardians, pupils and all others; (4) the management of public schools; and (5) any other matter relevant to improved public education;

G. Developing and implementing a program for educational accountability; and

H. Generally administering the Act at the state level, with the approval of the State Board.

§202-204 Reserved.

§205 Preparation of annual budget. The Department shall prepare and submit to the State Board for review and approval on or before a date fixed by the State Board budget for the next fiscal year which at a minimum proposes the appropriation by the Louisiana Legislature of whatever state funds are needed over-and-above its receipt of federal funds (with due regard to federal maintenance of effort, nonsupplanting, comparability and excess cost requirements) by the Department, Special School District Number 1 and school boards to comply fully with all of the requirements established by this Regulation.

§206-209 Reserved.

§210 Approval of nonpublic schools and facilities.

A. The State Superintendent must approve all nonpublic school programs within the state before the placement of any exceptional child may be made therein by a school board, Special School District Number 1, or by any other public agency of the State of Louisiana.

B. An exceptional child who is of an age at which school attendance is compulsory under the law of the state and who is not enrolled in a public school operated under the jurisdiction of the Department or an approved nonpublic school program must be regarded as truant.

C. Nonpublic schools and residential facilities must seek approval in the manner set forth in bulletins and circulars issued by the Department.

D. The standards upon which approval of decisions will be based must be established through the issuance of appropriate bulletins and circulars by the Department.

§211-219 Reserved.

§220 Certification of personnel.

A. The Department must develop and issue, subject to approval by the State Board, requirements for all public school staff and all approved nonpublic school program staff who provide instructional and instructional support services to exceptional children within the state.

B. No public school program or approved nonpublic school program may employ, for the purpose of, or with the effect of, providing services to exceptional children, an uncertified person in the capacity of director of Special School District Number 1, agency coordinator, supervisor of special education, special school principal, child search coordinator, educational consultant, evaluation coordinator, teacher, assessment teacher, adaptive physical education teacher, teacher aide, paraprofessional, school psychologist, school counselor, school social worker, speech therapist, school nurse, physical therapist, occupational therapist, or bus attendant.

§221-229 Reserved.

§230 Review of enforcement recommendations.

A. The State Superintendent must review all enforcement recommendations made by the Division of Special Educational Services (the Division) pursuant to Subpart 310 of this Part.

B. The State Superintendent must within ten operational days after receiving an enforcement recommendation, in writing, either endorse the recommendation and forward it to the State Board; or decline to accept the recommendation and forward the legal and educational reasons for doing so to the State Board.

§231-239 Reserved.

§240 Appointment of hearing officers.

A. The Department shall within twenty operational days from the effective date of this Regulation prepare and maintain thereafter the lists of hearing officers required by Subpart 478 of this Part. Before placing the name of any person on any such list, the Department must ensure that the person has participated in and successfully completed an in-service training program approved by the Department. Additional in-service training shall be provided by the Department whenever warranted by changes in applicable legal standards or educational practices within the past three years.

B. A separate list of hearing officers must be maintained for each state planning region.

C. Hearing officers must be impartial persons knowledgeable about the legal and educational issues involved in assessing compliance with this Regulation.

D. The names of at least three qualified hearing officers must be placed and maintained on each regional list and no name shall appear concurrently on more than one regional list.

E. Appointments will be for a period of three years and may be renewed. The Department must annually review the activities of persons on the list and must remove such persons from the list if they leave the state, decline to actively participate in the hearing process, cease to be impartial or do not carry out their responsibilities in a satisfactory fashion. At no time may any list contain the names of fewer than three persons.

F. In order to insure impartiality, no person may be appointed to serve as hearing officer who has a personal or professional interest which would conflict with his or her objectivity or who has been employed by a school board, Special School District Number 1, or the Division within the past three years.

§241-249 Reserved.

§250 Coordination with accountability program. The Department must ensure that school boards participating in the public school accountability and assessment program provide sufficient information, including information regarding the provision of services by public schools to nonpublic schools, to permit the Department to identify the differential effectiveness of the various combinations of instructional objectives, curricula, instructional settings and teaching approaches employed pursuant to Individualized Education Programs (IEPs) in an effort to provide exceptional children with an appropriate, free, public education. The Department shall also review existing data related to the accountability of services provided by nonpublic schools.

§251-269 Reserved.

§270 Interagency agreements. The Department is authorized to enter into any agreement proposed by or developed with another public or private agency, or agencies, which is (a) essential to the achievement of full compliance with this Regulation; (b) designed to achieve or accelerate the achievement of full educational opportunity for all exceptional children; or (c) necessary to increase the effectiveness (both in terms of service, quality and cost) of the state's overall efforts to provide full services to exceptional children.

§271-274 Reserved.

§275 Fiscal agent. The Department shall act as the fiscal agent in disbursing funds under P. L. 89-313, including transfers of such funds to school boards described in Subpart 491 of this Regulation.

§276-279 Reserved.

§280 Full educational opportunity. The Department must ensure that public education programs of the state meet the goal of providing full educational opportunity to all exceptional children, aged birth through twenty-one years, no later than September 1, 1985.

§281-289 Reserved.

§290 Nondiscrimination in employment.

A. The Department must not discriminate on the basis of handicap in the treatment of handicapped employees or potential employees who are qualified.

B. A handicapped employee or potential employee is "qualified" to perform a particular job if the employee or potential employee can either perform the essential functions of the job in question or can do so with reasonable accommodation to the known physical or mental limitations of the person.

1. Accommodations to the known physical or mental limitation of an otherwise qualified handicapped employee are "reasonable" unless the accommodation would create an undue hardship on the operation of the program. Factors to be considered in determining whether a particular accommodation would create an undue hardship are the overall size of the program with respect to the number of employees, number and type of facilities, and size of budget; composition and structure of work force and type of operation; and nature and cost of the needed accommodation.

2. Reasonable accommodations include making facilities used by employees readily accessible to and usable by handicapped employees, job restructuring, part-time or modified work schedules, the acquisition or modification of equipment or devices, and the provision of readers and interpreters.

C. No employment opportunity may be denied a qualified handicapped employee or potential employee if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the person.

D. No qualified handicapped employee or potential employee may be, on the basis of handicap:

1. Limited, segregated or classified in a way which adversely affects his/her opportunities or status.

2. Denied employment, upgrade, promotion, tenure, transfer, or rehire.

3. Demoted, downgraded, transferred, laid off, or terminated.

4. Subjected to different and lower rates of pay or compensation, or less generous leave policies (including leaves of absence and sick leave) or fringe benefits.

5. Treated differently with respect to recruitment, advertising, the processing of employment applications, job assignments, job classifications, position descriptions, organizational structures, lines of progression, seniority lists or any other term, condition or privilege of employment.

6. Excluded from or provided less support (including leave) for training, including professional meetings, conferences, and other related activities.

E. In offering employment or promotions to handicapped individuals, the amount of compensation offered because of any disability income, pension or other benefit received from another source, must not be reduced.

F. In making any employment decision concerning a handicapped employee or potential employee:

1. Tests or other selection criteria may not be used that screen out or tend to screen out handicapped employees or potential employees unless:

a. The test score or other selection criterion is demonstrated to be job-related for the position in question.

b. Alternative job-related tests or criteria that do not screen out (or tend less to screen out) handicapped employees or potential employees have not been identified by the U. S. Department of Health, Education and Welfare.

c. The test or other selection criterion is consistent with business necessity and the safe performance of the job.

2. Tests and other assessment instruments which purport to measure the job skills, aptitude or other characteristics of a person must be selected and administered in a manner which best ensures that the impaired sensory, manual, or speaking skill of a person (except where those skills are the factor to be measured) does not render the assessment inaccurate.

G. A preemployment medical examination of a potential employee must not be conducted unless it is a condition attached to a bona fide offer of employment; and all entering employees are subject to the examination regardless of handicap.

H. Preemployment inquiries of whether a potential employee (applicant) is a handicapped person, or concerning the nature of the severity of any handicap, must not be made unless:

1. The Department is taking remedial action to overcome the effects of past discrimination; or voluntary action to overcome the effect of prior limited participation; or mandatory affirmative action; and

2. The Department states clearly, orally or in writing, that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; the request is made on a voluntary basis and that refusal to provide the information will not subject the potential employee to adverse treatment; and any information supplied will be treated confidentially and will not be used in a discriminatory manner.

I. All information obtained as to the medical condition or history of handicapped employees or potential employees must be collected and maintained on separate forms and must be afforded the confidentiality regularly afforded to medical records, except as necessary to inform supervisors, managers, and first aid and safety personnel of restrictions on work, duties, mobility, etc.

J. No contract or other relationship entered into by the Department may have the effect of subjecting any handicapped employee or potential employee to discrimination, including relationships with employment and referral agencies, labor unions and organizations providing fringe benefits and training programs.

K. Multidisciplinary teams must employ and utilize persons who possess the cultural awareness necessary to competently administer evaluation instruments to children of various cultural backgrounds and properly interpret all information about the child collected during the evaluation process.

§291 Job restructuring guidelines. The Department shall, from time to time, issue bulletins and circulars setting forth appropriate job restructuring approaches which may be used to expand employment opportunity for handicapped persons in instructional and noninstructional job categories.

§292 Grievance procedures. The Department must extend grievance procedures now in effect pursuant to the regulation issued by the U. S. Department of Health, Education and Welfare implementing Title IX of the Education Amendments of 1972 (45 CFR 86.8) to include the grievance of handicapped employees.

§293 Affirmative Action.

A. Each multidisciplinary team under contract to the Department shall develop and submit to the Department no later than October 1, 1978 a plan to take affirmative action to employ and advance in employment minority, female, and qualified handicapped employees and potential employees. The plan must be approved by the Department and implemented no later than October 31, 1978.

B. Affirmative action efforts must occur at all levels of employment and must apply to all employment practices including, but not limited to: hiring, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training.

C. All personnel processes must be reviewed to determine whether:

1. Their present procedures assure careful, thorough, and systematic consideration of the job qualifications of minority, female, and known handicapped applicants and employees for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available (to the extent necessary, a description of how personnel will be modified must be included in the affirmative action program); and

2. Their personnel programs provide the required affirmative action for employment and advancement of minority, female, and qualified handicapped individuals, and based upon the findings of such reviews, whether appropriate outreach and positive recruitment activities need to be undertaken consistent with size and resources of the employer (and the extent to which existing employment practices are adequate).

§294 Reserved.

§295 Certification of staff.

A. Staff of school systems who provide instructional services and instructional support services to any exceptional children must currently meet all applicable Louisiana Standards for State Certification of School Personnel. The standards must be revised to reflect the requirements of this Regulation and published by the Department no later than January 1, 1979, to take effect no later than January 1, 1980.

B. Interim certification requirements must be in effect no later than November 1, 1978, for each of the following categories for which current certification requirements do not exist: director of Special School District Number 1, agency coordinator, supervisor of special education, special school principal, child search coordinator, educational consultant, evaluation coordinator, teachers, assessment teacher, adaptive physical education teacher, teacher aide, paraprofessional, school psychologist, school counselor, school social worker, speech therapist, school nurse, physical therapist, occupational therapist, bus attendant.

C. Existing certification requirements for any of the categories listed in Subsection B of this Subpart must be met by school boards as of the effective date of this Regulation.

D. The education consultant employed for the purpose of providing education assessment programs shall be used only for the purpose of locating, identifying and reevaluating children in need of special education and related services and assisting the classroom teacher if a child is continued in regular classroom placement after completion of an educational assessment program.

E. Teacher aides meeting the qualifications described above shall be assigned only to special teachers or regular education teachers providing classroom services to exceptional children according to the IEPs of the children.

F. All paraprofessional staff must have the skills and capability necessary to work with children in order to provide an environment conducive to the physical, emotional, and social growth of children and must be at least eighteen years and must possess a certificate of good health signed by a physician. Paraprofessional staff must have successfully completed a preservice and/or in-service training program according to a curriculum designed and approved by the Department.

§296 Reserved.

§297 Special census. The Department shall conduct during the 1978-79 school year a census of all children in Louisiana who, on a date during the school year established by the Department, are between the ages of birth and twenty-two years and:

A. Have been determined to be exceptional children as defined in Subpart 931 of this Regulation; or

B. Have been identified as children suspected of being exceptional children pursuant to Subpart 410 of this Regulation and:

1. Are currently participating in an initial screening process as defined in Subpart 423 of this Regulation; or
2. Are currently enrolled in an educational assessment program as defined in Subpart 424 of this Regulation; or
3. Are currently proposed for or in the process of receiving an individual evaluation pursuant to Subpart 426 of this Regulation.

§298 Master plan. The Department shall prepare and submit to the State Board by November 1, 1979, a five-year Louisiana master plan for the provision of special education and related services to all exceptional children within the state. The Department shall develop and approve forms for the collection of all necessary information from affected agencies including the preparation of local master plans for each school board. The Department in preparing and submitting the statewide master plan shall follow the procedures set forth in Subpart 330 A 5-13 and B of this Regulation.

§299 Reserved.

Part 300. Activities of the Division of Special Educational Services

§301 General responsibilities and authorities.

A. The Division of Special Educational Services is established within the Department to provide general supervision and monitoring of all education programs for exceptional children within the state, including all approved nonpublic school programs and all education programs administered by other state or local agencies.

B. In carrying out its responsibilities, the Division must:

1. Regulate, consult with, and assist school boards, Special School District Number 1, approved nonpublic school programs and other responsible public agencies in the awareness, location, identification and evaluation, placement and reevaluation of all exceptional children and children suspected of being exceptional children.

2. Regulate all aspects of and assist with the development of all special education programs in the state, supported in whole or in part by the state.

3. Require all schools and agencies who receive federal or state monies from or through the State of Louisiana for exceptional children to provide any and all data regarding the use of these funds required by the Department.

Investigations and Monitoring

4. Receive and investigate complaints, initiate its own investigations and conduct hearings with power of subpoena on behalf of an individual child or group of children, regarding failure to comply with any provisions of this Regulation and all other applicable state or federal laws relating to exceptional children.

5. Investigate and conduct hearings upon evidence regarding failure to comply with any provision of this Regulation and all other applicable state or federal laws, rules and/or regulations and take such action as may be necessary to correct the situation.

6. Adopt effective procedures for acting on allegations of noncompliance by any public agency which are found to have substance, including technical assistance; negotiation; conciliation; recommendation that funds for special education and related services be withheld; and/or other remedial action.

7. Take all action necessary to insure that all of the requirements set forth in this Regulation are met fully by all affected agencies and organizations.

8. Regularly monitor and evaluate the compliance of school boards, Special School District Number 1 and other affected public agencies within the state with the requirements of this Regulation consistent with written procedures for conducting this monitoring (including specific timelines) which include collection of data and reports; conduct of on-site visits; review of federal fund utilization; comparison (by sampling) of IEP programs; and case-by-case review of the continued need for residential placement.

9. Regularly monitor the compliance of approved nonpublic school programs through procedures such as written reports, on-site visits, telephone interviews, and parent questionnaires; disseminate copies of applicable standards to each school and facility; and provide the schools and facilities an opportunity to participate in development and revision of standards applicable to them.

Placement

10. Require that all local education agencies apply to the Department, either on a case-by-case basis or by requesting approval of criteria and procedures of general applicability, for the authority to place exceptional children in programs other than local public school programs operated within the parish or in an approved cooperative arrangement.

11. Insure that when exceptional children are placed in special education or related services provided by nonpublic agencies, such agencies shall meet the minimum requirements established by the State Board.

12. Require placement of exceptional children needing special education or related services, to the extent appropriate, in the school system in which they reside, or in an educational program operated by Special School District Number 1 or in an approved nonpublic school which is nearest their place of residence.

13. Insure that out-of-state schools or programs in which Louisiana's exceptional children receive services have the capability and do provide an education program that would meet minimal standards for similar programs if they were available in Louisiana.

Procedural Safeguards

14. Closely monitor the implementation of the procedural safeguard requirements of Subparts 471-479 of this Regulation.

15. Recommend to the State Superintendent a list of persons qualified to serve as hearing officers for each region of the state.

Applications and Compliance

16. Prepare and submit, with State Board approval, the annual state program plan for participation in the program of educational grants operated under the EHA and P. L. 89-313 and all other documents and reports required by those programs.

17. Recommend to the State Superintendent and to the State Board the approval or disapproval of every annual application made by a school board or Special School District Number 1 on the basis of a determination made by the Division of the current compliance by the applicant with this Regulation and other applicable state and federal requirements governing the operation of special education programs.

18. With the approval of the Department, after giving reasonable notice and an opportunity for a hearing, to decide that any agency receiving funds has failed to comply with any requirement in the administration of an approved application and thereupon to recommend to the State Superintendent and to the State Board to make no further payments to the agency from state or federal sources until satisfied that there is no longer any failure to comply with the requirement, or consider its decision in its review of any application made by the agency, or both.

19. Issue from time to time whatever bulletins, circulars, guidelines or other written guidance are necessary to carry out the requirements of this Regulation.

General

20. Provide notice of and conduct the public hearings on the annual program plan called for by this Regulation.

21. Insure, to the extent consistent with their number and location in the state, that adequate provision is made by school boards for the participation of exceptional children voluntarily enrolled in approved nonpublic school programs.

22. Conduct the self-evaluation required by Section 504, modify any practices that are unlawful under Section 504, take appropriate action including recommending to the State Superintendent and the State Board any necessary modification to eliminate the effects of any discrimination that resulted from past adherence to these policies and practices.

23. Provide parents with adequate notice of any applicable confidentiality requirement.

24. Establish procedures to be used in counting exceptional children receiving special education and related services including dates by which reports must be made, procedures for the certification of an accurate and unduplicated count and for data aggregation and process documentation.

25. With the approval of the State Board, establish procedures to assure that testing and evaluation materials utilized for the evaluation and placement are free of racial, cultural and sex bias.

26. Take any and all actions, consistent with the other provisions of law, necessary and proper to fully implement and comply with all requirements of the Act, the EHA, Section 504 and any other applicable federal statutes and regulations.

§302-309 Reserved.

§310 Monitoring and complaint investigation.

A. The Division must conduct, during each year, a comprehensive administrative review of the compliance with this Regulation of no fewer than one-third of the school boards, one-third of the approved nonpublic school programs and other affected agencies and of Special School District Number 1. Each school board and approved nonpublic school program shall be comprehensively reviewed at least once during any three-year period.

B. In carrying out its responsibilities under this part to monitor the compliance of school boards, Special School District Number 1, approved nonpublic school programs, and other affected agencies, and to investigate complaints filed with it, the Division must, to the fullest extent practicable, seek the cooperation of each agency or organization in obtaining compliance with this Part and shall provide assistance and guidance to help each agency or organization comply voluntarily.

C. The failure of a school board, Special School District Number 1, an approved nonpublic school program, or any other affected agency to cooperate constitutes, separately, non-compliance with this Regulation.

D. School boards, approved nonpublic school programs, Special School District Number 1 and other affected agencies shall keep such records and submit to the responsible Division official (or designee) timely, complete and accurate compliance reports at such times, and in such form and containing such information as is determined to be necessary to enable the Division to ascertain compliance with the requirements of this Regulation, with due consideration given to the difficulties of collecting information from individual files and records and the need for advance notice.

E. School boards, approved nonpublic school programs, Special School District number 1 and other affected agencies must permit access by staff of the Division during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance.

F. Where the Division investigates any alleged failure to comply with this Regulation or other applicable state or federal law, the Division upon a finding of noncompliance, shall recommend to the State Superintendent that a hearing pursuant to the requirements of Subparts 476-478 of this Regulation be initiated; immediate compliance be required and that the Superintendent recommend to the State Board that funds be withheld pending full compliance; other appropriate enforcement action be taken.

§311-316 Reserved.

§317 Intimidation and Coercion. No school board, approved nonpublic school program, Special School District Number 1 or other agency to which this Regulation is applicable shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege protected by this Regulation, the Act or any federal statute or regulations relating to the education or civil rights of exceptional children, or because the individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing conducted pursuant to this Regulation.

§318 Confidentiality of complainants. The identity of complainants must be kept confidential except to the extent necessary to carry out the purposes of this part including the conduct of any investigation, hearing, or judicial proceeding.

§319 Reserved.

§320 Approval of out-of-district placement.

A. In determining whether to give approval to a request made by a school board pursuant to Subpart 443I of this Part for placement of an exceptional child in Special School District Number 1 or in an approved nonpublic school program located outside the geographical boundaries of the school system, the Division must consider:

1. The short-term and long-term educational and care needs of the child.
2. The alternative educational placements available within the school system or through a cooperative agreement.
3. The potential for creating a new alternative educational placement within the school system or by cooperative agreement which would be less restrictive than the proposed placement.
4. The availability of community-based residential programs in the event that parents are opposed to continued "family" residence or such residence is determined to be inimical to the overall needs of the child.
5. The proximity of an approved nonpublic day school program located outside of the geographic boundaries of the

school system to the residence of the child (e.g., greater metropolitan area).

B. The Division must, in determining whether to give approval to a request made by the Director of Special School District Number 1 to shift an exceptional child to a more restrictive educational environment within the special district, carefully consider the short-term and long-term educational and care needs of the child and the actual or potential availability of appropriate community-based care.

§321-324 Reserved.

§325 Approval of cooperative programs.

A. The Division must review and approve any cooperative program proposed by two or more school boards pursuant to Subpart 444C of this Regulation.

B. The Division must make a decision to approve or disapprove a proposed cooperative program within ten operational days of receipt of a written request for approval.

§326-329 Reserved.

§330 Annual state program plan.

A. In the preparation and submission of the annual state program plan required by the EHA, the Division must:

1. Publish notice of initial public meetings scheduled to discuss the annual state program plan of the previous year and the development of the new program plan.

2. Distribute to each school board, approved nonpublic school program, public college and university, affected state agency, parent organization and child and youth organization operating in the state and concerned with general education which has previously registered with the Division, notice of the initial public meetings.

3. Hold a series of initial public meetings, at least one hundred operational days before submission, to discuss the annual state program plan of the previous year and the development of the new plan.

4. Prepare and file in a publicly available location a verbatim record of the initial public meetings.

5. Publish between forty-five and sixty calendar days before the submission of a final proposed plan to the State Board in newspapers of general circulation throughout the state, a summary of the proposed program plan indicating the purpose and scope of the program, its public availability, the timetable for final approval, the procedures for submitting written comments, and any policy changes from previous plans and a list of the times and places of the public meetings to be held.

6. Distribute, no later than thirty calendar days before submission, a copy of the proposed program plan and a list of the times and places of the public meetings to be held, to any parent organizations and child and youth advocacy organizations operating in the state and concerned with special education which has previously registered with the Division.

7. Publish on each of the three days preceding a public meeting a description of the time, place and purpose of the meeting in newspaper(s) of general circulation in the area of the state in which the meeting will be held.

8. Hold a series of open public meetings in which parents and other interested persons throughout the state are afforded a reasonable opportunity to comment on the proposed program plan.

9. Prepare and file in a publicly available location a written or electronic verbatim record of the public meeting and any written comments received.

10. Review and consider all public comments.

11. Make necessary modifications to the program plan.

12. Insure through discussion, negotiation, and formal agreements with other divisions of the Department and other state and local agencies that all necessary and proper coordi-

nation among federal funding sources has been accomplished.

13. Attach a summary of the comments made during the public meeting or received by the board to the proposed final program plan submitted to the State Board.

14. Publicize the approval by the State Board of a final program plan and the location where copies of the plan can be obtained by the public.

15. Publicize the approval by the U. S. Office of Education of the annual state program plan and the location where copies of the program plan can be obtained by the public.

B. The Division must make all reasonable efforts to inform potentially interested parent and child advocacy organizations throughout the state of the requirements of this Subpart and of Subpart 496 of this Regulation.

C. A letter signed by groups participating in the development of the annual state program plan confirming their participation in the initial activities of program development described in Subsections A 1-4 of this Subpart must accompany submission of the plan.

§331-334 Reserved.

§335 Annual report.

A. The Division shall require the preparation by school boards, Special School District Number 1, approved nonpublic school programs and other affected agencies, of such annual reports as are necessary to permit the Department to comply fully with requirements of this Regulation, the EHA, Section 504 and Title I of the Elementary and Secondary Education Act of 1965.

B. The Division may prescribe the format or formats to be used in preparing the reports.

C. Agencies required to submit annual reports must do so promptly, and in no event later than any date specified for their submission.

D. The failure to submit an annual report on or before the date required, without the express written permission of the Division, shall be considered noncompliance with both state and federal requirements and shall be treated accordingly.

§336-339 Reserved.

§340 Annual application.

A. The Division must review each annual application submitted by a school board or Special School District Number 1 as promptly as possible.

B. Written notice of whether the application is or is not in substantially approvable form (and, if not, the reasons therefor) must be provided to each school board and to Special School District Number 1 no later than July 1 of each year.

C. Formal written approval (or disapproval) must be provided within ten operational days following receipt by the Department of approval or disapproval by the U. S. Office of Education of the annual state program plan. General public notice of approval (or disapproval) of the annual state program plan shall be provided by the Department.

§341-342 Reserved.

§343 Approval of consolidated applications. In deciding whether to approve or disapprove a proposed consolidated application, the Division must determine whether each participating school board is unable to establish and maintain a program of sufficient size and scope to effectively meet the educational needs of exceptional children, after careful consideration of the following factors: the total student population; the number of exceptional children enrolled by category of exceptionality; the per capita resources available from local sources; the assessment of program effectiveness prepared for the last two school years; the availability of assistance and support services from other city or parish agencies; and the views of parents and other interested persons in the community.

§344-349 Reserved.

§350 Regular education membership.

A. In administering the State Equalization Fund Minimum Foundation for Public Education, the Department shall allow the inclusion of an exceptional child in the population used to determine the number of regular classroom teachers pursuant to pupil/teacher ratios established by the Department if the exceptional child is receiving not less than one hour of Certified Individualized Education Program time units per day of instruction in the regular classroom.

B. Inclusion of an exceptional child in the regular classroom membership as described in A. above shall not limit the ability of a school board or Special School District Number 1 to also include the same child in the population used to calculate the allowable costs of special education personnel providing special education services to the child.

§351 Allowable costs of special education personnel.

A. In administering the State Equalization Minimum Foundation Program for Public Education, the Department shall only allow the inclusion in the overall cost program of a school board requesting funds under the program of:

1. The salary of a certified special education teacher, speech therapist or teacher aide who is engaged exclusively in the teaching of exceptional children in an eligible membership (as defined by Subpart 352 of this Part) consistent with the bona fide multiple enrollment requirements of Subpart 353 of this Part; or

2. The salary of a certified assessment teacher who is engaged exclusively in the identification or reevaluation of exceptional children in an educational assessment program operated pursuant to Subpart 424 of this Regulation.

B. In administering the State Equalization Fund Minimum Foundation Program for Public Education, the Department shall include in the overall cost program developed for Special School District Number 1 the salary of a certified special education teacher, speech therapist or teacher aide who is engaged exclusively in the teaching of exceptional children in an eligible membership (as defined by Subpart 352 A and D of this Part) consistent with the bona fide multiple enrollment requirements of Subpart 353 of this Part.

C. The number of salaries which may be claimed under Subsections A and B of this Subpart shall be determined on the basis of the pupil/teacher, pupil/teacher aide, pupil/therapist ratios set forth in Appendix I of this Regulation. In calculating the pupil enrollment for pupil/speech therapist ratios (Appendix I, Item II) the weighted caseload approach set forth in Appendix II shall be utilized. When there are fewer than the minimum number of pupils per teacher specified by the ratios set forth in Appendix I of this Regulation, then the state allotment for the approved teacher, therapist or aide shall be reduced one-tenth for each pupil less than the specified minimum. The amount due after the reduced state allotment shall be paid to the teacher, therapist, or aide from the local school board funds. This reduction shall not be the cause or excuse for not providing an appropriate free public education.

D. The total number of children used by school boards for purposes of calculating the number of salaries to be claimed in Subsection C of this Subpart shall not exceed seventeen percent of the total school age (i.e., 3-22) population of the school system as determined by the Department.

E. School boards and Special School District Number 1 shall not, after March 15 of each school year, include, in their request for reimbursement for the balance of that school year, the salaries of certified special education teachers, therapists, assessment teachers, and teacher's aides not claimed for allotment on the Minimum Foundation Report before that date.

F. All salaries allowed under this Subpart must be in accordance with the Louisiana Teacher's Minimum Salary Schedule.

§352 Eligible membership. Subject to the limitation of Subpart 353 of this Part, an exceptional child enrolled in any of the following programs may be counted within each program as part of the pupil population used under §351 C of this Part to calculate the allowable number of certified special education teachers, therapists, and teacher's aides providing services under the program:

A. A self-contained special education class as defined in Subpart 980 of this Regulation.

B. A resource room program as defined in Subpart 978 of this Regulation in which the child is enrolled for not less than one-half nor more than three hours of Certified Individualized Education Program time units per day.

C. An itinerant special education program as defined in Subpart 949 of this Regulation in which the child is enrolled for not less than one-half nor more than two hours of Certified Individualized Education Program time units per day.

D. A speech therapy program in which the child is enrolled for not less than one-half nor more than two hours of Certified Individualized Education Program time units per day or not less than one hour nor more than ten hours per week.

E. An approved program of hospital or homebound instruction.

§353 Bona fide multiple enrollments.

A. For the purposes of Subparts 351C and 352 of this Part exceptional children may not be included concurrently in the pupil population of both:

1. A self-contained special education class and a resource room.

2. A self-contained special education class and an itinerant special education program.

3. A resource room program and an itinerant special education program.

B. An exceptional child may not be enrolled in a resource room for more than two hours per day of Certified Individualized Education Program time units unless the balance of the enrollment for the school day is in a speech therapy program and/or a regular classroom program.

C. An exceptional child must be enrolled in a school program which consists separately or in combination of a regular classroom enrollment; an eligible special education membership (as defined in Subpart 352 of this Part); a combination of eligible special education memberships not prohibited by A above.

§354 Utilization of special education personnel. The certified special education teacher, speech therapist, and teacher's aide whose salaries are included in the allowable costs under Subpart 351 of this Part shall be used to provide services only to those exceptional children needing special education and related services for whose benefit the state allotment was made. The certified assessment teachers whose salaries are included in the allowable costs under that Subpart shall be used only for the purpose of identifying or reevaluating children in need of special education except as otherwise provided in these regulations.

§355 Confidentiality.

A. The Division must comply with all of the requirements of Subpart 473 of this Part pertaining to confidentiality of personally identifiable education records.

B. The Division must provide parents full and effective notice of the requirements of Subpart 473 of this Part including:

1. A description of the extent to which the notice is given in the native languages of the various population groups in the state.

2. A description of the children on whom personally identifiable information is maintained, the types of information

sought, the methods the Department intends to use in gathering the information (including the sources from whom it is gathered) and the uses to be made of the information.

3. A summary of the policies and procedures which participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information.

4. A description of all of the rights of parents and children regarding this information.

§356 Notification of child identification effort. Notice of the child identification effort regularly undertaken by the Department and school boards must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the state.

§357-359 Reserved.

§360 Review of challenge of hearing officer.

A. The Division must promptly review any written challenge by a parent to the impartiality of a proposed hearing officer made pursuant to Subpart 479 of this Regulation.

B. The review must be completed and a written decision prepared within five operational days after receipt of a written challenge.

C. The Division must provide full and effective notice of this decision to the parent and parish supervisor within three operational days after completion of the review.

D. If the Division determines that doubt exists as to whether the proposed hearing officer is truly impartial, a new proposed hearing officer must be immediately selected by the school board.

§361-369 Reserved.

§370 Comprehensive personnel development and manpower training. In the preparation, submission, and implementation of the comprehensive system of personnel development mandated by the EHA, the related personnel development plan and the comprehensive system of manpower training required by Section 1953 of the Act, the Division will:

A. Conduct an annual needs assessment to determine if a sufficient number of qualified special education instructional, related service, and support personnel are available in the state to provide the special education and related services required by this Regulation.

B. Identify, on the basis of the annual needs assessment, target populations for personnel development and manpower training, and describe procedures to insure that activities to carry out the personnel development and manpower training plan are scheduled.

C. Seek the involvement of public and private institutions of higher education and other interested agencies and organizations in the development of any policies concerning certification requirements affecting special education; in the review of annual personnel development and comprehensive manpower training plans; in the development of in-service training programs; and in all other appropriate activities.

D. Establish appropriate monitoring and program evaluation procedures.

E. Establish, with the approval of the State Board, a statewide system (including the in-service training programs of colleges and universities) to facilitate the dissemination of information and replication of demonstrated and effective educational practices related to the education of exceptional children.

F. Incorporate the elements of the Comprehensive Manpower Needs Plan (currently under development) during the 1978-79 academic year, and thereafter, into the comprehensive system of personnel development (and personnel development plan) and the comprehensive system of manpower training.

§371 Preservice training agreements. The Division shall develop in concert with colleges and universities within the state

whatever preservice training arrangements are necessary to permit school boards, Special School District Number 1 and approved nonpublic school programs to comply with the requirements of this Regulation and to achieve full educational opportunity for exceptional children by September 1, 1985.

§372-379 Reserved.

§380 Technical assistance.

A. The Division must take all necessary steps to ensure that staff of school boards, approved nonpublic school programs and Special School District Number 1 are fully informed of their responsibilities under this Regulation.

B. The Division must provide staff of school boards, approved nonpublic school programs and Special School District Number 1 with whatever technical assistance and training is necessary to permit them to comply with the requirements of this Regulation.

§381-399 Reserved.

Part 400. Responsibilities of City and Parish School Boards

§401 General Responsibility. School boards are responsible for providing an appropriate, free public education to all exceptional children within their jurisdiction who are not voluntarily enrolled in an approved nonpublic school program and whose third birthday has occurred but whose twenty-second birthday has not occurred. Exceptional children whose third birthday occurs after the beginning of a regular school year but before March 15, or whose twenty-second birthday occurs during the course of the regular school year shall be regarded as eligible exceptional children for the entire school year. This responsibility continues unabated regardless of whether the exceptional child is provided special education and related services through a contract entered into by the school board with a public or private agency; by an educational cooperative of which the school board is a member; by Special School District Number 1 as a result of placement, referral or judicial commitment; or by an approved nonpublic school program if following placement or referral by Special School District Number 1 or judicial commitment.

§402 Provisions of this Part. Subparts 410-449, 460-499 of this Part establish responsibilities of school boards with regard to exceptional children within their jurisdiction who are not voluntarily enrolled in an approved nonpublic school program. Subparts 450-459 address the responsibilities of school boards with regard to exceptional children who are voluntarily enrolled in an approved nonpublic school program. Part 700 sets forth the responsibility of approved nonpublic day school programs with respect to exceptional children enrolled in such facilities. Part 600 establishes the obligations of Special School District Number 1 and approved nonpublic school residential programs to exceptional children enrolled.

§403-409 Reserved.

Identification

§410 Child search. Each school board must continually seek out, identify and locate every child within the jurisdiction of the board (regardless of current residence or enrollment) between the ages of birth and twenty-two years who is suspected of being an exceptional child in need of special education and related services. A formal child search effort must be conducted at least once each school year and must include children:

A. Enrolled in a regular education program operated by the school board.

B. Enrolled in a public education program operated by a cooperative of local districts or by Special School District Number 1 who currently reside, or whose parents currently reside, within the geographic boundaries of the district.

C. Enrolled in a nonpublic school program (within Louisiana or out-of-state) either voluntarily or as a result of a placement or referral by the school board or a civil court.