

CONTENTS

I. EXECUTIVE ORDERS	
EWE-79-11 — Establishes Louisiana Native American Advisory Commission	343
EWE-79-12 — Establishes Statewide Epilepsy Task Force	343
II. EMERGENCY RULES	
Education:	
Board of Trustees for State Colleges and Universities — Leaves of absence, sabbaticals	343
Board of Elementary and Secondary Education — Dismissal of vocational-technical school directors and assistant directors	344
Health and Human Resources Department:	
Office of Human Development — Respite care services for handicapped persons	344
III. RULES	
Agriculture Department:	
Structural Pest Control Commission — Lethal Yellowing Quarantine	344
Corrections Department:	
Board of Pardons — Processing of applications for pardon, commutation of sentence, or restoration of citizenship	345
Education:	
Governor's Special Commission on Education Services:	
Loan/Grant Division — Special allowance formula	345
Board of Elementary and Secondary Education — State Plan for Nutrition Education and Training Program of 1980; physical education certification requirements; public special education schools; Competency-Based Education Program; age requirement for Test of General Education Development; Board and committee meetings; deletion of obsolete adult education rules; certification of waivers; graduation requirements for adults	345
Board of Regents — State Appropriation Formula, Revised: 1980	349
Governor's Office:	
Office of Elderly Affairs — Rules implementing State Plan on Aging	354
Health and Human Resources Department:	
Office of Family Security — Payment for pancreatic enzymes under the Medical Assistance Program	354
Maximum allowable cost requirements for drugs	355
Board of Practical Nurse Examiners — Organization; faculty and staff; accreditation	355
Natural Resources Department:	
Office of Conservation — Amendment to Regulation Number 5	355
Office of the Secretary — Rules of procedure	356
Implementation of Act 605 of 1979	359
Public Safety Department:	
Office of Alcoholic Beverage Control — Unfair business practices in the malt beverage industry	362
Office of State Fire Protection — Modular structures	363
Office of Motor Vehicles — License plate regulations	364
Transportation and Development Department:	
Board of Registration for Professional Engineers and Land Surveyors — Registration fee; temporary permit fee; weighted exam grades	365
Treasury Department:	
Bond Commission — Nontraditional-use bond issues	365
Wildlife and Fisheries Department:	
Wildlife and Fisheries Commission — Shot regulations for waterfowl on federal refuges	366
IV. NOTICES OF INTENT	
Education:	
Board of Trustees for State Colleges and Universities — Amendments concerning self assessment fees and sabbatical leave	367
Board of Elementary and Secondary Education — Certification for assessment teachers; affirmative action for vocational-technical schools	367
Governor's Office:	
Data Processing Coordinating and Advisory Council — Various procedural rules	367
Engineers Selection Board — Rules of organization; selection procedure	367
Health and Human Resources Department:	
Office of Family Security — Timely submittal by providers of medical claims	368
Allowable medical costs	368
Office of Human Development — Respite care services for handicapped	368
Board of Examiners of Psychologists — Ethical Standards; written examination	369
Office of the Secretary — Amendments to facility manual for facilities where DHHR funds are used to care for handicapped persons	372
Natural Resources Department:	

Implementation of Act 592 of 1979 concerning the taking in kind of state-owned royalty crude oil	377
Office of Conservation — Termination of Order 29-H concerning well spacing provisions allowable assignment for oil wells	377
Revenue and Taxation Department:	
Corporation Franchise Tax Law	377
Petroleum, Beverage and Tobacco Tax Section — Enforcement of Special Fuels Tax Law	378
Transportation and Development Department:	
Exemption of nonconforming tourist oriented directional information signs from removal requirements	379
Urban and Community Affairs Department:	
Office of Community Services — State Plan for Department of Energy's Weatherization Assistance Program for low income people	379
Wildlife and Fisheries Department:	
Stream Control Commission — Water Quality Criteria revision (Barnes Creek-Tulla to Calcasieu River)	379
Division of Water Pollution Control — Rescheduling of Basin Plan hearings	380
V. POTPOURRI	
Natural Resources Department:	
Office of Conservation — Subsurface disposal well hearing notice	380

Executive Orders

EXECUTIVE ORDER EWE-79-11

WHEREAS, the Louisiana Department of Urban and Community Affairs is charged with the responsibility of providing training and technical assistance to Louisiana's Native Americans; and

WHEREAS, historically, Native Americans of Louisiana and the country have experienced problems peculiar to them as a people,

NOW, THEREFORE, I, Edwin Edwards, Governor of the State of Louisiana, by virtue of authority vested in me under the laws of this State, do hereby establish the Louisiana Native American Advisory Commission to the Department of Urban and Community Affairs, to be appointed by the Governor from names submitted to the Governor by the Secretary of Department of Urban and Community Affairs from the state and federally-recognized tribal groups of Louisiana.

FURTHERMORE, the Commission's role shall be solely an advisory one and not intended to execute policy and/or administrative procedures otherwise provided the Secretary; and

FURTHERMORE, shall convene at the discretion of the Secretary and/or in coordination between the Secretary and the elected chairperson of the Commission; and

FURTHERMORE, the functions and activities of the Commission shall be limited to the Secretary of the Department of Urban and Community Affairs relative to its interaction with other agencies of state and federal government.

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 10th day of October, A.D. 1979.

Edwin Edwards
Governor of Louisiana

EXECUTIVE ORDER EWE-79-12

WHEREAS, the Ninety-fourth Congress established the National Commission for the Control of Epilepsy and Its Consequences in July, 1975, under Public Law 94-63 to survey the medical and social management of epilepsy; to prepare recommendations in the areas of research, prevention, identification, treatment and rehabilitation; to develop a comprehensive plan for the control of epilepsy and its consequences; and to investigate the potential for prevention and control of epilepsy; and

WHEREAS, the National Commission for the Control of Epilepsy and Its Consequences completed a Plan for Nationwide Action on Epilepsy in August, 1977, and was commended by Vice President Walter Mondale for its thoroughness and its economy; and

WHEREAS, a portion of the recommendations of the National Commission for the Control of Epilepsy and Its Consequences is directed to activities and services on the state level which can be undertaken to improve services to people with epilepsy in the State of Louisiana; and

WHEREAS, the delivery of services to people with epilepsy in the State of Louisiana is now administered by a number of agencies with categorical and noncategorical programs and services, but there is no comprehensive plan directed specifically at aiding persons with epilepsy; and

WHEREAS, the Department of Health and Human Resources provides a large number of the state services to persons with epilepsy through its offices of Charity Hospital of New Orleans,

Hospitals, Licensing and Regulation, Mental Health, Mental Retardation, Human Development, Health Services and Environmental Quality and other program areas;

NOW, THEREFORE, I, EDWIN EDWARDS, Governor of Louisiana, by the power and authority vested in me by the constitution and laws of Louisiana, do hereby request and direct the Louisiana Department of Health and Human Resources to establish a task force to work with the Louisiana Epilepsy Association to develop a comprehensive plan for Statewide Action on Epilepsy, and, as a part of such planning, to review current legislation, policies, programs and services for persons with epilepsy;

BE IT FURTHER ORDERED THAT the said task force appointed by the Department of Health and Human Resources shall prepare, for consideration and appropriate action by the Governor and the Legislature, detailed recommendations concerning fiscal, personnel and other requirements necessary for its implementation;

BE IT FURTHER ORDERED THAT all agencies, departments, boards and commissions of the state shall extend assistance to the task force formed by the Department of Health and Human Resources in the preparation and development of this plan.

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 29th day of October, A.D. 1979.

Edwin Edwards
Governor of Louisiana

Emergency Rules

DECLARATION OF EMERGENCY

Board of Trustees for State Colleges and Universities

Effective September 1, 1979, the Board of Trustees for State Colleges and Universities added the following rule to its *Policies and Procedures Manual*, Part VII, Faculty and Staff Personnel Policies and Procedures, Section 7.5 Leaves of Absence, Subsection F, Sabbatical Leave, Numbers 1, 2, and 5:

1. Every faculty member or administrator may be eligible for leave for the purpose of professional or cultural improvement, or for the purpose of rest and recuperation, for the two semesters immediately following any six or more consecutive fiscal years of active service in the institution where such teacher is employed or for one semester following three or more consecutive fiscal years of such service; provided that absence on sick leave shall not be deemed to interrupt the active service herein provided for. The work is normally to consist of advanced courses in the instructor's teaching field or in a program leading to an advanced degree in that field. A sabbatical leave taken during a summer session shall be considered a semester for leave purposes.

2. Faculty members and administrators may be granted leave for the purpose of study or research. In those cases where the faculty member or administrator receives outside compensation for such study or research such payment is to be approved in writing, in advance by the President as supportive of the purposes of the leave.

5. The compensation for the period of leave approved shall be at the rate of seventy-five percent of the salary the individual will receive during the current fiscal year for the period of time leave is applied for and granted. Individuals shall contribute to the retirement system on the basis of annual salary rate. Compensation

payable to persons on leave shall be paid at the times at which salaries of the other members of the teaching staff are paid, and in the same manner. Prior approval must be secured from the Board of Trustees before any replacement is secured for the person granted leave. Institutions should utilize faculties to the fullest extent before requesting such replacements.

This Emergency Rule was necessary in order not to deny those faculty members intending to take sabbatical leave this year, the benefit of the new compensation rules. This action was taken in accordance with the emergency provisions of the Administrative Procedures Act and under the authority of Article VIII, Section 6 of the 1974 Constitution.

Bill Junkin, Executive Director
Board of Trustees for State Colleges and Universities

DECLARATION OF EMERGENCY

Board of Elementary and Secondary Education

The State Board of Elementary and Secondary Education at its meeting on October 25, 1979, exercised those powers conferred by the emergency provisions of the Administrative Procedures Act, R.S. 49:953B to adopt the following rule. This action was necessary in order to protect the welfare of the children of the State of Louisiana enrolled in vocational-technical schools to guarantee quality education.

Rule 6.03.46

In order to comply with the mandates of Act 644 of the 1979 Regular Session, the Board took the first step in adopting guidelines and procedures for the dismissal of directors and assistant directors in vocational-technical schools as follows:

Rules and Regulations

for Removal from Office of Regional Directors, Directors, and Assistant Directors in Vocational-Technical Schools

A regional director, director, or assistant director in a vocational-technical school under the jurisdiction of the State Board of Elementary and Secondary Education shall not be removed from office except upon written and signed charges of willful neglect of duty, or incompetency, or dishonesty, and then only if found guilty after a hearing by the Board or a committee of the Board, which hearing may be public or private at the option of the affected employee. Removal from office includes termination and/or demotion. At least fifteen days in advance of the date of the hearing, the Board shall furnish the respondent employee with a copy of the written charges. The respondent employee shall have the right to appear before the Board or committee of the Board, with witnesses in his behalf and with counsel of his selection, all of whom shall be heard by the Board or committee of the Board at the hearing. Any finding of a committee of the Board shall be reviewed and acted upon by the full Board. The Board may set aside or modify the findings of a committee of the Board. Nothing herein contained shall impair the right of appeal to a court of competent jurisdiction.

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

DECLARATION OF EMERGENCY

Department of Health and Human Resources Office of Human Development

In accordance with the Appropriations Act of the 1979 Louisiana Legislature, the Department of Health and Human Resources, Office of Human Development, has adopted the

emergency rulemaking to implement a program of Community Respite Care Services for Handicapped Persons and Their Families, effective October 1, 1979.

The purpose of Respite Care Services is maintenance of handicapped individuals in their own homes rather than placement in more restrictive settings. Emergency rulemaking was necessary to implement the program immediately in order that eligible handicapped individuals and their families could utilize the service to prevent more restrictive placement.

William A. Cherry, M.D., Secretary
Department of Health and Human Resources

Rules

RULE

Department of Agriculture Office of Agricultural and Environmental Sciences Structural Pest Control Commission

Amendment to Lethal Yellowing Quarantine

Whereas, it has been determined that a serious plant pest commonly known as Lethal Yellowing is known to exist outside the State of Louisiana; and

Whereas, Lethal Yellowing is known to be a serious pest of palm trees.

Therefore, in order to prevent the introduction and spread within Louisiana, and to eradicate the Lethal Yellowing wherever found in the state, the Louisiana Department of Agriculture under authority of Part II of Chapter 12 of Title 3 of the Louisiana Revised Statutes of 1950, does hereby propose the following amendment to the quarantine and regulation declaring new regulated products.

V. Regulated Products: All palms of any species.

Following Host Plants:

1. *Allagoptera arenaria* (Gomes) Kuntze
2. *Arenga engleri* Becc.
3. *Arikuryroba schizohpylla* (Mart.) Bailey (Arikury palm)
4. *Borassus flabellifer* L. (Palmyra palm)
5. *Caryota mitis* Lour. (Cluster fish-tail palm)
6. *Chrysalidocarpus cabadae* H. E. Moore (Cabada palm)
7. *Cocos nucifera* L. (Coconut palm) - all varieties, including Malayandwarf
8. *Corypha elata* Roxb. (Buri palm, Gebang palm)
9. *Dictyosperma album* (Bory) H. Wendl. and Drude (Hurricane or Princess palm)
10. *Gaussia attenuata* (O. F. Cook) Beccari (Puerto Rican Gaussia)
11. *Howeia belmoreana* (C. Moore and F. Meull.) Becc. (Sentry palm)
12. *Latania* spp. (all species)
13. *Livistona chinensis* (N. J. Jacquin) R. Br. ex Mart. (Chinese fan palm)
14. *Mascarena verschaffeltii* (Wendl.) Bailey (Spindle palm)
15. *Nannorrhops ritchiana* (W. Griffith) J. E. T. Aitchison (Mazari palm)
16. *Phoenix canariensis* Hort. ex Chab. (Canary Island date palm)
17. *Phoenix dactylifera* L. (Date palm)
18. *Phoenix reclinata* Jacq. (Senegal date palm)
19. *Phoenix sylvestris* (L.) Roxb. (Sylvester date palm)
20. *Pritchardia affinis* Becc. (Kona palm)
21. *Pritchardia pacifica* Seem. and H. Wendl. (Fiji Island fan palm)
22. *Pritchardia thurstonii* F. Meull. and Drude
23. *Ravenea hildebrandti* Wendl. ex Bouche

- 24. *Trachycarpus fortunei* (Hook.) Wendl. (Chinese windmill palm)
- 25. *Veitchia merrillii* (Becc.) H. E. Moore (Christmas palm, Manila, or adonidia)
- 26. *Veitchia montgomeryana* H. E. Moore (Montgomery's palm)

Richard Carlton, Secretary
Structural Pest Control Commission

RULE

**Department of Corrections
Board of Pardons**

The Louisiana Board of Pardons has adopted rules governing the processing of applications for pardon, commutation of sentence, or restoration of citizenship.

It is specifically provided that rules previously adopted and adhered to, unless included herein, are void.

Rule 1. Filing Procedure. To constitute a complete application for pardon, commutation of sentence, or restoration of citizenship, an applicant must comply with two basic requirements:

A. Submit a petition setting forth the name of applicant, date of birth, offense, parish where tried, judicial district, sentence and date, length of time served, reason for requesting clemency, and relief desired. The petition shall be signed and dated and shall contain a prison address (if applicant is incarcerated) and a home address. There is no requirement that the petition be in any particular form or length, so long as it is legible and contains the items mentioned. In the case of a request for pardon or restoration of citizenship, all previous convictions for which applicant was not pardoned must be listed.

B. Have published in a newspaper whose distribution includes the parish in which the offense is alleged to have been committed, one advertisement that indicates applicant's intent to apply to the Board for clemency. For the purpose of compliance with this rule, the Board will accept an application received within one year of the date of appearance of the advertisement. The applicant shall provide the Board with proof of publication as evidenced by a certificate furnished by said newspaper.

Rule 2. Hearing Dates. The Board's regular meeting days are Mondays, Tuesdays, and Wednesdays. It shall also meet at such other times as the Chairman may determine necessary for the purpose of reviewing and taking action upon applications pending before it and to transact such other business as it deems necessary.

Rule 3. Notice of Hearings. Before considering the application for clemency of any person, the Board shall give thirty days written notice to the district attorney and sheriff of the parish in which the applicant was convicted, to the applicant and/or his attorney (if any), and to any other interested person, of the date, time, and place at which the application will be heard and considered.

Rule 4. Discretionary Powers of the Board. An application may be considered by the Board any time after it is received, but no application will be considered by the Board until it deems the application to be complete.

In determining which cases are ready to be heard, the Board may, in its discretion, refuse to grant a hearing if an applicant has not served one-fifth of his sentence. In cases of life sentences and sentences of forty-five years or longer, the applications may be heard at the discretion of the Board. Additionally, the Board may refuse a hearing to an applicant because of his past criminal record or his poor conduct while incarcerated. However, if good cause is shown, nothing in this article shall prevent the Board from hearing the types of cases mentioned hereinabove.

In any matters not specifically covered by these rules, the Board shall have discretionary powers to act.

Rule 5. Employment and Residence Agreements. To demonstrate good faith, an applicant should provide the Board with both an employment and a residence agreement. However, neither an employment nor a residence agreement is required, but both are encouraged. The agreements shall inform the Board of the applicant's plans for the present and/or future.

Rule 6. Denials. The Board, upon denying an application, shall, within twenty-one working days, inform the applicant of the denial. No new application will be accepted until one year has elapsed from the date of denial.

John D. Hunter, Chairman
Board of Pardons

RULES

**Governor's Special Commission on Education Services
Loan/Grant Division**

Louisiana State Guaranteed Student Loan Program

Rule 8 has been changed to read:

8. Guarantee; Interest; Special Allowance

The Louisiana guarantee to lenders is one hundred percent of unpaid principal and interest. The federal statute prescribes seven percent simple interest on current loans, plus a special allowance which is paid by the federal government in addition to the seven percent interest on loans disbursed after November 8, 1965. The special allowance percentage is adjusted quarterly, and prior to July 1, 1979, was limited to an average of five percent in any twelve-month period. Beginning July 1, 1979, there is no five percent limit, and the special allowance is calculated according to the following formula:

The special allowance for any three-month period is computed by determining the average of the bond equivalent rates of the ninety-one-day Treasury bills for that period, by subtracting three and one-half percent from this average, by rounding the resultant percent upward to the nearest one-eighth of one percent, and by dividing the resultant by four.

The interest and special allowance are presently paid to lenders by the Governor's Special Commission on Education Services each six months on approximately January 15, and July 15, for periods ending December 31, and June 30. After payment to lenders, the Governor's Special Commission on Education Services immediately requests refund from the federal government for its portion of interest and special allowance.

Richard W. Petrie, Director, Loan/Grant Division
Governor's Special Commission on Education Services

RULE

Board of Elementary and Secondary Education

Rule 3.01.05

(Replaces present policy in effect.) The Board adopted the State Plan for Nutrition Education and Training Program for 1980 as presented by the Department of Education.

Rule 3.01.70.v(10)

The Board approved for final adoption Adapted Physical Education Certification Basic Requirements which were adopted at its August 23, 1979, meeting as emergency rules and published in Volume 5, Number 9, September 20, 1979, issue of the *Louisiana Register*.

Rule 3.01.51t

The Board approved for final adoption an addition to page 114, Bulletin 741, *Handbook for School Administrators*, to read as

follows: The requirements for application for establishment of a new public special school must be submitted to the Department of Education for review and then for recommendation to the Board of Elementary and Secondary Education at least one month prior to the Board meeting for which approval is being requested.

Rule 3.01.51u

The Board approved for final adoption an amendment to Bulletin 741, *Handbook for School Administrators*, by deleting policy mandating eighth grade literacy testing in reading and by adding provisions of the Competency-Based Education Program.

seek waivers of the certification requirements in Bulletin 746 shall have the right of first appeal to the Due Process Committee of the Board, but only after a statement of certification denial by the Department of Education using data submitted to the Department. The Due Process Committee shall evaluate the requests for certification waivers using the same guidelines.

All persons whose requests for certification waivers are denied based on the recommendation of the Due Process Committee, shall have the right of final appeal to the full membership of the Board. No requests for certification waivers, how-

Louisiana Literacy Assessment Program

Minimum Standards/Competencies							
1976-77	1977-78	1978-79	1979-80	1980-81	1981-82	1982-83	1983-84
Reading K-12	Mathematics K-12	Writing K-12	12th Grade Competencies	Science (K-12)	To be determined	TBD	TBD
State Assessment (Act 621)							
	4-8-11 Reading	4-8-11 Reading Mathematics	4-8-11 Reading Writing Mathematics	4-8-11 Reading Writing Mathematics	4-8-11 Reading Mathematics Writing	4-8-11 Reading Mathematics Writing	6-8-11 Reading Mathematics Writing
Minimum Competency Testing (Act 750)							
			Develop 2nd	Pilot 2nd Develop 3rd	Implement 2nd Pilot 3rd Modify 4th	Implement 2nd & 3rd Pilot 4th Develop 5th	Implement 2-3-4 Pilot 5th Develop 6th

Rule 3.01.51v

The Board approved for final adoption an amendment to Bulletin 741, *Handbook for School Administrators*, page 37, Section 2b(1) to read as follows: A student, unless married, must be seventeen years of age in order to be authorized to be administered the Test of General Education Development.

Rule 1.00.71

The Board approved for final adoption operating procedures relative to meetings to comply with the open public meetings law. These procedures were adopted by the Board as emergency rules on August 23, 1979, and were published in Volume 5, Number 9, September 20, 1979, issue of the *Louisiana Register*.

Rules 3.07.10b, 3.07.11, 3.07.12, 3.07.20, 3.07.21

The Board approved for final adoption deletion of the above mentioned rules relative to Adult Education due to obsolescence.

Rule 3.01.70d

The Board approved for final adoption amendment to Policy and Procedure Manual by deleting reasons for recommending certification waivers to read as follows:

Teacher Certification Appeals. Bulletin 746 must contain in an appropriate place the following statement: "A person applying for a teaching or other certifiable position in Louisiana who does not meet all of the requirements of Bulletin 746, but who feels that he/she should be certified, may appeal his/her case to the Board."

Appeals of all degreed persons, whether employed or not, shall be evaluated by the Teacher Certification Appeals Council, and waivers of the certification requirements in Bulletin 746 may be recommended by the Appeals Council to the Board.

Degreed persons whose appeals are rejected based on a recommendation of the Appeals Council shall have the right of a second appeal to the Due Process Committee of the Board. Using the same personal data and the same guidelines as used by the Appeals Council, the Due Process Committee may reevaluate the decision of the Council and make further recommendations to the Board on the waiver of certification requirements.

Nondegreed persons, whether employed or not, wishing to

ever, shall originate at the level of the full Board, and all cases must be reviewed first by an appeals body. (Reference 1.00.30a)

Rule 3.07.11

The Board approved for final adoption Graduation Requirements for Adults:

a) Revisions to Bulletin 741, *Handbook for School Administrators* (1977 edition), relative to Graduation Requirements for Adults, pages 37-45:

**3.07.11a Graduation Requirements for Adults
Adults Who Are Nonveteran**

1. Evening Schools. All state-approved high schools may offer courses for adults in the evenings, or at such times as necessary apart from their regular daily schedules. Before these courses may be accredited, a particular high school must submit a report in the form of an amendment to the Annual School Report to the Department of Education.

The minimum aggregate time allotment for one unit in an adult education course shall not be less than one hundred eighty clock hours of instruction. There shall be no limitation on the lengths of class periods. High school credit may be granted only in those courses listed in the program of studies.

All other minimum objective standards required of state-approved high schools shall be the same in the adult education program where high school credit is granted. In those cases where credit is allowed for successful completion of adult education courses, such credit may be considered as having been earned in residence.

2. Adult Education Program.

a. Definition. The Louisiana Adult Education Program shall be defined as an academic instructional program offering adults sixteen years of age and older with less than a secondary education the opportunity to continue their education to at least the level of completion of secondary school in an organized program administered by the Louisiana State Department of Education through local education agencies.

b. Requirements for Taking the General Educational

Development (GED) Test.

1. A student must be eighteen years of age or older, unless married, in order to be authorized to be administered the GED Test.

2. To qualify for recommendation to take the GED test, a student must enroll in an adult education program and take a standardized achievement test at the high school level. An average score of 13.0, with no one subject matter area below 12.0, must be obtained by the individual in order to receive authorization for administration of the GED test. Adult education students will be allowed to qualify to take the GED test without mandatory class attendance.

c. Procedure for Taking the GED Test.

1. By submission of Form DE-502, "Authorization for Administration of Test of General Educational Development," the parish or city superintendent of schools shall certify to the director of the Bureau of Adult Education, State Department of Education, that the student has complied with the adult education requirements and is authorized to be administered the GED test.

2. The local supervisor of adult education shall be responsible for submitting the original and one copy of this form to the director of the Bureau of Adult Education, one copy to the official GED testing center, and one copy to the student, indicating the official GED testing center where the student must make an appointment to take the test.

3. The official GED testing center shall have authorization to administer the GED test to the student upon receipt of the approved Form DE-502 unless notified otherwise by the director of the Bureau of Adult Education within ten days of receipt of the authorization.

4. The official GED testing center shall submit the completed test to the scoring agent.

d. Requirements for Passing the GED Test.

1. In order for an individual to satisfactorily complete the GED test, he must earn a standard score of 35 or above on each of the five sections of the test, or if any one or more of the scores is below 35, he must average a minimum composite score of 45 for all of the five sections.

2. A nonveteran who fails to make satisfactory scores must receive instruction in the areas of deficiency until such time as the instructor certifies the student is proficient in the failed section or sections.

3. A student who receives such instruction may be recommended for retesting on those sections of the test he failed, but not prior to thirty days from the date of the previous test.

4. The original and one copy of the retest recommendation form shall be submitted to the director of the Bureau of Adult Education by the parish or city superintendent; one copy to the official GED testing agent, and one copy to the student.

5. Retesting must be on a different form of the test from the one previously administered.

6. The student must score a minimum of 35 on each of the retested sections.

7. All test results must be submitted by the chief examiner to the director of the Bureau of Adult Education.

e. Issuance of High School Equivalency Diploma.

1. The official GED scoring agent shall certify that the student has successfully completed the GED test through submission of an original and four copies of form DE-509, "Official Results of General Educational Development," to the director of the Bureau of Adult Education.

2. The director of the Bureau of Adult Education shall certify that the student has complied with all adult education requirements, successfully passed the GED test, and is eligible to receive a high school equivalency diploma by signing form DE-509, "Official Results of the Test of General Educational Development."

3. The director of the Bureau of Adult Education shall attach an original and one copy of form DE-502, "Authorization for Administration of the Test of General Educational Development," with an original and one copy of form DE-509, "Official Results of the Test of General Educational Development," and submit to the director of the Bureau of Secondary Education.

4. The director of the Bureau of Secondary Education shall issue a high school equivalency diploma to the adult student and forward the diploma and one copy of form DE-502 and form DE-509 to the principal of the high school from which the diploma has been requested.

5. The principal shall sign the diploma and forward to the student. If transcripts have been requested by the student, the principal shall prepare and send to the director of the Bureau of Secondary Education, Certificate of High School Credits, nonveteran, for the applicant.

It is the responsibility of the local adult education supervisor to notify the principal of the high school from which the diploma is requested that a transcript is needed when the student is initially recommended to take the GED test.

6. A student shall receive his equivalency diploma through the last high school he attended, through the high school nearest his legal residence, or through the high school nearest to the publicly supported institution of higher education to which he is academically admissible, or through the high school which has been specifically designated by a local school system for that purpose.

7. High school equivalency diplomas shall be issued only through state-approved high schools, and the student shall be considered a graduate of that school.

8. A Louisiana resident who successfully completes the test at an official out-of-state GED center will be entitled to receive an equivalency diploma provided an official copy of his GED test results and qualifying scores on a standardized achievement test as certified by the testing agent have been received by the director of the Bureau of Adult Education. Louisiana residents who have received a high school equivalency diploma from another state will not be eligible to receive a Louisiana equivalency diploma on that basis without meeting the regular adult education requirements and successfully completing the GED test.

f. Retesting.

1. Before being retested a student must receive instruction in the areas of deficiency until such time as the instructor certifies the student is proficient in the failed section or sections.

2. A student who receives such instruction may be recommended for retesting on those sections of the test he failed, but not prior to thirty days from the date of the previous testing.

3. Retesting must be on a different form of the test from the one previously administered.

4. The student must score a minimum of 35 on each of the retested sections.

5. Retest recommendation forms shall be submitted to the director of the Bureau of Adult Education, by the parish or city superintendent.

6. All test results must be submitted by the chief examiner to the director of the Bureau of Adult Education.

Veterans or Members of the United States Armed Forces

1. Definition.

a. A person is considered a veteran if he has served at least ninety days in active military service and been honorably discharged from such service.

b. A person is considered a "member of the armed forces" if he is engaged in active military duty in the Army, Navy, Air Force, Marine Corps or Coast Guard. A member of the National Guard is not considered a "member of the armed forces" unless his unit has been federalized by the United States Government.

2. Service Credit.

a. Two units of credit toward high school graduation may be awarded to any member of the United States Armed Forces, or any honorably discharged veteran who has completed his basic training, upon presentation of a military record attesting to such completion.

b. Special training obtained while in the armed forces, comparable to courses offered in civilian secondary schools, may be accredited up to a maximum of two units.

c. All subjects completed by a member of the armed forces, or by an honorably discharged veteran, through the United States Armed Forces Institute, the Marine Corps Institute, or the Coast Guard Institute, may be accredited at face value.

3. Regular High School Diploma.

a. Any person who served honorably in the United States Armed Forces and has made satisfactory scores on the GED test may be awarded a regular diploma if he has earned a minimum of eight resident units of credit from a state-approved high school, regardless of the requirements for regular high school graduates.

b. A member of the United States Armed Forces, or an honorably discharged veteran, may be awarded a regular high school diploma upon completion of twenty units of work, regardless of the requirements for regular graduates.

c. In order to be eligible for a regular diploma based on results of the GED test, a member of the armed forces, or an honorably discharged veteran, must be a legal resident of Louisiana, or he must have formerly attended a Louisiana school.

d. A veteran who formerly attended a Louisiana school should submit his application for a regular diploma to the principal of the last school he attended in Louisiana.

e. An applicant now living in Louisiana who was never enrolled in a Louisiana school, but who attended an approved high school or elementary school in another state, should submit his application for a regular diploma to the principal of the nearest high school.

4. Equivalency High School Diploma.

a. Any honorably discharged veteran may be administered the GED test by one of the official GED centers approved by the Department of Education. For the purpose of identification, the veteran shall present a copy of his discharge papers to the chief examiner.

b. Members of the armed forces may take the GED test during the time they are in the service. They should be advised to make arrangements with their commanding officers.

c. A high school equivalency diploma may be issued in lieu of a regular diploma to a member of the United States Armed Forces, or an honorably discharged veteran, who has made satisfactory scores on the GED test and who has earned fewer than eight high school units of resident credit from a state-approved school.

d. A statement giving the date of the applicant's entrance into the United States Armed Forces should be

made in the Remarks column of the Certificate of High School Credits, veteran.

e. In order to be eligible for an equivalency diploma based on results of the GED test, a member of the armed forces, or an honorably discharged veteran, must be a legal resident of Louisiana, or he must have formerly attended a Louisiana school.

f. A veteran who formerly attended a Louisiana school should submit his application for an equivalency diploma to the principal of the last school he attended. If he did not attend a high school in Louisiana, he should submit his application to the high school nearest his residence.

g. An applicant now living in Louisiana who was never enrolled in a Louisiana school, but who attended an approved high school or elementary school in another state, should submit his application to the principal of the nearest high school.

5. Preparation of Certificates of High School Credits for Veterans and Members of the Armed Forces.

a. High school principals will prepare and send to the director of the Bureau of Secondary Education, State Department of Education, Baton Rouge, Louisiana 70804, Certificates of High School Credits, veteran (blue and pink copies), for all applicants.

b. If a diploma is to be granted on the basis of completion of twenty units, a complete record of all high school units earned shall be listed.

c. Only resident units completed should be listed if a diploma is to be issued on the basis of a minimum of eight units of high school work and successful completion of the GED test.

d. Work completed in residence at fully accredited high schools from other states may be accepted and applied toward meeting graduation requirements.

e. Official records of high school work being applied toward meeting the requirements for graduation must be in the files of the school issuing the diploma.

f. If an applicant has attended school in any state, but does not present any high school units, the principal will indicate on the Certificate of High School Credits, veteran, the name of the school last attended. Official records attesting to this fact should be on file in the principal's office.

g. A certified copy of the record of the GED test must accompany the Certificate of High School Credits if administered by an official GED testing center other than one approved by the Louisiana Department of Education.

h. A statement giving the date of the applicant's entrance into the United States Armed Forces should be made in the Remarks column of the Certificate of High School Credits, veteran.

6. Scoring. In order for an individual to satisfactorily complete the GED test, he must earn a standard score of 35 or above on each of the five sections of the test, or, if any one or more of the scores is below 35, he must average a minimum composite score of 45 for all of the five sections.

7. Retesting.

a. A veteran who fails to make satisfactory scores may, without having received additional instruction, be retested on the section or sections of the test he failed, but not prior to thirty days from the date of the previous testing.

b. Before being retested, a veteran may, if he desires, receive instruction in the areas of deficiency until such time as the instructor certifies he is proficient in the failed section or sections.

c. Retesting must be on a different form of the test from the one previously administered.

d. The student must score a minimum of 35 on each of the retested sections.

e. Retest recommendation forms shall be submitted to the director of the Bureau of Adult Education by the parish or city superintendent.

f. All test results must be submitted by the chief examiner to the director of the Bureau of Adult Education.

Summary of Methods to Obtain a High School Diploma

1. Regular High School Diploma

- a. Earning 20 units of eligible credits
- b. Completing requirements under the Early College Admissions Policy
- c. Being a veteran or a member of the armed forces with 8 or more resident high school credits and successfully completing the GED test.

2. Equivalency High School Diploma

- a. Enrolling in the Adult Education Program and successfully completing the GED test
- b. Being a veteran, or a member of the armed forces, with fewer than 8 resident high school units of credit, and successfully completing the GED test
- c. Completing successfully an entrance examination at an accredited college and one semester of work at the college level.
- b) Requests for waivers of the age requirements for taking the General Education Development Test (GED) must be submitted to the Board by the local educational agency in which the student resides with a rationale from the school principal and approved by the parish superintendent.
- c) Any request for a waiver of the age requirement may also be made directly to the Board.

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

RULES

Board of Regents

**1980 State Appropriation Formula
Section I. Authority**

This formula is submitted in accordance with Article VIII, Section 5-(D)(5) of the Louisiana Constitution of 1974 which mandates the Board of Regents "to formulate and make timely revision of a master plan for higher education. As a minimum, the plan shall include a formula for equitable distribution of funds to the institutions of higher education." Additionally, there have been repeated requests in the past from the Executive and Legislative branches of state government and the institutions themselves for the development of an equitable method for determining funding levels for each institution.

Section II. Introduction

The complex character of educational institutions, combined with increasing enrollments and operational costs in the last decade, exerted a demand for a more uniform method to distribute tax-generated funds to state institutions of higher learning. These pressures resulted in the development of numerous higher education formulae in numerous states using various factors of measurement as input for calculations to derive state appropriations for public colleges and universities. The number of states adopting this approach of "formula funding" has continually increased since the early 1960's; one survey indicated that twenty-five states utilized this method in 1973, and indications are that the trend is continuing. In computing the required amount of state funding, these formulae range in complexity from those using a few factors to those using many factors.

There are inherent advantages in using the formula approach to determine state appropriations. The formula method results in the accumulation of measurable data from institutions; it permits

the use of mathematical calculations that remove the necessity for subjective evaluation; and it is objective in nature and identifies the needs of all institutions in comparable terms. Primarily, the formula concept is equitable. This formula uniformly places financing on a per student credit hour basis for each institution. Equity, and not necessarily equality, is the basic objective of the formula.

The intention of this formula does not extend to the internal allocation of funds for any functional category, specific discipline, or program. The internal allocation necessary for the development of an effective program of higher education on each campus remains the prerogative of that campus administration and its governing board.

**Section III.
1980-81 Basic Factor Chart
Value Per Student Credit Hour**

Instruction, Research, Academic Support and all Other Support

Student Level	Lower Cost Areas	Higher Cost Areas
Lower Level Undergraduate	\$ 41.84	\$ 54.61
Upper Level Undergraduate	56.73	74.75
Nursing - LLU		113.73
Nursing - ULU		144.43
Nursing - Masters		240.15
Masters	186.54	235.15
Specialist Professional	209.14	
Doctorate	514.11	641.86
Law		123.59

The following are higher cost areas including Higher Education General Information Survey (HEGIS) taxonomy codes. Agriculture (0101-0199), Allied Health and Pharmacy (1208, 1211-1215, 1220, 1223-1225), Engineering (0901-0999), Fine Arts and Architecture (0201-0299, 1001-1099), Law (1401-1499), Nursing (1203), Sciences (0401-0499, 0700-0799, 1901-1999), Technology (5100-5499). All remaining HEGIS taxonomy codes are valued at the lower cost rate.

Definitions and Interpretations

1. Values. The values in the chart are based upon average Southern Regional Education Board (SREB) academic year (nine-month) salaries, pupil/teacher ratios, definitions of full-time equivalent students in student credit hours (SCH's) per academic year, and historical expenditure patterns by function. The veterinary medicine formula shall be considered by the Board of Regents prior to the 1980-81 budget hearings. If approved, the budget of the School of Veterinary Medicine prepared for 1980-81 on a nonformula basis may be amended.

2. Level. The assignments in the chart were stratified by level of offering and by program area. In the reporting of SCH productivity, the level of offering for a given SCH will be determined by the classification of the student pursuing the course.

3. Student Classification Structure.

Classification Structure	Earned Credits
Lower Level Undergraduate	0-59 semester hours
Upper Level Undergraduate	60 semester hours- graduation
Masters	Accepted for Graduate Study; Masters and Masters plus thirty
Specialist/Professional	Specialist/Professional refers only to students formally enrolled in an Education Specialist Program. The higher value assigned to this level of instruction reflects the Board of Regents' dedi- cation to the improvement of teachers in Louisiana
Doctorate	Formally admitted to study toward the Doctorate

4. Additional Student Classification Definitions.

A. A post-baccalaureate student enrolled in a state institution of higher learning, but not officially admitted to graduate school, is to be counted as "upper level undergraduate."

B. The categories presently recognized as "professional" are law (only those courses taught in a professional school of law), veterinary medicine, dentistry, and medicine. Of these, only law is currently included in this formula. Veterinary medicine may be included prior to the 1980-81 consolidated budget.

C. "Deferred credit" is defined as credit earned by students when credit is granted at a later date, such as graduation from high school. These "deferred credits" may be counted in an institution's SCH production during the period in which the student is officially registered in the class.

D. SCH credit earned in courses taught out of state is to be counted for student classification purposes and also is to be included in a separate section on the SCH production report for formula purposes. Records must be kept by course and location and are to indicate the number of students enrolled and the SCHs produced for each such course. Such records must be submitted to the Board of Regents no later than thirty days following the completion of the course.

E. An institution shall not count audits in its SCH production report.

F. Credit by examination, transfer credit, or correspondence study credit taken at another institution may be used only in the classification of the student and not in an institution's SCH production report. An institution may accept a provisional student's classification on the basis of the best knowledge available during the first semester of enrollment at the institution.

G. Credit earned in a cooperative institution (hospital, etc.) by a student enrolled in medical technology (or any curriculum requiring such arrangement) may not be counted in an institution's SCH production report.

H. Student classification must be updated each semester.

I. Student credit hours in nursing pursued in an associate degree nursing program are to be considered as upper level hours.

5. HEGIS Taxonomy. Taxonomy codes used in the Basic Factor Chart have not been expanded for this revision. The areas used are specific ones extracted from the taxonomy developed by the Western Interstate Commission for Higher Education (WICHE) for the United States Office of Education. These taxonomy codes have been statistically assigned into higher cost or lower cost areas.

Section IV. Formula Methodology

Student credit hours that remain scheduled on the fourteenth class day are separated into higher cost or lower cost program areas and levels, using the HEGIS Taxonomy and student classifi-

cation respectively. At the time legislative budget requests are prepared, summer and fall productivity data are complete. The approaching spring session production estimate should be based on the experience of the previous spring. Actual spring data will be available prior to the regular legislative session, and all institutions must submit adjusted reports by February 23, 1980 (Louisiana Tech by April 6, 1980). The SCH's shall be net, reflecting all transactions (drops, adds, resignations, etc.) occurring prior to the cutoff date. The resulting net SCH's are multiplied by the appropriate values on the Basic Factor Chart (Section III), and the sum of these products establishes one hundred percent of the funding generated by SCH production. The values contained in the Basic Factor Chart are based on state support of seventy-five percent of Educational and General (E & G) expenditures. Also, the values on the chart recognize fixed costs by providing a base support for all institutions. Funds for research are also included in the formula in accordance with the following provisions:

Generally Mandated Research shall be defined as that research which is (1) initiated internally by the institution or its management board, or (2) assigned as an institutional mission by *The Master Plan for Higher Education in Louisiana*, or (3) assigned as a general institutional mission by the executive or legislative branch of state government. The funds which will support this type of research shall be generated by values in the Basic Factor Chart of the higher education formula.

Specifically Mandated Research shall be defined as those research projects/programs which are initiated by executive order or by state statute. Funds for this type of research shall be requested as a formula exclusion.

The burden of proof is upon the institution that a particular research project is specifically mandated. Line item expenditures that are a direct result of a state legislative or executive mandate must be submitted to the Board of Regents' Finance Committee for review before such research will be allowed as a formula exclusion.

All institutions are to receive a base appropriation of \$1,084,482. This appropriation is intended to recognize fixed costs and diseconomies of scale.

An inflation factor for partial allocation of any new funds for higher education is included to promote an equitable distribution of inflationary support. The inflation factor amount for every institution funded on SCH production will be calculated by the Regents' staff. This computation will be based upon information institutionally supplied on budget "Form A's" for the 1979-80 operating budgets. All schools are to receive the inflation factor regardless of their level of implementation.

The combination of funds generated by SCH production, funds from the base appropriation, and funds generated by the inflation factor constitute full formula funding.

Procedure: Inflation Factor Calculation

Current Year 1979-80 Budgeted Operating Other Support Expenditures

Institutional Support	\$ _____
Student Services	_____
Scholarships and Fellowships	_____
Operation and Maintenance of Physical Plant	_____
Total Other Support	_____
State Appropriation Share	_____ x .75
Inflation Percentage (may be changed annually)	_____ x .10
Inflation Factor	\$ _____

Section V. Functional Category Distribution

Allocations to Educational and General Expense. Dr. John Dale Russell ("Budgetary Analysis," *College Self-Study*, Richard Axt

and Hall T. Sprague, Eds. Boulder, Colorado: Western Interstate Commission for Higher Education, 1959, p. 106.) has recommended allocations of expenditures to the eight functional categories of the Educational and General function. These categories, in use until recently, were: (1) resident instruction; (2) organized activities related to instruction; (3) organized research; (4) extension and public service; (5) libraries; (6) general administration; (7) general expense; and (8) maintenance and operation of physical plant. If the first four of Russell's categories are grouped under one heading, his recommendations are reduced to four groups as follows:

Resident Instruction and Related Activities	At least 63%
Libraries	5% to 6%
General Administration	15% or less
Operation and Maintenance of Physical Plant	16% or less

Further analysis in conjunction with Dr. Russell's research has led to the selection of the following suggested allocations of total educational and general expenditures:

Resident Instruction and Related Activities	68%
Libraries	5%
General Administration and General Expense	15%
Operation and Maintenance of Physical Plant	12%
	100%

Recent developments will have a definite impact on these allocations. Two such developments are: (1) the establishment of new functional categories within the E & G Function by National Association of College and University Business Officers (NACUBO); and (2) the energy crisis which has sent utility cost soaring, and therefore, may change the physical plant allocation. Since there are not sufficient data to support new recommended allocations, the old percentages shall be retained as broad guidelines.

The new functional categories as established by NACUBO; and how they should be converted for percentage allocation purposes, are as follows:

NACUBO New Categories	Conversion to Russell's Percentage Allocation
(1) Instruction	RIRA
(2) Research	RIRA
(3) Public Service	RIRA
(4) Academic Support (Libraries)	RIRA Libraries
(5) Student Services	GAGE
(6) Institutional Support	GAGE
(7) Scholarships and Fellowships	GAGE
(8) Operation and Maintenance of Plant	OMPP

For comparative purposes, Libraries are to be extracted from Academic Support.

It should be noted that Staff Benefits (related benefits) costs are to be reported as a cost in the department (category) in which an individual is employed. This has been recommended by NACUBO in the most recent publication of the handbook, *College and University Business Administration*, 1974.

Section VI. Funding Requests

A. Because the budgetary process requires considerable planning and effort, it is necessary that the requests be both reasonable and adequate to meet institutional needs and also be within the

state's funding capabilities. Therefore, these requests must be prepared in the manner set forth in this formula document. The Regents have the prerogative to make the final recommendation for funding levels of all segments of higher education. Such recommendations will be based upon: (1) complete evaluation of all requests, (2) projected state revenues, and (3) the development of a consolidated budget to be presented to the executive and legislative branches of state government.

B. The 1980-81 budget requests for all institutions subject to the formula are to be based on an implementation rate of one hundred percent. However, no institution need request less than the 1979-80 amount of state appropriations received for formula purposes. Funding requests for areas excluded from the formula shall be determined on an individual basis as set forth in Section IX, Exclusions.

C. Funding requests for management boards and their staffs, i.e., the Louisiana State University System, the Southern University System, and the Board of Trustees System, will be as set forth in Section IX, Exclusions. The funds for the operations of these management boards are an actual cost allocable to each segment of the respective boards. Therefore, an institution's pro rata share of system costs plus that individual institution's state appropriation shall be used in determining the attainment of the one hundred percent level of implementation.

D. Effective in fiscal 1980-81, all state appropriations not conforming to the formula allocation process shall not be considered in the continuing base appropriations, nor will these funds be considered in the application of the Inflation Factor computation. For comparative purposes in all formula schedules, analyses, etc., such funds will be included for determining implementation level; funds appropriated that do not conform to the formula process shall be footnoted to indicate their amount, source, and purpose. The aim of this section is to encourage equitable allocation of all funds for higher education through the formula.

Section VII. Special Requests

Justification for extraordinary expenditures, for a limited predetermined period, shall be based on this section. The purpose of this section is to provide a means of requesting funds over and above those funds generated by SCH production. Such funds may be requested to support projects particular and peculiar to a specific situation; e.g., a land purchase, large equipment purchase to meet accreditation requirements, etc. Each request is to be supported by a separate, concise report giving the purpose, the necessity, the expected results, the minimum amount needed, and the method of determining this amount. In addition, if the possibility exists that special funding will be required for more than one year, the expected duration shall be given along with a complete explanation. Requests for ongoing continuous functions, merely to avoid inclusion in formula funding, will not be granted.

Section VIII. Other Means of Financing

All annually recurring revenues, regardless of source, shall be budgeted by each institution. There are several reasons for this requirement: (1) the 1974 Constitution requires the annual appropriation of all funds for budgetary purposes; (2) budgeting provides responsible fiscal control over funds; and (3) budgeting requires planning in advance which, if properly done, normally results in more efficient and economical use of available resources. Institutions are the recipients of revenues from varied sources. Some examples of what should be included in the annual budgets, both the request and operating, are as follows: tuition and student fees; parking fees and fines; library fines; income from publications; income from sales and services; recurring federal funds such as George Barden, Vocational Education, McIntire-Stennis, etc; user fees in continuing education, correspondence study, and extension courses; and auxiliary income.

Section IX. Exclusions

A. The primary reasons for this section providing funding out-

side formula-generated appropriations are:

1. A method of measurement has not been devised for those institutions or operations that do not utilize student credit hours as a determinant of productivity. These institutions and operations are the Louisiana State University Medical Center and the Louisiana State University Center for Agricultural Sciences and Rural Development. A newly designed, modified program budget approach support by substantiating statistical and narrative data shall be used by the Medical Center in requesting funds for 1980-81.

2. Other exclusions consist of specific items which do not fall within the normal scope of operations of all institutions. For this reason these items are separated from formula consideration in order to provide a sound basis of comparison between institutions. Within this category are bond service and special funds for capital outlay (for those institutions that include these funds in the operating budget); Louisiana State University Fireman Training Program Dedicated Funds; Specifically Mandated Research; the annual Livestock Show at Southern University-Baton Rouge; Laboratory Schools at Louisiana State University-Baton Rouge and Southern University-Baton Rouge.

B. Method of Determining Recommended Funding Level:

1. Funding of these exclusions that are not otherwise provided for will be based upon fully documented and justified need as required so as to fulfill their duties and responsibilities as set forth in the role, scope, and mission charge of the respective units. The units for this year are:

- a. Southern University Board and system staff.
- b. Board of Trustees and system staff.
- c. Louisiana State University Board and system staff.
- d. Louisiana State University Medical Center.
- e. Center for Agricultural Sciences and Rural Development.
- f. Specifically mandated research.

2. The School of Veterinary Medicine is to prepare a budget request consistent with the actual needs for establishing the program.

3. Louisiana State University has received dedicated revenues for a number of years which could be bonded and expended for capital facilities. Capital outlay in the Board of Trustees and Southern University Systems has been handled outside of operating budgets, whereas the Louisiana State University System has used a combination approach. Because provisions already require the expenditures of annual appropriation funds to service these commitments, it is recommended that these funds be received by Louisiana State University above the formula amounts until these commitments are retired. In compliance with the Constitution and laws of this state, additional comments cannot be made without approval of the Board of Regents.

4. It is recommended that each public college or university operating a public laboratory school receive the proper allocation of funds based on the minimum foundation formula of the State Department of Education. For Louisiana State University-Baton Rouge and Southern University-Baton Rouge, these funds should be specifically appropriated to the institutions.

5. The Louisiana State University-Baton Rouge Fireman Training Program receives funds dedicated from fire insurance premiums by Act 32 of 1970. This Act provides that one-fourth of one percent of premiums received annually by insurers for fire coverage within Louisiana be used solely for this program. Since this amount is subject to fluctuation, the requested budget amount should be based on the previous year's receipts adjusted for any anticipated changes. These funds are to be received in addition to formula funds.

6. The Southern University-Baton Rouge annual livestock show is to be separately funded outside of the formula appropri-

ation.

7. The allocation to Southern University-Baton Rouge for the Scotlandville Fire District is an annual fixed amount charged the campus for the provision of fire department protection. This is necessary since the campus is not located within the jurisdiction of a municipal fire department. These funds are to be exclusive of formula funding.

Section X. Audit Procedures

The use of a state appropriation formula results in student credit hours becoming dollars through the conversion using the basic factor chart. The audit procedure previously established will continue to be used for this revision. This will insure correct and consistent interpretation and application of the procedure for recording and receiving credit for SCH production and will facilitate the use of the State Appropriation Formula. Every affected institution shall be visited each year and shall provide any required assistance needed to validate the methods and procedures used and the resultant data. The auditors shall use a predetermined audit outline including statistically proven record search patterns for those record areas requiring comparisons. Records to be examined shall include but not be limited to the following: class rolls; final grade reports; drop/add records; transcripts; student schedules; withdrawals and resignations; and any other relevant data sources.

Discrepancies shall be noted and reconciled, and the necessary corrective action shall be taken. Should a particular situation warrant it, the audit will be expanded so that the extent of the problem can be determined and the SCH production reports amended to indicate the correct production figures. Official notification of the adjustment shall be given to all concerned parties.

The audit process will also include a review of off-campus SCH production to verify compliance with Board of Regents' Policy 4.2, Guidelines for the Conduct of Off-Campus Activities. Noncompliance will be noted in the audit report.

Appendix A

Standardized Reporting Forms

The student credit hour audit procedure as it presently exists takes fourteenth class day data (department, course, section, credit hours, number enrolled, student identification, and SCH's produced) and compares them to final grade reports. Any exceptions must be substantiated with support documentation; i.e., properly prepared drop, add, or resignation forms. This provides a uniform reporting system to put all institutions of higher education in the state on a common base, primarily utilizing four standardized report formats. These reports, the (1) class roster, (2) final grade report, (3) detailed formula level report, and (4) summary formula area report, are to be prepared by all institutions.

The reports should be prepared as of the close of the fourteenth class day during the regular semesters and the seventh class day during the summer session (Louisiana Tech by the ninth class day). One copy of the Summary Formula Area Report should be sent to the Board of Regents by the twenty-fourth class day of each regular semester and the seventeenth class day of the summer session (Louisiana Tech by the nineteenth class day). For new classes beginning after the fourteenth (seventh, ninth) class day, each institution will be required to file a supplementary report of SCH's produced. These classes are to be reported in the session in which they are completed or in the following session if they are conducted totally in an interim period. The SCH production is to be reported in keeping with the two preceding requirements, with SCH production being counted on a date that is equivalent to the fourteenth or seventh class day (Louisiana Tech, the ninth) of courses offered during a regular semester. These supplemental reports will be due upon issuance of final grades in the reporting session and should include beginning and ending dates and equivalent cut-off dates for each class. A class day is defined as a regular class schedule day; Saturday, Sunday and state legal holidays are to be excluded as class days.

A common sequence arrangement of the various reports is to be

used by all institutions; this method will simplify the audit procedure and provide for a uniform communication basis. The class roster, detail formula level report, and final grade report are all to be arranged in the same sequence, alpha by course name or title/or alpha by course name or title within college.

All exceptions between the fourteenth class day (ninth class day for Louisiana Tech) and the final grade report must be supported by properly prepared and authorized drop, add, or resignation forms which are to be maintained for all courses by semester, filed in alphabetical order by student's last name. The summary formula area report should be arranged in alpha order by course number within each formula area breakdown.

Each institution will be required to identify all off-campus SCH production either on the above required reports or on a special

supplementary report. Each course offered off campus and the parish(es) in which it is taught must be reported. Parish codes are provided in Appendix C.

Appendix B

Reporting of Final SCH Production

To facilitate further research and study for the possible formula revisions, it will be necessary for each institution to furnish end-of-year reports on an annual basis. Information of this nature is necessary in the evaluation of measurement factors to determine effectiveness of programs. It will also point out areas where special formula consideration may be required. These reports, at a minimum, are to consist of recalculated BRC-1 and BRC-1A budget forms reflecting SCH production based on the final grade report.

Appendix C

Parish Codes

Acadia	01	Madison	33
Allen	02	Morehouse	34
Ascension	03	Natchitoches	35
Assumption	04	Orleans	36
Avoyelles	05	Ouachita	37
Beauregard	06	Plaquemines	38
Bienville	07	Pointe Coupee	39
Bossier	08	Rapides	40
Caddo	09	Red River	41
Calcasieu	10	Richland	42
Caldwell	11	Sabine	43
Cameron	12	St. Bernard	44
Catahoula	13	St. Charles	45
Claiborne	14	St. Helena	46
Concordia	15	St. James	47
DeSoto	16	St. John	48
East Baton Rouge	17	St. Landry	49
East Carroll	18	St. Martin	50
East Feliciana	19	St. Mary	51
Evangeline	20	St. Tammany	52
Franklin	21	Tangipahoa	53
Grant	22	Tensas	54
Iberia	23	Terrebonne	55
Iberville	24	Union	56
Jackson	25	Vermilion	57
Jefferson	26	Vernon	58
Jefferson Davis	27	Washington	59
Lafayette	28	Webster	60
Lafourche	29	West Baton Rouge	61
LaSalle	30	West Carroll	62
Lincoln	31	West Feliciana	63
Livingston	32	Winn	64

William Arceneaux
Commissioner of Higher Education

RULE

Office of the Governor Office of Elderly Affairs

The Office of the Governor, Office of Elderly Affairs, has amended its policies regarding the allotment of funds, organizational structure, and overall priorities as mandated by the Older Americans Act of 1965, hereafter referred to as the Act, as amended on October 18, 1978.

1. The amount of Title III funds which are allocated to the state's planning and service areas shall be determined by the Office of Elderly Affairs not to exceed eight and one-half percent of the state's Title III allotment. These funds may be used to pay no more than seventy-five percent of the cost of administering an area plan.

2. The Office of Elderly Affairs shall review and comment upon all state plans, budgets, and policies which affect the elderly.

3. Nutrition services recipients and multipurpose senior center participants shall be consulted in the development and administration of the State Plan.

4. In the provision of services under the State Plan, preference shall be given to older individuals with the greatest economic or social needs.

5. A hearing shall be provided to any unit of general purpose local government which requests to be designated as a planning and service area, if the unit has a population of one hundred thousand or more.

6. The Office of Elderly Affairs shall not grant a waiver for any area plan requirement of the Act which was in effect on September 30, 1978.

7. A uniform format for area plan development under Section 306 of the Act shall be prepared and distributed by the Office of Elderly Affairs to area agencies for their use.

8. The Office of Elderly Affairs will evaluate the need for nutrition services, multipurpose centers, and social services. Legal services will be included in its evaluation of social services.

9. The amount of funds expended for services to older individuals residing in rural areas shall be no less than one hundred five percent of the amount expended in Fiscal Year 1978.

10. The Office of Elderly Affairs shall reorganize and rearrange its functions, if it deems necessary, to assure efficient administration.

11. A hearing shall be granted, upon request, to any area agency on aging submitting a plan under Title III; or any provider of a service under such a plan; or any applicant proposing to provide a service under such plan.

12. The Office of Elderly Affairs shall provide satisfactory assurance that such fiscal control and accounting procedures shall be adopted as to assure proper disbursement of, and accounting for, federal funds paid under the Title III Program to the state.

13. The Office of Elderly Affairs shall directly provide social services (including nutritional services) only if local agencies are unable to do so.

14. Each nutrition project shall provide meals in a congregate setting. Home-delivered meals may be provided if the recipient of either a grant or contract for nutrition services determines it necessary.

15. Income from meal charges shall be used only for increasing the number of meals served by the project involved.

16. Each nutrition project shall give primary consideration to multipurpose senior centers when selecting an appropriate community facility for congregate meals, and for comprehensive social services.

17. The Office of Elderly Affairs shall provide funds only to those organizations furnishing home delivered meals which have demonstrated ability to provide home delivered meals, and which assure the Office of Elderly Affairs that the funds available from the Older Americans Act will not supplant funds from non-federal sources.

18. Multipurpose senior center facilities shall be used for the purpose for which they were acquired or constructed, for at least ten years after acquisition, or for at least twenty years after the completion of construction.

19. Sufficient funds must be available to meet the non-federal share of the cost of acquisition or construction of such facilities. When the acquisition or construction is completed, funds must be available to effectively use a facility for the purpose for which it is being acquired or constructed. A facility shall not be used for sectarian instruction or as a place for religious worship.

20. Multipurpose senior center facilities shall not be purchased or constructed to be used as multipurpose senior centers if the Office of Elderly Affairs has determined that there are existing facilities which can be used or leased for use as a multipurpose senior center.

21. The plans and specifications for the multipurpose senior center facility shall be in accordance with regulations relating to minimum standards of construction, with particular emphasis on securing compliance with the requirements of the Architectural Barriers Act of 1968.

22. All work on multipurpose senior center facilities will be done in compliance with the requirements of the Architectural Barriers Act of 1968; and with the provisions of the Davis-Bacon Act; and any related guidelines or regulations issued by the United States Secretary of Labor.

23. The Office of Elderly Affairs shall consult with the United States Secretary of Housing and Urban Development with respect to the technical adequacy of any proposed alteration or renovation of multipurpose senior centers.

24. To the extent practicable, legal services furnished under the plan shall be in addition to any legal services for older individuals being furnished with funds from sources other than the Act; and reasonable effort shall be made to maintain existing levels of legal services for older individuals.

25. From funds allotted under Section 304(a) for Part B of Title III, the Office of Elderly Affairs shall use an amount equal to one percent of this allotment or twenty thousand dollars, whichever is greater, for the purpose of Section 307(a)(12), unless, for any fiscal year, a state spends from state or local sources an equivalent amount for this purpose.

26. Any project receiving funds under Title VII of the Older Americans Act of 1965, as in effect on the day before the effective date of this Act, shall continue to receive funds under Part C of Title III of such Act, as amended, if such project meets the requirements and criteria established in such Title III, as amended by this Act. The state, pursuant to regulations prescribed by the Commissioner on Aging, shall discontinue the payment of such funds to a project if, after a hearing (requested by the person responsible for administering such project), it determines that such project has ineffectively carried out activities supported by such funds.

O. B. Butler, Administrator
Office of Elderly Affairs

RULE

Department of Health and Human Resources Office of Family Security

The Department of Health and Human Resources, Office of Family Security, has adopted a rule that will permit the payment of the following pancreatic enzymes for persons under age 21 who are recipients in the Medicaid Program: Cotazym, Ilozyme, Kuzyme HP, Pancrease, Pancreatin, and Viokase.

William A. Cherry, M.D., Secretary
Department of Health and Human Resources

RULE

Department of Health and Human Resources Office of Family Security

The Department of Health and Human Resources, Office of Family Security has adopted policy that will expand the list of drugs subject to the Maximum Allowable Costs (MAC) regulations. The list is as follows: Diphenoxylate hydrochloride/atropine sulfate 2.5 mg./0.025 mg. tablet, \$0.0491 per tablet; Methocarbamol, 500 mg. tablet, \$0.0496 per tablet; Methocarbamol, 750 mg. tablet, \$0.0640 per tablet; Sulfisoxazole, 500 mg. tablet, \$0.0273 per tablet; Oxyphenbutazone, 100 mg. per tablet, \$0.0847 per tablet; Tetracycline HCl, 125 mg./5 ml. syrup, \$0.0104 per ml.; Doxepin, 100 mg. capsule, \$0.2900 per capsule; Penicillin G, 400 mu. tablet, \$0.0237 per tablet; and Penicillin G, 800 mu. tablet, \$0.0640 per tablet.

In no case may a recipient be required to provide payment for any difference in a prescription price that may occur with the implementation of MAC, nor may our office use a cost which exceeds the established maximums except as follows. HEW's regulations provide that when a physician certifies that a specific brand is medically necessary for a particular patient then the MAC limitations for that medication will not apply. In this case their specific guidelines provide that:

1. the certification must be in the physician's handwriting;
2. the certification may be written directly on the prescription, or on a separate sheet which is attached to the prescription;
3. a standard phrase written on the prescription, such as "brand necessary" will be acceptable;
4. a printed box on the prescription blank that could be checked by the physician to indicate brand necessity is unacceptable;
5. a handwritten statement transferred to a rubber stamp and then stamped on the prescription blank is unacceptable.

William A. Cherry, M.D., Secretary
Department of Health and Human Resources

RULE

Department of Health and Human Resources Board of Practical Nurse Examiners

The Louisiana State Board of Practical Nurse Examiners has adopted the following amendments to the *Administrative Rules and Minimum Requirements Relating to Practical Nursing Education and Licensure to Practice in the State of Louisiana*.

Section I, General Board Policies

1. Organization. The Louisiana State Board of Practical Nurse Examiners consists of eleven members appointed by the Governor and is the regulatory agency created by statute to act with legal authority on matters related to practical nursing education and the practice of practical nursing in Louisiana as determined by the Louisiana Revised Statutes, Title 37, Section 961-979.

Section IV, Program Projection

1. Faculty and Staff

1-2 Minimum Number of Faculty

a. Registered nurses - No less than two, one of whom should be designated coordinator/charge instructor. The instructor-student ratio shall be one instructor to each twelve students in the clinical area.

Section VI, Program Approval and Accreditation

2. Types shall be:

2-4 Provisional approval shall be issued to programs that do

not maintain minimum requirements. Programs placed on provisional approval shall be reviewed annually.

Helen W. Sheehan, R.N., Executive Director
Board of Practical Nurse Examiners

RULE

Department of Natural Resources Office of Conservation

The Department of Natural Resources has amended, reenacted, and adopted Regulation No. 5, governing natural gas pricing pursuant to the provisions of Part V of the Natural Resources and Energy Act of 1973 — Chapter 7, of Title 30, of Louisiana Revised Statutes of 1950.

Regulation No. 5, Amended

A. This regulation shall apply to the price of intrastate natural gas sold by a natural gas company under contracts executed after December 8, 1973, under the provisions of Part V of the Natural Resources and Energy Act of 1973, being Sections 591 through 606 thereof. No contract shall be exempt under the provisions of Section 595.

B. Any and all hearings, investigations, and proceedings conducted or held under Part V of the Act shall be in accordance with the Rules of Procedure of the Commissioner of Conservation.

C. Each natural gas company who enters into a contract for the sale of intrastate natural gas shall file with the Commissioner, within thirty days after the execution of such contract, one complete copy of said contract and one complete copy of all classifications, practices, and regulations affecting such prices.

D. All notices of contracts, agreements, or understandings, or proposed contracts, agreements, or understandings, which may be submitted to the Commissioner pursuant to the provisions of Section 597 of the Act, shall be filed on forms approved by the Commissioner and shall contain the following information:

1. The exact legal name and status of the purchaser and seller and the name, title, and mailing address of the person(s) to whom communications concerning the notice are to be addressed.
2. Parties: seller, purchaser, owner, transporter.
3. Date of contract.
4. Term of contract.
5. Quantities of gas.
 - a. Maximum daily quantity seller is obligated to deliver. (MCF/day or MMBTU/day).
 - b. Minimum daily quantity purchaser is obligated to receive (MCF/day or MMBTU/day).
 - c. Measurement: pressure base.
 - d. Service: firm or interruptible. (Give conditions under which deliveries or receipts can be interrupted or curtailed and minimum level of daily volume during interruption or curtailment.)
6. Type of sale: industrial, sale for resale, transportation or other.
7. Point(s) of delivery.
8. Delivery pressures: minimum, maximum.
9. Price.

E. Unless the Commissioner gives notice to the contrary to the parties within fifteen days from the date of filing hereunder, any contract, agreement or understanding, or proposed contract, agreement or understanding, filed pursuant to the provisions of Section 597 of the Act shall be deemed to have been accepted or approved by the Commissioner without objection and to be in compliance with the provisions of Part V of the Act. If however, the Commissioner deems it advisable to consider the proposal further, he shall notify the parties accordingly and the matter shall thereafter be processed by the Commissioner in accordance with his rules and regulations.

F. All reports to be filed under the provisions of Part V of the Act, exclusive of those permitted or required under Section 597 thereof, shall be filed upon such forms and in such manner as prescribed by the Commissioner and as directed by him.

G. The Commissioner, upon receipt of a petition from any party to a contract or sale complaining of anything done or omitted to be done by any natural gas company in contravention of the provisions of Part V of this Act, shall pursuant to the provisions of Section 602 of this Act, forward a statement of the complaint to the natural gas company which shall have twenty days from receipt to satisfy the complaint or to answer the same in writing. In the event additional time to answer the complaint is requested by the natural gas company, in writing, the Commissioner may, for good cause shown, grant same, but in no case shall the additional time granted exceed thirty days.

H. In connection with filings made with the Commissioner by a natural gas company under provisions of Part V of the Act, interested parties shall be the parties to each such contract so filed.

R. T. Sutton
Commissioner of Conservation

RULES

Department of Natural Resources Office of the Secretary

General Rules and Regulations Section 1 - Definitions

As used in these rules and regulations:

A. "Adjudication" means the process for the formulation of a decision or order.

B. "Administrative Procedure Act" means Act 382 of 1966 as amended by Act 284 of 1974 and Act 730 of 1975 (R.S. 49:951 et seq.), and any amendments thereto.

C. "Decision" or "order" means the whole or any part of the final disposition (whatever its form, whether affirmative, negative, injunctive or declaratory) of the Secretary, in any matter other than rule-making, required by Constitution or statute to be determined on the record after notice and an opportunity for a hearing.

D. "Declaratory ruling or order" means a statement of limited applicability concerning the rights of specific parties or expressing the opinion of the Secretary on a particular subject.

E. "Department" means the Department of Natural Resources, State of Louisiana.

F. "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted and/or heard as a party.

G. "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character, other than the Secretary.

H. "Rule" means each 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 Secretary. The term includes the amendment or repeal of a prior rule, but does not include statements concerning only the internal management of the Department of Natural Resources and not affecting private rights or procedures available to the public, declaratory rulings or orders, or intra-agency memoranda.

I. "Rule-making" means the process employed by the Secretary for the formulation of a rule.

J. "Secretary" means the Secretary of Natural Resources, State of Louisiana.

K. "Violation" means a violation of any provision of the Secretary's rules and regulations.

Section 2 - Conflicts

A. If any conflict should develop between a rule or an order, and a provision of the Louisiana Constitution or a statute which prohibits such rule or order, the provision of the Constitution or statute shall prevail.

B. The Administrative Procedure Act shall govern all rules and regulations of the Secretary, and the Secretary shall have all power conferred by that Act.

Section 3 - Public Information; Adoption of Rules; Availability of Rules and Orders

A. The general course and method of operations of the Secretary by which the public may obtain information or make submissions or requests, shall be as provided in the Administrative Procedure Act and by these rules and regulations.

B. The within rules and regulations set forth the nature and requirements of formal and informal procedures available and of forms and instructions used by the Secretary.

C. The within rules and regulations are available for public inspection, as are any and all other rules and regulations and all other written statements of policy or interpretations formulated, adopted or used by the Secretary in the discharge of his functions, at the offices of the Secretary in Baton Rouge.

D. All final orders, decisions, and opinions are available for public inspection at the offices of the Secretary in Baton Rouge.

Section 4 - Procedure for Adoption of Rules

A. Prior to the adoption, amendment or repeal of any rule or regulation, the Secretary will:

1. Give at least fifteen days' notice of his intended action.

The notice will 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, and the place where, and the manner in which interested persons may present their views thereon. The notice will be mailed to all persons who have made timely request of the Secretary for advance notice of rule-making proceedings and will be published at least once in the Louisiana Register. The Secretary may, at his discretion, authorize more than fifteen days' notice of intended action. For the purpose of timely notice as required by this paragraph, the date of notice shall be deemed to be the date of publication of the issue of the Louisiana Register in which the notice appears, such publication date to be the publication date as stated on the first page of said issue.

2. 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 will be granted if requested by twenty-five persons, by a governmental subdivision or agency or by an association having not less than twenty-five members. The Secretary will consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule or rules, the Secretary, if requested to do so in writing by an interested person either prior to adoption or within thirty days thereafter, will issue a concise statement of the principal reasons for and against its adoption. An individual interested in orally presenting a position on an issue which does not require a separate public hearing, may be allowed to do so at a public meeting called by the Secretary, at the discretion of the Secretary.

B. If the Secretary should find that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than fifteen days' notice, he will state in writing to the Governor of the State of Louisiana, the Attorney General of Louisiana, and the Division of Administration of the State of Louisiana, the reasons for that finding, and will proceed without prior notice or hearing, or upon any abbreviated notice and hearing that he finds practicable, to adopt an emergency rule.

C. A rule adopted in substantial compliance with this Section shall be valid, and inadvertent failure to give notice to any person

or agency as provided herein shall not invalidate any rule adopted hereunder. A proceeding under Section 15 of these rules and regulations to contest the validity of any rule on the ground of noncompliance with the procedural requirements of this section must be commenced within thirty days from the effective date of the rule.

D. An interested person may petition the Secretary requesting promulgation, amendment or repeal of a rule. The petition may be in simple form or by letter, and shall be considered and disposed of in writing within ninety days after submission, either by denial with written reasons, or by initiation of rule-making proceedings in accordance with the provisions of this section.

Section 5 - Filing, Publication, and Taking Effect of Rules

A. The Secretary shall file a certified copy of each rule and regulation which he adopts, including a copy of the within rules and regulations, in the office of the Division of Administration.

B. Compilations may omit any rule, the publication of which would be unduly cumbersome, expensive or otherwise inexpedient; but such rule or rules, in processed or printed form will be made available on application to the Secretary.

C. Compilations will be made available upon request to agencies or officials of Louisiana free of charge, and to other persons at prices fixed by the Division of Administration to cover mailing and publication costs.

D. Each rule hereafter adopted shall become effective upon its publication in the Louisiana Register, said publication to be subsequent to the act of adoption, except that:

1. If a later date is required by statute or specified in the rule, the later date shall be the effective date.

2. Subject to applicable constitutional or statutory provisions, an emergency rule shall become effective on the date of its adoption, or on a date specified by the Secretary to be not more than sixty days future from the date of its adoption, provided written notice is given within three days of the date of adoption to the Governor of Louisiana, the Attorney General of Louisiana, and the Division of Administration as provided in Section 4B of these rules and regulations. Such emergency rule shall not remain in effect beyond the publication date of the Louisiana Register published in the month following the month in which the emergency rule is adopted, unless such rule and the reasons for adoption thereof are published in said issue; provided, however, that any emergency rule so published shall not be effective for a period longer than one hundred twenty days, but the adoption of an identical rule under Subsections A1 and A2 of Section 4 of these rules and regulations is not precluded. The Secretary will take appropriate measures to make emergency rules known to the persons who may be affected by them.

Section 6 - Investigations

A. Any person may file with the Secretary or the Executive Director, a written complaint of a violation of the Secretary's rules and regulations.

B. The Secretary may at any time, upon his own initiative, investigate any suspected violation of these rules and regulations.

C. In connection with the investigation of a possible violation of the rules and regulations, the Secretary may authorize that public hearings be conducted in accordance with the rules applicable to adjudication proceedings.

D. The Secretary has the power to develop facts through either informal investigation procedures or through formal hearings.

E. Investigations shall be for the purpose of determining such questions as whether a violation exists, the scope of the violation, and the persons or parties involved.

F. To the extent practicable, investigatory hearings shall be held in accordance with the rules applicable to adjudicatory proceedings.

G. When the Secretary determines that there has been a violation of the Act, or of any of the Secretary's rules and regulations, he

is authorized to take appropriate action, which may include the initiation of adjudicatory proceedings for enforcement purposes, or the institution of appropriate judicial proceedings.

Section 7 - Adjudication Notice; Hearing; Records

A. All hearings shall be public and shall be conducted by the Secretary or a presiding officer designated by the Secretary to conduct the hearings.

B. The Secretary shall fix the time and place for the hearing. All hearings shall be held in a convenient place, accessible to the public, in the City of Baton Rouge. If the Secretary deems that the interests of the Secretary or any person or party, or the location of the parties or witnesses, or the ends of justice so require, the hearing may be held in any other convenient place of public accessibility within the state.

C. Any hearing may for valid cause be continued by the Secretary or the presiding officer.

D. Parties shall have the right, but shall not be required, to be represented by counsel. Any such counsel must be duly licensed to practice law in the State of Louisiana, or be associated in the hearings with such duly licensed counsel.

E. In an adjudication, all parties who do not waive their rights shall be afforded an opportunity for hearing after reasonable notice.

F. The notice will include:

1. A statement of the time, place and nature of the hearing.

2. A statement of the legal authority and jurisdiction under which the hearing is to be held.

3. A reference to the particular sections of the statutes and rules involved.

4. A short and simple statement of the matters asserted.

5. The date on which any person who may object to the matters asserted must present to the Secretary a written objection. A written objection shall contain a short and simple statement of the basis of the objection.

G. If the Secretary or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application or request, a more definite and detailed statement shall be furnished.

H. Opportunity will be afforded to all parties to timely respond and present evidence on all issues of fact, and argument on all issues of law and policy involved, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

I. Unless precluded by law, informal disposition may be made, at any time, of any case of adjudication by stipulation, agreed settlement, consent order or default.

J. The record in a case of adjudication shall include:

1. All pleadings, motions and intermediate rulings.

2. All evidence received or considered, or a resume thereof if not transcribed.

3. A statement of matters officially noticed, except matters so obvious that statement of them would serve no useful purpose.

4. Offers of proof, objections and rulings thereon.

5. Proposed findings and conclusions and exceptions thereto.

6. Any decision, opinion or report by the officer presiding at the hearing.

K. The Secretary shall make a full transcript of all proceedings and shall, at the request of any party or person, furnish said party or person with a copy of the transcript or any part thereof upon payment of the cost thereof.

L. Findings of fact will be based exclusively on the evidence and on matters officially noticed.

**Section 8 - Rules of Evidence;
Official Notice; Oaths and Affirmations;
Subpoenas; Deposition and Discovery**

A. In adjudication proceedings:

1. The Secretary or presiding officer will admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs, and will give effect to the rules and privileges recognized by law. The Secretary or presiding officer will exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. Objection to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

2. All evidence, including records and documents in the possession of the Secretary of which he desires to avail himself, shall be offered and made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. In case of incorporation by reference, the materials so incorporated shall be available for examination by the parties before being received in evidence.

3. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the Secretary's specialized knowledge. Parties will be notified either before or during the hearing, or by reference to preliminary reports or otherwise, of the material to be noticed, including any staff memoranda or data, and they will be afforded an opportunity to contest the admissibility of the material to be noticed. The Secretary's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

B. The Secretary or the presiding officer appointed by the Secretary conducting a proceeding subject to these rules and regulations shall have the power to administer oaths and affirmations, regulate the course of the hearings, and the time and place of continued hearings, fix the time for filing of briefs and other documents, and direct the parties to appear and confer to consider simplification of the issues.

C. The Secretary or the Secretary's presiding officer shall have power to sign and issue subpoenas in the name of the Secretary requiring attendance and giving of testimony by witnesses and the production of books, papers and other documentary evidence. No subpoena will be issued until the party who wishes to subpoena the witness first deposits with the Secretary a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to R.S.13:3661 and 3671. Witnesses subpoenaed to testify before the Secretary only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examinations and to state the results thereof, shall receive such additional compensation from the party who wishes to subpoena such witnesses, as may be fixed by the Secretary with reference to the value of the time employed and the degree of learning or skill required. Whenever any person summoned under this section neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, the Secretary 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. The provisions of this part shall not be applicable as to the deposit of sums sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to R.S. 13:3661 and 3671 when the party requesting production complies with the provisions of the Louisiana Code of Civil Procedure applicable to the waiver of costs for indigents (Articles 5181 through 5188).

D. The presiding officer of the Secretary, or any party to a proceeding before him may take the depositions of witnesses,

within or without the State of Louisiana, in the same manner as provided by law for the taking of depositions in civil actions in courts of record. Depositions so taken shall be admissible in any proceeding affected by these rules or the Administration Procedure Act. The admission of such depositions may be objected to at the time of hearing and may be received in evidence or excluded from evidence by the presiding officer in accordance with the rules of evidence provided in these rules and regulations.

E. The Secretary may adopt rules providing for discovery to the extent and in the manner appropriate to the proceedings.

Section 9 - Decisions and Orders

A final decision or order adverse to a party in an adjudication proceeding will be in writing or will be stated in the record. A final decision will include findings of fact and conclusions of law. If findings of fact are set forth in statutory language, they will be accompanied by a concise and explicit statement of the underlying facts supporting the findings. A party may submit proposed findings of fact and conclusions of law, and, in that event, the decisions shall include a ruling upon each proposed finding and conclusion. Parties will be notified either personally or by mail of any decision or order. Upon request a copy of the decision or order will be delivered or mailed forthwith to each party and to his attorney of record. By written stipulation, the parties may waive, and in the event that there is no contest, the Secretary may eliminate, compliance with this section.

Section 10 - Rehearings

A. A decision or order in a case of adjudication shall be subject to rehearing, reopening or reconsideration by the Secretary within ten days from the date of its entry. The grounds for such action shall be either that:

1. The decision or order is clearly contrary to the law and the evidence.

2. The party has discovered, since the hearing, evidence important to the issues which he could not with due diligence have obtained before or during the hearing.

3. There is a showing that issues not previously considered ought to be examined in order to dispose of the matter.

4. There is other good ground for further consideration of the issues and the evidence in the public interest.

B. The petition of a party for rehearing, reconsideration or review, and the order of the Secretary, if granting it, will set forth the grounds which justify such action. Nothing in this section will prevent rehearing, reopening or reconsideration of a matter by the Secretary in accordance with other statutory proceedings applicable to it, or at any time, on the ground of fraud practiced by the prevailing party or of procurement of the order by perjured testimony or fictitious evidence. On reconsideration, reopening or rehearing, the matter may be heard by the Secretary, or it may be referred to a presiding officer. The hearing will be confined to those grounds upon which the reconsideration, reopening or rehearing was ordered. If an application for rehearing is filed timely, the period within which judicial review, under the applicable statute, must be sought, shall run from the final disposition of such application.

**Section 12 - Ex parte
Consultations and Recusations**

Unless required for the disposition of ex parte matters authorized by law, the Secretary or the presiding officer designated to conduct the hearing, shall not communicate, directly or indirectly, in connection with any issue of fact or law, with any party or his representative, or with any officer, employee or agent engaged in the performance of investigative, prosecuting or advocating functions, except upon notice or opportunity for all parties to participate.

Section 13 - Remedies

The Secretary may issue:

1. Decrees or orders requiring a party to cease and desist from any course of conduct or action deemed by the Secretary

to be inimical to its purposes or aims or any part thereof.

2. Decrees or orders requiring a party to take affirmative action to further the interests of the Secretary or to correct or insure correction of prior action of a party or otherwise.

3. Declaratory decrees or orders as to the policy of the Secretary in any regard.

4. Generally any decrees or orders to affect the interests of the Secretary as to his general aims and purposes.

Section 14 - Judicial Review of Declaratory Orders and Rulings

Within fifteen days from the decree, or of a declaratory order or ruling, any party affected thereby may petition the Civil District Court for the Parish of East Baton Rouge, for a declaration as to the validity or applicability of any declaratory decree, order or ruling. After the lapse of such period of fifteen days, or upon the finality of any order of court with regard thereto, such declaratory decree, order or ruling shall be final.

Section 15 - Judicial Review of Validity or Applicability of Rules

The validity or applicability of a rule or regulation may be determined in an action for declaratory judgment in the Civil District Court for the Parish of East Baton Rouge, in which the Secretary is made a party to the action. An action for a declaratory judgment under this section may be brought only after the plaintiff has requested the Secretary to pass upon the validity or applicability of the rule or regulation in question, and only upon a showing that review of the validity and applicability of the rule or regulation in connection with a review of a final agency decision in a contested-adjudication case would not provide an adequate remedy and would inflict irreparable injury.

Section 16 - Judicial Review of Adjudication

A. A person who is aggrieved by a final decision or order in an adjudication proceeding is entitled to judicial review thereof, whether or not he has applied to the Secretary for rehearing, without limiting, however, utilization of or the scope of judicial review available under other means of review, redress, relief or trial de novo provided by law. A preliminary, procedural or intermediate action or ruling is immediately reviewable, if review of the final decision would not provide an adequate remedy and would inflict irreparable injury.

B. Proceedings for review may be instituted by filing a petition in the Civil District Court for the Parish of East Baton Rouge within thirty days after the mailing of notice of the final decision by the Secretary, or if a rehearing is requested, within thirty days after the decision thereon. Copies of the petition shall be served upon the Secretary and on all parties of record.

C. The filing of the petition does not itself stay enforcement of the decision of the Secretary, who may, however, grant a stay upon appropriate terms.

Section 17 - Construction and Effect

A. Nothing in these rules and regulations shall be held to diminish the constitutional rights of any person, or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise provided by law, all requirements or privileges relating to evidence or procedure shall apply equally to the Secretary and all persons.

B. If any provision of these rules and regulations shall be found to be in conflict with federal requirements, such conflicting provision of these rules and regulations is hereby declared to be inoperative solely to the extent of such conflict, and such findings or determination shall not affect the operation of the remaining provisions of these rules and regulations in their application to the functions of the Secretary.

C. If any provision of these rules and regulations or the application thereof is held to be invalid, the remaining provisions of these rules and regulations or other application thereof shall not be affected, so long as they can be given effect without

the invalid provision, and to this end the provisions of these rules and regulations are declared to be severable.

D. These rules and regulations shall take effect upon their approval by the Secretary and filing and publication pursuant to the provisions of Section 5 of these rules and regulations, and no procedural requirement shall be mandatory as to any proceeding instituted prior to the effective date of such requirement.

William C. Huls, Secretary
Department of Natural Resources

RULES

Department of Natural Resources Office of the Secretary

(Editor's Note: The following rules are applicable to the licensing of alternate fuels support facilities as authorized by Act 605 of the 1979 Regular Session of the Louisiana Legislature.)

Definitions

As used in these rules and regulations:

1. "Act" means Act 605 of 1979, and any amendments thereto.

2. "Alternate fuel" or "other alternate fuel" means some fuel other than natural gas, coal, and, with the exceptions stated in the federal Powerplant and Industrial Fuel Use Act of 1978, oil.

3. "Applicant" means any person who applies for a license pursuant to these rules and regulations.

4. "Application" means an application submitted under these rules and regulations for a license to construct or operate support facilities within the jurisdiction of the Secretary of Natural Resources, for transfer or renewal of any such license, or for any substantive change in any of the conditions or provisions of any such license.

5. "Administrative costs" include the wages and salaries of the Secretary's staff and employees; the engineering, legal, and operating costs incurred by or on behalf of the Secretary; the equipment, supplies and overhead required for the Secretary to carry out his functions, and any other similar administrative costs reasonably required by the Secretary for operation and management.

6. "Application processing fees" means all fees or charges imposed by the Secretary pursuant to these rules and regulations.

7. "Economic costs" shall include, but not be limited to, costs for facilities and services related to transportation, education, health, highways, roads and streets, police protection, fire protection, sewerage and water facilities and services, sanitation, flood protection, parks and recreation, libraries, and other similar types of community services.

8. "License" means a license issued by the Secretary, pursuant to these rules and regulations, to any person to construct or operate support facilities within the jurisdiction of the Secretary.

9. "Licensee" means the holder of a valid license.

10. "Person" has the identical meaning given that term in the Act.

11. "Secretary" means the Secretary of Natural Resources.

12. "Support facility" means any facility providing an intermediate coal or alternate fuel service essential or useful to the use of, or conversion to, such fuels by powerplants and industries, the availability of which will facilitate economical and orderly use of or conversion to coal or alternate fuel and inure to the benefit of Louisiana citizens using the products produced by the powerplants and industries which utilize the support facility, and which the Secretary has determined is required by the public interest of the State to be either licensed by the State under this Act, or if no person is interested in obtaining a license and constructing and operating such support facility, is owned and operated by the

Department as elsewhere provided in this Act. Support facilities shall include, without exclusion, facilities for loading and unloading, cleaning, blending, and/or storing coal or alternate fuel.

Applications

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

2. An application shall contain the following general information:

A. A brief summary of the entire application suitable for use by the Secretary in giving the notices required by the rules and regulations.

B. The name, address, citizenship, and telephone number of the applicant.

C. The names and addresses of the officers of the applicant.

D. The name and address of the person designated by applicant to receive formal notices or documents.

E. A statement at the end of the application, subscribed and sworn to before a notary public, that the person who signs the application represents that he is authorized and empowered to sign the application on behalf of the applicant and that the contents of the application are true.

F. If the applicant is a corporation, a copy of the applicant's charter or certificate and articles of incorporation, certified by the appropriate official of the state of incorporation.

3. An application shall contain a description of the proposed support facility and the service it will render.

4. An application, based upon facts available at the time of the application, shall contain an analysis of:

A. The extent to which the construction and/or operation of the proposed support facilities may increase the demand on the State of Louisiana and its political subdivisions for public services and facilities, including, but not limited to, schools, parks, transportation facilities, wharves, docks, electricity, water, and sewage facilities, flood protection, police and fire protection, and other physical and social services.

B. An estimate as to the direct and indirect economic, environmental, and administrative costs attributable to the construction and operation of the proposed support facilities.

C. The areas and facilities to be served by the proposed support facilities with specific data as to amounts and types of coal or other alternate fuel to be transported to, and/or refined or used at, each projected destination on an annual basis.

D. All relevant facts showing the extent to which proposed support facilities will contribute to the maintenance and/or development of energy-using industries in Louisiana and to the availability of the products of those industries to Louisiana consumers and industries.

E. All relevant facts showing the extent to which the construction and operation of the proposed support facilities will contribute to increased employment and employment benefits in Louisiana.

F. The projected temporary and permanent demographic effect of the construction and operation of the proposed support facilities.

G. The projected demand for services related to the proposed support facilities, with emphasis on the duration and location of such services. Services as used in these rules and regulations include, but are not limited to, skilled and unskilled labor, barge services, dock workers, contractors, fabricators, engineering and other professional consultants, suppliers, surveyors, and repair and maintenance services and personnel, and living accommodations.

5. An application shall contain a statement by the applicant that he will comply with any reasonable conditions the Secretary may prescribe in accordance with the provisions of the Act or the

Secretary's rules and regulations, which such reasonable conditions to be contained in the license.

6. An applicant shall designate those portions of any information submitted to the Secretary, as part of an application, which concern or relate to trade secrets or which are by nature confidential.

7. Each applicant shall pay to the Secretary such application processing fees as provided elsewhere in these rules and regulations.

8. Ten copies of an application shall be filed with the Secretary. After the filing of an application, the Secretary shall determine, as promptly as reasonably possible, whether or not such application contains all of the information required by these rules and regulations.

9. If the Secretary determines that an application appears to contain the information required by these rules and regulations, he shall publish notice of the filing of the application and a summary of the application immediately in the Official Journal of the State of Louisiana. A copy of the notice and summary shall also be mailed to all interested persons who have made written request of the Secretary for such information.

10. If the Secretary determines that all the required information is not contained in the application, the Secretary shall promptly notify the applicant of such deficiencies in writing and require that the deficiencies be corrected within a certain period of time or the application will be denied for failure to do so.

11. The Secretary may hold such investigatory or adjudicatory hearings as he deems necessary for a proper review and consideration of an application.

12. At any time during an application proceeding, the Secretary may require an applicant to submit such additional information as the Secretary deems necessary in order to meet the requirements of these rules and regulations and other applicable law, and to enable the Secretary to carry out his responsibilities thereunder.

13. An application may be amended or withdrawn at any time before the Secretary renders a final decision thereon, by submitting ten copies of the amendment, or a written request for withdrawal, to the Secretary. If information in an application becomes inaccurate or incomplete after it is filed but before a final decision is rendered on the application, the applicant shall promptly furnish the correct or additional information.

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

Application Processing Fees

1. Any person who files an application with the Secretary shall reimburse the Secretary in accordance with these rules and regulations, for all direct costs incurred by or on behalf of the Secretary in processing any such application.

2. Any person who files an application with the Secretary for a license to construct or operate support facilities within the Secretary's jurisdiction shall remit at the time such application is filed an initial application processing fee of one hundred dollars represented by a certified or cashier's check drawn on a bank or trust company doing business under the laws of the State of Louisiana or the United States, payable to the State of Louisiana, Department of Natural Resources.

3. The application processing fee provided for in the preceding paragraph, and all interest accrued thereon, shall be used by the Secretary to compensate the Secretary for all direct costs incurred by or on behalf of the Secretary in processing such applications.

4. Should the application be withdrawn by the applicant before the issuance by the Secretary to the applicant of a license to construct or operate support facilities, the Secretary shall refund to the applicant any portion of the application fee remaining after payment by the Secretary of all direct costs incurred in processing

such application through the date of such withdrawal.

5. The Secretary shall periodically make a determination of the amount of all direct costs incurred by or on behalf of the Secretary in processing an application.

6. The Secretary shall assess, as application processing fees, all such direct costs against the person or persons whose application has given rise to the direct costs incurred and sought to be recovered, and shall serve on each such person a "Notice of Assessment." Such person or persons shall thereafter make full payment of such fees to the Secretary within thirty days from receipt of Notice of Assessment.

7. Any person on whom a Notice of Assessment is served under these Regulations shall be entitled to a hearing before the Secretary on such assessment, provided a written request for a hearing is filed with the Secretary within thirty days after receipt of the Notice of Assessment.

8. The Secretary's General Rules and Regulations and the Louisiana Administrative Procedures Act (R.S. 49:951 et seq.) shall apply to any hearing held in connection with any Notice of Assessment under these rules and regulations.

9. Should any person fail to pay any application processing fees when due, such person shall pay interest at the legal rate per annum on the unpaid balance of such assessment from the date the assessment is due until paid.

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

11. Application processing fees recovered by the Secretary pursuant to these rules and regulations shall be limited to the amount necessary to compensate the Secretary for the actual costs incurred in processing the application.

12. This section shall not be interpreted to enlarge or diminish the right of the State of Louisiana, or any political subdivision thereof, to impose any other valid fees.

Licenses

1. No license shall issue unless the Secretary determines that:

A. The facilities which are the subject of a license application to the Secretary are "support facilities" within the term and meaning of Act 605 of 1979 and these rules and regulations.

B. The construction and operation of the proposed support facilities will promote the economic and industrial well being of the State of Louisiana, will be an economically viable project as shown by the data provided in the application, and will be consistent with the public interest as declared in the Act. In making the finding of economic viability and public interest, the Secretary shall consider the effect of an application on existing licensed support facilities and shall not issue a license which would be contrary to the State Plan promulgated by the Secretary pursuant to Act 605 of 1979.

C. The proposed support facilities will be constructed and operated in conformance with the Act, the rules and regulations of the Secretary, other applicable law and conditions of the license.

D. The applicant has reimbursed the Secretary for all direct costs incurred by or on behalf of the Secretary in processing the application and has paid to the Secretary any other sums due the Secretary under applicable law.

2. A license shall contain the name and address of the licensee, and the licensee's agent for service of process in the State of Louisiana.

3. A license shall contain a description of the support facilities licensed.

4. A license shall describe all activities authorized by the license.

5. A license shall be subject to and contain such reasonable conditions as the Secretary deems necessary to carry out the purposes of the Act and the Secretary's rules and regulations, including, but not limited to, conditions requiring that the licensee:

A. Comply with all applicable laws and regulations, now in effect or hereafter adopted or amended.

B. Construct and operate the support facilities in accordance with the description of such construction and operation in the license.

C. Promptly provide the Secretary with the name, address, citizenship, and telephone number of any person with whom the applicant has made, or proposes to make, a significant contract for the design, construction or operation of support facilities within the Secretary's jurisdiction, and a description of any such contract.

D. Notify the Secretary of any substantive changes in any data submitted to the Secretary.

E. Cooperate with the Secretary in monitoring the construction and operation of the licensed support facilities.

F. Submit detailed construction drawings, plans and specifications to the Secretary for all components of the support facilities sufficiently in advance of commencement of construction of such components to enable the Secretary to properly review such drawings, plans and specifications for conformance with the provisions and conditions of a license, the Secretary's rules and regulations, and other applicable law.

G. Afford access, at reasonable times, to licensed support facilities to representatives of the Secretary for the purposes of inspection of relevant records, files, papers, processes, controls, operations, and facilities for the purpose of ascertaining the state of compliance with the license, the Act, and the rules, regulations, and orders of the Secretary.

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

A. A licensee which exercises its rights under the license shall pay to the Secretary reasonable fees and charges lawfully recoverable by the Secretary to compensate for direct costs incurred by the Secretary which pertain to the licensed support facilities.

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

7. Except as otherwise provided in these rules and regulations, a license shall be for such term as determined by the Secretary.

8. A license may be revoked, suspended, or modified by the Secretary for the following reasons:

A. The willful making of a false statement or willful misrepresentation of a material fact in connection with securing or maintaining such license.

B. Failure to comply with, or respond to, lawful inquiries, rules, regulations, or orders of the Secretary or the conditions of any license issued by the Secretary.

9. The Secretary may not revoke, suspend, annul, modify or withdraw a license unless, prior to the institution of proceedings, the Secretary gives notice by certified mail to the licensee of facts which warrant the intended action, and the licensee is given an opportunity at a hearing to show compliance with all lawful requirements for the retention of the license. If the Secretary finds that public health, safety or welfare imperatively require emergency action, and incorporates a finding to that effect in an order, summary suspension of a license may be ordered pending proceedings for suspension, revocation or other action. These proceedings will be promptly instituted and a decision promptly

rendered. All hearings held on the suspension, revocation, annulment or withdrawal of a license will be governed by the Secretary's General Rules and Regulations concerning adjudications.

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

11. The Secretary may make clerical corrections in a license upon written request by the licensee demonstrating clearly a need for such changes.

12. Before the Secretary may approve any change by a licensee to the licensed support facilities which would constitute a substantive change in any condition or provision of a license, a licensee shall file an application therefor with the Secretary and the Secretary shall give such application full consideration as provided in these rules and regulations.

13. Licenses may be renewed by following the procedures prescribed herein for obtaining issuance of a license. A license shall be renewed if the Secretary finds that the licensee has complied with all terms and conditions of the license.

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

Coordination; Enforcement

1. The Secretary shall coordinate, consult and cooperate with any federal or state agencies, or political subdivisions of the State, having an interest in the construction and operation of support facilities within the Secretary's jurisdiction.

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

William C. Huls, Secretary
Department of Natural Resources

RULES

Department of Public Safety Office of Alcoholic Beverage Control

Rule Prohibiting Certain Unfair Business

Practices in the Malt Beverage Industry in Louisiana

I. Definitions.

The following terms have respective meanings ascribed to them, except in those instances where the context indicates a different meaning:

(1) "Brewer" means any person who, directly or indirectly personally or through any agency, engages in the making or production of malt beverages.

(2) "Importer" means any dealer who imports alcoholic beverages from any state, territory, possession, or foreign country for handling in Louisiana as defined in R.S. 26:241(6).

(3) "Person" means any individual, municipality, industry, public or private corporation, partnership, firm or any other entity.

(4) "Bureau" means the Bureau of Alcohol, Tobacco and Firearms of the United States Treasury Department.

(5) "Industry member" means any person engaged in business as a distiller, brewer, rectifier, blender or other producer, or as an

importer or wholesaler, of distilled spirits, wine or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, but shall not include an agency of a state or political subdivision thereof, or an officer or employee of such agency.

(6) "Cost to industry members" means the invoice cost, or the replacement cost, of the merchandise to the industry member, whichever is lower:

(1) Less all trade discounts except customary discounts for cash and discounts from the state or any governmental agency allowed for the payment of collection of any taxes.

(2) Plus, in the following order:

(a) Freight charges not otherwise included in the invoice cost or the replacement cost of the merchandise.

(b) Cartage cost which shall be three-fourths of one percent of the cost to the industry member after adding freight charges but before adding cartage, any existing tobacco stamp excise tax, and markup.

(c) Any existing tobacco stamp excise tax.

(d) A markup to cover a proportionate part of the cost of doing business which markup, in the absence of proof of a lesser cost, shall be two percent of the cost to the industry member after adding freight charges, cartage, and any existing tobacco stamp excise tax.

II. Findings and Declaration of Policy.

A. The Assistant Secretary of the Office of Alcoholic Beverage Control finds and declares the following:

1. The Bureau of Alcohol, Tobacco and Firearms of the Treasury of the United States has for several years prohibited "exclusive outlet" and "tied house" arrangements with respect to the marketing and sale of beverages of both high and low alcoholic content in Louisiana.

2. The Bureau has prohibited these practices by enforcement of Section 5 of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C., §205 in Louisiana.

3. The Bureau's enforcement of this federal law in Louisiana, in the case of malt beverages, depends on the existence of a similar Louisiana law (i.e., a law that imposes similar requirements with respect to similar transactions).

4. For several years, the Bureau has enforced the provisions of Section 5 of the FAA Act prohibiting exclusive outlets and "tied house" arrangements in the marketing and sale of malt beverages in Louisiana under the authority and legal conclusion that R.S. 51:422 of the Louisiana Unfair Sales Law was the required similar Louisiana law.

5. The Legislature of Louisiana has provided specific laws at the 1979 Regular Session which prohibit such "tied house" arrangement by enacting Act 518 and Act 520 which amends Section 286 of Title 26 relative to additional causes for suspension and revocation of permits.

6. The Assistant Secretary of the Office of Alcoholic Beverage Control finds that federal enforcement of the prohibitions contained in Section 5 of the FAA Act against exclusive outlets and tied house arrangements with respect to the marketing and sale of malt beverages in Louisiana has brought stability to that industry, has prevented unlawful and unfair inducements for the retail purchase of malt beverages, and has prevented unlawful coercion, bribery, kickback demands, and other unfair and unlawful business practices from occurring.

7. The Assistant Secretary of the Office of Alcoholic Beverage Control declares it to be in the best interest of the citizens of Louisiana that fair business dealings and unfettered competition govern the malt beverage industry in Louisiana, that it remain an industry dominated by fairness and integrity, and that it should be safeguarded against the threat of corrupt and unfair business practices.

III. Regulations and Exception Authorized Pursuant to R.S. 26:286(9) and (10) Relative to the Marketing and Sale of Malt Beverages in Louisiana.

A. The Assistant Secretary of the Office of Alcoholic Beverage Control finds that the substantive legislative intent and full purpose of R.S. 26:286 is to prevent the unfair inducement to purchase goods or services by wholesalers or retailers, thus unfairly diverting trade from a competitor and thereby impairing fair and free competition.

THEREFORE, to fully implement the legislative intent and purpose of R.S. 26:286(9) and (10) with respect to the malt beverage industry in Louisiana, the Assistant Secretary of the Office of Alcoholic Beverage Control hereby adopts and promulgates the following rule he deems necessary to carry out the provisions contained in Subparagraphs (a) and (b) of Paragraphs 9 and 10 of Section 286 of Title 26, including, but not limited to, exceptions determined to be in the public interest and to be necessary to further the purposes provided for in Chapter 2 of Title 26, by amending Regulation No. IX to prohibit certain unfair business practices within the malt beverage industry.

1. Exceptions.

A. Equipment.

In order to provide proper dispensing of draught malt beverages by retail dealers, industry members may provide without charge, coil cleaning service, tap markers which show brand, and tapping equipment such as rods, vents, taps, hoses, washers, couplings, vent tongues and check valves.

Accessories such as carbon dioxide gas tanks, regulators, and other draught equipment accessories with a reasonable open market price of more than five dollars but less than one hundred dollars must be sold to retailers at a price no less than the cost to the industry member as defined herein. Such sales shall be made for cash only.

Draught equipment accessories with a reasonable open market price of one hundred dollars or more are not included under this exception.

B. Inside signs.

Signs, posters, placards, designs, devices, clocks, calendars, decoration or graphic displays, bearing advertising matter and for use in the windows or elsewhere in the interior of a retail establishment, may be given, rented, loaned or sold to a retailer by an industry member if the total value of such materials in use at any one time for any one brand does not exceed one hundred fifty dollars to any one retail establishment, including all expenses incurred directly or indirectly by an industry member in connection with the purchase, manufacture, transportation, assembly, and installation of such materials and of accessories thereto; provided however, that the industry member shall not directly or indirectly pay or credit the retailer for displaying such materials or for any expense incidental to their operation.

C. Supplies.

Carbon dioxide gas or ice may be sold to a retailer, if sold in accordance with the reasonable open market price thereof in the locality there sold.

D. Services.

Industry members may price, stock, shelve and rotate their products and other malt beverage brands at retail premises under the express authority of the retail owner or manager or said establishment.

E. Retailer advertising specialties.

Trays, coasters, matches and paper napkins cannot be given away but may be sold to retailers by industry members and the price charged for such items must be no less than the cost to the industry member as defined herein.

Other retailer advertising specialties, such as beer mats, menu cards, meal checks, foam scrapers, back bar mats, tap markers, thermometers, ash trays, corkscrews, paper bags, blotters, pencils and key rings which bear advertising matter, and which are primarily valuable to the retailer as point of sale advertising media, may be furnished, given, or sold to a retailer if the aggregate cost to any industry member of such

retailer advertising specialties furnished, given, or sold in connection with any one retail establishment in any one calendar year does not exceed twenty-five dollars.

After the delivery of such retailer advertising specialties with an aggregate cost to an industry member of twenty-five dollars has been made by such industry member to a particular retail establishment during any one calendar year, any future deliveries of such items to that particular retail establishment by such respective industry member during the remainder of such calendar year must be effected only by the sale of such items at their reasonable open market price in the locality where sold. Any items sold, furnished or given away under this subsection must be itemized separately on the industry member's invoices and other records.

F. Merchandise.

Merchandise, such as groceries, drugs, plastic and paper cups, and other such containers designed to hold liquid, pitchers, glassware, novelty items cannot be given away but may be sold to a retailer without limit as to quantity or value, by an industry member who is also engaged in business as a bona fide vendor of such merchandise. If such merchandise is sold in combination with distilled spirits, wine, or malt beverages such sales must be itemized separately on the industry member's invoices and other records. Provided, however, that equipment, fixtures, signs, supplies and consumer and retailer advertising specialties may be furnished only as provided elsewhere in this part.

G. Fairs and Festivals and Special Events.

When a retail dealer calls upon an industry member to service a particular limited event where malt beverages will be sold or given away, the industry member must charge the retail dealer a price at least equal to the cost to the industry member as defined herein for the product and charge for all equipment used and services given in an amount at least equal to that listed as follows:

- (1) Labor—at a rate equal to that required under the Federal Wage and Hour Law.
- (2) Self contained electric units in which the beer container is refrigerated within the unit—fifteen dollars per day.
- (3) Electric unit in which the beer container sits outside the cooling unit—fifteen dollars per day.
- (4) Picnic pumps—one dollar per day.
- (5) Tubs—one dollar per day.
- (6) Cold plates—two dollars per day.
- (7) Trucks, designed to handle packaged or draught beer—thirty dollars per day.
- (8) Mobile draught units such as trailer or other vehicles—thirty dollars per day.

Lynn E. Williams, Assistant Secretary
Office of Alcoholic Beverage Control

RULE

**Department of Public Safety
Office of State Fire Protection**

LAC 17-4:18 Modular Structures

18.1 Modular structures definition. A modular structure is any type of watercraft, movable or structure erected in the State of Louisiana which does not come within the definition of a mobile home as set forth in the Mobile Home Act, Act 281 of 1974, R.S. 51:911.21 et seq., but which contains hidden appliances, such as wiring, which are manufactured into the product at a factory rather than on site and which are therefore impractical or impossible to inspect on-site when erected or constructed in Louisiana.

18.2 Applicability of Fire Marshal's Act. All of the provisions of the Louisiana State Fire Marshal's Act, R.S. 40:1561, et seq., shall