

Notices of Intent

NOTICE OF INTENT

Department of Economic Development Economic Development Corporation

Small Business Linked Deposit Loan Program (LAC 19:VII.Chapter 73)

In accordance with R.S. 51:2312 and the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Economic Development, Economic Development Corporation hereby intends to adopt the following rules and regulations regarding the Linked Deposit Loan Program.

The text of this proposed Rule may be viewed in its entirety in the emergency rule section of this issue of the *Louisiana Register*.

Interested persons may submit written comments on the proposed Rule no later than 30 days following the date of publication of the Notice of Intent. Written comments should be directed to Dennis A. Manshack, Executive Director, Economic Development Corporation, Box 44153, Baton Rouge, LA 70804.

Dennis A. Manshack
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Small Business Linked Deposit Loan Program

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

Implementation costs of the proposed rules for FY 98-99 is estimated at \$8,100. These costs reflect the portion of LEDC's administrative expenses needed to process the linked deposit transactions. This will not represent an increase in LEDC's administrative expenses due to the fact that the program has been in existence and operating since FY 90.

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

This rule established procedures for authorization and administration for an existing low interest loan program. The Treasurer's office has deposited \$30 million into accounts at an interest rate three percent lower than it would ordinarily receive on normal deposits. The "linked deposit" costs the state approximately \$900,000 per year in lost revenues. The deposit and the state's ability to make this deposit is by law subject to the judgment of the State Treasurer.

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

Each business is eligible for up to a \$200,000 linked deposit under this program. The "linked deposit" is available to small businesses for a period of two to five years with an average of three years, renewable each year. After the prescribed period, the deposit returns to state funds to be reinvested into another business taking advantage of the linked program. The benefit to

each eligible business would be \$200,000 times one, three or four percent with an average of three percent, or \$6,000 per year to be used to create new jobs. It is estimated that 65 to 70 businesses per year will be assisted either by the initiation of a new "linked" application or by renewal of an existing one.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The effect on competition will be minimal since the amount each business receives and the beneficiaries will be spread across the small business spectrum. The effect on employment should be positive since one of the criteria for awarding this benefit will be the ratio of state funds to be deposited to the number of jobs created or sustained.

Dennis Manshack
Executive Director
9812#038

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Economic Development Office of the Secretary

Substance Abuse and Drug-Free Workplace Program (LAC 13:V.Chapter 1)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and in accordance with Executive Order MJF 98-38 and R.S. 49:1015 et seq., notice is hereby given that the Department of Economic Development, Office of the Secretary intends to promulgate rules regarding the implementation of a drug testing program for new and existing employees within the Department.

Title 13

ECONOMIC DEVELOPMENT

Part V. Office of the Secretary

Chapter 1. Substance Abuse and Drug-Free Workplace Program

§101. Philosophy

A. The Department of Economic Development is totally committed to deterring substance abuse or use which imperils the health and well-being of our employees and the citizens of this State. To accomplish this, DED hereby adopts these Substance Abuse and Drug-Free Workplace Rules which will enhance the safety and welfare of our employees, increase overall productivity and the quality of our service to the public, preserve property and equipment, promote public safety, reduce absenteeism and job-related accidents which, in turn, will improve the image and reputation of our Department and employees.

B. DED's philosophy is consistent with the State of Louisiana's long-standing commitment to establishing a drug-free workplace. To deter the use of illegal drugs by employees of the State of Louisiana, the Louisiana Legislature enacted laws which provide for the creation and implementation of drug testing programs for State employees. Further, the

Governor of the State of Louisiana recently issued Executive Order 98-38 providing for the promulgation, by executive agencies, of written policies mandating drug testing of employees, appointees, prospective employees and prospective appointees in accordance with Louisiana Revised Statute 49:1001, et seq. This Department fully supports these actions and is committed to a drug-free workplace.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:

§103. Applicability

A. These Rules apply to all employees and appointees of this Department, as well as potential employees, potential appointees (excluding appointed members of boards and commissions), individuals providing service to this Department through a contract with a third party employer (i.e. temporary agency employees), and all other persons having an employment relationship with the Department, whether classified, unclassified, student employees, student interns, full-time, part-time or temporary (hereinafter "employee(s)" unless otherwise noted).

B. These Rules do not apply to the Louisiana Racing Commission which will amend its current Rules to include the provisions set forth in Executive Order 98-38.

C. Following a job offer, potential employees and potential appointees will be required to submit to pre-employment drug testing. All employees are subject to post-accident/incident, reasonable suspicion and return-to-duty/rehabilitation monitoring drug and alcohol testing. Employees who incur safety-sensitive positions and applicants who apply for safety-sensitive positions are subject to both random and pre-selection drug and alcohol testing. Finally, prior to being reassigned, temporarily detailed, promoted or demoted to a safety-sensitive position, an employee is required to undergo drug and alcohol testing. A list of the safety-sensitive positions within this Department is attached as Appendix A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:

§105. Requirements

A. To maintain a safe and productive work environment, all DED employees are required to:

1. report for duty in the physical and emotional condition which maximizes his/her ability to perform assigned tasks in a competent and safe manner;
2. promptly and cooperatively submit to drug/alcohol testing when required by a supervisor or appointing authority;
3. notify a supervisor on the first scheduled workday following any arrest or conviction for DWI, drug or drug-related offense which occurs on or off duty.

B. DED prohibits the use, abuse and presence of unauthorized alcohol, illegal or unauthorized drugs, and other prohibited substances in the bodies of its employees while on duty, scheduled on-call or engaged in DED business, on or off DED/State premises. The presence of unauthorized alcohol, illegal or unauthorized drugs, and other prohibited substances in a State vehicle while on or off duty is also prohibited.

1. The presence of alcohol is indicated by a confirmed blood alcohol concentration of 0.05 percent or more by weight based upon grams of alcohol per one hundred cubic centimeters of blood.

2a. Illegal or unauthorized drugs include:

- i. any drug which is not legally obtainable;
- ii. any drug which is legally obtainable, but has been illegally obtained;
- iii. prescription drugs not being used in accordance with the prescription;
- iv. or any substance which affects the employee's ability to safely and competently perform assigned duties.

b. Controlled dangerous substances are listed in Schedule I, II, III, IV and V of La. R.S. 40:964.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:

§107. Drug/Alcohol Testing

A. All employees may be required to submit to drug and/or alcohol testing as a condition of employment, as a condition of continued employment, or as a condition of promotion, demotion, reassignment or detail to a safety-sensitive position. Whether announced or unannounced, tests will be administered under the following circumstances.

1. Pre-Employment. Drug tests are required of all prospective employees and appointees of this Department. Each prospective employee/appointee shall be required to submit to drug screening at the designated time and place following a job offer. Pursuant to La. R.S. 49:1008, a prospective employee/appointee testing positive for the presence of a prohibited substance shall be eliminated from consideration for employment. Additionally, applicants for safety-sensitive positions listed in §121 shall be required to submit to alcohol testing. Applicants who test positive for the presence of alcohol shall be eliminated from consideration for employment.

2. Post-Accident/Incident. An employee may be subject to drug testing following an on-duty accident where there is reasonable suspicion that the employee was under the influence of drugs or alcohol. *Reasonable suspicion* is a belief, based upon reliable, objective and articulable facts derived from direct observation of specific physical and behavioral characteristics (behavior, speech, appearance, odor), which causes a prudent person to suspect that an employee has engaged in drug or alcohol use. Only an appointing authority shall require an employee to submit to post-accident/incident testing. Generally, this decision will be based upon the recommendation of supervisory personnel at the scene who have objectively and thoroughly reviewed the circumstances of the accident/incident. The supervisor will fully document the facts upon which the recommendation for testing is made. Any employee directly involved in an on-duty accident shall be required to submit to drug and alcohol testing if:

- a. the accident involves circumstances giving rise to a reasonable suspicion that the accident may have involved the employee's drug or alcohol use and the employee's action or inaction may have been a causative factor;

b. the accident meets the criteria of paragraph (a) and results in or causes the release of hazardous waste as defined by La. R.S. 30:2173(2) or hazardous materials as defined by La. R.S. 32:1502(5); or

c. the accident results in a fatality or serious bodily injury.

Note: When post-accident/incident testing is ordered, a Departmental representative shall transport the individual being tested to and from the testing site. Under no circumstance should any employee who is reasonably believed to be impaired or under the influence of any drug or alcohol be permitted to operate a motor vehicle.

3. Random. Random alcohol and drug testing is required of all employees holding safety-sensitive positions as listed in §121. Such testing shall be periodic and unannounced, and employee selection therefor shall be by a computer-generated random selection process. All such testing shall, unless impracticable, occur during the employee's normal work hours.

4. Promotion/Reassignment/etc. to Safety-Sensitive Position. Current employees are required to undergo drug and alcohol testing prior to being reassigned, temporarily detailed, promoted or demoted to a safety-sensitive position as defined in §121. An offer of promotion, reassignment, detail or demotion will be withdrawn if a positive drug or alcohol test result is reported, and employees are further subject to disciplinary action as specified in these Rules.

5. Reasonable Suspicion. An employee shall be required to submit to drug and alcohol testing when he/she exhibits behavior or appearance that is characteristic of drug or alcohol use. The decision to test will be by a appointing authority based upon reliable, objective and articulable facts derived from direct observation of the employee's physical appearance, behavior, speech, body odor or physical manifestations. The observation must be made by supervisory personnel (two, if possible) who shall record, in writing, the observations leading to the recommendation for testing.

Note: When reasonable suspicion testing is ordered, a Departmental representative shall transport the individual being tested to and from the testing site. Under no circumstance should any employee who is reasonably believed to be impaired or under the influence of any drug or alcohol be permitted to operate a motor vehicle.

6. Return-to-Duty/Rehabilitation Monitoring. Any employee who retains his/her job following a violation of these Rules shall be required, at his/her own expense, to undergo and complete any and all treatment recommended by a certified substance abuse professional. Any such employee shall be subject to periodic drug/alcohol testing. Further, any employee who voluntarily or, as a condition of continued employment, participates in an alcohol/substance abuse rehabilitation program, shall be subject to random drug/alcohol testing for a minimum of one year or longer as determined by the treating substance abuse professional. Any such employee shall be required to certify, in writing, his/her understanding and acceptance of such a rehabilitation agreement as a condition of returning to work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:

§109. Drug Testing Procedures

A. Drug testing pursuant to these Rules shall be for the presence of marijuana, opiates, cocaine, amphetamine/methamphetamine and phencyclidine (PCP) in accordance with La. R.S. 49:1001, et seq. Testing shall be performed by a contractor chosen by the Office of State Purchasing, Division of Administration. At a minimum, the testing procedure shall assure:

1. that all specimens for drug testing are collected, stored, transported and tested in compliance with United States Department of Health and Human Services (DHHS) guidelines (and applicable federal and state regulations) to ensure integrity of the testing process;

2. urine specimens will be collected with emphasis upon the privacy rights of the employee. Direct observation of the employee during collection of the urine specimen will be allowed only under the following conditions:

a. when there is specific, articulable reason to believe that the individual may alter or substitute the specimen;

b. when the individual has provided a urine specimen which falls outside the acceptable temperature range;

c. when the last urine specimen provided by the individual was verified by the Medical Review Officer as adulterated; or

d. when collection site personnel observe conduct or behavior indicating an attempt to substitute/adulterate the sample or otherwise alter the integrity of the collection process;

Note: In all instances in which direct observation is deemed appropriate, the designated DED representative shall review and concur, in advance, with any decision by collection site personnel to obtain a specimen under direct observation. This representative shall maintain, in a confidential record, the full name of the reporting collection site personnel and the specific facts relied upon to approve the direct observation. The record shall be signed by the Department representative. All direct observations shall be conducted by same gender collection site personnel.

3. the split sample collection methodology must be used in accordance with LA R.S. 49:1006(D), with both the primary and split specimens properly stored and transported to the testing laboratory. The primary urine sample will be analyzed for the presence of marijuana, opiates, amphetamines/methamphetamine, cocaine and phencyclidine (PCP);

4. appropriate chain of custody forms shall be utilized to ensure the integrity of each urine specimen by tracking its handling, storage and transportation from point of collection to final disposition;

5. testing shall be performed by laboratories certified for forensic urine drug testing by the U.S. Department of Health and Human Services and in strict compliance with DHHS Guidelines;

6. the dual testing procedure shall be used for all samples. Each primary sample that tests positive for a prohibited substance shall be subject to an additional, more precise confirmatory test (gas chromatography/mass spectrometry);

7. all positive test results (those which exceed federally established cut-off levels as set forth in 49 CFR 40, Section 40.29), shall first be reported by the testing laboratory to

DED's qualified Medical Review Officer (MRO). The MRO is a licensed physician knowledgeable of substance abuse who has received specialized training in interpreting and evaluating test results in conjunction with an individual's medical history and other relevant biomedical information. The MRO will review the collection procedure, chain of custody and testing methodology before contacting the employee/appointee/applicant to rule out the possibility of error or that medications, medical history or any other condition caused the positive test result;

8. if the test is confirmed to be positive by the MRO, the employee may, within 72 hours of notification from the MRO, request, in writing, directly to the MRO, that the split specimen (initially collected but separated and stored during the collection process) be tested in a different DHHS certified laboratory. This split sample testing shall be allowed if timely requested and performed at the employee's expense;

9. once a positive test is confirmed and reported to DED by the MRO, an employee in a safety-sensitive position will be prohibited from performing safety-sensitive functions. A request for testing of the split sample will not delay any such employee's removal from performing safety-sensitive functions; and

10. if testing of the split specimen results in a negative result, the MRO will cancel the positive result of the initial test. All doubts shall be resolved in favor of the employee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:

§111. Alcohol Testing Procedures

A. Evidential Breath Testing Devices (EBT) approved by the National Highway Traffic Safety Administration will be used by certified Breath Alcohol Technicians to determine the presence of alcohol in the employee's system.

B. The employee will be advised of the results of the breath screening test. No further testing will be required if the test results are negative. If the screening test is positive for the presence of alcohol, a confirmation test will be performed within twenty minutes, but not less than fifteen minutes of completion of the screening test. If the confirmatory test indicates a blood alcohol concentration of 0.05 percent or more by weight based upon grams of alcohol per one hundred cubic centimeters of blood, the results will be reported as positive to DED's designated representative.

C. An employee occupying a safety-sensitive position will be immediately removed from performing safety-sensitive functions in the event of a positive alcohol test.

D. Positive test results will also be reported to the appointing authority whenever an employee refuses to complete or sign the breath alcohol confirmation testing form, provide breath or an adequate amount of breath (excluding medical inability), or fails to cooperate with the testing procedure in any way that prevents completion of the test.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:

§113. Enforcement

A. The use of illegal drugs, unauthorized alcohol and other controlled or unauthorized substances will not be tolerated. Substance abuse endangers the health and well-being of our employees, prevents quality service to the public and is inconsistent with this Department's mission. While the Department's position is firm, we will resolve any reasonable doubt regarding the testing procedure or results in the employee's favor.

B. Disciplinary action will be taken after a complete and thorough review of the applicable data in accordance with Chapter 12 of the Civil Service Rules. Employees will be provided pre-deprivation notice and a meaningful opportunity to respond prior to the imposition of disciplinary action.

C. Penalty for a First Positive Test. A first positive test (drug or alcohol) will result in disciplinary action up to and including the possibility of termination. Factors to be considered in determining the appropriate sanction include, but are not limited to, the employee's work history, length of service, current job performance and the existence of prior disciplinary action. At a minimum, the first-time offender will remain off from work at least thirty calendar days. For any such period, the first ten workdays will be a suspension, without pay. For the remaining twenty days, the employee will be permitted to use annual, sick or compensatory leave, if available. During this thirty-day period, the employee shall obtain a substance abuse evaluation and commence any recommended rehabilitative treatment. Refusal to participate in the evaluation/treatment process, at the employee's expense, will result in termination.

D. Termination will be the recommended penalty for the following violations:

1. second positive drug test result or confirmed blood alcohol level above the applicable thresholds;
2. refusal to submit to a drug or alcohol test;
3. failure to cooperate in any way which prevents the completion of a drug or alcohol test;
4. submission of an adulterated or substitute sample for testing;
5. buying, selling, dispensing, distributing or possessing unauthorized alcohol or any illegal or unauthorized substance while on duty, in a State vehicle or on DED/State premises; and

6. operating a State vehicle or personal vehicle while on duty under the influence of drugs or alcohol where testing administered by an authorized official confirms a violation of these Rules.

E. Suspension will be the recommended penalty for the following violations:

1. failure to notify a supervisor of an off-duty arrest or conviction of DWI or drug-related offense at the beginning of the next scheduled workday.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:

§115. Confidentiality/Employee Rights

A. All drug and alcohol testing results and records (including all information, interviews, reports and statements) are considered confidential communications, pursuant to La. R.S. 49:1012, and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding, except in an administrative or disciplinary proceeding or civil litigation where drug use by the tested individual is relevant. Exceptions to these confidentiality provisions are limited to written employee consent; federal agencies when licensure or certification actions are required; to a decision-maker in arbitration, litigation or administrative proceedings arising from a positive drug test; and as otherwise required by law.

B. In compliance with La. R.S. 49:1011, any employee, upon learning of a confirmed positive test result, shall, upon written request, have the right of access, within seven working days, to records and other documentation relating to the drug testing process and any records relating to the results of any relevant certification, review, suspension/revocation proceedings of the testing facility.

C. Employees should know that statistical records and reports of drug testing are maintained by DED, contract physicians and drug testing laboratories. This information is aggregate data and is used to monitor compliance and to assess the effectiveness of the drug testing program.

D. This Department has no interest in informing law enforcement authorities of a positive drug test. However, nothing contained in these Rules will be construed to preclude the delivery of any illegal drug, controlled dangerous substance, or other substance prohibited by these Rules, discovered in/on DED/State property, or upon the person of a DED employee, to law enforcement officials. Likewise, any employee engaged in the sale, attempted sale, distribution or transfer of illegal drugs or controlled substances while on duty or on DED/State property shall be referred to appropriate law enforcement authorities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:

§117. Employee Assistance Program (EAP)

A. Early recognition and treatment of drug abuse or dependency are essential to successful rehabilitation. Employees experiencing a substance abuse problem are encouraged to seek assistance from the Department's EAP Coordinator within the Human Resources Division. Any such involvement will be held in strict confidence, but employees should know that supervisors and appointing authorities (who need to know) will be kept abreast of the employee's treatment and leave needs.

B. Employees referred to the EAP Coordinator by supervisory personnel or who, as a condition of continued employment, participate in a substance abuse rehabilitation program will be subject to the Return-to-Duty/Rehabilitation Monitoring testing set forth in these Rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:

§119. General Provisions

A. DED reserves the right to have a licensed physician, of its own choosing and at its own expense, determine if use of prescription medication produces effects which impair the employee's performance or increase the risk of injury to the employee or others. In such case, DED will modify the employee's customary job duties or work activities for the period the employee is unable to safely perform his/her customary job duties. Alternatively, the employee may be required/permitted to use accrued leave.

B. Although the substance abuse testing defined in these Rules is restricted to five specified drugs and alcohol, DED reserves the right to require employees to submit to additional testing, if warranted. Such tests will only be administered when post-accident or reasonable suspicion testing produce negative results and the employee's behavior clearly indicates impairment or other indicia of substance use. Separate samples will be collected for these additional tests and the testing process will fully comply with DHHS regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:

§121. Appendix A

No safety sensitive positions at this time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:

Interested persons may submit written comments no later than 30 days from the date of publication of the Notice of Intent to Kevin P. Reilly, Sr., Secretary, Box 94185, Baton Rouge, LA 70808, 225-342-5388.

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Substance Abuse and Drug-Free Workplace Program

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

Costs projected at this time are based upon personnel turnover, which mandates that new hires are tested, and projected accidents which could result in drug/alcohol testing. Cost for the remainder of the current fiscal year (1998-1999) is estimated to be \$1,296; costs for future fiscal years will be approximately \$2,565, based on the information provided by the division of Administration in which the pending Request For Proposal (REP) is expected to result in drug testing costs of \$13.50 per person. Costs for experts to testify in any Civil Service Appeals or Court Trials as the result of disciplinary actions taken as the result of the drug testing policy and procedures cannot be estimated at this time.

This drug testing program is mandated by Executive Order MJF 98-38. Funding of this program will be absorbed within the existing budget.

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

There is no estimated effect on revenue collections of state or local governmental units as a result of this Rule.

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

It is expected that savings in employee productivity will result to the Department if employees who are addicted to drugs or alcohol are identified and removed from the workplace. Additionally, drug testing should reduce the number of prospective employees with substance abuse problems who might otherwise be employed by the Department. Leave costs may be reduced as a result of identifying employees with substance abuse problems.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The number of persons employed should not be affected. Drug Testing will extend the period of time that it takes to employ staff because of the testing procedure and results. Persons addicted to drugs may be eliminated from competition for positions.

Kevin P. Reilly, Sr.
Secretary
9812#015

Robert E. Hosse
General Government Section Director
Legislative Fiscal Branch

NOTICE OF INTENT

Board of Elementary and Secondary Education

**Bulletin 1191—School Transportation Handbook
(LAC 28:XXVII)**

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the State Board of Elementary and Secondary Education approved for advertisement revised Bulletin 1191, promulgated in LR 2:187 (June 1976), referenced in LAC 28:I.915.A. Bulletin 1191 is designed to provide information and direction to local school system personnel in school transportation in Louisiana, and minor changes are being made to further clarify the contents and the intent of policies.

**Title 28
EDUCATION**

Part XXVII. Bulletin 1191—School Transportation Handbook

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AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 2:187 (June 1976), amended LR 22:809 (September 1996), amended LR 25:

Copies of the Bulletin 1191—School Transportation Handbook may be seen in its entirety at the Office of the State Register, 1051 North Third Street, Baton Rouge, LA or at the office of the State Board of Elementary and Secondary Education, 626 North Fourth Street, Room 104, Baton Rouge, LA.

Interested persons may submit written comments until 4:30 p.m., February 10, 1999 to Jeannie Stokes, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

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

RULE TITLE: Bulletin 1191—School Transportation Handbook

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

We estimate that it will cost the State approximately \$500 to print and distribute one hundred copies of Bulletin 1191. This estimate is based on the cost of five dollars to print and mail each bulletin.

BESE estimated cost for printing this policy change and first page of fiscal and economic impact statement in the *Louisiana Register* is approximately \$1,500.00. Funds are available.

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

The adoption of Bulletin 1191 will slightly increase State revenue (\$100.00) collection. This will be attributed to the sale of approximately twenty bulletins at \$5.00 per copy. We do not foresee any effect on revenue collection by Local Governmental units.

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

The guidelines, rules and regulations listed in this bulletin are designed to bring standardization and safer operation of our school transportation system. The users of the system, the student being transported to and from school and indirectly their parents, will benefit by being assured of a safer ride and a more comfortable ride. We estimate the only cost that would be incurred will be by a few persons or non-governmental groups desiring a copy of the bulletin. It will cost approximately five dollars per copy.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The adoption of this bulletin will not affect competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
9812#037

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

**Bulletin 1213—Minimum Standards for School Buses
(LAC 28:XXV.Chapters 1-17)**

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the State Board of Elementary and Secondary Education approved for advertisement revised Bulletin 1213 promulgated in LR 2:187 (June 1976), referenced in LAC 28:I.915.B. Bulletin 1213 provides the minimum specifications for all pupil transportation purchased, owned or operated by a school district board of education or all school buses leased or contracted by said board. The specifications also address those buses leased or contracted to a district board of education by private owners. The revision of Bulletin 1213 was required to comply with state law and changes in the Federal Vehicle Safety Standards. This action is not required by federal regulations.

Title 28
EDUCATION

Part XXV. Bulletin 1213—Minimum Standards for School Buses in Louisiana

(Editor's Note: Bulletin 1213 was adopted by the Board of Elementary and Secondary Education in January, 1973 in an uncodified format, amended LR 4:428 (November 1978), LR 5:243 (August 1979), LR 8:526 (October 1982), LR 9:130 (March 1983), LR 13:291 (May 1987), LR 14:348 (June 1988), LR 14:789 (November 1988), LR 15:544 (July 1989), LR 15:962 (November 1989), LR 16:956 (November 1990), LR 16:1055 (December 1990), LR 21:259 (March 1995), and LR 23:1645 (December 1997). This present revision is being published in codified form, hence historical notes will reflect a history, by section, from this time forward.)

Chapter 1. Purpose

§101. Introduction

A. One of the most important functions of a school system's operation relative to pupil transportation is the purchasing, operation, and maintenance of safe school buses. This bulletin is designed to provide School Boards with a list of minimum standards which would allow for safe transportation of pupils. It enables bus dealers to bid competitively based on uniform standards which meet minimum specifications for every school district in the state. In addition, Optional Equipment Standards have been made a part of this bulletin in order to assist transportation officials in designing school buses which meet their specific needs.

B. The Department of Education is especially indebted to these Transportation Supervisors who have donated their valuable time and effort to the revision of this important document.

Bill Samec, Chairman	Lafayette Parish Schools
Dale Boudreaux	Jefferson Parish Schools
Chris Bowman	Lafourche Parish Schools
Harry Levy	Jefferson Davis Parish Schools
Jimmy Sibille	St. Landry Parish Schools

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§103. Forward

A. All pupil transportation vehicles purchased on or after July 1, 1998, shall meet or exceed the requirements herein. The appropriate sections of these specifications apply to all school buses for pupil transportation in Louisiana which are purchased, owned, or operated by a district board of education and to all school buses leased or contracted to a district board of education by private owners for the transportation of pupils to and from school and all school-related activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 3. General Provisions

§301. Federal Motor Vehicle Safety Standards

A. All school buses shall meet or exceed the minimum requirements of these specifications and meet or exceed all applicable Federal Motor Vehicle Safety Standards (FMVSS).

B. All school buses shall be equipped as required by the minimum specifications contained herein and as required by applicable FMVSS.

C. In the event of a conflict between the requirements of an applicable FMVSS, as referred to in §301, and the minimum specifications contained in this regulation, the requirements of the FMVSS shall prevail.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§303. Used School Buses

A. Any used school bus purchased for use in Louisiana by or for a school system shall meet current legal requirements of the Louisiana Revised Statutes for motor vehicles and shall meet Louisiana specifications for school buses that were in effect on the date the vehicle was manufactured.

B. No school bus may be replaced by another school bus that was manufactured before the 1978 model year. This applies to buses purchased by veteran owners/operators, by newly hired owners/operators and by school boards, individual schools, booster clubs, etc. for the purposes of transporting children to and from school and school-related activities and for use as spare buses.

C. All replacement school buses, at the time they are acquired by the owner, must be ten (10) or *less* model years old for veteran owners/operators and school districts and five (5) or *less* model years old for newly hired owners/operators. The number of years shall be reckoned from the date of introduction of the model year. (Example, a 1988 model school bus is considered 10 model years old as of 1998.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§305. Changes in Specifications

A. Any part of these specifications may be changed at any time by addenda adopted by the State Board of Elementary and Secondary Education. Changes will be made to comply with changing FMVSS or statutes of the Louisiana Legislature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§307. Certification by Manufacturers

A. All school bus vendors shall certify to the purchaser (local education agency, contract or individual), upon delivery that the school bus(es) sold for use by Louisiana school systems meet or exceed all standards specified herein and comply with the applicable FMVSS set forth by the United States Department of Transportation. (See §1701—T-10 Form)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§309. Repairs

A. Any repairs or alterations to any bus that falls under the guidelines of Bulletin 1213 shall be made in accordance with all specifications contained herein and all applicable FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§311. Responsibility of Dealers and Manufacturers

A. The responsibility of compliance with Bulletin 1213 specifications rests with the vendors and manufacturers.

B. If any vendor or manufacturer sells school transportation equipment that does not conform to all these and all other applicable State and Federal specifications, the vendor shall be required to make necessary conversions to bring the vehicle into compliance. All cost related to such alteration shall be borne by the vendor.

C. Local school systems shall have the option of imposing additional specifications that meet or exceed state and federal standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§313. Completion of Form T-10

A. It is mandatory that the seller of any new or used school bus shall complete a T-10 form verifying that the purchased vehicle meets all state and federal school bus specifications applicable at the time of manufacture.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§315. Sanction

A. Any school bus that does not meet the minimum specifications set forth in Bulletin 1213 must not be used until such time that the bus is in compliance with said Bulletin.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 5. Bus Body Standards

§501. Definition of School Bus Types

Type A—a conversion or body constructed and installed upon a van-type compact truck or front-section vehicle, with a gross vehicle weight rating of 10,000 pounds or less, designed for carrying more than 10 persons.

Type B—a conversion or body constructed and installed upon a van or front-section chassis, or stripped chassis, with a gross vehicle weight rating of more than 10,000 pounds, designed for carrying more than 10 persons. Part of the engine is beneath and/or behind the windshield and beside the driver’s seat. The entrance door is behind the front wheels.

Type C—a body installed upon a flat back cowl chassis with a gross vehicle weight rating of more than 10,000 pounds, designed for carrying more than 10 persons. All of the engine is in front of the windshield and the entrance door is behind the front wheels.

Type D—a body installed upon a chassis, with the engine mounted in the front, midship, or rear, with a gross vehicle weight rating of more than 10,000 pounds, designed for carrying more than 10 persons. The engine may be behind the windshield and beside the driver’s seat. It may be at the rear of the bus, behind the rear wheels, or midship between the

front and rear axles. The entrance door is ahead of the front wheels.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§503. Aisles

A. Minimum clearance of all aisles shall comply with current FMVSS, *School Bus Passenger Seating and Crash Protection*. All emergency doors shall be accessible by a 12" minimum aisle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§505. Auxiliary Fan

A. An auxiliary fan at least six (6) inches in diameter shall be located in the center of the windshield to provide maximum effectiveness for the right side of the windshield and the service door.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§507. Back Up Audible Alarm

A. Every new and used bus purchased shall be equipped with an automatic back-up audible alarm which sounds on backing. It must be capable of emitting sound audible under normal conditions from a distance of not less than one hundred feet. The alarm shall also be capable of operating automatically when the vehicle is in neutral or a forward gear but rolls backward.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§509. Battery

A. The battery is to be furnished by the chassis manufacturer. The body manufacturer shall securely attach the battery on a slide out or swing tray in a closed, vented compartment in the body skirt, so that the battery is accessible for convenient servicing from the outside. Battery compartment door or cover shall be hinged at the front or top, and secured by an adequate and conveniently operated latch or other type fastener.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§511. Body Size

A. The “body length” shall be measured from the inside surface of the windshield to the outside surface at the rear of the bus.

Number of Rows of Seats	PUPIL CAPACITY	
	3-3 Plan Rump Width of 13 Inches	3-2 Plan Rump Width of 13 Inches
4	23/24	19/20
5	29/30	24/25

6	35/36	29/30
7	41/42	34/35
8	47/48	39/40
9	53/54	44/45
10	59/60	49/50
11	65/66	54/55
12	71/72	59/60
13	77/78	64/65
14	83/84	69/70
15	89/90	74/75

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§513. Bumpers

A. The front and rear bumpers shall meet current FMVSS. The front bumper shall extend to the outer edges of the fenders. The rear bumper shall be 10" in width and wrapped around the back corners of the bus extended forward at least 12".

B. No trailer hitch or other device designed for towing shall be designed, fixed, or attached upon any school bus operated in the State of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§515. Ceiling

A. Ceiling specifications shall meet all current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§517. Color

A. The school bus body, including hood and fenders, shall be painted "National School Bus Yellow".

B. The body trim, including mirrors and rub rails, shall be glossy black.

C. The grill shall be black or grey.

D. The rear bumper and lettering shall be glossy black.

E. The wheels shall be black or grey.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§519. Construction

A. The construction of the school bus body shall be in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§521. Crossing Control Device

A. Every new and used bus purchased shall be equipped with a crossing control device actuated by the driver and operated in conjunction with the stop arm. The crossing control device shall pivot out from the right side of the front bumper to prevent persons from walking in front of the bus.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§523. Defrosters

A. Defrosters shall be of sufficient capacity to keep the windshield, window to the left of the driver, and glass in the entrance door clear of fog, frost, and snow. Defrosters shall be constructed to meet current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§525. Doors-Service and Emergency

A. Service and emergency doors shall be constructed and located in compliance with current FMVSS.

B. The emergency door shall be marked directly above the door with the words EMERGENCY DOOR or EMERGENCY EXIT on both the inside and outside of the bus in letters at least two (2) inches high.

C. No decals or other markings may be placed on either emergency glass panel.

D. The installation of locks on the emergency and service doors shall include a device to prevent the activation of the starter mechanism while the emergency door is locked.

E. There shall be no manual locking of any doors while the bus is in operation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§527. Electrical System

A. The electrical system shall be in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§529. Fire Extinguisher

A. Each bus shall be equipped with at least one dry-chemical type fire extinguisher with a gauge of at least five (5) pound capacity, Type A, B, C, mounted in the manufacturer's bracket and located in the driver's compartment in a clearly marked location. The fire extinguisher shall bear the label of Underwriters' Laboratories, Inc. showing a rating of not less than 2A-10B/C.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§531. First Aid Kit

A. The bus shall have a removable moisture proof and dust proof first aid kit mounted in an accessible area within the driver's compartment, and shall be marked to indicate its location.

B. A minimum unit shall include the following supplies:

- 2 single units Adhesive Tape—1 inch x 2 1/2 yards
- 2 single units Sterile Gauze Pads—3 inches x 3 inches (12 per unit)
- 1 single unit Adhesive Bandage—3 inches x 3/4 inches (100 per unit)
- 1 single unit Bandage Compress—2 inch (12 per unit)
- 1 single unit Bandage Compress—3 inch (12 per unit)
- 2 single units Sterile Gauze Roller Bandage—2 inches x 6 yards
- 2 single units Non-sterile Triangular Bandage—approximately 40 inches x 36 inches x 54 inches with 2 safety pins
- 3 single units Sterile Gauze--36 inches x 36 inches (U.S.P. 2428 count)
- 3 single units Sterile Eye Pad--(1 per unit)
- 1 pair Scissors

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§533. Floor

A. The floor shall meet current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§535. Heaters

A. Heaters shall be constructed and installed in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§537. Identification

A. Only lettering and signs approved by state law or regulation shall appear on school buses. Lettering shall be limited to the name of the owner or operator necessary for identification, including the name of the parish/city school system. All lettering shall be in block form.

1. The lettering shall be placed as high as possible to provide maximum visibility and conform to “series B” of Standard Alphabets for Highway Signs. (Contact the National Commission on Safety Education; 1201 Sixteenth Street NW, Washington, D.C., 20036 for more information.)

B. All letters and numbers used for identification purposes shall be in glossy black enamel or glossy black vinyl decals.

1. The numbers located on the front bumper shall be of contrasting color.

C. The body shall bear the words SCHOOL BUS in glossy black letters at least eight (8) inches high on both the front and rear of the school bus or on signs attached thereto.

D. The numbering system on school buses shall be a minimum of five (5) inches in height and is required in and limited to four locations.

1. On the right side of the bus, it is behind the service door below the window line and not to exceed twenty-four (24) inches below this point.

2. On the left side, it is directly below the driver’s window.

3. On the rear, it is beneath the right rear tail light.

4. On the front, it is either in the center of the front bumper, the right side of the bumper, or on a panel along the bumper. The numbers on the front bumper shall be of contrasting color to the bumper.

E. The bus shall have the name of the owner on the left side of the bus under the driver’s side window in glossy black lettering at least two (2) inches in height, but not more than four (4) inches in height. The name should be the owner’s legal name and should not contain nicknames, handles, etc.

F. Only the following signs/decals are approved for use on school buses:

1. decals indicating handicapped riders are on board;

2. a decal indicating the school bus stops for all railroad crossings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§539. Inside Height

A. The inside height shall be a nominal seventy-two (72) inches or more, measured metal to metal, at any point on the longitudinal centerline from front vertical bow to rear vertical bow.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§541. Lamps and Signals

A. All school buses shall be equipped with lamps and reflectors in accordance with current FMVSS.

B. Two reflex reflectors shall be installed on each side of the bus, one at or near the front and one at or near the rear.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§543. Length and Width

A. The overall width of the bus shall not exceed eight (8) feet and the overall length shall not exceed forty (40) feet.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§545. Metal Treatment

A. All metal used in the construction of the bus shall be in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§547. Mirrors

A. All buses shall be equipped with an interior mirror mounted so the driver can view the entire interior of the bus while in a normal seated driving position.

1. The interior mirror shall have rounded corners and protected edges.

B. All exterior mirrors shall be in compliance with current FMVSS.

1. All buses shall be equipped with two (2) exterior mirrors (one on each side) each giving an unobstructed view from the mounting position to the rear of the bus while the driver is in a normal seated driving position. The exterior mirrors shall be easily adjustable and rigidly mounted to reduce vibration.

C. Each bus shall have a mirror system which provides a clear, unobstructed view of the area in front of the bus and immediately adjacent to the right and left front wheels and at the entrance door.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§549. Mounting

A. The body shall be mounted on the chassis in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§551. Mud Flaps

A. All buses shall be equipped with mud flaps on the rear of the vehicle or immediately behind the rear wheels.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§553. Overhead Storage

A. Overhead storage compartments or racks are not allowed in the passenger compartment of any bus.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§555. Rub Rails

A. All buses shall be equipped with two rub rails constructed and installed in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§557. Seat Belt for Driver

A. A lap belt/shoulder harness seat belt for the bus driver shall be provided in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§559. Seats

A. All seats and seat covering shall be in compliance with current FMVSS.

B. All seats shall be forward facing and securely fastened to the floor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§561. Steering Wheel

A. The steering wheel shall be constructed and installed in compliance with current FMVSS and have a minimum clearance of at least two (2) inches between the steering wheel and the cowl instrument panel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§563. Steps

A. All steps shall be constructed and installed in compliance with current FMVSS.

B. The first step at the service door shall not be less than ten (10) inches and not more than fourteen (14) inches from the ground when measures from the top of the step.

C. Steps shall be enclosed to prevent the accumulation of ice and snow.

D. At least one device shall be designed to assist passengers during ingress and egress, and be of such design as to eliminate entanglement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§565. Stop Signal Arms

A. All school buses shall be equipped with two semaphore arms, constructed and placed in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§567. Sun Shield

A. The sun shield shall be a minimum of six (6) inches X thirty (30) inches, adjustable, transparent, and mounted on two brackets.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§569. Undercoating

A. The entire underside of the bus body, including floor sections, cross members, and below floor line side panels, shall be coated with rust-proofing compound for which the compound manufacturer has issued notarized certification of compliance to the bus body builder that the compound meets or exceeds all performance and qualitative requirements of paragraph 3.4 of Federal Specification TT-C-520B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§571. Ventilation

A. The body shall be equipped with a suitable controlled ventilating system of sufficient capacity to maintain proper quantity of air under operating conditions, without having to open windows except in extremely warm weather.

B. Static-type non-closeable exhaust ventilation shall be installed in low-pressure area of roof.

C. Roof hatches designed to provide ventilation, regardless of the exterior weather conditions, may be provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§573. Weight Distribution

A. Weight distribution of a fully-loaded bus on a level surface shall be such as not to exceed the manufacturer's front gross axle rating and rear gross axle weight rating.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§575. Wheel Housing

A. The wheel housing shall allow for easy tire removal and servicing and be designed to support seat and passenger loads.

B. The wheel housing shall be attached to the floor sheets in such a manner as to prevent any dust or water from entering the bus body and have an inside height of ten (10) inches or less.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§577. Windows

A. Each full side window, other than emergency exits designated to comply with FMVSS 217, shall provide an unobstructed emergency opening of at least nine (9) inches, but not more than thirteen (13) inches high and twenty-two (22) inches wide, obtained by lowering the window. One side window on each side of the bus may be less than twenty-two (22) inches wide.

B. Optional tinted and/or frost-free glazing may be installed in all doors, windows, and windshields consistent with federal, state, and local regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§579. Windshield

A. The windshield shall be constructed and installed in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§581. Windshield Washers

A. A windshield washer system shall be installed in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§583. Windshiled Wipers

A. All windshield wiper systems shall comply with current FMVSS.

B. A windshield wiping system, two speed or variable speed with an intermittent feature, shall be provided.

C. The wipers shall be operated by one or more air or electric motors of sufficient power to operate the wipers. If one motor is used, the wipers shall work in tandem.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§585. Wiring

A. All wiring shall comply with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 7. Bus Chassis Standards

§701. Chassis Specifications

A. All chassis specifications shall apply to Type A, B, C, and D school buses unless exceptions are noted in exceptions to minimum standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§703. Air Cleaner

A. The air cleaner installation shall be in compliance with the current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§705. Axles

A. The front and rear axle shall have a capacity which is in compliance with the current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§707. Battery

A. The storage battery, as established by the manufacturer's rating, shall be of sufficient capacity to care for starting, lighting, signal devices, heating, other electrical devices and have a minimum of 475 cold cranking amperes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§709. Brakes

A. All school buses shall be equipped with brakes in compliance with the current FMVSS, *Hydraulic Brake System* or *Air Brake System*, as appropriate. All repairs and/or adjustments shall meet current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§711. Clutch

A. Clutch torque capacity shall be equal to or greater than the engine torque output, and shall have a starter interlock device installed to prevent actuation of the starter if the clutch is not depressed. All repairs and/or adjustments shall be in compliance with the current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§713. Color

A. Chassis, including wheels and front bumper, shall be black. Body cowl, hood, and fenders shall be national school

bus yellow. The flat surface of the hood may be non-reflective black or national school bus yellow.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§715. Drive Shaft

A. The drive shaft shall be protected by a metal guard or guards to prevent it from whipping through the floor or dropping to the ground.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§717. Exhaust System

A. The exhaust system shall be properly insulated from the fuel tank and fuel tank connections by a securely attached metal shield at any point where it is twelve (12) inches or less from the fuel tank.

1. Any repairs or modifications to the exhaust system shall be in compliance with this bulletin and current FMVSS.

B. The exhaust pipe, muffler, and tailpipe shall be outside the bus body and secured to the chassis.

C. The tailpipe shall be constructed of seamless or electrically welded tubing of at least 16-gauge steel or equivalent.

D. The tailpipe shall be located in such a manner as to deflect exhaust past the extreme rear corner of the bus.

1. The tailpipe shall *not* be located within twenty-two (22) inches of the center of the rear bumper and shall extend past the rear bumper at a length not to exceed two (2) inches.

2. The muffler shall be constructed of corrosion-resistant material.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§719. Fenders

A. Fenders shall be constructed in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§721. Frame

A. The frame shall be constructed in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§723. Fuel Tank

A. The fuel tank and fuel system shall be in compliance with current FMVSS and hold a minimum of thirty (30) gallons.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§725. Genetator or Alternator

A. All Type A and Type B buses, up to 15,000 pounds gross vehicle weight rating, shall have a minimum 60-amp alternator.

B. All buses equipped with an electrically powered lift shall be equipped with a minimum 100-amp alternator.

C. All wiring and mounting shall be in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§727. Governor

A. An engine speed governor is permissible. When it is desired to limit road speed, a road speed governor should be installed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§729. Horn

A. Each bus shall be equipped with two (2) horns of standard make with each horn capable of producing a complex sound in bands of audio frequencies between 250 and 2,000 cycles per second.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§731. Instruments and Instrument Panel

A. The chassis shall be equipped with the following instruments and gauges (lights in lieu of gauges are not acceptable):

1. speedometer;
2. odometer;
3. voltmeter with graduated scale;
4. oil pressure gauge;
5. water temperature gauge;
6. fuel gauge;
7. high beam indicator;
8. air pressure or vacuum gauge in compliance with current FMVSS.

B. All instruments shall be easily accessible for maintenance and repair, and mounted in an instrument panel so as to be clearly visible to the driver in a normal seated position.

C. The instrument panel shall have lamps of sufficient candlepower to illuminate all instruments and gauges.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§733. Oil Filter

A. An oil filter with a replaceable element shall be provided and connected by flexible oil lines if not built in or an engine mount design. The oil filter shall have a minimum of at least one (1) quart capacity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§735. Openings

A. All openings in the floorboard or firewall between the chassis and the passenger compartment shall be sealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§737. Passenger Load

A. It shall be unlawful for anyone responsible for the transportation of school children on school buses, including drivers or operators of buses, transportation supervisors, school superintendents, and members of parish and city school boards to permit a number of children exceeding the number of seats available on a bus to be transported at one time on such bus. [Louisiana Statute R.S.32:293 (C)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§739. Shock Absorbers

A. The bus shall be equipped with double action shock absorbers compatible with the manufacturer's rated axle capacity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§741. Springs

A. The capacity of springs or suspension assemblies shall be commensurate with the chassis manufacturer's gross vehicle weight rating.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§743. Steering Gear

A. The steering gear and assembly shall be in compliance with current FMVSS. Power steering is required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§745. Tires and Rims

A. Recapped tires, if used, shall be used only on the rear wheels.

B. A spare tire, if carried, shall be properly mounted outside the passenger compartment.

C. Tires and rims of proper size, and tires with load rating commensurate with the chassis manufacturer's gross vehicle weight rating, shall be provided.

1. All tires and rims on a given vehicle shall be of the same size and rating.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§747. Transmission

A. Automatic transmissions shall have no fewer than three forward speeds and one reverse speed. The shift selector shall provide an indent between each gear position when the gear selector and shift selector are not steering column mounted.

B. In manual transmissions, second gear and higher shall be synchronized.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§749. Undercoating

A. The undersides of the steel or metallic-constructed front fenders shall be undercoated with a rust proofing compound that meets or exceeds the requirement of paragraph 3.4 of Federal Specification TT-C-520B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 9. Exceptions to Minimum Standards

§901. Type "A" Buses

A. The vehicle must meet all Federal Motor Safety Standards and Specifications.

B. All minimum standards applying to Type C and Type D buses shall apply to Type A buses with the following exceptions.

1. The vehicle shall:
 - a. have a minimum headroom of sixty-three (63) inches;
 - b. be equipped with one flashing stop arm;
 - c. have a minimum gross vehicle weight of 8,200 pounds;
 - d. be equipped with a 100 ampere alternator or an 80 ampere alternator and two batteries, if it is equipped with a lift;
 - e. have a minimum aisle width of twenty-six (26) inches from front to back, if the vehicle is equipped with a lift;
 - f. have the rear bumper at manufacturer's standards equipment on van conversions or a minimum of eight (8) inches when body is constructed on a van type truck;
 - g. have a heater at manufacturer's standards;
 - h. have a grab handle not less than ten (10) inches in length and attached to the barrier.

C. Fender level marker lights are not required.

D. A barrier conforming to federal standards shall be installed on the right side immediately behind the entrance door.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§903. Type "B" Buses

A. The vehicle must meet all current FMVSS and Specifications.

B. All minimum standards applying to Type C and Type D buses shall apply to all Type B buses with the following exceptions.

1. The vehicle shall:
 - a. be equipped with a 100 ampere alternator or an 80 ampere alternator, or one (1) group 8D battery if equipped with a lift;
 - b. have a minimum aisle width of thirty (30) inches from front to back if the vehicle is equipped with a lift.

C. The gross vehicle weight of the vehicle shall be more than 10,000 pounds.

D. A door may be located to the left of the driver on a GP chassis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 11. Standards For Specially Equipped School Buses; Vehicles Designed to Transport Students with Disabilities

§1101. General Requirements

A. Vehicles designed to transport students with disabilities shall comply generally with all minimum standards for school buses.

B. Specifications for Additional Equipment or Modifications Necessary for Special Needs Transportation

1. Wheelchair lift doors shall be located on the right side of the bus and far enough to the rear to prevent the door, when opened, from obstructing the service door.

2. The wheelchair lift door shall open outwards, and a positive fastening device shall be installed to hold the door in an open position.

3. The wheelchair lift door shall be constructed of materials as the other school bus doors and equivalent in strength.

4. The door panel(s) shall extend below the full length of the skirt when an elevator type lift is used.

5. A two panel door is optional. If used, the panels shall be of approximately equal width, equipped with hinges and hinged to the side of the bus. Both panels shall open outward.

6. A two panel door shall be equipped with at least a one-point fastening device on the rear panel to the floor or header and at least two-point devices to the floor and header on the forward door panel.

7. The door shall be equipped with a device that will actuate an audible or visible signal located in the driver's compartment when the doors are not secured.

8. Each door shall contain a fixed or moveable window aligned with the lower line of the other windows of the bus, and, as nearly as practicable, the same size as the other bus windows.

9. The forward panel shall be equipped with an overlapping flange to close the space where the panels meet.

10. A weather seal shall be provided to close all door edges.

11. Door posts and headers shall be reinforced sufficiently to provide support and strength to the areas of the side of the bus not used for service doors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§1103. Power Lift

A. The power lift shall have a minimum capacity of 750 pounds.

B. The power lift platform shall be a minimum of twenty-eight (28) inches wide and forty (40) inches long, including guard panels and rails.

C. The platform shall be covered with non-skid material.

D. A self-adjusting or equivalent ramp of sufficient width to minimize the incline to the lift platform shall be attached to the lift platform.

E. Controls shall be provided that enable the operator to activate the lift mechanism from either inside or outside of the bus.

F. A device shall be installed on the lift to prevent its operation until the door or doors are opened.

G. The power lift shall extend only from the side of the vehicle.

H. If a wheelchair lift is installed just rear of the service door, a stanchion and guard panel shall be installed between the lift and the service door.

I. A circuit breaker shall be installed between the power source and the lift motor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§1105. Ramps

A. Ramps are not permissible for use on Type "C" and "D" buses, except for emergency purposes.

B. Ramps shall be sufficient to hold 750 pounds of sustained weight.

C. Each ramp shall be equipped with protective flange on each longitudinal side to keep the wheelchair on the ramp.

D. The ramp shall be covered with nonskid material (i.e. webbed steel or rubberized material).

E. The ramp shall be equipped with a handle or handles and of such a weight as to permit one person to put the ramp in place and return it to the storage place.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§1107. Aisles

A. All aisles leading to the emergency door(s) from the wheelchair area shall be of sufficient width (minimum thirty (30) inches) to permit passage of a maximum sized wheelchair.

B. Thirty-nine (39) inch seats are permitted forward of the wheelchair area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§1109. Other Equipment

A. Securing devices necessary to hold portable student support equipment such as oxygen bottles, ventilators, crutches, etc. shall be installed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§1111. Wheelchair Fastening Devices

A. Position fastening devices shall be provided and meet current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 13. Optional Equipment

§1301. Specifications

A. A system to monitor the exterior lights on the front and rear of the bus from the driver's seated position is permissible. Such a system shall indicate to the driver whether a light is operating.

B. A power service door is permissible if it is equipped with a manual override that allows the driver to manually operate the door if the power system fails.

C. A public address system with speakers inside and outside the bus is permissible if it is equipped with a selector switch that permits the driver to select "inside" or "outside" speakers and is mounted in the driver's compartment.

D. A lock with two (2) keys is permissible to be installed on the fuel supply service door.

E. An AM or FM radio, cassette player, or compact disc player are permissible.

F. Fog lamps are permissible and shall conform to current FMVSS.

G. Two way radio systems and/or cellular phones are permissible.

H. Buses may be equipped with four (4) seven (7) inch arrow faced turn signals.

I. Buses may be equipped with a fuel gauge inspection plate located immediately above the sending unit.

J. A seat designed for the bus attendant is permissible. The attendant's seat must be installed facing either the front or rear of the bus.

K. Body fluid clean-up kits are permissible.

L. Additional emergency exits are allowed provided they meet current FMVSS.

M. A bus may be equipped with tinted windows provided the window is shaded within Louisiana Department of Public Safety guidelines.

N. A heater booster pump may be installed on diesel powered buses.

O. An engine pre-heating device may be installed on diesel powered buses.

P. Combination side marker/turn signals may be installed.

Q. If the stop arm is electrically controlled, it is permissible to equip it with a slip clutch for motor and transmission protection.

R. Alternative fuel systems are allowed provided they meet current FMVSS.

S. A clear lens strobe light may be installed on the rear one-third of the bus.

T. A video system to monitor driver and student behavior may be installed.

U. Exterior motion devices may be installed.

V. Buses may be equipped with low profile tires.

W. Reflective bus markings are allowed provided they meet all current FMVSS and state regulations.

X. Electronic security systems are permissible.

Y. Hubometers are permissible.

Z. Bus roofs may be painted white. The white paint may not extend beyond the drip rail. Front and rear caps must remain yellow.

AA. External baggage compartments are allowed.

BB. Diesel engine noise reduction packages are allowed.

CC. Seat spacing may be altered to accommodate special devices. All seats must be forward facing.

DD. An electronically controlled "cruise control" is permissible.

EE. LED type stop arms are permissible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 15. Motor and Chassis Specifications

§1501. Motor

A. The chassis shall be equipped with a diesel engine that meets the specifications shown in the following table. It must also be a truck type engine. Diesel powered vehicles with hydraulically assisted hydraulic brakes shall have a chassis air or vacuum for stop arm operation. The vehicle shall also be equipped with power steering, dual horns, batteries with 1875 CCA, and front and rear shock absorbers.

Capacity	48 or less	53/54	59/60	65/66	71/72	77/78 or greater
Tire Size	09R x 22.5	10R x 22.5	10R x 22.5	10R x 22.5	11R x 22.5	11R x 22.5 (14ply)
Rim Size	22.5	22.5	22.5	22.5	22.5	22.5
Gross Vehicle Weight Rating	22,500	26,500	29,000	29,000	31,000	33,000
Gross Horsepower	180	190	190	190	190	210
Forward Transmission Speeds	4	4	4	4	4	5
Front Axle	7,500	9,000	10,000	10,000	12,000	12,000
Rear Axle	15,000	17,500	19,000	19,000	19,000	21,000
Alternator	130	130	130	130	130	130
Front Springs	7,500	9,000	10,000	10,000	12,000	12,000
Rear Springs	15,000	17,500	19,000	19,000	19,000	21,000

Note: Where buses require flat type floors 19.5" tires are allowed if Gross Vehicle Weight Rating requirements are met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 17. Appendix A
§1701. T-10 Form

MANDATORY

FORM T-10
REV: 7/94

STATE DEPARTMENT OF EDUCATION

DATE: _____

GUARANTEED FROZEN MILEAGE: _____

I propose to sell _____ the following described NEW/USED school bus.
(Contract Owner or School Board) (circle one)

CHASSIS _____

BODY _____

YEAR MODEL _____

YEAR MODEL _____

MAKE _____

MAKE _____

SERIAL NUMBER _____

SERIAL NUMBER _____

MILEAGE _____

MILEAGE _____

CONDITION _____

CONDITION _____

This vehicle meets all Federal Motor Vehicle Safety Standards and Bulletin 1213 specifications applicable at the date of manufacture.

I verify that the above information is true and correct to the best of my knowledge.

OFFICIAL PURCHASE AGREEMENT DATE: _____

LICENSE NUMBER: _____

SIGNATURE (Seller)

COMPANY

ADDRESS

Purchased by: _____
SIGNATURE

Approved by: _____
LOCAL SCHOOL SYSTEM

ADDRESS

SIGNATURE OF LOCAL SCHOOL SYSTEM
SUPERINTENDENT/TRANSPORTATION
SUPERVISOR

COPIES SENT TO:

WHITE/STATE DEPARTMENT OF EDUCATION

CANARY/TRANSPORTATION DEPARTMENT

PINK/PURCHASER

GOLD/VENDOR

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Interested persons may submit written comments until 4:30 p.m., February 10, 1999 to Jeannie Stokes, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

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

**RULE TITLE: Bulletin 1213—Minimum
Standards for School Buses**

Title 28

EDUCATION

**Part XXIX. Bulletin 1475—Operational and Vehicle
Maintenance Procedures**

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

We estimate this action will cost approximately \$600 to print and distribute one hundred and twenty copies of Bulletin 1213. This estimate is based on the cost of five dollars to print and mail each bulletin to school recipients. We do not foresee this action creating a cost (savings) to local governmental units.

BESE estimated cost for printing this policy change and first page of fiscal and economic impact statement in the *Louisiana Register* is approximately \$60. Funds are available.

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

The adoption of Bulletin 1213 will increase State revenues by approximately \$200. This will be attributed to the sale of approximately forty bulletins at \$5 per copy. We do not foresee any effect on revenue collection by Local Governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

Manufacturers and distributors of new and used school buses will be those persons directly affected by the proposed action. All buses to be sold will be required to meet or exceed the specifications outlined in the Bulletin 1213. We do not expect the sales price of school buses to be greatly affected by this action. Individuals involved in transporting pupils to and from school, e.g., school officials, parents whose children ride the bus and the passengers themselves, will benefit by knowing that each school bus has been designed and purchased with safety in mind.

**IV. ESTIMATED EFFECT ON COMPETITION AND
EMPLOYMENT (Summary)**

Bulletin 1213 enables school bus dealers to bid competitively based on uniform standards which meet minimum specifications for every school district. This action will have little or no effect on employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
9812#035

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

**Bulletin 1475—Operational and Vehicle Maintenance
Procedures (LAC 28:XXIX)**

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., notice is hereby given that the State Board of Elementary and Secondary Education approved for advertisement revised Bulletin 1475, referenced in LAC 28:I.915.C. Bulletin 1475 is designed to provide information and direction to local school system personnel in school transportation in Louisiana, and changes are being made to further clarify and re-emphasize certain provisions of the Bulletin.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161 and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, amended LR 21:163 (February 1995), LR 25:

Copies of Bulletin 1475—Operational and Vehicle Maintenance Procedures may be seen in its entirety at the Office of the State Register, 1051 North Third Street, Baton Rouge, LA or at the office of the State Board of Elementary and Secondary Education, 626 North Fourth Street, Room 104, Baton Rouge, LA.

Interested persons may submit written comments until 4:30 p.m., February 10, 1999 to Jeannie Stokes, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 1475—Operational and Vehicle
Maintenance Procedures**

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

We estimate this action will cost approximately \$500 to print and distribute one hundred copies of Bulletin 1475. This estimate is based on the cost of five dollars to print and mail each bulletin to school districts and governmental units. We do not foresee this action creating a cost (savings) to local governmental units.

BESE estimated cost for printing this policy change and first page of fiscal and economic impact statement in the *Louisiana Register* is approximately \$1,900. Funds are available.

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

The adoption of Bulletin 1475 will increase State revenues by approximately \$100. This will be attributed to the sale of approximately twenty bulletins at \$5.00 per copy. We do not foresee any effect on revenue collection by local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

The school bus driver will be the person directly affected by this action. Bulletin 1475 provides the basic essentials the driver needs to perform his/her job. Students he/she transports every day to and from school will also benefit from a free, safe drive. Parents whose children are using the school bus will also benefit by not having to drive their children to school.

**IV. ESTIMATED EFFECT ON COMPETITION AND
EMPLOYMENT (Summary)**

The adoption of this bulletin will not effect competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
9812#055

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of Air Quality and Radiation Protection Air Quality Division

Control of Emissions of Smoke
(LAC 33:III.1105)(AQ183)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air Quality Division regulations, LAC 33:III.1105 (Log Number AQ183).

The limitation on the shade or appearance of emissions will be changed from Number 1 on the Ringlemann Chart to 20 percent opacity. The regulation mentions Chapter 15, Table 4, which references 40 CFR Part 60, Method 9 and Method 22 for measurement of visible emissions. This rule applies to flares and other similar devices used for burning in connection with pressure valve releases for control over process upsets. The basis and rationale for this rule are to clarify the existing language.

This proposed rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S.49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33 ENVIRONMENTAL QUALITY Part III. Air

Chapter 11. Control of Emissions of Smoke §1105. Smoke from Flaring Shall Not Exceed 20 Percent Opacity

The emission of smoke from a flare or other similar device used for burning in connection with pressure valve releases for control over process upsets shall be controlled so that the shade or appearance of the emission does not exceed 20 percent opacity (LAC 33:III.1503.Table 4) for a combined total of six hours in any 10 consecutive days. If it appears the emergency cannot be controlled in six hours, the administrative authority shall be notified by the emitter as soon as possible after the start of the upset period. Such notification does not imply the administrative authority will automatically grant an exemption to the source(s) of excessive emissions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR:0000 (December 1998).

A public hearing will be held on January 25, 1999, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the

proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by AQ183. Such comments must be received no later than February 1, 1999, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (225) 765-0486. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Investigations and Regulation Development Division at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of AQ183.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/ola/irdd/olaereg.htm>.

Gus Von Bodungen, P.E.
Assistant Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Control of Emissions of Smoke

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no costs or savings to state or local governmental units from this proposal.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect on revenue collections of state or local governmental units as a result of this rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There will be no costs or economic benefits to persons or nongovernmental groups as a result of this rule. The rule merely changes the limitation on shade or appearance of emissions from number 1 on the Ringelmann Chart to a roughly equivalent standard of 20 percent opacity.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
This proposal will not have any known effect on competition or employment.

Gus Von Bodungen
Assistant Secretary
9812#043

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of Air Quality and Radiation Protection Air Quality Division

Storage of Volatile Organic Compounds (LAC 33:III.2103)(AQ185)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air Quality Division regulations, LAC 33:III.2103 (Log Number AQ185).

Additional methods will be allowed for the measurement of Reid vapor pressure. The allowed methods are ASTM D323, ASTM D4953, ASTM D5190, and ASTM D5191. The use of these methods was requested by a facility subject to the rule. The basis and rationale for this proposed rule are to allow alternate test methods that are technically sound and that are allowed by other states.

This proposed rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S.49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 21. Control of Emission of Organic Compounds

Subchapter A. General

§2103. Storage of Volatile Organic Compounds

* * *

[See Prior Text in A-H.3.a]

b. by ASTM Test Methods D323, D4953, D5190, or D5191 for the measurement of Reid vapor pressure, and adjusted for actual storage temperature using the nomographs contained in API Bulletin 2517;

* * *

[See Prior Text in H.3.c-1.5]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 15:1065 (December 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:27 (January 1990), LR 17:360 (April 1991), LR 18:1121 (October 1992), LR 20:1376 (December 1994), LR 21:1223 (November 1995), repromulgated LR 21:1333 (December 1995), amended LR 22:453 (June 1996), LR 22:1212 (December 1996), LR 24:20 (January 1998), LR 25:

A public hearing will be held on January 25, 1999, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. This hearing

will also be for a revision to the State Implementation Plan (SIP) to incorporate this proposed rule. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by AQ185. Such comments must be received no later than February 1, 1999, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (225) 765-0486. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Investigations and Regulation Development Division at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of AQ185.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/olaie/irdd/olaeregs.htm>.

Gus Von Bodungen, P.E.
Assistant Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Storage of Volatile Organic Compounds

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no costs or savings to state or local governmental units from this proposal.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect on revenue collections of state or local governmental units as a result to this rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There will be no costs or economic benefits to directly affected persons or nongovernmental units.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
This proposal will not have any known effect on competition or employment.

Gus Von Bodungen
Assistant Secretary
9812#044

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of the Secretary

Late Payment Fees

(LAC 33:I.1413, 1415; III.217, 219; V.5129, 5131;
VII.529; IX.1309; XI.307; XV.2510, 2511)(OS030)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Environmental Quality regulations, LAC 33:I.1413 and 1415; III.217 and 219; V.5129 and 5131; VII.529.E-F; IX.1309.H-I; XI.307.C-D; XV.2510 and 2511 (Log #OS030).

The proposed rule will revise the existing procedure for calculation of late payment fees on past due invoice balances. The late fee will change from 10 percent per month to 5 percent per month up to 15 percent and establishes a time table for late fee charges. These fees will apply to any non-payment of fees to the department by the invoice due date. The basis and rationale for the proposed rule are to put a cap on the amount of late fee charges.

This proposed rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S.49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33

ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

Chapter 14. Groundwater Fees

§1413. Late Payment Fee

A. Payments not received within 15 days of the due date will be charged a late payment fee. Any late payment fee shall be calculated from the due date indicated on the invoice.

1. Payments not received by the department by the fifteenth day from the due date will be assessed a five percent late payment fee on the original assessed fee.

2. Payments not received by the department by the thirtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

3. Payments not received by the department by the sixtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Ground Water Protection Division, LR 18:730 (July 1992), amended LR 21:797 (August 1995), amended by the Office of Management and Finance, Fiscal Services Division, LR 25:

§1415. Failure to Pay

Failure to pay the prescribed application fee or annual fee as provided herein, within 90 days after the due date, will constitute a violation of these regulations and shall subject the person to applicable enforcement actions under the Louisiana

Environmental Quality Act including, but not limited to, revocation or suspension of the applicable permit, license, registration, or variance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Ground Water Protection Division, LR 18:730 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 25:

Part III. Air Quality

Chapter 2. Rules and Regulations for the Fee System of the Air Quality Control Programs

§217. Late Payment Fee

A. Payments not received within 15 days of the due date will be charged a late payment fee. Any late payment fee shall be calculated from the due date indicated on the invoice.

1. Payments not received by the department by the fifteenth day from the due date will be assessed a five percent late payment fee on the original assessed fee.

2. Payments not received by the department by the thirtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

3. Payments not received by the department by the sixtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:612 (September 1988), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 18:706 (July 1992), LR 19:1373 (October 1993), LR 21:781 (August 1995), amended by the Office of Management and Finance, Fiscal Services Division, LR 25:

§219. Failure to Pay

Failure to pay the prescribed application fee or annual fee as provided herein, within 90 days after the due date, will constitute a violation of these regulations and shall subject the person to applicable enforcement actions under the Louisiana Environmental Quality Act including, but not limited to, revocation or suspension of the applicable permit, license, registration, or variance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:612 (September 1988), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1373 (October 1993), amended by the Office of Management and Finance, Fiscal Services Division, LR 25:

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality—Hazardous Waste

Chapter 51. Fee Schedules

§5129. Late Payment Fee

A. Payments not received within 15 days of the due date will be charged a late payment fee. Any late payment fee shall be calculated from the due date indicated on the invoice.

1. Payments not received by the department by the fifteenth day from the due date will be assessed a five percent late payment fee on the original assessed fee.

2. Payments not received by the department by the thirtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

3. Payments not received by the department by the sixtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 11:533 (May 1985), LR 12:676 (October 1986), LR 18:725 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:18 (January 1996), LR 25:

§5131. Failure to Pay

Failure to pay the prescribed application fee or annual fee as provided herein, within 90 days after the due date, will constitute a violation of these regulations and shall subject the person to applicable enforcement actions under the act including, but not limited to, revocation or suspension of the applicable permit, license, registration, or variance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 11:533 (May 1985), LR 12:321 (May 1986), LR 12:676 (October 1986), LR 13:433 (August 1987), LR 18:725 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 25:

Part VII. Solid Waste

Chapter 5. Solid Waste Management System

Subchapter D. Solid Waste Fees

§529. Annual Monitoring and Maintenance Fee

* * *

[See Prior Text in A - D]

E. Late Payment Fee. Payments not received within 15 days of the due date will be charged a late payment fee. Any late payment fee shall be calculated from the due date indicated on the invoice.

1. Payments not received by the department by the fifteenth day from the due date will be assessed a five percent late payment fee on the original assessed fee.

2. Payments not received by the department by the thirtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

3. Payments not received by the department by the sixtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

F. Failure to pay the prescribed application fee or annual fee as provided herein, within 90 days after the due date, will constitute a violation of these regulations and shall subject the person to applicable enforcement actions under the act including, but not limited to, revocation or suspension of the applicable permit, license, registration, or variance.

* * *

[See Prior Text in G]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:18 (January 1996), LR 25:

Part IX. Water Quality Regulations

Chapter 13. Louisiana Water Pollution Control Fee System Regulation

§1309. Fee System

* * *

[See Prior Text in A - G]

H. Late Payment Fee. Payments not received within 15 days of the due date will be charged a late payment fee. Any late payment fee shall be calculated from the due date indicated on the invoice.

1. Payments not received by the department by the fifteenth day from the due date will be assessed a five percent late payment fee on the original assessed fee.

2. Payments not received by the department by the thirtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

3. Payments not received by the department by the sixtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

I. Failure to Pay. Failure to pay the prescribed application fee or annual fee as provided herein, within 90 days after the due date, will constitute a violation of these regulations and shall subject the person to applicable enforcement actions under the Louisiana Environmental Quality Act including, but not limited to, revocation or suspension of the applicable permit, license, registration, or variance.

* * *

[See Prior Text in J - M]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2014(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:534 (May 1985), amended LR 14:626 (September 1988), LR 18:731 (July 1992), LR 21:798 (August 1995), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:19 (January 1996), amended by the Office of Water Resources, LR 24:326 (February 1998), amended by the Office of Management and Finance, Fiscal Services Division, LR 25:

Part XI. Underground Storage Tanks

Chapter 3. Registration Requirements, Standards, and Fee Schedule

§307. Fee Schedule

* * *

[See Prior Text in A - B.5]

C. Late Payment Fee. Payments not received within 15 days of the due date will be charged a late payment fee. Any late payment fee shall be calculated from the due date indicated on the invoice.

1. Payments not received by the department by the fifteenth day from the due date will be assessed a five percent late payment fee on the original assessed fee.

2. Payments not received by the department by the thirtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

3. Payments not received by the department by the sixtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

D. Failure to Pay. Failure to pay the prescribed application fee or annual fee as provided herein, within 90 days after the due date, shall constitute a violation of these regulations and shall subject the person to applicable enforcement actions under the act including, but not limited to, revocation or suspension of the applicable permit, license, registration, or variance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 11:1139 (December 1985), amended LR 16:614 (July 1990), LR 17:658 (July 1991), LR 18:727 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:19 (January 1996), LR 25:

Part XV. Radiation Protection

Chapter 25. Fee Schedule

§2510. Late Payment Fee

A. Payments not received within 15 days of the due date will be charged a late payment fee. Any late payment fee shall be calculated from the due date indicated on the invoice.

1. Payments not received by the department by the fifteenth day from the due date will be assessed a five percent late payment fee on the original assessed fee.

2. Payments not received by the department by the thirtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

3. Payments not received by the department by the sixtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:719 (July 1992), amended LR 21:791 (August 1995), amended by the Office of Management and Finance, Fiscal Services Division, LR 25:

§2511. Failure to Pay

Failure to pay the prescribed application fee or annual fee as provided herein, within 90 days after the due date, will constitute a violation of these regulations and shall subject the person to applicable enforcement actions under the act including, but not limited to, revocation or suspension of the applicable permit, license, registration, or variance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:719 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:19 (January 1996), LR 25:

A public hearing will be held on January 25, 1999, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested

persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by OS030. Such comments must be received no later than February 1, 1999, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (225) 765-0486. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Investigations and Regulation Development Division at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of OS030.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/olae/irdd/olaeregs.htm>.

J. Dale Givens
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Late Payment Fees

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No implementation cost or savings to state or local governmental units are expected as a result of this rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
It is difficult to calculate the effect on revenue collections since this late payment fee is dependent on failure to pay. However, the effect is expected to be minimal.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
No economic cost and/or benefits to directly affected persons are expected as a result of this rule.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
No effect on competition and employment is expected as a result of this rule.

J. Dale Givens
Secretary
9812#050

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of the Secretary

Permit Qualifications and Requirements
(LAC 33:I.1504; III.501, 517, 5111; V.515; VII. 517,
520; IX.2331, 2387, 2407, 2765, 2769)(OS029)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Environmental Quality regulations, LAC 33:I.1504; III.501, 517, and 5111; V.515; VII.517 and 520; IX.2331, 2387, 2407, 2765, and 2769 (Log # OS029).

The proposed rule requires that applicants for an environmental permit, or for transfer of ownership of a permit, meet certain requirements and also requires that an applicant provide the department with a list of states(s) where the applicant has similar or identical federal or state environmental permits. This rule is required by the Louisiana Environmental Quality Act, R.S. 30:2014.2. The basis and rationale for the proposed rule are to comply with R.S. 30:2014.2.

This proposed rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S.49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33

ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

Subpart 1. Departmental Administrative Procedures

Chapter 15. Permit Review

§1504. Requirements for Obtaining a Permit

A. In addition to meeting the requirements for permits outlined in the applicable sections of the Environmental Quality Regulations, an applicant shall:

1. have no history of environmental violation(s) that demonstrates to the department an unwillingness or inability to achieve and maintain compliance with the permit for which the application is being made, unless the department determines that the applicant's history of environmental violation(s) can be adequately addressed by permit conditions;

2. if required, register with the Secretary of State;

3. owe no outstanding fees or penalties to the department; and

4. if under a compliance schedule, be making satisfactory progress in meeting the conditions of the compliance schedule.

B. Before issuing any permit, permit renewal, or transfer of ownership of a permit, the administrative authority may conduct an evaluation of the applicant related to the management of any facilities or activities subject to regulation under any applicable air, water, solid waste, hazardous waste, radiation control, or other environmental programs administered by the various states of the United States or by the federal government. If, pursuant to this evaluation, the administrative authority determines that the applicant has

demonstrated an unwillingness or inability to achieve and maintain compliance with the permit for which application is being made, the administrative authority may:

1. include such conditions in the permit as reasonably deemed necessary for the protection of human health and the environment; or

2. deny any application for the issuance, renewal, or transfer of the permit.

C. The applicant shall provide to the department a list of the state(s) where he or she has federal or state environmental permits identical to, or of a similar nature to, the permit for which application is being made. This information shall be provided for all individuals, partnerships, corporations, or other entities who own a controlling interest (50 percent or more) in the company or who participate in the environmental management of the facility for an entity applying for a permit, permit renewal, or an ownership interest.

D. In addition to providing the information required in Subsection C of this Section, the applicant shall submit a written statement, as part of the initial permit application, to certify that:

1. if required, the applicant has registered with the Secretary of State; and

2. no outstanding fees or penalties are owed to the department.

E. The administrative authority may require the submission of additional information if the administrative authority deems such information necessary in order to make a determination under this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:

Part III. Air Quality

Chapter 5. Permit Procedures

§501. Scope and Applicability

* * *

[See Prior Text in A-C.9]

10. Before issuing any initial permit for a new or existing source, permit renewal, or transfer of ownership of a permit, the administrative authority may conduct an evaluation of the applicant and may include such conditions in the permit as reasonably deemed necessary for the protection of human health and the environment or may deny any application for the issuance, renewal, or transfer of the permit. Requirements of LAC 33:I.1504 are not applicable to permit modifications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011 and 2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:613 (July 1990), LR 17:478 (May 1991), LR 19:1420 (November 1993), LR 20:1281 (November 1994), LR 20:1375 (December 1994), LR 23:1677 (December 1997), amended by the Office of the Secretary, LR 25:

§517. Permit Applications and Submittal of Information

* * *

[See Prior Text in A-F]

G. Change of Ownership. Notification of any change in ownership must be given to the permitting authority within 90

days after the change. Such notification need not require a complete permit application submittal, but shall be provided in accordance with forms or guidance from the permitting authority and in accordance with requirements of LAC 33:I.1504. The administrative authority is authorized to amend the permit to reflect such changes in accordance with LAC 33:III.521. Failure to disclose such changes of ownership within 90 days after the event will be grounds for invalidation of the permit. Based on review of the compliance history of the new owner, the administrative authority has the right to deny the transfer of the permit in accordance with provisions of LAC 33:I.1504. Changes in ownership of a source holding grandfathered status will require that a permit application be submitted in accordance with LAC 33:III.501.B.6 and Subsection A.3 of this Section.

H. Additional requirements for permits, permit renewals, and transfer of ownership of permits are provided in LAC 33:I.1504. Requirements of LAC 33:I.1504 are not applicable to permit modifications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), amended LR 20:1375 (December 1994), amended by the Office of the Secretary, LR 22:344 (May 1996), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:405 (April 1997), LR 23:1677 (December 1997), amended by the Office of the Secretary, LR 25:

Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program

§5111. Permit Requirements, Application, and Review

* * *

[See Prior Text in A]

1. Before commencement of the construction of any new source, the owner or operator of such source shall obtain a Louisiana Air Permit in accordance with Subsections B and C of this Section and in accordance with LAC 33:I.1504.

* * *

[See Prior Text in A.2-C.5.b]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2060 and R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), amended LR 18:1363 (December 1992), LR 19:891 (July 1993), repromulgated LR 19:1314 (October 1993), LR 23:59 (January 1997), amended by the Office of the Secretary, LR 25:

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality—Hazardous Waste

Chapter 5. Permit Application Contents

Subchapter C. Permit Applications: Parts I and II

§515. Part I Information Requirements

* * *

[See Prior Text in A-A.22]

23. list other states in which hazardous waste operations are or have been conducted, as required by LAC 33:I.1504;

24. zoning of site, if applicable;

25. for hazardous debris: a description of the debris category(ies) and contaminant category(ies) to be treated, stored, or disposed of at the facility;

26. other information required in LAC 33:I.1504; and

27. comments.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 21:266 (March 1995), amended by the Office of the Secretary, LR 25:

Part VII. Solid Waste

Chapter 5. Solid Waste Management System

Subchapter A. Administration, Classification, and Inspection Procedures

§517. Permit Modifications

* * *

[See Prior Text in A-A.1.b]

i. a statement from the proposed permit holder assuming liability for existing violations and conditions;

ii. proof of financial responsibility by the proposed permit holder, as required by LAC 33:VII.727.A.1 and 2; and

iii. information required in LAC 33:I.1504.

* * *

[See Prior Text in A.2-4]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of the Secretary, LR 25:

§520. Compliance Information

All applicants for solid waste permits shall comply with the requirements of LAC 33:I.1504.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:

Part IX. Water Quality Regulations

Chapter 23. The Louisiana Pollutant Discharge

Elimination System (LPDES) Program

Subchapter B. Permit Application and Special LPDES Program Requirements

§2331. Application for a Permit

* * *

[See Prior Text in A-E]

F. Information Requirements. All applicants for LPDES permits shall provide the following information to the state administrative authority, using the application form provided by the state administrative authority (additional information required of applicants is set forth in Subsections G - K of this Section and LAC 33:I.1504):

* * *

[See Prior Text in F.1-8]

9. additional application requirements in LAC 33:IX.2765.A and LAC 33:I.1504.

* * *

[See Prior Text in G-1 EDITORIAL NOTE]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:723 (June 1997), amended by the Office of the Secretary, LR 25:

Subchapter D. Transfer, Modification, Revocation and Reissuance, and Termination of Permits

§2387. Termination of Permits

* * *

[See Prior Text in A-A.4]

5. additional causes of termination contained in LAC 33:IX.2769 and LAC 33:I.1504.

* * *

[See Prior Text in B]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:725 (June 1997), amended by the Office of the Secretary, LR 25:

§2407. Modification, Revocation and Reissuance, or Termination of Permits

A. Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the state administrative authority's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in LAC 33:I.1504 and LAC 33:IX.2383, 2387, or 2769. All requests shall be in writing and shall contain facts or reasons supporting the request.

* * *

[See Prior Text in B.1-D]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:725 (June 1997), LR 23:1524 (November 1997), amended by the Office of the Secretary, LR 25:

Subchapter V. Additional Requirements Applicable to the LPDES Program

§2765. Additional LPDES Permit Application Requirements

* * *

[See Prior Text in A-A.2]

B. In addition to the requirements in LAC 33:I.1504 and LAC 33:IX.2331.G.1, H.1, and K.1, all applicants shall provide the following information to the administrative authority using the application form provided by the office, unless the office determines that such information is not required for the applicant's facility or activity:

* * *

[See Prior Text in B.1-3]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of the Secretary, LR 25:

§2769. Additional Requirements for Permit Renewal and Termination

A. The following are causes, in addition to those found in LAC 33:IX.2387 and LAC 33:I.1504, for terminating a permit during its term or for denying a permit renewal:

* * *

[See Prior Text in A.1-D]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:726 (June 1997), amended by the Office of the Secretary, LR 25:

A public hearing will be held on January 25, 1999, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by OS029. Such comments must be received no later than February 1, 1999, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (225) 765-0486. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Investigations and Regulation Development Division at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of OS029.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/olaie/irdd/olaereg.htm>.

J. Dale Givens
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Permit Qualifications and Requirements**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There are no expected costs or savings to state or local governmental units for this proposed rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect on revenue collections of state or local governmental units as a result of this rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
All applicants for environmental permits or for change of ownership of a permit will be affected by this rule. The rule requires that a person seeking a permit submit a list of state(s) where the applicant has federal or state environmental permits identical to or of a similar nature to the permit applied for. No significant impact is anticipated since this information should be readily available from both large and small companies in computer databases. Companies without computer capability would tend to be very small operations with very few, if any, out-of-state operations, making it simple to collect the required information.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule will have no effect on competition or employment.

J. Dale Givens
Secretary
9812#051

Robert E. Hosse
General Government Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Environmental Quality
Office of the Secretary**

Procedures for Public Record Requests
(LAC 33:I.Chapter 23)(OS025)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to adopt the Office of the Secretary regulations, LAC 33:I.Chapter 23 (Log Number OS025).

The proposed rule will establish a uniform fee schedule and standardize the procedure for processing requests for copies of public records maintained by the Department of Environmental Quality. The Office of the Governor, Division of Administration, established a 25 cents per page fee (see LAC 4:I.301.B) to be charged by all state agencies. This rule reduces the Division of Administration fee to 5 cents per page for persons who complete DEQ Form FSD-0005-02. The Division of Administration has approved the uniform fee schedule and procedure provided in this rule, in accordance with LAC 4:I.301.G. The department's ultimate goal is to make all of its public records available for free through Internet access; viewing of some records may be possible beginning in March 1999. The basis and rationale for this proposed rule are to prescribe the procedure that the public must follow to obtain copies of DEQ public records.

This proposed rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S.49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33

ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

**Subpart 1. Departmental Administrative Procedures
Chapter 23. Procedures for Public Record Requests
§2301. Purpose**

It is the purpose of this Chapter to give notice of the standard department procedures for receiving and processing requests for copies of public records and to establish a department copy fee schedule in compliance with the Uniform Fee Schedule for Copies of Public Records (LAC 4:I.301), the Administrative Procedure Act (R.S. 49:950 et seq.), and the Louisiana Public Records Law (R.S. 44:1 et seq.).

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq. and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Management and Finance, Fiscal Services Division, LR 25:

§2303. Policy

A. The department shall implement the fee schedule in LAC 33:I.2309 when providing copies of public records requested by the public.

B. The department reserves the right to deny any request that is so burdensome as to interfere with the operation of the constitutional and legal duties of the custodian of records.

C. No copies shall be provided to any requester who appears on the Accounts Receivable Past Due report until all past due amounts have been paid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq. and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Management and Finance, Fiscal Services Division, LR 25:

§2305. Standard Operating Procedures

A. All requests for copies of public records, including subpoenas duces tecum for production of original public records, shall be made using DEQ Form FSD-0005-01. A certification on DEQ Form FSD-0005-02 shall be submitted with the request if free or reduced rate copies are requested. Completed forms may be submitted in person, by mail, or by facsimile. No other request (e.g., e-mail, telephone, telegram) will be honored. Completion of the DEQ Form FSD-0005-01 is waived only if the records requested are prepared by the department specifically for sale to the public (e.g., *Environmental Regulatory Code*). Copies of the forms may be obtained through the DEQ website at <http://www.deq.state.la.us> or from the following contacts:

1. Customer Information Number (888) 763-5424;
2. DEQ Headquarters, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810, phone: (225) 765-0741;
3. Office of Air Quality and Radiation Protection, Custodian of Records, Box 82135, Baton Rouge, LA 70884-2135, phone: (225) 765-0219, fax: (225) 765-0222;
4. Office of Legal Affairs and Enforcement, Custodian of Records, Box 82282, Baton Rouge, LA 70884-2282, phone: (225) 765-0370, fax: (225) 765-0409;
5. Office of Management and Finance, Custodian of Records, Box 82231, Baton Rouge, LA 70884-2231, phone: (225) 765-0647, fax: (225) 765-0746;
6. Office of the Secretary, Custodian of Records, Box 82263, Baton Rouge, LA 70884-2263, phone: (225) 765-0741, fax: (225) 765-0746;
7. Office of Waste Services, Custodian of Records, Box 82178, Baton Rouge, LA 70884-2178, phone: (225) 765-0355, fax: (225) 765-0617; and
8. Office of Water Resources, Custodian of Records, Box 82215, Baton Rouge, LA 70884-2215, phone: (225) 765-0634, fax: (225) 765-0635.

B. Payment shall be made in accordance with the rates established in this Chapter.

C. Advance payment is required. Payment shall be made only by check or money order made payable to the Department of Environmental Quality. The department does not accept cash.

D. In order to ensure the preservation of official department records, no records shall leave the premises for duplication, whether accompanied by agency personnel or otherwise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq. and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Management and Finance, Fiscal Services Division, LR 25:

§2307. Exceptions to Standard Operating Procedures

The following procedures shall apply to persons requesting copies of public records under an exception to standard operating procedures.

A. All requests for copies of public records shall be made using DEQ Form FSD-0005-01.

B. Requests for exceptions to standard operating procedures must be approved in advance by the appropriate division administrator.

C. The only exception to LAC 33:I.2305.D is for large maps that must be duplicated by an outside source copy provider, due to unavailability of suitable copying equipment within the department. In this case, the document shall be accompanied by a department employee who shall remain with the document until its return.

1. When public records are taken by department personnel to an outside source copy provider as an exception to LAC 33:I.2305.D, the requester shall be responsible for all costs of reproduction. The requester shall make payment or arrangements for payment with the outside source copy provider in advance of the request for the exception, and shall include a statement of such arrangements as part of the request. The department reserves the right to approve the outside source copy provider and to refuse the release of original public records to an outside source copy provider.

2. A request for any exception to LAC 33:I.2305.D other than that specified in this Subsection shall be submitted to the secretary, deputy secretary, or undersecretary for consideration and approval.

D. When payment of an invoice for copies of public records provided by facsimile, as an exception to standard operating procedure, is not received in the Fiscal Services Division within 10 working days, the requester's name will appear on an Accounts Receivable Past Due report maintained by the Fiscal Services Division. No copies shall be provided to any requester who appears on the Accounts Receivable Past Due report until all past due amounts have been paid. Division administrator approval is required, and credit approval may be required, prior to providing copies by facsimile.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq. and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Management and Finance, Fiscal Services Division, LR 25:

§2309. Uniform Fee Schedule

Item	Cost
Regular Fees:	
One-sided Copy (any size)	\$.25 page
Two-sided Copy (any size)	\$.50 page
Reduced Fees (Form FSD-0005-02 completed):	
One-sided Copy (any size)	\$.05 page
Two-sided Copy (any size)	\$.10 page

Computer Reports (Copy of existing computer generated report): One-sided Copy (any size) Two-sided Copy (any size)	\$.25 page \$.50 page
Requests for Proposal (RFP) [Current request only]	No charge
Copies printed and produced by outside sources (Request made by DEQ employees) (DNR Print Shop, LSU Press, DOA Printing, etc.)	As determined by the cost statement
Reproduced VCR Tapes	Cost of tape and production
Computer Generated Report/Map that requires data processing time* (Disk/CD will be provided by DEQ) *Cost to include personnel, supplies, etc.	Determined on each request
Facsimile, per page **A cover sheet and an invoice shall be included in the faxed material at no charge	\$1.00 per page**
Copy of Established File on Personal Computer (Disk/CD will be provided by DEQ) (Charges include processing time)	\$5.00 per Disk/CD
Postage and Handling	Actual cost

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq. and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Management and Finance, Fiscal Services Division, LR 25:

A public hearing will be held on January 25, 1999, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by OS025. Such comments must be received no later than February 1, 1999, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (225) 765-0486. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Investigations and Regulation Development Division at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of OS025.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/ola/irdd/olaereg.htm>.

J. Dale Givens
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Procedures for Public Record Requests**

**Title 33
ENVIRONMENTAL QUALITY
Part I. Office of the Secretary**

**Subpart 1. Department Administrative Procedures
Chapter 20. Records of Decision for Judicial Review
§2001. Scope and Purpose**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No significant implementation costs or savings to state or local governmental units are expected as a result of this rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
A modest decrease in revenues is expected with promulgation of this proposed rule as a result of reduced copy fee paid by indigent citizens or persons using copies strictly for a public purpose.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
An economic benefit to directly affected persons or non-governmental groups is expected as a result of reduced copy fees paid by indigent citizens or persons using copies strictly for a public purpose.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
No effect on competition and employment is expected as a result of this rule.

J. Dale Givens
Secretary
9812#048

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Environmental Quality
Office of the Secretary**

Records of Decision for Judicial Review
(LAC 33:I.Chapter 20)(OS028)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Office of the Secretary regulations, LAC 33:I.Chapter 20 (Log #OS028).

These regulations provide for the assembly, in a uniform and consistent order, of a record of decision of any DEQ action or decision which is the subject of an appeal to, or other request for judicial review by, a court of competent jurisdiction. The basis and rationale for this proposed rule are to comply with R.S. 30:2050.20.

This proposed rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S.49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

A. These regulations provide for the assembly, in a uniform and consistent order, of a record of decision of any department action or decision that is the subject of an appeal to, or other request for judicial review by, a court of competent jurisdiction.

B. These regulations do not apply to matters handled by the Department of State Civil Service, Division of Administrative Law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular, R.S. 30:2050.20.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:

§2003. Definitions

Record of Decision—for purposes of this Chapter, all documents, evidence, and other items presented to, and/or actually considered by, the decision maker for the purpose of influencing the decision. This shall include, but is not limited to:

1. the record of any hearing or other proceeding held in connection with the decision or action;
2. any comments, written or oral, submitted to the department in connection with the decision or action;
3. any response to such comments issued by the department;
4. all matters officially noticed by the decision maker;
5. any written statement of the decision or action and reasons therefor; and
6. for permit actions:
 - a. the permit application, including all supplements and amendments thereto;
 - b. any notices of deficiency issued by the department;
 - c. any responses to notices of deficiency;
 - d. any correspondence relating to the permit application;
 - e. any public notices relating to the permit action; and
 - f. the final permit, if granted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular, R.S. 30:2050.20.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:

§2005. Responsibility for Assembly of Record of Decision

A. When the department is served with notice of an appeal or other request for judicial review, such notice shall be immediately forwarded to the department's Legal Division, which shall be responsible for assembling a complete and legible copy of the record of decision and transmitting it to the court.

B. Upon receipt of such notice, the Legal Division shall promptly notify the decision maker and other appropriate

agency personnel, each of whom shall be responsible for promptly transmitting to the Legal Division complete and legible copies of any portions of the record that may be in his/her possession or control.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular, R.S. 30:2050.20.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR :25:

§2007. Format of Record of Decision

A. Unless otherwise required by law or rule of court, the copy(ies) of the record that are transmitted to the court shall be assembled in the format indicated in Paragraphs 1 - 5 of this Subsection.

1. The main body of the record shall consist of all documents (or legible copies thereof) other than exhibits. (Exhibits are addressed in Paragraph 2 of this Subsection.) The main body shall be assembled according to the provisions of Subparagraphs a - e of this Paragraph.

a. The documents shall be arranged in chronological order, with the oldest document as the first.

b. Each page shall be consecutively numbered. The page number shall be inscribed in the lower right corner of the page, where it is possible to do so without obscuring text or other information.

c. The pages shall be on white paper, measuring eight and one-half inches by fourteen inches. The image shall be on one side of the paper only.

d. If the main body of the record contains more than 250 pages, it shall be divided into volumes of 250 pages or less.

e. Each volume shall be bound at the top, with front and back covers. The front cover of each volume shall be inscribed with:

- i. the name of the court to which the record is directed;
- ii. the title of the action;
- iii. the docket number assigned by the court;
- iv. the division of the court to which the matter is assigned;
- v. the words, "Record of Decision";
- vi. the name, address, and telephone number of each attorney of record, with the name and status of each party he/she represents;
- vii. the volume number of that volume and the total number of volumes (i.e., volume 2 of 3); and
- viii. the number of exhibits included in the record.

2. Those portions of the record that are not included in the main body are submitted as exhibits. Exhibits shall conform to the provisions of Subparagraphs a - e of this Paragraph.

a. The following items shall not be included in the main body of the record, but rather shall be submitted as exhibits:

- i. items that are larger than eight and one-half by fourteen inches, such as maps, charts, and blueprints;
- ii. bound materials, such as books and materials in loose-leaf binders; and
- iii. any other items that are too bulky or cumbersome to be efficiently included in the main body of the record.

b. Each exhibit shall be assigned a number. The numbers shall be assigned chronologically according to the date appearing on the exhibit, if any. If no date appears on the exhibit, the exhibit number shall be assigned according to the date of submittal of the exhibit to the department.

c. Each exhibit shall be labeled with the exhibit number, a brief description of the exhibit, and the date appearing thereon or the date of submittal, as applicable.

d. Exhibits shall be packaged in boxes, envelopes, or other containers in such a manner as to facilitate storage and handling. Each box, envelope, or container shall bear a label inscribed with the following information:

- i. the name of the court to which the record is directed;
- ii. the title of the action;
- iii. the docket number assigned by the court;
- iv. the division of the court to which the matter is assigned;
- v. the words, "Record of Decision";
- vi. the name, address, and telephone number of each attorney of record, with the name and status of each party he/she represents; and
- vii. the exhibit number for each exhibit contained therein and the total number of exhibits (i.e., exhibits 2 and 3 of 7).

3. Confidential Documents

a. Documents or other materials that are part of the record, but have been declared confidential by the secretary in accordance with R.S. 30:2030, 2074(D), or other law, shall be submitted to the court only under seal. "Under seal" shall mean contained in sealed envelopes or boxes, which are clearly marked or labeled with the following inscription: "CONFIDENTIAL -- FOR REVIEW BY COURT PERSONNEL ONLY. The enclosed materials have been declared confidential by the Secretary of the Louisiana Department of Environmental Quality, pursuant to La. R.S. [insert citation]."

b. Confidential materials submitted under seal, as described in Subparagraph a of this Paragraph, shall not be placed in the main body of the record nor in the exhibits. In place of each such item the following notice shall be placed, accompanied by the secretary's written determination of confidentiality as to that item: "NOTICE -- CONFIDENTIAL ITEM SUBMITTED UNDER SEAL. An item which would otherwise appear at this point in the record has been submitted to the court separately and under seal, because the Secretary of the Louisiana Department of Environmental Quality has declared it confidential, pursuant to La. R.S. [insert citation]. See the attached written determination of confidentiality."

4. Indexes

- a. The following indexes shall be prepared:
 - i. a chronological index of every document in the main body of the record, showing the date, item name or description, and page number of the first page of each document;
 - ii. an alphabetical index of every document in the main body of the record, showing the date, item name or description, and page number of the first page of each document; and

iii. a chronological index of every exhibit in the record, showing the exhibit number and description of each exhibit.

b. A copy of each index shall be included in each volume of the main body of the record, directly beneath the front cover.

c. A copy of the exhibit index shall be placed in each box, envelope, or other container in which exhibits are transmitted to the court.

5. Certificate of Completeness and Authenticity. The first volume of the main body of the record shall contain an original certificate of the decision maker as to the completeness and authenticity of the entire record of decision. Each other volume, if any, shall contain a copy of that certificate. The certificate, or copy thereof, shall be placed after the last page of each volume.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular, R.S. 30:2050.20.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:

A public hearing will be held on January 25, 1999, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by OS028. Such comments must be received no later than February 1, 1999, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (225) 765-0486. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Investigations and Regulation Development Division at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of OS028.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/ola/irdd/olaeregs.htm>.

Herman Robinson
Assistant Secretary

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

RULE TITLE: Records of Decision for Judicial Review

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

The implementation of this rule will result in no increase or decrease in costs, as compared to the current costs to the agency

of preparing records of decision. The rule merely codifies procedures that the agency already follows in substantial part.

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

This rule will have no effect on revenue collections of state and local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

No non-agency persons or groups would be directly affected by the proposed rule.

**IV. ESTIMATED EFFECT ON COMPETITION AND
EMPLOYMENT (Summary)**

The proposed rule would have no impact on competition or employment.

J. Dale Givens
Secretary
9812#049

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Division of Administration
Board of Trustees of the
State Employees Group Benefits Program**

Diabetes Self-Management Training

In accordance with the applicable provisions of R.S. 49:950, et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 42:871(C) and 874(B)(2), vesting the Board of Trustees with the responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, the Board hereby gives Notice of Intent to adopt amendments to the Plan Document of Benefits.

The Board finds that it is necessary to amend provisions of the Plan Document regarding benefits for diabetes self-management training. Accordingly, the Board intends to amend the Plan Document of Benefits for the State Employees Group Benefits Program in the following particulars:

Amend Article 3, Section I, Subsection F, by adding a new paragraph, 36, to read as follows:

36. outpatient self-management training and education, including medical nutrition therapy, for the treatment of insulin-dependent diabetes, insulin-using diabetes, gestational diabetes, and non-insulin using diabetes, when such self-management training and education is provided by a licensed health care professional with demonstrated expertise in diabetes care and treatment who has completed an educational program required by the appropriate licensing board in compliance with the National Standards for Diabetes Self-Management Education Program as developed by the American Diabetes Association, and only as follows:

a. a one-time evaluation and training program for diabetes self management, conducted by the health care professional in compliance with the National Standards for Diabetes Self-Management Education Program as developed by the American Diabetes Association, upon certification by the health care professional that the covered person has

successfully completed the program, such benefits not to exceed \$500;

b. additional diabetes self-management training required because of a significant change in the covered person's symptoms or conditions, limited to benefits of \$100 per year and \$2,000 per lifetime;

* * *

Interested persons may present their views, in writing, to Jack W. Walker, Ph.D., Chief Executive Officer, State Employees Group Benefits Program, Box 44036, Baton Rouge, LA 70804, until 4:30 p.m. on Wednesday, January 27, 1999.

Jack W. Walker, Ph.D.
Chief Executive Officer

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Diabetes Self-Management Training**

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

It is estimated that implementation of this benefit will cost the State Employees Group Benefit Program \$1,044,000 to \$1,566,000 during the first year. Over time these additional claim costs will be reflected in the rate structure that is adopted by the Board of Trustees.

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

Revenue collections of state and local governmental units will not be affected.

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

Those persons directly affected will be the plan members that are diagnosed with diabetes. These persons will not have a benefit of \$500 for evaluation and training for the self-management of diabetes. Thereafter, an additional \$100 benefit per person per year for further evaluation and training for the self-management of diabetes, based upon medical necessity, subject to a lifetime maximum benefit of \$2,000. Providers of these services will benefit from an additional health benefit that is now payable under the terms of the State Employees Group Benefits Program.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The creation of Certified Diabetic Trainer could affect competition and employment in the health care market.

Jack W. Walker, Ph.D.
Chief Executive Director
9812#061

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Division of Administration
Board of Trustees of the
State Employees Group Benefits Program**

Plan Document—Impotency Drugs

In accordance with the applicable provisions of R.S. 49:950, et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 42:871(C) and 874(B)(2), vesting the Board of Trustees with the responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, the Board hereby gives Notice of Intent to adopt amendments to the Plan Document of Benefits.

The Board finds that it is necessary to amend the Plan Document to limit benefits for drugs prescribed for treatment of impotency. Accordingly, notice is hereby given that the Plan Document of Benefits for the State Employees Group Benefits Program will be amended in the following particulars:

Amend Article 3, Section VIII, of the Plan Document by adding thereto a new subsection, designated as subsection PP, to read as follows:

VIII. Exceptions and Exclusions for All Medical Benefits
No benefits are provided under this contract for:

* * *

PP. Drugs prescribed for Treatment of impotence, except when prescribed for males over the age of thirty, in a quantity not greater than five (5) per month, and provided that no benefits are payable for Yohimbine oral tablets, Papaverine and Phentolamine self-injectables, or any other drugs prescribed or dispensed for Treatment of impotence unless such Treatment is indicated in the approval of the drug by the Food and Drug Administration;

* * *

Interested persons may present their views, in writing, to Jack W. Walker, Ph.D., Chief Executive Officer, State Employees Group Benefits Program, Box 44036, Baton Rouge, LA 70804, until 4:30 p.m. on Wednesday, January 27, 1999.

Jack W. Walker, Ph.D.
Chief Executive Officer

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Plan Document—Impotency Drugs**

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

It is estimated the implementation of this benefit limitation will impact the State Employees Group Benefits Program by reducing net drug costs to the Program. These total costs are unknown but based on data from January, 1998 through June, 1998, total cost to the Program for this type of drug was \$171,172. This amount could be doubled to reflect an annual cost of \$342,344.

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

Revenue collections of state or local governmental units will not be affected.

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

Those persons directly affected will be the plan members of the State Employees Group Benefits Program. Those members utilizing prescription drugs for the treatment of impotence will be limited to 5 doses per month, and coverage will be limited to males over the age of 30.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Competition and employment will not be affected.

Jack W. Walker, Ph.D.
Chief Executive Officer
9812#042

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Division of Administration
Board of Trustees of the
State Employees Group Benefits Program**

Special Enrollment—Retirees

In accordance with the applicable provisions of R.S. 49:950, et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 42:871(C) and 874(B)(2), vesting the Board of Trustees with the responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, the Board hereby gives Notice of Intent to adopt amendments to the Plan Document of Benefits.

In order to implement the provisions of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, and to comply with rules and regulations promulgated pursuant thereto, and La. R.S. 22:250.1, et seq., the Board of Trustees of the State Employees Group Benefits Program intends to amend the Plan Document of Benefits.

The full text of this proposed rule can be viewed in its entirety in the emergency rule section of this issue of the *Louisiana Register*.

Interested persons may present their views, in writing, to Jack W. Walker, Ph.D., Chief Executive Officer, State Employees Group Benefits Program, Box 44036, Baton Rouge, LA 70804, until 4:30 p.m. on Wednesday, January 27, 1999.

Jack W. Walker, Ph.D.
Chief Executive Officer

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Special Enrollment—Retirees**

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

There will be no implementation costs as a result of Amendment #1 as this is currently how the plan operates.

According to the Program's consultant, AON Consulting, the costs of Amendment #2 will be negligible due to the minimal number of retirees that will be allowed to enroll under these special provisions.

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

Revenue collections of state or local governmental units will not be affected.

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

Those persons directly affected will be those retirees that will be allowed to enroll into the State Employees Group Benefits Program under the special enrollment provisions of HIPAA.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Competition and employment will not be affected.

Jack W. Walker, Ph.D.
Chief Executive Officer
9812#060

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Board of Examiners in Dietetics and Nutrition**

Dietetics and Nutrition
(LAC 46:LXIX.Chapter 1)

The Louisiana Board of Examiners in Dietetics and Nutrition proposes to adopt the following rules into the Board's General Rules.

The proposed rules define and clarify terms that are currently included in the Louisiana Dietetic/Nutrition Practice Act. Further, the proposed rules outline in accordance with the Administrative Procedure Act and the Disciplinary Manual for Occupational Licensing Boards, the procedures that the Board will use in the investigation of complaints, the process for holding compliance and disciplinary hearings, and a list of the disciplinary options available to the Board for sanctioned licensees.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part LXIX. Registered Dietitians

Chapter 1. Dietitians/Nutritionists

§101. Definitions

* * *

Application—any person who has applied to the board for a license or permit to engage in the practice of dietetics/nutrition in the state of Louisiana.

* * *

Diet Instruction—the process of imparting knowledge related to a specific nutrition plan. It does not include the dynamics of interpretation of the nutrition assessment, deliberation, development or change in a nutrition plan, all of which are within the scope of *Dietetics/Nutrition Practice*.

Dietetic Nutrition Practice and Medical Nutrition Therapy—may be used interchangeably.

* * *

Incidental to the Practice of Their Profession—as specified in that profession's practice act or licensure law in the State of Louisiana as interpreted by that profession's regulatory board or agency.

* * *

Nutrition Counseling—the provision of individualized guidance on appropriate food and nutrient intake for those with special needs, taking into consideration health, cultural, socioeconomic, functional and psychological facts from the nutrition assessment. Nutrition counseling may include advice to increase or decrease nutrients in the diet; to change the timing, size of composition of meals; to modify food textures; and in extreme instances, to change the route of administration.

Nutrition Education—imparts information about food and nutrients, diet lifestyle factors, community nutrition resources and services to people to improve their nutrition.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3081-3093; R.S. 36:259(Q).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, LR 10:12 (January 1984), promulgated by the Department of Health and Hospitals, Board of Examiners in Dietetics and Nutrition, LR 14:435 (July 1988), amended LR 25:

§113. Rules for Professional Conduct

Licenseses, under the act shall perform their professional duties using the following Code of Ethics which reflect the ethical principles of the dietetic/nutrition professional and outline obligations of the licensee to self, client, society and the profession.

A. - C. ...

D. The licensee will not be negligent in his practice and assumes responsibility and accountability for personal competence in practice through continuing education and recognition of the limits of his ability and adherence to accepted standards of practice.

E. - G. ...

H. The licensee shall not be addicted to or dependent upon alcohol or other habit-forming drugs or be a habitual user of narcotics, barbiturates, amphetamines, hallucinogenics, or

other drugs having similar effects upon the competency of the licensee. When such substances are prescribed by a physician, the licensee will not practice if the medications adversely affects his mental competency.

I. ...

J. A failure to adhere to the above Code of Ethics, or a violation of the above Rules for Professional Conduct constitutes unprofessional conduct and a violation of lawful rules and regulations adopted by the board and further constitutes grounds for disciplinary action specified in R.S. 37:3090 of the Dietitian/Nutritionist Practice Act and these Rules and Regulations and also constitutes grounds for a denial of licensure or a renewal of licensure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3081-3093; R.S. 36:259(Q).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, LR 10:12 (January 1984), promulgated by the Department of Health and Hospitals, Board of Examiners in Dietetics and Nutrition, LR 14:437 (July 1988), amended LR 25:

§115. Denial, Suspension or Revocation of License

A. Certificate denial, suspension or revocation shall be accomplished in accordance with Section 3090(A) of R.S. 37:3081-3093, the State Administrative Procedure Act, and the Procedural Rules provided in 46:LXIX.Chapter 5.

B. The board may refuse to issue a license or provisional license, or suspend, revoke or impose probationary conditions and restrictions on the license or provisional license of a person on a finding of any of the causes provided by §3090.A and B of the Dietitian/Nutritionist Practice Act.

C. A suspended license shall be subject to expiration and may be renewed as provided in §115, but such renewal shall not entitle the licensee, while the license remains suspended and until he is reinstated, to engage in the licensed activity, or in any other conduct or activity in violation of the order of judgment by which the license was suspended. If a license is revoked on disciplinary grounds and is reinstated, the licensee, as a condition of reinstatement, shall pay the renewal fee and any late fee that may be applicable.

D. Disciplinary Options Available to the Board. In accordance with R.S. 37:3085; R.S. 37:3088 and R.S. 37:3090, the following disciplinary options are available to the board.

1. Revocation. The involuntary termination of the licensee's license.

2. Suspension. The licensee is not permitted to practice for a specified period of time. Rehabilitative conditions may be imposed to run concurrently with the suspension period.

3. Probation. The licensee is permitted to practice, but the board has imposed conditions upon the practice or the practitioner including, but not limited to, rehabilitation. Once the time period has elapsed, and the licensee has complied with the terms of probation and/or rehabilitation, the board will allow the practitioner to resume practice unconditionally.

4. Restriction of License. A reduction in the scope of practice.

5. Censure. The board makes an official statement of censure ship concerning the individual.

6. Reprimand. Similar to censure. The board reproves the licensee. There may be public or private reprimands.

7. Restitution. Requirement imposed upon the licensee that he make financial or other restitution to a client or other injured party.

E. Publication of Disciplinary Action. The board will notify the professional community within 30 days of any disciplinary action, including the disciplined licensee's name, location, offense and sanction imposed. A notice of disciplinary action will also be published in the board's newsletter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3081-3093; R.S. 36:259(Q).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, LR 10:12 (January 1984), promulgated by the Department of Health and Hospitals, Board of Examiners in Dietetics and Nutrition, LR 14:438 (July 1988), amended LR 25:

Chapter 5. Procedural Rules

§501. Authority

A. Consistent with the legislative purpose enumerated in R.S. 37:3081-3093, and to further protect the safety and welfare of the public of this state against unauthorized, unqualified and improper practice of dietetics and nutrition, the following rules of procedure are established under this board's specific rulemaking authority of R.S. 37:3085 and R.S. 49:952 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3081-3093; R.S. 36:259(Q).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, LR 10:12 (January 1984), promulgated by the Department of Health and Hospitals, Board of Examiners in Dietetics and Nutrition, LR 25:

§503. Investigation of Complaints

A. The board is authorized to receive complaints against licensees or applicants from any person.

B. Any complaint bearing on a licensee's professional competence, conviction of a crime, unauthorized practice, violation of provisions of the Dietitian/Nutritionist Practice Act or Board Rules and Regulations, mental competence, neglect of practice or violation of the state law or ethical standards where applicable to the practice of dietetics and nutrition, should be submitted to the board.

C. Once a written and signed complaint is received, the board will initiate a review of the allegations. The board may dispose of the complaint informally through correspondence or conference with the licensee and/or the complainant which may result in a consent order agreeable to both parties. If the licensee stipulates to the complaint and waives his right to formal hearing, the board may impose appropriate sanctions without delay. If the board finds that a complaint cannot be resolved informally, the written complaint will be forwarded to the board's designated Complaint Investigation Officer (hereinafter referred to as the CIO) for investigation.

D. The board's CIO shall have authority to investigate the nature of the complaint through conference and correspondence directed to those parties or witnesses involved. The officer shall send the involved licensee notice of the investigation, containing a short summary of the complaint and any questions the officer may direct to the licensee relative to the complaint. All letters to the involved licensee, the complainant, or any other witness, shall be sent by registered

mail, with the designation "Personal and Confidential" clearly marked on the outside of the envelope.

E. The CIO shall conclude the investigation as quickly as possible without compromising thoroughness. Unless good cause is shown by the CIO satisfactory to the board, which may extend the time for the investigation, the investigation and recommended action shall be completed within 60 days of the date the CIO first receives the complaint.

F. The CIO shall make a recommendation to the board for disposition by informal hearing, formal hearing or dismissal of the complaint. When the CIO's recommended action might lead to denial, suspension, or revocation of the certificate, the board shall immediately convene a formal adjudication hearing, pursuant to R.S. 37:3090.B. The officer may determine that the licensee's explanation satisfactorily answers the complaint and may recommend to the Board that the matter be dropped. The recommended remedial action or dismissal of the complaint shall be forwarded to the involved complainant and licensee.

G. The CIO may also resolve the complaint through a consent order entered into by the licensee and the complainant. If the order contains any agreement by the licensee to some remedial course of action, the agreement must be signed by the complainant, the licensee and the board. The CIO will make note of any settlement arrived at between the complainant and the licensee, but such a settlement does not necessarily preclude further disciplinary action by the board.

H. If the CIO's recommendation for informal hearing is accepted by the board, the officer shall notify the licensee of the time and place of the conference and of the issues to be discussed. The licensee shall appear on a voluntary basis. The licensee shall be advised that the hearing will be informal, no lawyers will be utilized and no transcript of the hearing made. Any witnesses used will not be placed under oath, and no subpoenas will be issued. The licensee shall be informed that any statements made at the informal hearing may not be used or introduced at a formal hearing, unless all parties consent, in the event the complaint cannot be resolved informally. If the licensee notifies the CIO that he does not wish such an informal hearing, none shall be held. In that event, the CIO shall recommend to the board the initiation of a formal disciplinary hearing.

I. If the investigation disclosed any of the following:

1. that the complaint is sufficiently serious to require formal adjudication;

2. the licensee fails to respond to the CIO's correspondence concerning the complaint;

3. the licensee's response to the CIO's letter discloses that further action is necessary; an informal hearing is held but does not resolve all the issues; or the licensee refuses to comply with the recommended remedial action, the CIO shall recommend to the board the initiation of a formal disciplinary hearing.

J. In any recommended action submitted to the board by the CIO, the recommended action should be submitted in brief, concise language, without any reference to the particulars of the investigation, or any findings of fact or conclusions of law arrived at during the investigative process.

K. The board shall also have authority to delegate to the CIO the investigation of any alleged violations of R.S. 37:3090.A, prior to board action on such alleged violations. In that event, the CIO shall submit to the board the complete details of the investigation, including all facts and the complete investigation file, if requested by the board. Final authority for appropriate action rests solely with the board.

L. At no time shall the CIO investigate any case as authorized by the board or §503 where said officer has any personal or economic interest in the outcome of the investigation, or is personally related to or close friends with the complainant, the licensee, or any of the involved witnesses. In such event, the officer shall immediately contact the board, who shall have authority to appoint a CIO ad hoc for disposition of that case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3081-3093; R.S. 36:259(Q).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, LR 10:12 (January 1984), promulgated by the Department of Health and Hospitals, Board of Examiners in Dietetics and Nutrition, LR 25:

§505. Conduct of Hearing

A. The board shall be authorized to conduct two types of hearings: compliance hearings and formal disciplinary hearings.

1. Compliance Hearing

a. The board will provide a compliance hearing to an applicant for a regular or provisional license whose application was disapproved by the board pursuant to §111.G of these Rules and Regulations, providing such applicant requests a compliance hearing in writing within thirty (30) days after the receipt of the notice of the disapproval, in which request the applicant shall state the opposition to the disapproved application.

b. A licensee, whose license is deemed expired because of a failure to timely renew, under R.S. 37:3088, shall be entitled to a compliance hearing, provided the licensee requests same in writing, within ten days after the receipt of the notice of the expired license; or in the event the licensee did not receive notice of the expired license within 30 days of the date upon which the license would have expired by operation of law.

c. Whenever possible, the board shall schedule a compliance hearing on a disapproved application in such a manner that the applicant is given an opportunity to present evidence of compliance and the board to rule thereon in sufficient time to allow the applicant to take the next scheduled examination, if the board decides in favor of the applicant. If this is not possible, and the board has reason to believe that the applicant's opposition has merit, the applicant shall be allowed to take the examination provisionally, pending the hearing and determination of the board. In no event shall the compliance hearing be conducted later than 30 days after requested. This time limitation applies to rejected applicants, as well as licensees with lapsed certificates.

d. The purpose and intent of the compliance hearing is to provide a forum for the applicant or licensee to present documentary evidence in the form of affidavits, court records, official records, letters, etc., along with under-oath testimony to establish that they do, in fact, meet the lawful requirements

for the application or the retention of the license. The board shall have the authority to administer oaths, hear the testimony and conduct the hearing. No transcript of the hearing is required. The applicant or licensee may be represented by counsel, or may represent themselves in proper person.

e. In any compliance hearing, the burden shall be on the applicant or licensee to establish that he meets the criteria for licensure or that his certificate was timely renewed.

f. Within 30 days after the compliance hearing, the board will forward its final decision, including findings of fact and conclusions of law, by certified mail, to unsuccessful applicant or licensee.

g. Thereafter, the unsuccessful applicant or licensee may apply for a rehearing, as provided in R.S. 49:959, subject to further judicial review, pursuant to R.S. 49:964, 965.

2. Formal Disciplinary Hearing

a. The board shall also be authorized to conduct formal disciplinary hearings pursuant to R.S. 37:3090.B. The board shall promptly notify the Attorney General, who is authorized and requested to appear on behalf of the State.

b. The hearing shall be held before the board only after the involved licensee is given at least 30 days notice by certified mail. The content of the notice, as well as the conduct of the hearing, shall be governed by R.S. 49:955, being further provided that the licensee be advised of his right to be represented by legal counsel; and that the board shall arrange for a court reporter to make an accurate recording of all testimony presented at the hearing. By bringing a complaint, the client waives the privilege of confidentiality for the purposes of the hearing.

c. The rules of evidence, notice, authority to administer oaths, issue subpoenas, conduct depositions and control confidential or privileged information, will apply to the formal adjudication hearing in the form specified by R.S. 49:956.

d. It is the licensee's continuing obligation to keep the board informed of his whereabouts. Accordingly, if notice of the hearing cannot be delivered by mail because of a change of address and the new address is not provided to the board, the board may hold the hearing in the licensee's absence, after making reasonable efforts to obtain the licensee's new address.

e. When the licensee receives notice, he may file an answer to the notice denying some or all of the charges, or offering any explanation or assert whatever defense is deemed applicable.

f. For good cause shown, the board has discretion to extend or continue the time set for the hearing for such reasons as ill health, inability to obtain counsel, the complexities of the case, or such other matters deemed by the board to present good cause.

g. The board shall elect from its membership a person to act as Presiding Officer at the hearing, to make rulings on objections, the admissibility of evidence, and to insure that the conduct of the hearing proceeds without delay and pursuant to law. The other board members may not delegate their decision-making and fact-finding duties to the Presiding Officer; nor shall the Presiding Officer have any greater weight in the

decision-making process. The board's findings of fact and conclusions of law shall be signed by the majority of the board finding those findings of fact and conclusions of law. Any board member disagreeing with those findings of fact and conclusions of law may also file in the record a dissent.

h. Any board member having reason to believe that he or she is biased or prejudiced against one of the parties to the proceeding or has a personal interest in the outcome shall immediately notify the remaining board members and request to be disqualified. Likewise, any party to such a hearing may file with the board an affidavit requesting a disqualification because of bias or personal interest. As soon as possible, but not later than the beginning of the hearing, the majority of the board must pass upon the requests for disqualification. The concerned board member shall not participate in the action to disqualify and shall not vote on the issue. If the board is quite certain that there is no merit to the requests for disqualification, the board will proceed with the hearing. However, any doubt should be resolved in favor of disqualification. In that event, the board should immediately contact the Governor to appoint a board member pro tem to replace the disqualified member for the hearing in progress only.

i. The parties to the hearing are urged to confer prior to the hearing through their respective counsel, or personally to attempt to reduce or simplify the issues to be heard. This procedure is not required. The board will, however, honor any stipulations arrived at between the parties as proven fact at the hearing. The purpose of the prehearing conference is to insure that the hearing is not unusually delayed by receiving testimony or other evidence on matters which are not seriously in dispute.

j. The board shall have discretion to consolidate one or more cases for hearing involving the same or related parties, or substantially the same questions of law or fact. The board may also grant separate hearings if such a joint hearing would be prejudicial to one or more of the parties. If hearings are to be consolidated, notice must be given to all parties in advance of the hearing.

k. The Presiding Officer shall consider a motion to modify or quash any subpoena issued in connection with the hearing, provided that such motion is filed, by registered mail, with the board not later than three days prior to the hearing date, or the date scheduled for the deposition. Possible grounds to quash or limit the subpoena include, but are not limited to, testimony or material protected by privilege of statute, regulation, or other law; burdensomeness that would not be justified in light of the evidence's importance to the case, undue hardship on a witness; vagueness; and immateriality.

l. The procedures to be followed in conducting the hearing governing the order of proceedings, rulings on evidence, and the board's decision are contained in Chapters 11 through 14, respectively, of the Disciplinary Action Manual for Occupational Licensing Boards, prepared by the Louisiana Department of Justice, 1979, through the office of the Attorney General. A copy of these pertinent chapters will

be provided to an interested party involved with a hearing, by written request submitted to the board.

m. The burden of proof rests upon the Attorney General who is bringing the charge before the board. No sanctions shall be imposed or order be issued, except upon consideration of the whole record, as supported by and in accordance with reliable, probative and substantial evidence as cited in R.S. 49:957.

n. Any party or person deemed to be governed by or under the jurisdiction of R.S. 37:3081-3093, may apply to the board for a declaratory order or ruling in order to determine the applicability of a statutory provision or rule of this board to said party or person. The board shall issue the declaratory order or ruling in connection with the request by majority vote of the board, signed and mailed to the requesting party within 30 days of the request, except that the board may seek legal counsel or an Attorney General's opinion in connection with the request, in which case the declaratory order or ruling may be issued within 60 days of its request.

o. Judicial review and appeal of any decision or order of the board shall be governed by R.S. 49:964, 965.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3081-3093; R.S. 36:259(Q).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, LR 10:12 (January 1984), promulgated by the Department of Health and Hospitals, Board of Examiners in Dietetics and Nutrition, LR 25:

Interested persons may submit written comments to Suzanne L. Pevey, Administrator, Louisiana Board of Examiners in Dietetics and Nutrition, 11930 Perkins Road, Suite B, Baton Rouge, Louisiana 70810, on or before January 15, 1999. She is the person responsible for responding to inquiries regarding the proposed rules.

JoAnn M. Puls, LDN, RD
Chairperson

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Dietetics and Nutrition**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be \$2,425.60 increase in expenses to the Louisiana Board of Examiners in Dietetics and Nutrition based on the implementation of the proposed rules for definitions, disciplinary options and procedural rules.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The implementation of the proposed rules to add definitions, disciplinary options and procedural rules to the Louisiana Board of Examiners in Dietetics and Nutrition's current Rules and Regulations will have no financial impact on revenue collections for state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
The implementation of the proposed rules for definitions, disciplinary options and procedural rules to the Louisiana Board of Examiners in Dietetics and Nutrition's Rules and Regulations will have no impact of the costs and/or economic

benefits to the Board's licensees, the public or any governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The implementation of the proposed rules for definitions, disciplinary options and procedural rules to the Louisiana Board of Examiners in Dietetics and Nutrition's current Rules and Regulations should not effect competition and employment of Licensed Dietitian/Nutritionists or Provisionally Licensed Dietitian/Nutritionists.

Suzanne L. Pevey
Administrator
9812#014

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Office of Public Health

Sanitary Code—The Control of Diseases (Chapter II)

Under the authority of R.S. 40:5 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et. seq., the Department of Health and Hospitals, Office of Public Health is proposing to amend Sections 2:003 and 2:008 in Chapter II (The Control of Diseases) of the Louisiana Sanitary Code. The additions made in Section 2:003 are intended to clarify instructions within the code for defining how data on reportable conditions is submitted. For reports that do not require special reporting conditions, as outlined in Section 2:003, the information requested on the Confidential Disease Case Report form #2430 can be transmitted to the Office of Public Health by facsimile, phone or electronically through personal computers. This change is intended to facilitate greater ease of reporting from the public as well as to enhance the awareness of the Epidemiology Section regarding potential outbreaks of infectious diseases. In addition, while the Office of Public Health has historically treated infectious disease related information about patients as confidential in accordance with the law, the confidential manner in which case reports are viewed and handled is not stated in the present Sanitary Code for the reportable disease list. Consequently, it is proposed that the statement; "Information contained in reports under this section shall remain confidential in accordance with the law" be added to the end of Section 2:003.

The changes incorporated below in Section 2:008 are being made to clearly specify that laboratories within as well as those out of the state, have a responsibility to report data that confirms or aids in the diagnosis of a communicable reportable disease in Louisiana. In addition, due to the rapid evolution of testing methodology and forthcoming changes in the Centers for Disease Control's case definition of HIV infection, the need exist to specify the full range of test results which aid or confirm in a diagnosis and that should be reported to the Office of Public Health. The proposed changes would extend the present reportable disease list to include the results of all HIV antibody and antigen screening tests, T Cell subset determinations, molecular procedures that detect, analyze or

quantitate HIV DNA or RNA and cell culture procedures that cultivate the HIV virus.

The actual text changes to the above listed sections in Chapter II of the Sanitary Code are as follows:

Chapter II.

The Control of Diseases

2:003 The following diseases are hereby declared reportable: (Louisiana Register Vol. 23, Number 3 March 20, 1997).

Acquired Immune Deficiency Syndrome (AIDS)
Amebiasis
Arthropod Borne Encephalitis (specify type)
Blastomycosis
Botulism*
Campylobacteriosis
Chancroid**
Chlamydia infection**
Cholera*
Cryptosporidiosis
Diphtheria*
Enterococcus (infection; resistant to vancomycin)
Escherichia coli O157:H7
Gonorrhea**
Haemophilus influenzae infection
Hemolytic-Uremic Syndrome
Hepatitis, Acute (specify A,B,C or Other)
Hepatitis B carriage in pregnancy
Herpes (neonatal)
Human Immunodeficiency Virus (HIV)
Legionellosis
Lyme Disease
Lymphogranuloma venereum**
Malaria
Measles (rubeola)*
Meningitis, other bacterial or fungal
Mumps
Mycobacteriosis, atypical***
Neisseria meningitidis infection
Pertussis (whooping cough)
Rabies (animal and man)
Rocky Mountain Spotted Fever
Rubella (German measles)*
Rubella (congenital syndrome)
Salmonellosis
Shigellosis
Staphylococcus aureus (infection; resistant to methicillin/oxacillin or vancomycin)
Streptococcus pneumoniae (infection resistant to penicillin)
Syphilis**
Tetanus
Tuberculosis***
Typhoid Fever
Varicella (chicken pox)
Vibrio infections (other than cholera)

Case reports not requiring special reporting instructions (see below) can be reported by Confidential Disease Case Report forms (2430), facsimile, phone reports, or electronic transmission.

*Report suspected cases immediately by telephone. In addition, all cases of rare or exotic communicable diseases and all outbreaks shall be reported.

**Report on STD-43 form. Report cases of syphilis with active lesions by telephone.

***Report on CDC 72.5 (f 5.2431) card.

All reportable diseases and conditions other than the venereal diseases, tuberculosis and those conditions followed by asterisks should be reported on an EPI-2430 card and forwarded to the local health unit or the Epidemiology Section, P.O. Box 60630, New Orleans, Louisiana 70160, phone 1(800)256-2748 or FAX (504)568-3206.

OTHER REPORTABLE CONDITIONS

(Louisiana Register Vol. 23, Number 3 March 20, 1997)

- Cancer
- Complications of Abortion
- Congenital hypothyroidism*****
- Galactosemia*****
- Hemophilia*****
- Lead poisoning
- Phenylketonuria*****Reye's Syndrome
- Severe traumatic head injury*****
- Severe undernutrition (severe anemia, failure to thrive)
- Sickle cell disease*****
- Spinal cord injury*****
- Sudden infant death syndrome (SIDS)

Report cases on an EPI-2430 card unless indicated otherwise below.

****Report in DDP3 form; preliminary telephone report from emergency room encouraged (504)568-2509.

*****Report to the Louisiana Genetic Diseases Program Office by telephone (504)568-5070 or FAX (505)568-7722. Information contained in reports required under this section shall remain confidential in accordance with the law.

* * *

2:008 The director of every laboratory whether public, private, hospital or other, within or out of the state, where specimens are examined for the purpose of confirming or aiding in the diagnosis of a communicable disease, shall report to the State Health Officer the following information: (1) all reactive serologic tests for syphilis;

(2) microscopic findings of *Treponema pallidum*;

(3) all reactive test for Human Immunodeficiency Virus (e.g. EIA, Western Blot, P24 Antigen, or Immunofluorescent Antibody Assay);

(4) the results of T Cell subset (e.g CD4 Counts) determinations;

(5) the results of any nucleic acid based assay or sequencing procedure used for the detection, quantitation (viral load) or analysis of Human Immunodeficiency Virus DNA or RNA (e.g. NASBA, PCR, LCR or bDNA); and

(6) the results of virus isolation and culture procedures for Human Immunodeficiency Virus. Moreover, the results of all tests which either confirm or suggest the occurrence of reportable diseases as specified in Section 2:003 are to be reported. Such reports shall be submitted within 72 hours after

completion of the reportable test and shall contain the name of the physician or person submitting the specimen; the name, age, sex, race and address of the person from whom the specimen was obtained, and the name and degree of reactivity of the test performed. Persons submitting specimens for reportable laboratory tests are required to supply the laboratories with sufficient information to comply with the provisions of this Section. Laboratory reports shall not be construed as diagnosis. In the case of private patients, follow-up of laboratory reports shall be through the physician(s) submitting the specimen(s).

* * *

Comments and concerns regarding the proposed rule should be addressed to Dr. Louise McFarland, Office of Public Health, Epidemiology Section, P.O. Box 60630, 325 Loyola Avenue, New Orleans, Louisiana 70160 until January 11, 1999. A public hearing for this rule proposal will also be held on January 26, 1999 at the Office of Public Health, 325 Loyola Ave., Room 511, New Orleans, LA beginning at 10 a.m. in order to receive any additional comments on the proposed rule.

David W. Hood
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Sanitary Code—The Control of Diseases

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Publication costs (\$160) for posting the Notice of Intent in the *Louisiana Register* are the only expenses to be incurred in implementing rule changes in Chapter II of the Sanitary Code in FY 98-99. This rule will clarify various means by which currently mandated reports of reportable conditions are submitted to and handled by the Office of Public Health.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The proposed changes to Chapter II of the Sanitary Code are not estimated to effect the revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
The hospitals and clinical laboratories affected by these changes in the Sanitary Code will not experience additional cost nor economic benefits. This rule clarifies various means by which currently required reports of reportable conditions should be submitted to the Office of Public Health.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The proposed rule changes in the Sanitary Code do not impact upon competition between hospitals or between laboratories or employment opportunities for personnel within these institutions.

Jimmy Guidry, M.D.
Assistant Secretary
9812#068

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Insurance Office of the Commissioner

Regulation 62—Managed Care Contracting Requirements (LAC 37:XIII.Chapter 53)

In accordance with the provisions of LA R.S. 49:950 of the Administrative Procedure Act, the Department of Insurance hereby gives notice of its intent to adopt Regulation 62. The purpose of this regulation is to implement the standards of and assure compliance with Acts 897 and 1495 of the 1997 Regular Session of the Louisiana Legislature which provide for the required participation of qualified rural hospitals and their practicing physicians, through the establishment of reasonable contracting requirements for medical services, that do not jeopardize the health of enrollees or plan members. This regulation shall take effect on March 20, 1999.

A copy of the full text of this proposed rule can be viewed in the Emergency Rule section of this issue of the *Louisiana Register*.

A public hearing on the proposed regulation will be held on January 27, 1999 in the Plaza Hearing room of the Louisiana Department of Insurance located at 950 North Fifth Street, Baton Rouge, LA, at 9:00 a.m. All interested persons will be afforded an opportunity to make comments.

Interested persons may submit oral or written comments to Yolanda M. Edwards, Senior Attorney, Division of Health, Department of Insurance, Box 94214, Baton Rouge, LA 70804-9214, telephone (225) 342-1355. Comments will be accepted through the close of business at 4:30 p.m., January 28, 1999.

James H. "Jim" Brown
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Regulation 62—Managed Care Contracting Requirements

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

No costs or savings to state or local governmental units are anticipated as a result of the implementation of Regulation 62. Any new duties imposed upon the Department of Insurance will be handled by existing personnel using existing resources.

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

Adoption of Regulation 62 will have no impact upon revenue collections of state or local governmental units.

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

It is anticipated that there will be a 15 percent to 35 percent increase in expenditures for the HMOs or managed care networks that cover these citizens receiving care in the rural hospitals affected by Regulation 62.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on employment or competition are anticipated as a result of Regulation 62.

Donald J. McLean, Jr. Robert E. Hosse
Assistant Commissioner General Government Section Director
Management and Finance Legislative Fiscal Office
9812#046

NOTICE OF INTENT

Department of Public Safety and Corrections Corrections Services

Drug-Free Workplace (LAC 22:I.203)

In accordance with the Administrative Procedure Act, R.S. 49:953(B), and in order to implement Executive Order No. MJF 98-38, the Department of Public Safety and Corrections, Corrections Services, hereby gives notice of its intent to adopt regulations dealing with the Drug-Free Workplace.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part I. Corrections

Chapter 2. Personnel

§203. Drug-Free Workplace

A. Purpose. To provide a comprehensive program of substance abuse education and to establish guidelines for employee drug/alcohol testing.

B. Applicability—All Employees of Corrections Services. The Deputy Secretary, Undersecretary, Assistant Secretaries and each Unit Head are responsible for conveying the contents of this regulation to all concerned.

C. Definitions

CAP-FUDT Laboratory—a laboratory certified by the College of American Pathologists for forensic urine drug testing.

Custodian of Records—staff person responsible for the direct accountability of drug test results.

Drug Testing—for the purpose of this regulation, drug testing programs will generally be comprised of two testing components preliminary analysis; and formal testing. The application of formal testing may be contingent upon the results of the preliminary analysis. Alcohol testing consists only of administering the approved test and replicating any positive results.

Employee—any individual employed by or appointed to a position with the Louisiana Department of Public Safety and Corrections, Corrections Services (including student workers and temporary appointments) or by an outside agency or provider who works in an institution or division or any individual under contract to the Louisiana Department of Public Safety and Corrections, Corrections Services who works in an institution or division. (This does not necessarily confer "employment" status on independent contractors or

employees of outside agencies, but serves to define a class of people who are subject to participation in the Drug-Free Workplace Program.)

Formal Testing—drug testing conducted by a CAP-FUDT or SAMSHA certified laboratory which usually follows a positive result on a preliminary analysis for the presence of drugs.

Inmate—anyone committed to the Department, whether as an adult or juvenile.

Preliminary Analysis—the first analytical procedure to detect the presence of drugs or metabolites using approved drug testing instruments. (See §203.H.1 for additional information.) The results of the preliminary analysis are to be used solely to indicate the need for additional formal testing, except for those who are being tested for pre-employment purposes. In this case, when the preliminary analysis is positive, it will be sufficient cause to either remove the prospective employee from consideration for employment or appointment or be cause for conducting formal testing. If formal testing is conducted and the result is positive, then this shall be cause for the prospective employee's elimination from consideration for employment or appointment.

Safety/Security Sensitive Position—any job which directly or indirectly affects the safety and security of others. For the purpose of this regulation, safety/security sensitive positions are those which involve direct contact with inmates, offenders and persons under supervision and those having access to confidential information relative to the care, confinement or supervision of inmates, offenders and persons under supervision. All positions within the Department are considered to be safety/security sensitive positions, including those that may require or authorize access to a prison or an incarcerated individual, those with duties that may require or authorize carrying a firearm, those that may require instructing or supervising any person to operate or maintain, or that may require or authorize operating or maintaining, any heavy equipment or machinery and those that may require or authorize the operation or maintenance of a public vehicle, or the supervision of such an employee.

SAMSHA Certified Laboratory—a laboratory certified by the Substance Abuse and Mental Health Services Administration for forensic urine drug testing.

Unit Head—refers to the head of each operational unit.

D. Policy. Substance abuse is a major contributor to criminal activity and is particularly detrimental to our overall correctional mission in providing for the safety of employees and the public. Staff who engage in substance abuse are less likely to enforce policies and procedures effectively to control or to prevent illicit drug and alcohol use by other employees and inmates. Therefore, it is the Secretary's policy to promote increased employee awareness of substance abuse and to achieve and maintain a workplace free of drugs and alcohol.

E. General. Each Unit Head is responsible for implementation of a substance abuse education program that requires compliance with this regulation. Each employee is responsible for refraining from illegal use, possession, sale or manufacture of controlled substances, and from reporting to work or working while under the influence of or impaired by alcohol or drugs.

F. Type of Testing

1. Pre-Employment. Drug testing will be conducted prior to employment. (See §203.C.7 for additional information.)

2. Reasonable Suspicion/Probable Cause. Reasonable suspicion/probable cause screening and subsequent testing, as appropriate, may be based on:

a. observable phenomena, such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug or alcohol or when the odor of alcohol, marijuana smoke, or other substance, as appropriate, is present;

b. a pattern of abnormal conduct or erratic behavior;

c. arrest or conviction for a drug or alcohol-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use or trafficking (the term "trafficking" shall also mean "distribution");

d. information provided by reliable and credible sources or independently corroborated;

e. newly discovered evidence that the employee tampered with a previous drug or alcohol test;

f. credible allegation or confirmation of involvement in a significant violation of policy in which judgment may have been impaired.

3. Post Accident. An employee shall be subject to drug testing following an accident that occurs during the course and scope of their employment that:

a. involves circumstances leading to a reasonable suspicion of the employee's drug use;

b. results in a fatality; or

c. results or causes the release of hazardous waste as defined in R.S. 30:2173(2) or hazardous materials as defined in R.S. 32:1502(5);

d. an employee who is involved in an accident that results in bodily injury or property damage may be subject to drug testing.

4. Rehabilitative. As a condition for returning to work after participating in a rehabilitation program, an employee must participate in a substance abuse aftercare program and agree to follow-up testing on a random basis for up to 48 months. (Additionally, medical professionals who are in an impaired program or who have a documented substance abuse history must agree to periodic drug/alcohol testing throughout the course of their employment.) Staff testing positive without legitimate explanation whose employment is not terminated are subject to rehabilitative random testing for a period of 48 months.

5. Random. All employees who occupy safety/security sensitive positions (as defined in this regulation) will be subject to random drug testing. On a quarterly basis, a list of social security numbers representing at least 5% of a Unit's employees will be selected at random by a computer-generated selection process. This list will be provided to each institution, the Division of Probation and Parole, the Division of Youth Services and Prison Enterprises. (Headquarters employees will be included in the EHCC selection process.)

a. The Office of Information Services will generate the list of social security numbers at the prescribed interval and insure that the lists are distributed directly to the Unit Heads. (Alternatively, if a Unit has a drug-testing services contract with a CAP-FUDT certified or SAMSHA certified laboratory, the production of this list may be included as part of those services.)

b. Unit Heads will establish a policy for matching the social security numbers to employee names, notification of selected employees, recording of test results and other appropriate procedures as needed.

c. All tests will be conducted during the selected employees' work hours; no employee will be called in on his day/night off specifically for the purpose of a random drug test.

d. The conduct of this program will be in accordance with §203.H.

6. Promotion. Drug testing will be conducted prior to promotion.

G. Substances to be Tested for. As provided by statute, drug testing may be performed for any of the following classes of drugs: marijuana; opiates; cocaine; amphetamines; and phencyclidine. This does not preclude testing for any other illegal drugs, alcohol, or abused prescription medication.

H. Conduct of the Drug Testing Program. All urine specimens for drug testing shall be collected, stored, and transported pursuant to applicable laws and appropriate safety procedures.

1. The On Trak, Microline, TesTstik, AccuSign DOA series test kits (formerly called AbuSign DOA) Pharmscreen and MCC test kits for drug testing, (five panel only), may be utilized as a preliminary analysis to determine the need for further testing, but may not be used as the basis for any disciplinary action or other adverse action. (Formal testing may be utilized initially in lieu of preliminary analysis when the Unit Head determines that this is the most efficient method.)

2. Collection of Specimens

a. Collection of urine specimens may be done on-site by the operational Unit's staff who have received the appropriate training or by outside laboratory personnel or off-site at an outside laboratory.

b. All collection of urine specimens shall be made with regard to privacy of the individual.

c. Direct observation by the same sex of the individual during collection of the urine specimen may be allowed only under the following conditions:

i. there is reason to believe that the individual may alter or substitute the specimen to be provided; or

ii. the individual has provided a urine specimen that falls outside the acceptable temperature range; or

iii. the last urine specimen provided by the individual was verified by a MRO as being adulterated based upon the determinations of the laboratory; or

iv. the person collecting observes conduct indicating an attempt to substitute or adulterate the sample; or

v. the individual has previously been determined to have a urine specimen positive for one or more of the drugs

listed in §203.G and is being tested for the purposes of follow-up testing upon or after return to service; or

vi. the type of drug testing is post-accident or reasonable suspicion/ probable cause.

d. Disposal of biohazardous waste will be handled properly in accordance with appropriate safety procedures.

3. Handling and Storage. This component applies to those tests which require the specimen to be preserved for testing and/or transporting to a laboratory.

a. The person obtaining the urine specimen should sign, date, and record the time the specimen was obtained on an accompanying form and turn over to appropriate personnel, who are responsible for labeling and refrigerating/freezing the specimen.

b. The area where the refrigerator containing urine samples is located is to be secured at all times when not in use by appropriate personnel.

c. Only appropriately designated and trained personnel may retrieve the specimen from the refrigerator for testing.

4. Medical Review Officers

a. A Medical Review Officer (MRO), who must be a licensed physician, will review all positive formal test results and will obtain a list of medication used by the employee at the time of the test. The MRO will give the employee the opportunity to provide a medical history and/or discuss the test results. In the event of a positive result on the formal test, the MRO will give a copy of the results to the employee and to the Unit Head.

b. It is not mandatory that the MRO review the results of a pre-employment preliminary analysis which results in a positive finding.

I. Conduct of the Alcohol Testing Program

1. The *Corrections Services Employee Manual, Employee Rule and Disciplinary Procedures*, Rule #11, prohibits employees from reporting for or being on duty under the influence of alcohol or other intoxicants, (or when the odor or effect is noticeable). Towards this end, employees may be required to submit to alcohol testing while on duty under circumstances previously defined in §203.F.2 - 5.

2.a. A portable breathalyzer should be used to determine violation of this regulation. Portable breathalyzers authorized under this regulation are:

i. Alcocheck;

ii. Alco-Sensor III;

iii. Alcotector Mark X; and

iv. Lion Alcometer S-D2.

b. In the event of a positive reading on the portable breathalyzer, a second test must be conducted. In addition, the Intoxilyzer 5000 is also authorized under this regulation as an approved breath-testing device.

3. The alcohol test can be administered only by those persons specifically authorized by the Unit Head and who have received instruction in the use of the testing instrument(s).

J. Training Required. A minimum of one hour of training per year on the effects and consequences of controlled substance abuse on personal health and safety at the workplace and indicators of substance use or abuse is required for all full time employees.

K. Record Keeping and Reporting Requirements

1. A custodian of records is required to maintain a record of each employee who has submitted to a drug or alcohol test, the date of such test, the name of the person performing the test, the number of tests performed, and a summary of the results of each type of test. This information must be maintained in the employee's confidential medical file.

2. All test results will be retained for five years.

3. All information, interviews, reports, statements, memoranda and/or test results received through the Unit's drug testing program are confidential communications, pursuant to R.S. 49:1012 and may not be used or received in evidence, obtained in discovery or disclosed in any public hearing or private proceedings, except in an administrative or disciplinary proceeding or hearing, or civil litigation where drug use by the tested individual is relevant. All such confidential information shall be maintained in a secure manner.

4. Pre-employment and promotional drug testing will be verified through the Department Regulation No. C-05-003 audit process and reported through the Headquarters Human Resources Annual Program Review.

5. A monthly report of drug testing activities will be compiled for submission in the Department Regulation No.

C-05-001 report. The report will reflect the categories of testing conducted, the number of tests conducted by category, number of positives, percentage of positives, number of negatives, and type of drug tested. (See §203.K.5, Employee Drug Testing Report Form.)

6. By October 1 of each year, each Unit Business Office will submit a report to the Headquarters Fiscal Office detailing the number of employees affected by the drug testing program, the categories of testing conducted, the associated costs of testing, and the effectiveness of the program. In conjunction with the Undersecretary's Office, the Headquarters Fiscal Office will compile the Department's Annual Drug Testing Report for submission to the Division of Administration by November 1 of each year. (See §203.M.)

L. Violation of this Regulation. The guidelines provided for in the *Corrections Services Employee Manual* for the application of disciplinary penalties will be utilized in the administration of this regulation. Formal testing with positive results may be cause for initiation of disciplinary action. When a positive formal test result, for which appropriate explanation cannot be provided does not result in termination, referral to the "Employee Assistance Program" or other individual or agency equipped to coordinate accessibility to substance abuse education or counseling is appropriate.

M. Employee Drug Testing Report Form



State of Louisiana
Employee Drug Testing Report
Agency:
Contact:
Contact Telephone:

Executive Order MJF 98-38 directs state department, agencies, boards, commissions, and entities of state government to promulgate a written policy which mandates drug testing of employees, appointees, prospective employees, and prospective appointees pursuant to R.S. 49:1001 et seq. A model drug testing policy and a drug education program have been developed to aid each agency in designing their policy and educating their employees about drug testing. Executive Order MJF 98-38 mandates pre-employment/appointment, reasonable suspicion, post accident/injury, and random for safety and security sensitive drug testing. Executive Order MJF 98-38 also requires that each agency submit to the Office of the Governor, through the Commissioner of Administration, a report on its written policy and progress of its drug testing programs on November 1, 1998. This report shall be updated and submitted each year on November 1.

TYPES OF TESTING:	Total Employees In Position	Number Of Tests	Number of Positive Results	% of Positive Results	Number of Negative Results
Pre-employment/appointment					
Post Accident/Injury					
Random: Safety or Security Sensitive Positions					
Reasonable Suspicion					
Random: Rehabilitation Program					
Other					
TOTAL:					
ASSOCIATED COSTS:					
Collection					
Testing					
MRO					

Random Selector					
Other					
TOTAL:					
NARRATIVE DESCRIPTION OF PROGRAM (please attach policy):					
COMMENTS ON PROGRAM EFFECTIVENESS:					
SUGGESTIONS FOR THE OFFICE OF THE GOVERNOR:					
Please submit report to: Angele D. Davis, Deputy Commissioner of Administration; P.O. Box 94095; Baton Rouge, LA 70804-9095; Fax (225) 342-1057; adavis@doa.state.la.us					

AUTHORITY NOTE: Promulgated in accordance with Executive Order MJF-98-38.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 25:

Richard L. Stalder
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Drug-Free Workplace**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The estimated implementation cost to the state for fiscal year 1998-99 for three months is approximately \$3,605.00, and the estimated annual implementation cost to the state for fiscal year 1999-2000 and beyond is approximately \$14,421.00. Projections for the proposed rule represent department-wide costs for drug testing all employees who are promoted. Annual costs for drug testing under the current rule are approximately \$66,752.00.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There will be no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There will be no noticeable impact on competition. There will be a minimal impact on hiring and promotions due to the small number of positive drug screens. The program is considered to be very effective and will ensure a workforce that is and will remain drug free.

Bernard E. "Trey" Boudreaux, III
Undersecretary
9812#040

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Revenue
Excise Tax Division**

Direct Shipment of Sparkling or Still Wines
(LAC 61:I.201)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the authority of R.S. 26:341, 26:344, and 26:359, notice is hereby given that the Department of Revenue, Excise Taxes Division proposes to adopt LAC 61:I.201, pertaining to direct shipments of sparkling or still wines to consumers within the state by authorized manufacturers or retailers.

Act 71 of the 1998 Regular Session of the Louisiana Legislature enacted R.S. 26:359 to impose a tax on the direct sale and shipment of wines by common carrier, provide for the enforcement and collection of the tax, require application and tax payment before shipments can be made, and provide for penalties for unlawful shipments of sparkling or still wines to Louisiana consumers under certain circumstances. This proposed regulation provides for identifying and reporting of shipments.

**Title 61
REVENUE AND TAXATION**

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

Chapter 2. Alcoholic Beverages

§201. Direct Shipments of Sparkling or Still Wines

A. Identification of Shipments

1. All shipments made by an authorized manufacturer or retailer of sparkling or still wines that are shipped directly to any consumer in Louisiana shall be identified as follows:

a. the words "Alcoholic Beverage—Direct Shipment" shall be marked and clearly visible on both the front and back of the package in lettering measuring at least one quarter inch in height; and

b. the words "Unlawful to Sell or Deliver to Anyone under 21 Years of Age" must be clearly visible on the front of the package, in lettering measuring at least one quarter inch in height.

2. The manufacturer's or retailer's Louisiana registration or permit number assigned by the Excise Taxes Division shall be clearly displayed on the front of the package.

3. All shipments shall have affixed to the exterior packaging a notification to the person making the delivery that a signature of the recipient is required prior to delivery. The notice should be at least 3" by 3" and contain words similar to the following:

ATTENTION
Courier
SIGNATURE REQUIRED.
Deliver to RECIPIENT address only. No indirect delivery. Disregard any Signature Release. Recipient MUST be at least 21 years old, and not show signs of intoxication.

B. Reporting of Shipments

1. For each shipment made by an authorized manufacturer or retailer of sparkling or still wines that is shipped directly to any consumer in the state of Louisiana, the authorized manufacturer or retailer shall maintain the following records until December 31 of the year following the year in which the shipment was made. These records shall be available for inspection by the Department of Revenue upon request:

- a. an invoice detailing the transaction; and
- b. a certification, on a written form as specified by the secretary, by the person receiving the shipment that the recipient is 21 years of age or older.

2. Each certification required by §201.B must be signed and dated at the time of delivery to any consumer in Louisiana.

3. The carrier making the actual delivery of packages of sparkling or still wines shall forward copies of the bills of lading to the Excise Tax Division of the Louisiana Department of Revenue by the 15th day of the month following the month of delivery in the same manner as reports showing the handling of alcoholic beverages as required under R.S. 26:369.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:341, 26:344, and 26:359.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Excise Taxes Division, LR 25:

Interested persons may submit date, views or arguments, in writing, to Cynthia Bridges, Director, Excise Taxes Division, Department of Revenue, Box 201, Baton Rouge, LA 70821 or by facsimile to (225) 925-3851. All comments shall be submitted by 4:30 p.m., Tuesday, January 26, 1999.

A public hearing will be held on Wednesday, January 27, 1999, at 10:00 a.m. in the Secretary's Conference Room, 330 North Ardenwood Drive, Baton Rouge, LA.

Cynthia Bridges
Director

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

RULE TITLE: Direct Shipment of Sparkling or Still Wines

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

Implementation of a program for the direct shipment of sparkling and still wines as provided for by Acts 1998 No. 71 will result in an increase in the Excise Taxes Division's expenditures for the cost of two additional positions at an approximate annual cost of \$60,000 for salaries and related benefits.

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

Requiring out-of-state dealers that directly ship sparkling and still wines to instate customers to register and pay an annual tax will result in an increase in the state's general funds. During the first quarter of 1998, 40 companies registered and paid the \$100 annual registration fee. Based on this data, it is estimated that these 40 companies will register each year and pay total annual fees of \$16,000. A four percent annual growth rate is assumed to estimate the subsequent years.

In addition, requiring out-of-state dealers to collect the proper sales and excise taxes from direct shipments to instate customers will likely result in an increase in sales and excise tax collections, assuming that these monies were not previously collected. The Department does not have data to estimate the amount of these possible revenues.

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

Out-of-state dealers that directly ship sparkling and still wines to instate customers will incur increased costs for the annual tax as well as increased administrative burden required to file the registration and sales invoice information. Based on registrations from the first quarter of 1998, it is estimated that 40 companies will register each year and pay total annual tax of \$16,000. The dealers' increased administrative costs cannot be determined, but is expected to be minimal.

In addition, registered out-of-state dealers will collect the proper sales and excise taxes from direct shipments to instate customers, which could result in an increase in customer costs, assuming that these monies were not previously collected. The Department does not have data to estimate these additional costs.

It is possible that the receipts for these out-of-state dealers may be adversely impacted if customers, who purchased sparkling and still wines from them only to avoid proper payment of sales and excise taxes, now choose to purchase from instate sellers. There is no data available to estimate this possible impact.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Acts 1998, No. 71 should equalize the competition for instate and out-of-state sparkling and still wine dealers by ensuring proper registration and collection of the taxes. No impact on employment is expected.

John Neely Kennedy
Secretary
9812#036

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Social Services Office of Family Support

Family Independence Work Program
(FIND Work)—Support Services
(LAC 67:III.2913)

The Department of Social Services, Office of Family Support, proposes to amend LAC 67: III, Subpart 5, Family Independence Work Program, known in Louisiana as "FIND Work."

Under the authority granted to the agency by Public Law 104-193 and R.S. 46:231.10, this rule proposes to change the amount allowed per participant per state fiscal year for items deemed necessary to facilitate the employment of the participant. The funds used to provide such items are currently set at a maximum of \$150 per year. In order to better facilitate the participant's entry into the workplace, the agency proposes to increase the maximum allowed to \$300 per participant per state fiscal year and add "clothing" in addition to uniforms as an eligible expense.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 5. Family Independence Work Program (FIND Work)

Chapter 29. Organization

Subchapter C. Activities and Services

§2913. Support Services

A.1. - 2. ...

3. Other Supportive Services

a. ...

b. Payments not to exceed a combined total of \$300 per state fiscal year may be made for certain costs deemed necessary such as eyeglasses, hearing aids and other small medical appliances, uniforms/clothing, tools and training materials, medical exam not provided by Medicaid or other resource, placement test fees and other course pre-requisite costs, safety equipment and transportation-related expenses.

c. ...

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 17:309 (March 1991), amended LR 17:388 (April 1991), LR 18:244 (March 1992), LR 18:687 (July 1992), LR 18:748 (July 1992), LR 18:1268 (November 1992), LR 19:504 (April 1993), LR 20:793 (July 1994), LR 23:451 (April 1997), LR 24:356 (February 1998), LR 24:1135 (June 1998), LR 25:

Interested persons may submit written comments by January 26, 1999 to Vera W. Blakes, Assistant Secretary, Office of Family Support, Box 94065, Baton Rouge, Louisiana, 70804-9065. She is the responding authority to inquiries regarding this proposed rule.

A public hearing on the proposed rule will be held on January 26, 1999 at the Department of Social Services, Second Floor Auditorium, 755 Third Street, Baton Rouge, 9:00 a.m. All interested persons will be afforded an opportunity to

submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call (504) 342-4120 (Voice and TDD).

Madlyn B. Bagneris
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Family Independence Work Program—Support Services

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

Implementation of this rule will increase state agency costs for a FIND Work participant's "other supportive services" for the quarter 04/99 through 06/99 by approximately \$67,745 and for fiscal years 99/00 and 00/01 by approximately \$270,980. These funds are available from Louisiana's Temporary Assistance to Needy Families (TANF) Block Grant. Policy and forms revisions will also be required and these costs will be within the normal budget constraints. There are no anticipated costs or savings to local governmental units.

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

There will be no effect on revenue collections of state or local governmental units.

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

FIND Work participants will benefit from the increase to \$300 per state fiscal year for "other supportive services" such as uniforms/clothing, tools and safety equipment.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed increase in allowable payments may facilitate a participant's entry into employment. The increased expenditure for goods and services will otherwise have no effect on competition and employment because of the diverse items and/or services eligible for payment.

Vera W. Blakes
Assistant Secretary
9812#065

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Social Services Office of Rehabilitation Services

Business Enterprises Program Manual
(LAC 67:VII.Chapter 5)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Social Services, Louisiana Rehabilitation Services proposes to adopt the following rule in LAC 67:VII.Rehabilitation Services, Business Enterprises Program Manual.

The rule governing Louisiana Rehabilitation Services policy relative to business enterprises is proposed in order to comply with 34 CFR 295.4.

Title 67
SOCIAL SERVICES

Part VII. Rehabilitation Services

Chapter 5. Business Enterprises Program Manual

§501. Purpose

A. The purpose of the Business Enterprises Program Manual is to provide uniform rules and regulations for the administration of Business Enterprises Programs operated by the State Licensing Agency.

B. The purpose of Chapter 5 is to set forth the legal authority from which these rules are derived, to proclaim the mission of the Business Enterprises Program, define terms used in this body of policy, and to set forth the organization of the Business Enterprises Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:

§503. Mission of the Business Enterprises Program

A. Mission. The mission of the Business Enterprises Program is to establish and maintain business enterprises operated by qualified individuals who are blind.

B. Goals. The goals for the Business Enterprises Program are:

1. provide employment opportunities for qualified persons who are blind by establishing and maintaining Business Enterprises Program Facilities; and
2. administer a continuing process of career development and upward mobility for qualified persons in the Business Enterprises Program.

C. Objectives. The objectives of the Business Enterprises Program are:

1. establish and equip Business Enterprises Program Facilities;
2. assure availability of Business Enterprises Program Licensed Managers;
3. provide management support services to Business Enterprises Program Licensed Managers;
4. develop and maintain standards of conduct and a system of accountability for State Licensing Agency staff;
5. develop and maintain standards of conduct and a system of accountability for Business Enterprises Program Licensed Managers;
6. establish and maintain procedures for quality customer service; and
7. attain the program's financial stability through its administration in an operationally efficient and cost-effective manner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:

§505. Federal Legal Authority

A. The Rehabilitation Act of 1973 as amended by the Rehabilitation Act Amendments of 1986 and 1992 - In accordance with Federal Law under Title I of the Rehabilitation Act of 1973 (Public Law 93-112) as amended, including the Rehabilitation Act Amendments of 1986 (Public Law 99-506), and the Rehabilitation Act Amendments of 1992 (Public Law 102-569), vocational and other rehabilitation

services are offered to individuals with disabilities through the Department of Social Services, Louisiana Rehabilitation Services.

B. Code of Federal Regulations - Volume 34, Sections 361, 363, 365, and 370.

C. The Randolph-Sheppard Act of 1936, as amended (20 U.S.C. Section 107 et seq.), authorizes designated State Licensing Agencies to establish and administer Business Enterprises Programs in their respective states. The law locates the State Licensing Agency (SLA) for the program in the individual state or territorial agency which offers vocational rehabilitation services for individuals who are blind under the Rehabilitation Act of 1973, as amended [29 U.S.C. 31-42].

D. Primary regulatory authority for the Business Enterprises Program is found at 34 CFR Part 395. Other regulatory guidelines impacting the Business Enterprises Program are found at 34 CFR Part 361 and 32 CFR 260.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:

§507. State Legal Authority

A. Louisiana Revised Statutes - R.S. 49:664. Section 6B (1)(b) [Legislative Act that created the Department of Health and Hospitals], R.S. 36:477 (c) [Legislative Act that created the Department of Social Services].

B. Louisiana Act 19 of 1988, effected the merger of the Division of Rehabilitation Services with the Division of Blind Services to form Louisiana Rehabilitation Services.

C. LA R.S. 46:333 gives preference to the blind in operation of vending stands, vending machines, and other small business concessions to be operated on the premises.

D. LA R.S. 46:2641 provides for the establishment of the Blind Vendors Trust Fund.

E. LA R.S. 49:950 (et seq.) is the Administrative Procedure Act for the authority to promulgate rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:

§509. Definitions

A. The following words or terms, when used in this manual, shall have the following meaning unless the context clearly indicates otherwise:

Acquired Stock—that stock in which the licensed manager has accrued equity and which the State Licensing Agency, in conjunction with the licensed manager or licensed managers involved, has determined is suitable for use. Stock in which the licensed manager has not accrued equity is not acquired stock and remains the property of the State Licensing Agency.

Act—the Randolph-Sheppard Vending Facility Act (Public Law 74-732), as amended by Public Law 83-565 and Public Law 93-516, 20 U.S.C., Ch. 6A, Sec. 107.

Active Participation—a process of good faith negotiations involving the Elected Committee of Licensed Managers and the State Licensing Agency. The Committee must be given the opportunity to have meaningful input into the decision-making process in the formulation of program policies which affect licensed managers. The SLA is charged with the ultimate

responsibility for the administration and operation of all aspects of the Business Enterprises Program.

BEP—the Business Enterprises Program of the State Licensing Agency which provides self-employment opportunities for qualified persons who are blind.

BEP Administrator—the person who has responsibility for the operation of the Business Enterprises Program in the state.

Blind Person—a person who, after examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the person shall select, has been determined to have:

1. not more than 20/200 central visual acuity in the better eye with correcting lenses; or
2. an equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

Blind Services Executive Director—the person responsible for administering and coordinating services to the blind and severely visually impaired individuals of the State.

Blind Vendors Trust Fund—monies collected from certain vending machines located on state, federal, and other property, and the disbursement thereof.

Board or Commission—the governing body for the State Licensing Agency.

Business Consultant (BC)—an individual who provides consultative and management services to those business enterprises and licensed managers in the area of the State to which the consultant is assigned.

Business Enterprise—an approved business administered by the State Licensing Agency. See definition of *Vending Facility*.

Business Enterprises Program (BEP)—the Business Enterprises Program services available to establish business enterprises for persons who are blind.

Cafeteria Facility—a food dispensing business enterprise capable of providing a broad variety of prepared foods and beverages (including hot meals) primarily through the use of a line where customers serve themselves from displayed selections. A cafeteria may be fully automatic or provide limited waiter or waitress service. Table and/or booth seating facilities are always provided.

Commissioner—the Commissioner of the Rehabilitation Services Administration (RSA) who exercises approval authority for the Federal government under the Randolph-Sheppard Act.

Committee—the State Elected Committee of Licensed Managers.

Consumer—any person who has made application for the State Licensing Agency's services and has been determined by the State Licensing Agency to be eligible for services.

Contract—a written agreement between the State Licensing Agency and officials in control of Federal or other property to establish a business enterprise.

Contract Labor—a person or company that performs duties or services not a part of the regular duties of the business enterprise.

Counselor—Rehabilitation Services counselors assigned to the State Licensing Agency's program of Vocational Rehabilitation.

Director or Executive Director—the chief administrator of the State Licensing Agency.

Displaced Licensing Manager—a licensed manager who has been displaced from his or her business enterprise through no fault of his or her own.

Dry/Wet Facility—all facilities providing manual dispensing of prepackaged articles, refreshments, and services.

Elected Committee of Licensed Managers (ECM)—the committee elected biennially by licensed managers in accordance with 34 CFR 395.14.

Equipment, Expendable—items having a relatively small cost per item and having a relatively short life expectancy.

Equipment, Non-Expendable—all necessary equipment which requires a relatively high capital outlay and has a normal life expectancy of several years.

Federal Property—any building, land, or other real property owned, leased, or occupied by any department, agency, or instrumentality of the United States (including the Department of Defense and the United States Postal Service), or any other instrumentality wholly owned by the United States.

Federal Regulations—the regulations issued pursuant to the Randolph-Sheppard Act.

Grantor—a Federal, State, County, Parish, city government, private corporation, company, partnership, or individual who grants a permit or enters into an agreement with the State Licensing Agency to operate a business enterprise on its/their property.

Grantor's Agreement—a written document between a grantor and the State Licensing Agency which sets forth the terms, conditions and responsibilities of all parties to the agreement for the operation of a business enterprise on private and/or public property.

Gross Receipts—all revenue including sales tax.

Initial Stock and Supplies—those resalable items or supplies necessary for the opening and operation of a specific type of business enterprise.

Interim Manager—a licensed manager appointed to manage a business enterprise on a temporary basis.

License—a written instrument issued by the State Licensing Agency to a person who is blind, authorizing such person to manage a business enterprise.

Licensed Manager—a licensed individual who has signed an agreement with the State Licensing Agency to manage a Randolph-Sheppard Business Enterprise under the supervision of the State Licensing Agency, or an individual awaiting assignment to a business enterprise.

Licensing Agency—the State Licensing Agency, which has been designated by the Commissioner, pursuant to the Act, to issue licenses to persons who are blind for the management of business enterprises.

Management Services—inspection, quality control, consultation, accounting, regulating, in-service training, and other related services provided on a systematic basis to

support and improve business enterprises operated by licensed managers.

Manager's Agreement—an agreement between a licensed manager and the State Licensing Agency, establishing basic terms and conditions for management of a business enterprise.

Net Earnings or Net Profits—gross profit after deducting operating expenses and set-aside collected.

Net Proceeds—the amount remaining from the sale of articles or services of business enterprises and a vending machine income or other income accruing to licensed managers after deducting the cost of such sales and other authorized expenses excluding set aside charges required to be paid by the licensed managers.

Net Sales—the sum total of sales, excluding sales tax.

Other Income—money received by a licensed manager from sources other than over the counter and machine sales.

Other Property—property which is not Federal property and on which business enterprises are established or operated by the use of any funds derived in whole or in part, directly or indirectly, from the operation of vending facilities on any Federal property.

Permit—the official approval given a State Licensing Agency by a Department, Agency, or Instrumentality in control of the maintenance, operation and protection of Federal property or person in control of other property where the State Licensing Agency is authorized to establish a business enterprise.

Purveyor—an approved source of supply for food, beverages, supplies, or services.

Randolph-Sheppard Act—Public Law 74-732 as amended by Public Law 83-565, Public Law 93-516, and Public Law 95-602, 20 U.S.C. Chapter 6A, Section 107.

Routine/Preventive Maintenance—the regular care, upkeep, and cleaning of equipment used in a business enterprise whether owned by the State Licensing Agency or the licensed manager.

Rules and Regulations—the instrument written by the State Licensing Agency and approved by the Secretary of Education setting forth the conduct and operation of the Business Enterprises Program.

Salable Stock—products comprising the merchandise available for sale to the public.

Satellite Business Enterprise—a business enterprise without a permanently assigned licensed manager which is being operated by a licensed manager who is also operating his/her regularly assigned business enterprise.

Satisfactory Site—an area determined by the BEP Administrator to have sufficient space, electrical and plumbing outlets, and other such accommodations as prescribed by the Act, for the location and operation of a business enterprise in accordance with applicable health laws and building codes.

Secretary—the United State Secretary of Education.

Snack Bar Business Enterprise—a business enterprise engaged in selling limited lines of refreshment and prepared food items necessary for a light meal service.

State Licensing Agency (SLA)—the State agency that issues licenses to persons who are blind for the operation of business enterprises on public and/or private property.

State Property—lands, buildings, and/or equipment owned, leased, or otherwise controlled by the State.

Statewide Average Manager Earnings—the average annual manager earnings as calculated each year for the RSA-15 Report.

Trainee—a qualified Vocational Rehabilitation consumer, who when referred to the Business Enterprises Program, is placed in training to prepare for licensing under the rules and regulations of the State Licensing Agency.

Training Program—the program of study and/or on-the-job training provided to prospective and/or experienced licensed managers.

Vending Facility—automatic vending machines, cafeterias, snack bars, cart service, shelters, counters, and such other appropriate auxiliary equipment which may be operated by licensed managers and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws and including the vending or exchange of changes for any lottery authorized by State Law and conducted by an agency of a State within such State [CFR 34, Part 395.1(x)].

Vending Machine—any coin or currency operated machine which dispenses articles or services, except any machine operated by the United States Postal Service for the sale of postage stamps or other postal products and services. Machines providing services of a recreational nature and telephones shall not be considered to be vending machines.

Vending Machine Facility—an automatic coin or currency operated business enterprise which dispenses a variety of food and refreshment items and services. Including in this category would be interstate highway locations.

Vocational Rehabilitation Services—those services as defined in the Rehabilitation Act, 1973, as amended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:

§509. Promulgation of Business Enterprises Program Policies

A. Rules and procedures, that is, the policies governing the administration of the Business Enterprises Program are developed and maintained in accordance with the Randolph-Sheppard Act [20 U.S.C. Section 107 et seq.], the Rehabilitation Act [29 U.S.C. 31-43], and the Louisiana Administrative Procedure Act [R.S. 49:950 et seq.].

B. The rulemaking authority is the Department of Social Services, Louisiana Rehabilitation Services, hereinafter referred to as the State Licensing Agency (SLA). Promulgation of rules and procedures governing the Business Enterprises Program follows the process Louisiana Administrative Procedure Act (R.S. 49:950 et seq.).

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:

§511. Policy of Non-Discrimination

A. The State Licensing Agency assures that it shall not exclude from participation, deny the benefits of the program or

otherwise subject any person to discrimination because of the person's gender, age, physical or mental impairment, religion, race, creed, national origin, or political affiliation in accordance with the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 as amended, and the Americans with Disabilities Act of 1990.

B. Every licensed manager of a Business Enterprises Program Facility shall operate the business enterprise in such a manner that no person shall be subject to discrimination because of the person's gender, age, physical or mental impairment, religion, race, creed, national origin, or political affiliation whether that person is a present or prospective supplier, customer, employee or other individual who might come into contact with the enterprise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:

§513. Accessibility of Written Materials

A. Upon advance request, all written materials will be provided to each licensed manager in a format accessible to that Manager, to the extent practical. It is the responsibility of the licensed manager to inform the business consultant of the accessible format needed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:

§515. Organization of State Licensing Agency

A. Louisiana Department of Social Services, Louisiana Rehabilitation Services (LRS), is designated as the sole state agency under a state plan for vocational rehabilitation services approved pursuant to the provisions of the Rehabilitation Act of 1973, (29 U.S.C., Ch. 16) and approved by Rehabilitation Services Administration as the State Licensing Agency.

1. Louisiana Rehabilitation Services Director. The Senior Administrative official of the Agency.

2. Blind Services Executive Director. Administers and coordinates services to the blind.

3. Central Office Staff. The program is administered by the Randolph-Sheppard Program Manager who reports to the Blind Services Executive Director.

4. Field Staff. The state is divided into specific geographic areas for the purpose of administering the Business Enterprises Program, and a business consultant (Randolph-Sheppard Management Analyst) is assigned to each area. The RSMA provides the link between the licensed managers and the central office and is authorized to provide the services and is obligated to assist and support the licensed managers in complying with the rules and regulations of the Rehabilitation Services Administration and the SLA relative to business enterprises established under the Randolph-Sheppard Act.

5. Licensed Managers. The individual enterprises established by the Business Enterprises Program are managed by licensed managers who derive their livelihood from net profits of the operations. Licensed managers are subject to instructions, policies, rules and regulations of the Business Enterprises Program, but are not employees of the program, the SLA, or the State of Louisiana. They do, however, have a

contractual relationship with the SLA and are required to manage the facilities in accordance with established rules and regulations.

6. Duties of the Business Enterprises Program Administrator. The duties of the Business Enterprises Program Administrator are:

a. assures compliance with all applicable rules, regulations and statutory provisions;

b. prepares program budgets and approves expenditures;

c. plans for the development and expansion of the program and upgrading of existing facilities;

d. drafts program policy, operating instructions and regulation changes as needed to make the program more efficient or to conform to current legislative mandates;

e. promotes the program to the general public; and

f. actively participates with the ECM in accordance with 34 CFR 395.14.

7. Duties of the RSMA. The duties of the Randolph-Sheppard Management Analyst are:

a. assists each licensed manager to operate the business enterprise within applicable rules and regulations;

b. initiates negotiations for new facilities;

c. oversees the development of new installations;

d. conducts public relations activities which promote a positive image of the program to existing and potential host organizations, rehabilitation workers, consumers, and the general public;

e. provides management services to licensed managers;

f. collects and analyzes data on the operation of each business enterprise in order to provide technical assistance and for monitoring and reporting purposes; and

g. communicates with the district EMC on district operations.

8. Guidelines for Communication. Communication of information is to occur so that the best interests of the Business Enterprises Program are served. This is best accomplished when information is shared and acted upon by those who can respond most effectively in the circumstances. The administrative staff of the SLA is responsible for assuring that active communication among SLA staff and licensed managers contributes to the effective operation of the entire Business Enterprises Program. Management services and operational matters are best handled by communicating with the appropriate RSMA. Section 515.A.8.a-c describe appropriate levels to which various types of communication should be directed.

a. Communications originated by a licensed manager. The licensed manager is to maintain appropriate and professional communication with customers and building management personnel. The point of communication for licensed managers with the SLA is the RSMA. Circumstances in which a licensed manager may contact the Business Enterprises Program Administrator are:

i. when a problem cannot be resolved through normal channels;

ii. when there is a specific complaint concerning the conduct and/or behavior of a RSMA; or

iii. when an emergency develops and the RSMA is not available.

b. Randolph-Sheppard Management Analyst Communication. An RSMA is expected to maintain open and ongoing communications with all the licensed managers in his/her area. Should a situation require immediate action beyond the RSMA's authority, he/she may contact the proper administrative official. All significant information will be communicated to the BEP Administrator at the earliest opportunity.

c. Written Communications. Any communication of major consequence is to be documented in writing. Situations needing immediate action are to be addressed promptly by the appropriate official and subsequently documented in writing. Records of written documentation will be maintained in accordance with agency policy. Written requests require written responses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:

§517. Management Services Provided by the State Licensing Agency

A. Overview of Management Services. Management services include inspection, quality control, consultation, accounting, regulating, in-service training, and other related services on a systematic basis to support and improve vending facilities.

B. Technical Assistance Services. The SLA shall provide each licensed manager with:

1. recommendations for optimizing business enterprise profitability;
2. recommendations and feedback on business enterprise operations including quality, service and cleanliness;
3. possible solutions to problems recognized by the licensed manager or brought to the licensed manager's attention by BEP staff or the Grantor;
4. providing upward mobility and in-service training; and
5. explanation of the SLA's procedures, policies, and standards.

C. Responsibilities of the Randolph-Sheppard Management Analyst. The RSMA will consult with the respective ECM representative on district issues, as appropriate. RSMAs are required to assist licensed managers in their district to meet Business Enterprises Program requirements through review and consultation on:

1. compliance with applicable laws and program regulations;
2. hiring employees in accordance with rules and regulations;
3. compliance with all conditions in the licensed manager's license;
4. assuring that merchandise is:
 - a. sold in accordance with the grantor's agreement;
 - b. neither purchased or sold on credit; and
 - c. of high quality, adequately stocked, and properly displayed;
5. standards for employee personal appearance and hygiene;

6. quality customer service;
7. maintenance of sanitation and safety standards;
8. proper maintenance of equipment;
9. communications and working relationships between the licensed manager and customers, suppliers, employees, grantor, and the general public;
10. SLA and other agency requirements for record keeping; and
11. licensed manager performance evaluations.

D. Business Consultant Business Enterprise Visits. Business consultant business enterprise visits shall be made as often as necessary to ensure the continued success of the business enterprise. The business consultant will work with licensed managers to maximize profits. Each time the business consultant visits a business enterprise, he/she will complete a business enterprise visitation report.

E. Business Enterprise Reviews. The business consultant shall complete an inspection of the business enterprise using a standard form as needed. The report shall be discussed with and signed by the licensed manager.

F. Visits by the Program Administrator. The Program Administrator will periodically visit business enterprise facilities.

G. Assistance of Rehabilitation Staff. At the request of the business consultant or other BEP staff member, rehabilitation staff will provide necessary assistance to the program when the best interest of the licensed manager or the SLA needs such assistance.

H. SLA Provision of Training. The SLA shall ensure that effective programs of vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials, shall be provided to trainees as vocational rehabilitation services. Such programs shall include on-the-job training in all aspects of business enterprise operations for licensed managers, and upward mobility training including further education and additional training or retraining for improved work opportunities for all licensed managers. (34 CFR 395.11)

1. Training for New or Potential Licensed Managers. Training for potential or new licensed managers will cover the basic and common knowledge, skills, and abilities necessary to operate a business enterprise. This training will use instruction and on-the-job training to cover such topics as the history and statutory foundations of the BEP, acceptable business practices, the rules and regulations of the BEP, employee supervision, food preparation and handling, operation and maintenance of equipment and furnishings, merchandising, and quality customer service.

2. Training for Present Licensed Managers. Post-employment training will be provided by the SLA to encourage greater professional competence and to promote the upward mobility of the licensed manager. The training will, through instruction and on-the-job training, enhance the knowledge, skills, and abilities needed to operate and improve the operation of present enterprises, and to prepare for the operation of a more comprehensive enterprise, supervisory practices relevant to larger operations, changing policies and laws, and state of the art merchandising techniques and

equipment. Such a training program will also incorporate the use of peer trainer workshops in best practices.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:

§519. State Licensing Agency Responsibilities for Business Enterprise Operations

A. Business Enterprise Equipment and Fixtures. The SLA will provide each business enterprise with fixtures and equipment in such quantity and quality so as to give reasonable assurance of successful operation by the licensed manager.

B. Additions, Deletions, or Modifications to Equipment. The licensed manager will make no additions, deletions or modifications to the business enterprise and its operation, in the form of equipment, fixtures or facilities, without first obtaining written authorization from the SLA.

C. Maintenance and Replacement of Business Enterprise Equipment. The SLA shall maintain, or cause to be maintained, all business enterprise equipment in good repair and in an attractive condition and shall replace or cause to be replaced worn-out and obsolete equipment as required to ensure the continued successful operation of the business enterprise. (34 CFR 395.10)

D. Initial Inventory and Supplies. The SLA shall provide for initial inventory of merchandise for resale and for operating a business enterprise by a licensed manager.

E. Assignment, Transfer of Licensed Managers. The SLA will carry out assignment and transfer of licensed managers through business enterprise vacancy announcements, eligibility verification, and establishing and convening a screening committee.

1. Business Enterprise Vacancy Announcement

a. The SLA will develop minimum qualifications specific to the characteristics of the vacant enterprise. These minimum qualifications will establish the level of accomplishment expected of the applicant for the vacant business enterprise in each of the areas to be considered by the Screening Committee as described in §519.E.2. Priority will be given to displaced licensed managers:

- i. location, type of enterprise, and general description of operations;
- ii. minimum qualifications;
- iii. for a new enterprise, estimates of monthly net sales based upon potential patronage, with disclaimer this estimate is not a guarantee of sales; and
- iv. application due date.

2. Eligibility Verification and Referral to Screening Committee. The SLA shall provide a list of eligibility criteria and refer eligible applicants to the Screening Committee. Selection shall be based upon:

a. managerial and other skills and abilities demonstrated by the licensed managers under consideration as they fit the available business enterprise, including:

- i. handling labor needs;
- ii. complexity of financial skills;
- iii. food preparation and production; and
- iv. customer relations;

b. previous records of the licensed manager under consideration, including:

i. consideration of the timeliness and accuracy of record keeping;

- ii. customer satisfaction;
- iii. improvements in profits;
- iv. safety and sanitation inspections;
- v. fees, taxes, and bill payment history;
- vi. initiative shown in upgrading skills;
- vii. regularity of work attendance;
- viii. compliance with applicable rules and laws; and
- ix. past evaluations by the SLA;

c. seniority of eligible licensed manager.

3. Screening Committee and Recommendation for Assignment. The Screening Committee shall be established and convened by the SLA. The Screening Committee will consider applicants for assignment and transfer. The committee shall make recommendation(s) to the SLA or designee. At least one member of the Screening Committee shall be a representative of the Elected Committee of Managers.

F. Vending Machine Income. Vending machine income will be managed by the following.

1. Vending machine income from vending machines on Federal property which has been disbursed to the SLA by a property manager under the vending machine income sharing provisions of the Federal Regulations shall accrue to each licensed manager operating a business enterprise on Federal property in an amount not to exceed the average net income of the total number of licensed managers, as determined each fiscal year on the basis of each prior year's operations, except that vending machine income shall not accrue to any licensed manager in any amount exceeding the average net income of the total number of licensed managers in the United States. [34 CFR 395.8(a)]

2. No licensed manager shall receive less vending machine income than he/she was receiving during the calendar year prior to January 1, 1974, as a direct result of any limitation imposed on such income under this ceiling. (34 CFR 395.32)

3. One-hundred percent (100%) of all vending machine income from vending machines on Federal property which are in direct competition with a business enterprise operated by a licensed manager will accrue to the SLA which shall disburse such income to such licensed manager operating such business enterprise on such property provided that the total amount of such income accruing to such licensed manager does not exceed the maximum amount determined under 34 CFR 395.8(a). In the event that there is income in excess of the maximum amount which may be disbursed to the licensed manager under 34 CFR 395.8(a), such additional income shall accrue to the SLA for purposes determined in accordance with 34 CFR 395.8(c). [34 CFR 395.32(b)]

4. The SLA will disburse vending machine income to qualifying licensed managers on at least a quarterly basis. [34 CFR 395.8(b)]

5. Vending machine income retained by the SLA will be sued in accordance with applicable Federal regulations. [34 CFR 395.8(c)]

6. Unassigned income from non-Federal property is used to develop and enhance the BEP.

G. Due Process. The SLA provides procedures for fair hearings of licensed managers' grievances. These procedures provide each licensed manager the opportunity to seek remediation of dissatisfaction with any SLA action arising from the operation of the BEP and are set forth in the following.

1. Informal Administrative Review. It is the policy of the SLA to resolve complaints in an expeditious and facilitative manner. These resolutions shall be accomplished through the informal administrative review process whenever possible. A licensed manager has the right to request a full evidentiary hearing at any time within established due process time lines.

a. Information administrative reviews are conducted by the SLA staff person closest to the problem who was not involved in the action resulting in the complaint, and who can resolve the complaint in the most expeditious manner.

b. The information administrative review is to be completed within 45 calendar days of receipt of the written complaint to the appropriate SLA staff person.

c. The results of the informal administrative review are to be reported in writing to the BEP Administrator, with a copy going to the licensed manager affected.

2. Full Evidentiary Hearings. Licensed managers have the right to a full evidentiary hearing to resolve dissatisfaction with any SLA action arising from the operation or administration of the Business Enterprises Program. Evidentiary hearings shall be conducted as set forth in the following.

a. If the complaint cannot be resolved with an informal administrative review, or in the absence of an information administrative review, the licensed manager may request a full evidentiary hearing. The request for a full evidentiary hearing must be made to the BEP Administrator in writing within 30 calendar days from the date the licensed manager receives the written notification of adverse action, or the written report of the information administrative review. The request for a full evidentiary hearing is to be sent by certified mail.

b. The licensed manager may be represented in the evidentiary hearing by legal counsel, or other representation of the licensed manager's choice, and at the licensed manager's expense.

c. Reader services or other reasonable accommodations will be arranged by the SLA upon the request of the licensed manager.

d. The hearing will be scheduled by the SLA for a time and place convenient and accessible to the licensed manager and the SLA staff involved in the hearing. The licensed manager will be notified of the place and time of the hearing and the right to be represented by legal or other counsel in writing.

e. The hearing will be conducted by an impartial and qualified official with no involvement or vested interest in the SLA, action at issue, or with the operation of the affected business enterprise. The presiding officer will conduct the hearing in accordance with State and/or Federal laws and rules governing the conduct of such proceedings. In any case, the hearing will be conducted in a manner that avoids delay,

maintains order, and provides for a full recording and reporting of the proceedings so that a full and true disclosure of the facts and issues occurs.

f. The hearing officer's determination will be based upon the facts as presented by both parties and upon applicable law, and the existing rules of the SLA. The hearing officer does not have the power to rule upon the legality or construction of the rules themselves. The officer's decision will determine the relevant issues and facts to be ruled upon.

g. The hearing officer shall make a written report of the evidence presented, the laws and rules used in determining a resolution, and the resolution itself. This report shall be issued to the BEP Administrator and the licensed manager, or his/her authorized representative within 15 calendar days of the conclusion of the full evidentiary hearing.

h. If the licensed manager is dissatisfied with the decision, she or he may request that the Secretary (USDE) convene an arbitration panel.

3. Arbitration of Complaints after the Evidentiary Hearing. The licensed manager has the right to file a request for arbitration with the Secretary (USDE) if dissatisfied with the outcome of the evidentiary hearing. By filing a complaint with the Secretary, the operator consents to the release of information necessary for the conduct of an ad hoc arbitration panel.

a. The complaint must be filed in writing and must contain:

- i. statement of the grievance;
- ii. the date and place of the full evidentiary hearing;
- iii. a copy of the decision and what actions have been taken because of the decision;
- iv. the part of the decision which is causing the dissatisfaction and reason for the dissatisfaction; and
- v. a statement as to what is required to remedy the situation.

b. The Secretary (USDE) will convene an arbitration panel after receiving a complaint which meets the requirements in §519.G.3.a.i. - v. The decision of the panel will be final, except as provided for in 20 U.S.C. 107d-2. The Secretary will pay the reasonable costs for the arbitration. An abstract of the arbitration decision will be published in the *Federal Register*. The panel will be convened by the Secretary in accordance with the following:

- i. the SLA shall designate one member of the panel;
- ii. the licensed manager shall designate one member of the panel;
- iii. the designees of the SLA and the licensed manager shall together designate the third panel member who shall not be an employee of the SLA or its parent agency. This member shall be the chairperson of the panel; and
- iv. if the SLA or licensed manager does not select a member for the panel, the Secretary will designate such a member on the applicable party's behalf.

4. Arbitration of SLA Complaints Against Federal Agencies. The SLA is to resolve problems related to the operation of a business enterprise with the full participation of the licensed manager and the appropriate property manager. The SLA may file a complaint with the Secretary (USDE) if it

determines that an agency controlling Federal property is not complying with the provisions of the Randolph-Sheppard Act of U.S. Department of Education regulations. After the complaint is received, the Secretary will convene an arbitration panel. If the panel finds that the Federal agency is in violation of the Act or USDE regulations, that Federal agency will be notified that it is expected to correct the violation according to 20 U.S.C. 107d-2. The Secretary pays the reasonable costs of this arbitration. The decision resulting from the arbitration will be published in the *Federal Register*. The arbitration panel will be convened by the Secretary in accordance with the following:

- a. the SLA will designate one member of the panel;
- b. the agency controlling the Federal property over which the dispute arose will designate one member of the panel;
- c. the designees of the SLA and the agency controlling the property will designate a third member who is not an employee of the agency. This member will chair the panel; and
- d. if either the SLA or the head of the Federal department, agency, or instrumentality fails to designate a member of an arbitration panel, the Secretary shall designate such member on behalf of such party.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:

§521. Licensed Managers

A. Licensing Requirements for Operating a Business Enterprise

1. **Definition of License.** A license is a written instrument issued by the SLA to a licensed manager, authorizing such person to operate a business enterprise on Federal or other property. (34 CFR 395.1)

2. **Issuance and Conditions of License.** A license shall be issued by the SLA in accordance with Federal regulations making the individual eligible to operate a business enterprise. The license shall be prominently displayed in the licensed manager's business enterprise. The license remains effective for an indefinite length of time, unless terminated, suspended, or revoked by the SLA in accordance with State and Federal regulations. A license issued to a qualified individual is non-transferable. (34 CFR 395.7) Requirements for the issuance of a BEP license are that the individual:

- a. must be blind as verified by documentation (34 CFR 395.7);
- b. must be a U.S. citizen residing in the State in which he/she desires to be trained and licensed. Birth certificate or other applicable documentation must be submitted with application (34 CFR 395.7);
- c. be at least 18 years of age or older;
- d. have completed all services on the Individualized Written Rehabilitation Program which are prerequisite for the training program;
- e. have documentation of independent living skills;
- f. be a high school graduate or have a GED;
- g. have basic math skills; and
- h. have successfully completed the BEP Training Program.

3. **Termination of Agreement or Removal from an Enterprise.** The SLA may terminate a manager's agreement and/or immediately remove the licensed manager from operation of a business enterprise for cause shown. Termination of a manager's agreement or removal from operation of a business enterprise does not necessarily mean that the manager's license will be suspended or terminated. The licensed manager has the right to a full evidentiary hearing when dissatisfied with any State Licensing Agency action in accordance with BEP, State, and Federal regulations.

4. **Termination of License.** A license automatically expires when the licensed manager is no longer a U.S. citizen, no longer meets the definition of legal blindness, surrenders his/her license, resigns, retires, or dies. A license may be terminated or suspended by the SLA, after affording the licensed manager an opportunity for a full evidentiary hearing, in accordance with BEP, State, and Federal regulations. [34 CFR 395.7(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:

§523. Operation Standards for Licensed Managers

A. The licensed manager is expected to operate in accordance with the established rules and regulations of the BEP, within the terms of the licensed manager's agreement with the SLA and the grantor's agreement, contract, or permit. The licensed manager may not act as an agent of the SLA. Specifically, the licensed manager will:

1. work cooperatively with authorized representatives of the SLA in connection with their official responsibilities;
2. operate the business enterprise in accordance with all applicable health laws and regulations, safety regulations and other Federal, State, county, and municipality laws and regulations applicable to the business enterprise;
3. dress and maintain a level of personal hygiene which will convey a positive public image;
4. supervise employees in a manner that promotes quality customer service;
5. operate the business enterprise on a cash basis unless otherwise authorized by the SLA;
6. arrange for continued operation of the enterprise in the case of absences;
7. maintain daily records of gross receipts, merchandise purchased, cash on hand, and personal withdrawals from the business enterprise, and other records as established by the BEP;
8. maintain and display current licenses and permits, including BEP license, in the business enterprise;
9. complete and submit all required Federal and State reports and payments for each business enterprise;
10. comply with all regulations and laws governing the possession and/or use of firearms, weapons, alcohol and other drugs; and
11. maintain appropriate professional relationships with suppliers, customers, and building officials as in §523.B - D.

B. **Relationships with Suppliers/Purveyors.** The licensed manager is free to choose the suppliers from whom he/she is to make purchases, provided, however, that such suppliers are established and reputable.

C. Relationships with Customers. To serve the best interest of the public, the licensed manager and his/her employees must:

1. provide prompt, cheerful and courteous service to all customers and accommodate, within reasonable limits, such other persons who may come to the business enterprise requesting change, information, or other services; and
2. operate on a cash basis.

D. Relationships with Building Officials. Section 523.D.1 - 2 provide guidance in maintaining a productive relationship with building officials.

1. The licensed manager must comply with all reasonable requests concerning the operation of a business enterprise that may be made by officials of the building in which the enterprise is located, provided that such requests do not conflict with the agreement and the rules and regulations issued by the SLA as contained herein.

2. If differences should arise between the licensed manager and building management, the licensed manager shall bring the matter to the immediate attention of the business consultant for appropriate action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:

§525. Grounds for Suspension or Termination of a License

A. A BEP license may be suspended or terminated for:

1. failure to open the assigned business enterprise as stated in the permit/contract with the grantor agency, without prior proper approval from the SLA (abandonment of business enterprise);
2. defrauding any agency of the government (including the SLA) or any supplier or failure to pay monies due including taxes, fees, or assessments to any governmental entity or supplier;
3. failure to file required financial and other records with the SLA or to preserve them for a specified time and failure to comply/cooperate with audits conducted by the SLA or other State or Federal agencies;
4. failure to maintain the required insurance coverage;
5. the business enterprise is not being operated in accordance with the rules and regulations, terms and conditions of the permit with the grantor agency, or the terms and conditions of the business enterprise manager's agreement;
6. intentional abuse, neglect, unauthorized use or removal of the business enterprise equipment; or failure to properly maintain the equipment in a clean and operating manner within the scope of the licensed manager's level of maintenance authorization;
7. substance abuse (alcoholic beverages, illegal drugs, etc.) while operating the business enterprise; or other substance abuse that interferes with the operation of a business enterprise;
8. operation of a business enterprise in such a way that the SLA's investment is obviously endangered;
9. an attempt by a licensed manager to derive personal benefit from privileged information acquired through participation in the Business Enterprises Program;

10. failure to comply with all Federal and State laws prohibiting discrimination and failure to assure services without distinction on the basis of race, gender, color, national origin, religion, age, political affiliation, or disability;

11. determination by the SLA that the licensed manager no longer has the necessary skills and abilities for effectively managing a business enterprise;

12. use of the business enterprise to conduct unlawful activities;

13. failure to personally operate and manage the business enterprise in accordance with the manager's agreement; or

14. does not actively operate a business enterprise in the Business Enterprises Program for 5 years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:

§527. The Elected Committee of Managers

A. Authority for Establishing an Elected Committee of Licensed Managers is found in Section 107-B1 of Chapter 6A of Title 20 U.S., commonly referred to as the Randolph-Sheppard Act.

B. Section 527.B.1 - 2 provide guidance in approaching the degree of participation by the ECM.

1. Active participation means a process of good faith negotiations involving the ECM and the SLA. The committee must be given the opportunity to have meaningful input into the decision-making process in the formulation of program policies which affect licensed managers.

2. The SLA is charged with the ultimate responsibility for the administration and operation of all aspects of the Business Enterprises Program.

C. Functions of the Elected Committee of Licensed Managers include:

1. actively participate with the SLA in the major administrative, policy, and program development decisions affecting the overall administration of the Business Enterprises Program;

2. to receive and transmit to the SLA grievances at the request of licensed managers and to serve as advocates for such managers in connection with such grievances;

3. to actively participate with the SLA in the development and administration of a State system for the transfer and promotion of licensed managers;

4. to participate with the SLA in developing training and retraining programs for licensed managers;

5. to sponsor, with the assistance of the SLA, meetings and instructional conferences for licensed managers;

6. to participate in setting out the method of determining the charge for each of the purposes listed below:

a. maintenance and replacement of equipment;

b. the purchase of new equipment;

c. management services;

d. assuring a fair minimum of return to licensed managers; or

e. the establishment and maintenance of retirement or pension funds, health insurance contributions, and provisions for paid sick leave and vacation time, it is so determined by a majority vote of licensed managers, after the SLA provides to

each licensed manager information on all matters relevant to such proposed purposes. [34 CFR 395.9(b) and (c)]

D. The ECM will be composed of licensed managers in the program based on such factors as geography and business enterprise type with a goal of providing for proportional representation of licensed managers on Federal property and other property. There will be an executive committee with their duties and terms of office specified in the by-laws of the ECM.

E. The SLA shall provide for the biennial election of a State committee of licensed managers which shall be fully representative of all licensed managers in the State Program. (34 CFR 395.14)

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:

Interested persons may submit written comments for 40 days from the date of this publication to May Nelson, Director, Louisiana Rehabilitation Services, 8225 Florida Boulevard, Baton Rouge, LA 70806-4834. Ms. Nelson is responsible for responding to inquiries regarding the proposed rule.

Public hearings will be conducted at 10:00 a.m. on Wednesday, January 27, 1999, as follows: Baton Rouge, LRS Regional Office, 2097 Beaumont Drive; Alexandria, LRS Regional Office, 900 Murray Street; New Orleans, LRS Regional Office, 2026 St. Charles Street; Shreveport, LRS Regional Office, 1525 Fairfield Avenue.

Individuals with disabilities who require special services should contact Judy Trahan, Program Manager, Louisiana Rehabilitation Services, at least 14 working days prior to the hearing if special services are needed for their attendance. For

information or assistance, call 225-925-4131 or 1-800-737-2958 or for voice and TDD, 1-800-543-2099.

Madlyn B. Bagneris
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Business Enterprises Program Manual**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no projected implementation cost in order to promulgate the Randolph-Sheppard Program's policy manual.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no anticipated increase or decrease in revenue. Louisiana Rehabilitation Services has sufficient funds to administer the Randolph-Sheppard Program as Act 19 of 1998 was approved by the Louisiana Legislature.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There is no change in the estimated cost and/or economic benefits to directly effect persons or nongovernmental groups. The proposed action will allow the licensed blind managers to have a promulgated policy manual.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The proposed action will have no impact on competition and employment in the public and private sectors.

May Nelson
Director
9812#062

H. Gordon Monk
Staff Director
Legislative Fiscal Office